PROJECT NO. 42190

RULEMAKING TO IMPLEMENT NEW CHAPTER 24 RELATED TO SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS, MIGRATION OF SUBSTANTIVE RULES FROM THE TCEQ (30 TAC CHAPTER 291) TO THE PUC (16 TAC 24)	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW CHAPTER 24 RELATED TO SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS (MIGRATION OF SUBSTANTIVE RULES FROM THE TCEQ (30 TAC CH 291) TO THE PUC (16 TAC CH 24)) AS APPROVED AT THE JULY 10, 2014 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new Chapter 24 relating to Substantive Rules Applicable to Water and Sewer Service Providers. Sections 24.1, 24.14, 24.21, 24.22, 24.28, 24.41, 24.76, 24.83, 24.93, 24.94, 24.102, 24.103, 24.105, 24.109, 24.113, 24.115, 24.123, and 24.150 are adopted with changes to the proposed text as published in the April 11, 2014 issue of the *Texas Register* (39 TexReg 2667). Sections 24.2-24.6, 24.8, 24.9, 24.11, 24.12, 24.15, 24.23-24.27, 24.29-24.32, 24.34, 24.35, 24.42-24.45, 24.71-24.75, 24.80-24.82, 24.84-24.92, 24.95, 24.101, 24.104, 24.106, 24.107, 24.110-24.112, 24.114, 24.116-24.122, 24.124, 24.125, 24.127-24.138, 24.140-24.144, 24.146, 24.147, and 24.151-24.153 are adopted without changes to the proposed text as published in the April 11, 2014 issue of the *Texas Register* (39 TexReg 2667).

This adoption will result in the migration of substantive rules regulating water and sewer utilities from the Texas Commission on Environmental Quality (TCEQ) (30 Texas Administrative Code (TAC) Chapter 291) to the commission (16 TAC Chapter 24). The new chapter (Chapter 24)

implements the substantive rules related to the economic regulation of water and sewer and includes necessary changes to implement the rules in accordance with commission procedures. The modifications to the published text address primarily typographical and procedural issues identified by various commenters associated with the migration of the existing TCEQ rules to the commission in the new Chapter 24. Correspondingly, the commission has not made modifications to the published text of the rules that result in substantive changes. This rulemaking is necessary to allow the commission to begin the economic regulation of water and sewer utilities effective September 1, 2014, pursuant to House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session. Therefore, the new Chapter 24 substantive rules will be effective September 1, 2014.

Project Number 42190 is assigned to this proceeding.

The commission received comments on the proposed amendment from the TCEQ, the Office of Public Utility Counsel (OPUC), the Texas Apartment Association (TAA), and the City of Houston (Houston). In addition, joint comments were received from several investor owned utilities: Aqua Texas, Canyon Lake Water Service Company, SouthWest Water Company, and Corix Utilities (Water IOUs). Reply Comments were received from the Cities of Blue Mound, Kyle, Ivanhoe, and Buda (Coalition of Cities); Alliance of Local Regulatory Authorities (ALRA); Houston, OPUC, and the Water IOUs.

General Comments

Houston and OPUC filed comments which noted that their understanding is that this current rulemaking is intended to effectuate the transfer of TCEQ's functions related to the economic regulations of water and sewer utilities to the commission. Houston and OPUC reserved future comment for replies in this project and for later phases of the water utility transition. The Joint IOUs, in addition to making detailed comments addressed below, also acknowledged that the opportunity for comment in subsequent proceedings to address specific substantive issues would be the most appropriate forum to address most substantive comments. The Water IOUs noted their desire to see substantive revisions to many of these rules in subsequent rulemakings but suggested that some substantive revisions should occur during this rulemaking.

In reply comments the Coalition of Cities, OPUC, ALRA, and Houston noted that this rulemaking is intended to migrate the TCEQ's relevant substantive rules relating to the economic regulation of water and sewer utilities into the commission's rules and stated, generally, that many of the Water IOUs' recommended revisions are beyond the scope of this rulemaking.

Commission Response

The commission agrees with all commenters that this rulemaking is intended only to transfer the existing TCEQ substantive water and sewer utility rules, with limited necessary changes to accommodate regulatory and procedural differences between the TCEQ and the commission. The commission intends to engage in future rulemaking proceedings following the September 1, 2014 transfer of jurisdiction over water and sewer

utilities. At that time, the commission will consider addressing substantive issues associated with the economic regulation of such water and sewer utilities. The commission addresses each proposed revision below and declines to make a revision when it is beyond the limited scope of this proceeding.

Section 24.3

Paragraph (1)(C)

The Water IOUs suggested deleting the definition of negative acquisition adjustment in paragraph (1)(C). The Water IOUs asserted that TCEQ has previously determined in *Canyon Lake Water Service Company's Application for a Rate/Tariff Change* that negative acquisition adjustments should not be applied in the water or wastewater rate base determination *(Canyon Lake Water Service Company's Application for a Rate/Tariff Change;* SOAH Docket No. 582-11-1468; TCEQ Docket No. 2010-1841-UCR and Proposal for Decision at 47-48). The Water IOUs further commented that the term serves no purpose and is not used in any other TCEQ rule.

OPUC replied that the Water IOUs incorrectly read paragraph (1) as a definition of the term negative acquisition adjustment. OPUC noted that the term "negative acquisition adjustment" is used to better define the term "acquisition adjustment" and deletion of the reference to a "negative acquisition adjustment" will leave the definition of acquisition adjustment incomplete. According to OPUC, the Coalition of Cities and ALRA, removal of the term would not affect the commission's authority to make a negative acquisition adjustment. Houston likewise disagreed with the Water IOUs noting that determination of acquisition adjustments is case specific, and could result in positive or negative determinations.

The Coalition of Cities also replied and noted that the Water IOUs requested the elimination of the definition of negative acquisition adjustment, paragraph (1)(C), but want to leave in the rule the definition of positive acquisition adjustment, paragraph (1)(B). The Coalition of Cities disputed the basis for which the Water IOUs wish to delete the definition of negative acquisition adjustment, including the fact that the TCEQ did not actually make the determination cited by the Water IOUs. The Coalition of Cities noted that regardless of a prior TCEQ decision where the TCEQ did not adopt a negative acquisition adjustment in a Canyon Lake Water Services Company case, the commission would not be restricted by a TCEQ decision in a specific case.

Commission Response

The commission disagrees with the Water IOUs' suggestion to delete the definition of negative acquisition adjustment. The commission agrees with OPUC and Houston that the current language, which includes a discussion of negative acquisition adjustment, adds clarity to the types of acquisition adjustments on which the commission may make a ruling in a future rate filing. The commission also agrees with Houston that a commission determination of acquisition adjustments is case specific and could result in positive or negative determinations.

The commission further notes that regardless of whether the TCEQ may have determined that such adjustments should not be applied in water/wastewater utility rate cases involving a review of a water and sewer utility's rate base, the commission reserves the right to apply such adjustments in the future. Moreover, such a revision would create a substantive change to the rule and is beyond the limited scope of this proceeding. The

commission intends to engage in future rulemaking proceedings following the September 1, 2014 transfer of jurisdiction over water and sewer utilities. At that time, the commission will consider addressing substantive issues associated with the economic regulation of such water and sewer utilities. Therefore the commission declines to make the Water IOUs' recommended revision.

Paragraph(3)

The Water IOUs argued that that there is a conflict between the definition of "affected person" in paragraph (3) and a definition that appears in the commission's procedural rules pursuant to the Public Utility Regulatory Act (PURA). The Water IOUs argued that this conflict should be reconciled.

In reply comments, OPUC and ALRA noted that re-numbered §22.1(b)(4) addresses this concern by identifying the substantive rules as controlling in the event of a conflict.

Commission Response

The commission agrees with OPUC and ALRA that the re-numbered §22.1(b)(4), as published in Project No. 42191, specifically addresses the Water IOUs' concerns about potential conflicts between a definition that appears in both the newly adopted substantive rule and the procedural rules. Section 22.1(b)(4) states "to the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control." Based on the plain language of §22.1(b)(4), in the event of any conflict between the commission's procedural rules and the substantive rules adopted in the new Chapter 24, the substantive rules in Chapter 24 will control. This

outcome is also consistent with the commission's stated goal in this phase of the transition of economic regulation over water and sewer utilities that minimal substantive changes be made to the existing TCEQ rules governing such entities. Therefore, the commission declines to revise paragraph (3) to address the perceived conflict between the definition of "affected person" with the commission's procedural rules because the definition in §24.3(3) controls.

Section 24.14

Subsection (a)(1)-(3).

The Water IOUs noted that emergency order procedures are separately addressed in proposed amendments to the commission's procedural rules. The Water IOUs recommended that the substantive rule should clarify the procedures that will apply in the situations described in subsection (a)(1)-(3).

Commission Response

The commission agrees that procedural processes for emergency orders relating to the adopted substantive rules in the new Chapter 24 are set forth in the commission's procedural rules, specifically Subchapter P of the commission's procedural rules titled, Emergency Orders for Water and Sewer Utilities. The commission agrees with the Water IOUs that subsection (a)(1)-(3) can be better clarified by including a reference to Subchapter P of the procedural rules that clearly applies to the entire section. Therefore, the commission modifies subsection (a) to incorporate the following statement "[t]he commission may issue emergency orders under Chapter 22, Subchapter P of this title

(relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing" in order to clarify that the procedures in Chapter 22, Subchapter P will apply in the situations described in subsection (a)(1)-(3).

Section 24.15

Subsection (a)

The TCEQ recommended adding the phrase "and the TCEQ" between the word "commission" and the phrase "with a certified copy of any wholesale water supply contract." The TCEQ recommended this change to ensure that the TCEQ receives a copy of any wholesale water supply contract provided to the commission. The TCEQ contended that placing this requirement in the commission rule will assist the regulated community to understand that this information will be needed by both agencies as a result of the transfer.

Commission Response

The commission understands the TCEQ's concerns related to ease of transition for the regulated community. The commission will continue to work with the TCEQ to ensure a smooth transition for both agencies and the public, including the regulated community. However, the commission finds that placing a requirement in the commission rules for a water and sewer utility or other regulated entity to file a document with the TCEQ creates an oversight obligation for the commission that would be better addressed through the TCEQ's own rules. Therefore, the commission declines to revise the proposed rule as recommended.

In order to ensure that water and sewer utilities and other regulated entities understand it is ultimately their responsibility to remain in compliance with each applicable regulatory authority, the commission modifies §24.1 in response to the TCEQ's concerns by incorporating a new subsection (c) into the text as published. The new subsection (c) states that "it is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by the TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to the TCEQ of regulated activities as required by the TCEQ rules." This language is intended to put each water and sewer utility or other regulated entity on notice that there may be other agency requirements (including those at TCEQ) with which it will be necessary to comply that are also potentially associated with the regulatory activities taking place at the commission. The commission finds that this addresses TCEQ's concerns without creating a potential obligation for the commission to enforce TCEQ's filing requirements.

Subsection (c)

The TCEQ recommended adding the phase "and the TCEQ" to the end of the sentence in subsection (c). The TCEQ recommended this change to ensure that the TCEQ receives a copy of any wholesale water supply contract provided to the commission. The TCEQ contended that placing this requirement in the commission rule will assist the regulated community to understand that this information will be needed by both agencies as a result of the transfer.

Commission Response

As stated previously, the commission will continue to work with the TCEQ to ensure a smooth transition for both agencies and the public, including the regulated community. However, the commission finds that placing a requirement in the commission rules for a water and sewer utility or other regulated entity to file a document with the TCEQ creates an oversight obligation for the commission that would be better addressed through the TCEQ's own rules. Therefore, the commission declines to revise the proposed rule as recommended.

However, in order to ensure that water and sewer utilities and other regulated entities understand it is ultimately their responsibility to remain in compliance with each applicable regulatory authority, the commission modifies §24.1 in response to the TCEQ's concerns by incorporating a new subsection (c) into the text as published. The new subsection (c) states that "it is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by the TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to the TCEQ of regulated activities as required by the TCEQ rules." This language is intended to put each water and sewer utility or other regulated entity on notice that there may be other agency requirements (including those at TCEQ) with which it will be necessary to comply that are also potentially associated with the regulatory activities taking place at the commission. The commission finds that this addresses TCEQ's concerns without creating a potential obligation for the commission to enforce TCEQ's filing requirements.

Section 24.21

Subsection (b)(2)(A)

The Water IOUs noted that in 30 TAC §291.21(b)(2)(A), the words "service rules and policies" are included as a separate entry under 30 TAC §291.21(b)(2)(A)(i) as follows:

(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 may change rates for water or wastewater service without commission approval but shall 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;

The Water IOUs explained that in proposed subsection (b)(2)(A), did not include "service rules and policies" as subsection (b)(2)(A)(i). The Water IOUs identified this change and renumbering as creating a substantive effect on the rule because as proposed, "service rules and policies"

generally could not be revised as a minor tariff change, which would be a change from the existing TCEQ rule.

In reply comments, ALRA argued in favor of not editing the proposal such that it allows that the Commission may approve "the following minor changes to tariffs, service rules and policies" followed by a list of approvable changes. ALRA commented that the language actually makes better sense in the proposed rules as compared to the TCEQ rule because subsection (b)(2)(A) would, if revised as the Water IOUs request, allow a minor change to a tariff to include changes to "service rules and policies" with *any* change to a service rule or policy identified as minor. ALRA recommended against the Commission revising the language or narrowly defining the types of minor changes to "service rules and policies." Otherwise, ALRA argued, changes could occur without approval that would materially impact ratepayers. ALRA commented that if a change in service policies or rules is not a kind of change specifically identified as minor, it should be considered only in the context of a previously noted rate case.

Commission Response

The commission finds that the difference between the existing TCEQ rule and the proposed commission rule is due to a transcription error, and is not the result of a decision by the commission to substantively revise the TCEQ rule. Therefore the commission has corrected this transcription error in the adopted rule by modifying the rule to include "service rules and policies" as subsection (b)(2)(A)(i), and renumbering the remainder of the subparts such that the rule tracks the TCEQ's existing rule. ALRA's comment suggests that the transcription error resulted in a substantive change to the rule, which in

this case, ALRA supports. The commission notes that this rulemaking is intended only to transfer the existing substantive water and sewer utility rules, with limited necessary changes to accommodate regulatory and procedural differences between the TCEQ and commission. Because the phrase "service rules and policies" was inadvertently left out of subsection (b)(2)(A) in the published rule, the commission modifies subsection (b)(2)(A) to properly track 30 TAC §291.21(b)(2)(A).

Subsection (l)(1)

The Water IOUs pointed out what appears to be a typographical error in proposed subsection (l)(1). The Water IOUs noted that per the original text in 30 TAC §291.21(l)(1), the word "customers" should not be followed by an apostrophe in the following sentence: "Implementation of the temporary water rate provision will allow the utility to recover from customers' revenues that the utility would otherwise have lost due to mandatory water use reductions."

Commission Response

The commission agrees to adopt the modification suggested by the Water IOUs to subsection (l)(1) to address an apparent typographical error by removing the apostrophe after the word "customers" from the text of the published rule. With this modification, the text of subsection (l)(1) now reads: "Implementation of the temporary water rate provision will allow the utility to recover from customers revenues that the utility would otherwise have lost due to mandatory water use reductions."

Section 24.22

Subsection (a)

The Water IOUs recommended revising proposed subsection (a) by adding the italicized phrase to read: "Notice must be provided *in substantially the same form* as the notice form included in the commission's rate application package …" The Water IOUs argued that the current form improperly conflates the 5/8" x 3/4" meter rate with 3/4" meter rates in the notice form and that notice of all meter size rates and service fees are not addressed. The Water IOUs contended that it would be beneficial to have additional flexibility to provide notice to customers in a manner that may be more helpful or informative than what the form provides to allow for expansions or modifications to fit special circumstances. The Water IOUs argued that since the TCEQ staff has accepted notices that vary from the form that practice should be reflected in the rules by adopting this revision.

OPUC, the Coalition of Cities, and ALRA replied to the Water IOUs' comment and noted that adopting the proposed revision would create a substantive change, and therefore be outside the scope of this rulemaking. OPUC commented that the proposal conflicts with the current TCEQ rule, which specifically requires that notice of a rate change "must be provided on the notice form included in the commission's rate application package" and that allowing utilities to change the notice would increase rate case expenses for all parties and require extra effort by commission staff to evaluate such notice. OPUC recommended addressing concerns about the notice by revising the form. ALRA further argued against allowing applicants to submit alternative forms of notice as an unnecessary potential for controversy which may result in the need to re-issue notice and will require commission staff to evaluate each custom notice. ALRA argued

that §22.80 provides more guidance than the language proposed by the Water IOUs, and added that "significant" changes to existing forms must be published in the *Texas Register* for public comment. Finally, ALRA argued sufficient flexibility exists in the rules as proposed to allow applicants to provide additional information that could be useful in the notice.

Commission Response

The commission appreciates the Water IOUs' desire to ensure adequate and useful notice is provided as part of the commission's rate application package. The commission, however, declines to make the Water IOUs' recommended revision at this time because much of the content and requirements of the notice form are derived from Texas Water Code (TWC) §13.187 and such revision could otherwise lead to substantive changes to the required notice for rate changes. The commission agrees with OPUC and ALRA that the Water IOUs have proposed a substantive modification to the existing notice requirements contained in the published version of §24.21(l)(1). As such, the proposed modification is beyond the limited scope of this rulemaking. The commission intends to engage in future rulemaking proceedings following the September 1, 2014 transfer of jurisdiction over water and sewer utilities. At that time, the commission will consider addressing substantive issues associated with the economic regulation of such water and sewer utilities. The commission agrees with ALRA's comments that §22.80 and the existing substantive rules for applicants provide sufficient flexibility to permit the inclusion of any additional information in any notice of a proceeding that may be useful.

Section 24.23

The Water IOUs commented that proposed §24.23 should be revised to read: "may not file a notice of intent to increase the same rates more than once in a 12-month period…" In support of this proposed revision, the Water IOUs argued that it is the intent of TWC, §13.187(p) to restrict the rate increase impacts on the same customers to no more than once per year and this revision would then embody that intent. The Water IOUs note that utilities may operate under more than one set of rates in many instances and the rule, as proposed, creates a situation where the Water IOUs have to wait 12 months to file an application to increase rates on customers that were not the subject of the previous rate application.

In their respective replies, OPUC, Houston, the Coalition of Cities and ALRA all argued against the Water IOUs' proposed revisions to §24.23. Houston and ALRA argued that §24.23 as it currently exists, mirrors the respective language of TWC, §13.187(p), and is sufficiently clear in addressing the aforementioned legislative intent. The Coalition of Cities argued the proposed language is in direct conflict with TWC, §13.187(p). The Coalition of Cities explained that the relevant provision in the TWC clearly provides that a utility or two or more utilities under common control and ownership may not file more than one statement of intent in a 12-month period. The Coalition of Cities argued that the Water IOUs should recognize this to be the law regardless of whether utilities under common control and ownership serve the same customers or not. The Coalition of Cities provided an example of an attempt by one of the Water IOUs to file notices of intent within two regions within a 12-month period because they each serve different customers in each region. According to the Coalition of Cities, this attempt was rejected by the TCEQ for violating this rule and law. Moreover, OPUC and the Coalition of Cities noted that

the Water IOUs' proposal was considered and rejected by the legislature in last two regular sessions and should also be rejected by the commission.

The Coalition of Cities further elaborated that separate and distinct utilities always have different customers even if they are commonly owned and controlled. Therefore, according to the Coalition of Cities, the statutory prohibition against two or more commonly owned utilities filing more than one statement of intent during a 12-month period would presume that those utilities have different customers. Finally, Houston also noted that the recommended change is beyond the scope of this rulemaking.

Commission Response

The commission declines to make the Water IOUs' proposed change to the rule. The commission agrees with Houston and considers the Water IOUs' proposed revision to be substantive and outside the scope of the current rulemaking. The current rulemaking is intended to transfer the existing TCEQ substantive water and sewer rules to the commission with only minimal substantive modifications in order to permit the commission to assume jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014. The commission intends to engage in future rulemaking proceedings following the September 1, 2014 transfer of jurisdiction over water and sewer utilities. At that time, the commission will consider addressing substantive issues associated with the economic regulation of such water and sewer utilities. The commission agrees with Houston and ALRA that §24.23, as published, properly implements the existing requirements of TWC, §13.187(p).

Section 24.25

Subsection (f)

The Water IOUs recommended deleting the "good cause" requirement for modifying rate filing packages in proposed subsection (f) because it is inconsistent with the commission's procedural rules and practice. The Water IOUs suggested that without revision, the proposed rule would make it difficult to make modifications to the rate filing package to correct minor calculation errors. The Water IOUs requested that the commission clarify that minor corrections are considered "good cause" for modification.

Houston and the Coalition of Cities each argued in their respective reply comments that the applicant's burden of demonstrating the validity of a "good cause" exception to make modifications is protective of ratepayers and the process. Houston argued that a utility would be allowed a requested change if "good cause" is adequately demonstrated. Similarly, the Coalition of Cities suggested there is no anecdotal evidence that the "good cause" requirement has been burdensome for the water or sewer utilities since its inclusion from 1990 to present. The Coalition of Cities also noted that removal of the good cause requirement would permit utilities to file inaccurate and misleading applications without consequence. Houston also observed that consideration of this issue is outside the scope of this proceeding.

Commission Response

The commission disagrees with the Water IOUs that a good cause requirement is inconsistent with existing commission rules and declines to make the Water IOUs' proposed change to subsection (f). Subsection (f) states "The items in the rate filing package may be modified on a showing of good cause." The commission agrees with Houston and the Coalition of Cities that the applicant's burden of demonstrating the validity of a "good cause" exception to make modifications under the published version of subsection (f) is protective of ratepayers and the commission's rate setting process in general. The commission also finds that the existing language in subsection (f) provides guidance to all parties to describe the circumstances under which an applicant may modify its application after it has been filed. The commission agrees with ALRA that the rule will continue to afford applicants the ability to address minor errors through a showing of good cause. This is particularly so given that a good cause exception appears throughout new Chapter 24 (*see* §§24.30, 24.31, 24.85, 24.109, and 24.112). This outcome is also consistent with the commission's stated goal in this phase of the transition of economic regulation over water and sewer utilities that minimal substantive changes be made to the existing TCEQ rules governing such entities.

Section 24.28

Paragraph (4)

The Water IOUs noted that the proposed paragraph (4) has what appears to be a typographical error and that the word "The" should be deleted from the beginning of the paragraph.

Commission Response

The commission agrees with the Water IOUs that the proposed paragraph (4) improperly contains the word "The" in the beginning paragraph of the provision. The commission modifies paragraph (4) to delete "The" so that the text of this subsection now reads: "Additional information may be requested from any utility in the course of evaluating the rate/tariff change request…"

Paragraphs (8) and (9)

The Water IOUs recommended deleting proposed paragraphs (8) and (9) because these paragraphs inappropriately authorize rate case expense disallowances. The Water IOUs described the disallowances attributable to this rule as unreasonable, improper, arbitrary, and unlawful under the Third Court of Appeals decision in *Oncor Electric Delivery Company LLC v. Public Utility Commission of Texas*, 406 S.W.3d 253 (Tex. App.-Austin 2013, no pet.)(applying *Suburban Utility Corporation v. Public Utility Commission*, 652 S.W.2d 358, 36263 (Tex. 1983)). The Water IOUs stated that the application of the disallowances authorized by paragraphs (8) and (9) has been challenged on appeal to district court. The Water IOUs also noted that the commission has another open rulemaking project related to rate case expense issues for electric utilities (Project No. 41622). The Water IOUs submitted comments in that rulemaking project and have incorporated those comments by reference by submitting them attached to their comments in this rulemaking project. The Water IOUs suggested that the commission not adopt paragraphs (8) and (9) because they are not necessary for the commission to administer its new jurisdiction over regulated water and wastewater utilities effective September 1, 2014.

In reply comments, OPUC argued that the content of paragraphs (8) and (9) is currently in TCEQ's substantive rules and therefore should continue to be included in the commission rules. OPUC disagreed with the Water IOUs' legal analysis related to the case cited and further noted that the revision is well beyond the scope of this rulemaking. Houston, the Coalition of Cities and ALRA also commented that this is outside the scope of this rulemaking. Houston agreed with the Water IOUs that a rulemaking is ongoing in Project No. 41622 to address rate case expenses for electric utilities; but, argued that this fact makes it more appropriate to reserve comments on this issue until after a final order is issued in the electric rate case rulemaking project. ALRA and the Coalition of Cities also argue that any unresolved litigation related to this rate case expense rule is insufficient to guide the commission.

Commission Response

The commission declines to delete paragraphs (8) and (9) as proposed by the Water IOUs. The commission agrees with OPUC, ALRA, the Coalition of Cities, and Houston and considers the proposed revision to be substantive and outside the scope of the current rulemaking intended to transfer the existing substantive water and sewer utility rules. The commission intends to engage in future rulemaking proceedings following the September 1, 2014 transfer of jurisdiction over water and sewer utilities. At that time, the commission will consider addressing substantive issues associated with the economic regulation of such water and sewer utilities.

The commission finds the comments related to electric utilities' recovery of rate case expenses in Project No. 41622 to also be outside the scope of this rulemaking. The

commission notes that the issues related to recovery of rate case expenses will require the kind of examination appropriate during the next phase of rulemaking intended to address substantive changes to the rules. At that time litigation may have resolved the issues; but, the commission agrees with ALRA and the Coalition of Cities that unresolved litigation is insufficient to prompt the commission make a wholesale modification to the existing TCEQ rules regarding rate case expenses. Again, the scope of this phase of the transition of jurisdiction over the economic regulation of water and sewer utilities is limited to incorporating existing TCEQ rules into the commission's new Chapter 24 with only minimal modifications where necessary to be consistent with the commission's regulatory process. No such change to the existing rate case expense rule for water and sewer utility base rate proceedings is required here.

Section 24.29

The Water IOUs commented that the commission is proposing in Project No. 42191 to apply the interim rate relief procedures found in Chapter 22, Subchapter F of the commission's procedural rules to water and sewer utilities. The Water IOUs argued that if this occurs, there will be a conflict between the rules. Moreover, the Water IOUs requested a revision to §24.29 to acknowledge that interim rate relief is an extraordinary form of rate relief. The Water IOUs contended that the following order of events is typical under application of the TWC: (1) the application is filed and notice is provided; (2) requested rates go into effect after 60 days; and (3) a hearing takes place, if any, with those rates in effect until a decision is made. The Water IOUs argued that consideration of interim rates in the order of events described above should require an evidentiary hearing based on sworn evidence, not just oral arguments. The Water IOUs further

recommended a higher burden of proof be mandated to require movants for interim rates demonstrate that the utility's rates as proposed "could result" in unreasonable rates. The Water IOUs noted that the commission's interim rate relief rule at §22.125 requires a showing of "good cause." The Water IOUs stated that the suggested clarification is warranted because adopting the TCEQ rule 'as is' creates a procedural issue, when implementing the interim rate provisions of §24.29, that the commission should correct due to the two differing methods for evaluating interim rate relief. The Water IOUs concluded that the commission and State Office of Administrative Hearings (SOAH) administrative law judges (ALJs) will have inadequate guidance related to interim rates as of September 1, 2014 and that the commission will be prevented from appropriately administering interim rate relief under its new jurisdiction over water and wastewater utilities without such clarification.

In reply comments, OPUC disagreed with the Water IOUs proposed changes and argued that current law does not actually entitle an applicant to charge the noticed rate throughout the rate case, as may be the current practice. OPUC contended that the Water IOUs' proposed changes to §24.29 were not supported by the law and that the claim that interim rates are an "extraordinary form of rate relief" is based upon a misreading of the law. OPUC further commented that the Water IOUs omitted any discussion of the authority that TWC, §13.187(k) grants to regulatory authorities to suspend the effective date of the utility's rate change. OPUC explained that interim rates may be employed if the effective date of the utility's rate change has been suspended and that utilities are not entitled as a matter of law to charge their noticed rate throughout the rate case. OPUC commented that the Water IOUs' argument did not discuss the utility's burden of proof to demonstrate the proposed rate change is just and reasonable as

required by TWC, §13.184(c). OPUC noted that to the extent that there is a conflict between a procedural rule and a substantive rule in Chapter 24, the substantive rule controls, as provided in re-numbered §22.1(b)(4) published in Project No. 42191. OPUC also noted that the commission and SOAH judges will be able to properly consider requests for interim rate relief pursuant to proposed §24.29 and §22.125.

The Coalition of Cities commented that the Water IOUs' proposed revision to §24.29 is beyond the scope of this proceeding. The Coalition of Cities explained that the effect of the Water IOUs request would be to require a full evidentiary hearing before interim rates can be put into effect, which is not required by the current rule, in contrast with the fact that utilities often receive an effective interim rate (the noticed rate increase) without an evidentiary hearing or meeting any burden of proof after 60 days from the filing of the application for an increase in rates. The Coalition of Cities noted that the TWC provides the commission the same authority to establish interim rates without an evidentiary hearing as was available to the TCEQ's executive director and that for this transition process, at a minimum, §24.29 should be adopted as proposed.

Houston disagreed with the Water IOUs' requested revision regarding interim rates. In particular, Houston rejected the Water IOUs' suggestion of implementing a higher burden of proof on customers or a municipal operating within its regulatory authority to request interim rates. In particular, Houston commented that such a suggestion was unacceptable compared to the utility's ability to present any rate request and accompanying rate increase before a final decision has been made. Houston suggested the Water IOUs' request is not in the public interest and does not adequately balance the interests between the customer and the utility. Houston

commented that commission staff or SOAH would be able to adequately evaluate the need for interim rates.

ALRA disagreed with the Water IOUs' interpretation of the point of interim rates, finding that interim rates appear to allow the commission to reduce the rates in the ratepayer's benefit. ALRA commented that the Water IOUs failed to address the conceptual difference between interim rates in the water utility context as compared to those in the electric utility context. ALRA explained that although a water or sewer utility could begin collecting a rate 60 days after notice of the application, interim rates may be implemented "where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility" based on oral arguments. ALRA continued by noting the commission's existing interim rates increase the rates during the pendency of a hearing, to the utility's benefit, rather than reducing them from a rate for which notice has been provided but for which a final decision has not been reached. ALRA recommended that the commission adopt a consistent method in the water and sewer utility context by not allowing a utility's collection of any rate increases during the hearing process unless they meet the interim rate standards applicable to electric utilities.

Commission Response

The commission declines to modify §24.29 as proposed by the Water IOUs to incorporate a statement that interim rate relief is an extraordinary form of rate relief. The commission disagrees with the statement by the Water IOUs that "adopting the TCEQ rule 'as is' creates a procedural issue that the commission should clarify because the commission will be prevented from appropriately administering interim rate relief under its new jurisdiction over water and wastewater utilities…" The commission finds that the re-numbered §22.1(b)(4), as published in Project No. 42191, specifically addresses the Water IOUs' concerns about potential conflicts between §24.29 and the commission's existing procedural rules regarding interim rates. Section 22.1(b)(4) states "to the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control." Based on the plain language of §22.1(b)(4), in the event of any conflict between the commission's procedural rules and the substantive rules adopted in the new Chapter 24, the substantive rules in Chapter 24 will control. This outcome is consistent with the commission's stated goal in this phase of the transition of economic regulation over water and sewer utilities that minimal substantive changes are to be made to the existing TCEQ rules governing such entities.

The commission further agrees with Houston, the Coalition of Cities, and ALRA that the revision proposed by the Water IOUs is beyond the scope of this rulemaking. The commission finds that the effect of the Water IOUs request would be to require a full evidentiary hearing before interim rates can be put into effect, which is not required by the existing TCEQ rule. As such, the Water IOUs' requested modification amounts to a

substantive change to the existing TCEQ practice that is beyond the scope of this rulemaking. The commission further finds that the SOAH ALJs have been operating under the TCEQ's current rule regarding interim rates for a number of years, presumably with sufficient guidance through the TWC and TCEQ rules. Therefore, the commission disagrees with the Water IOUs that absent a substantive change to §24.29, SOAH administrative law judges will lack sufficient guidance regarding the standard for evaluating requests for interim rates.

The commission likewise declines to adopt a process, as suggested by ALRA, that would prohibit a utility's collection of any rate increases during the hearing process unless the utility meets the interim rate standards applicable to electric utilities. The commission declines to make this change because, again, such modifications are clearly substantive and outside the limited scope of this proceeding.

Section 24.41

Subsection (b)

The Water IOUs commented that the proposed subsection (b) has a typographical error in the last sentence of the paragraph. The Water IOUs noted the TCEQ version of this rule reads (with the italicized (c) appearing in the TCEQ rule but not the commission's proposed rule) : "The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection *(c)* of this section."

Commission Response

The commission agrees to adopt the modification suggested by the Water IOUs to subsection (b) to address a typographical error in the reference to persons eligible to appeal under subsection (c). The commission modifies the adopted subsection (b) by adding "(c)" after the word "subsection" in the last sentence of subsection (b) such that it now reads: "The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section."

Section 24.76

Subsection (b)

The Water IOUs noted that the proposed §24.76 removes much of the detail regarding the requirements related to the regulatory assessment fee that was included in the corresponding TCEQ rule. The Water IOUs suggested that those details would be helpful to utilities because they still have to collect the fee and remit it to TCEQ. To justify and explain the basis for the fee, the Water IOUs also recommended that a reference to the TWC provision that requires the fee should be incorporated in subsection (b). The Water IOUs additionally suggested adding the italicized phrase that appears below to subsection (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 *as required by TWC, §5.701(n)* and remit such fee to the TCEQ."

Commission Response

The commission declines to re-insert the details regarding the regulatory assessment fee as suggested by the Water IOUs. The commission finds that excising much of the detail regarding the regulatory assessment fees in the new Chapter 24 is appropriate because the commission will not be collecting the regulatory assessment fee on an ongoing basis. The TCEQ will continue to collect the regulatory assessment fee and is the appropriate agency to maintain a rule regarding any issues associated with its collection.

However, the commission agrees to provide further clarification of the statutory basis for the regulatory assessment fee by including the Water IOUs' suggested reference to TWC, §5.701(n), which describes the regulatory assessment fee. The commission, therefore, modifies subsection (b) as follows:

(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 as required by TWC, §5.701(n) and remit such fee to the TCEQ.

Subsection (e)

The TCEQ recommended adding the phrase "or the TCEQ" before the words "upon request" at the end of the sentence. The TCEQ suggested this change is necessary to allow either the commission or the TCEQ to request utility records relating to the regulatory assessment fee and that TCEQ would need such records as part of its billing and collection function related to the regulatory assessment fee.

Commission Response

The commission understands the TCEQ's concerns related to ease of transition for the regulated community. The commission will continue to work with the TCEQ to ensure a smooth transition for both agencies and the public, including the regulated community. However, the commission finds that placing a requirement in the commission rules for a water and sewer utility or other regulated entity to file a document with the TCEQ creates an oversight obligation for the commission that would be better addressed through the TCEQ's own rules. Therefore, the commission declines to revise the proposed rule as recommended.

However, in order to ensure that water and sewer utilities and other regulated entities understand it is ultimately their responsibility to remain in compliance with each applicable regulatory authority, the commission modifies §24.1 in response to the TCEQ's concerns by incorporating a new subsection (c) into the text as published. The new subsection (c) states that "it is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by the TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to the TCEQ of regulated activities as required by the TCEQ rules."

This language is intended to put each water and sewer utility or other regulated entity on notice that there may be other agency requirements (including those at TCEQ) with which it will be necessary to comply that are also potentially associated with the regulatory activities taking place at the commission. The commission finds that this addresses

TCEQ's concerns without creating a potential obligation for the commission to enforce TCEQ's filing requirements.

Section 24 83

Subsection (a)(3)

The Water IOUs stated that there is an error in proposed subsection (a)(3) because it improperly identifies §24.87(k) as relating to "Disputed Bills." The Water IOUs noted that it is §24.87(l) that relates to "Disputed Bills." The Water IOUs noted that this error appears in the TCEQ rule and recommended revising the rule at this time by striking the reference to §24.87(k) and instead inserting the proper reference to §24.87(l).

Commission Response

The commission agrees with the Water IOUs that the published version of subsection (a)(3) improperly identifies §24.87(k) as the subsection relating to "Disputed Bills" instead of §24.87(l). The commission therefore modifies the adopted subsection (a)(3) by replacing "§24.87(k) of this title (relating to Billing)" with "§24.87(l) of this title (relating to Disputed Bills)."

Section 24.93

Paragraph (2)(A)

The TCEQ recommended inserting the word "plan" after the phrase "TCEQ-approved drought contingency" in the following sentence: "A utility must file a copy of its TCEQ-approved drought contingency with the utility's approved tariff."

Commission Response

The commission agrees with the TCEQ that the word "plan" should be inserted into paragraph (2)(A) after the phrase "TCEQ drought contingency." The commission therefore modifies paragraph (2)(A) to read (with the additional word italicized): "A utility must file a copy of its TCEQ-approved drought contingency *plan* with the utility's approved tariff."

Paragraph (2)(B)

The TCEQ noted an inadvertent omission and recommended inserting the phrase "with the commission" before the phrase "at the same time it is required to file the report with the TCEQ" in the following sentence: "The utility shall file a copy of any status report required to be filed with the TCEQ at the same time it is required to file the report with the TCEQ."

Commission Response

The commission agrees with the TCEQ that the phrase "with the commission" should be inserted into paragraph (2)(B) before the phrase "at the same time it is required to file the report with the TCEQ." The commission therefore modifies paragraph (2)(B) to read (with the additional phrase italicized): "The utility shall file a copy of any status report required to be filed with the TCEQ *with the commission* at the same time it is required to file the report with the TCEQ."

Paragraph (3)(A)

The Water IOUs suggested adding a comma, as one appears below, to proposed paragraph (3)(A): "If the TCEQ waives or limits the reporting requirements, the utility . . ."

Commission Response

The commission agrees with the Water IOUs that a comma should be inserted into paragraph (3)(A) after the word "requirement." The commission therefore modifies paragraph (3)(A) to read: "If the TCEQ waives or limits the reporting requirements, the utility shall file with the commission within ten days a notice that the reporting requirements have been waived or limited, including a copy of any order or other authorization."

Section 24.94

Subsection (a)

The TCEQ and the Water IOUs noted an error in subsection (a) and recommended striking the phrase "of the commission" before the phrase "for all normal demands for service" from the sentence: "These facilities must be of sufficient size to meet TCEQ's minimum design criteria for wastewater facilities of the commission for all normal demands for service and provide a reasonable reserve for emergencies."

The Water IOUs further recommended that the commission re-insert the following language excised from TCEQ's original rule:

> Unless specifically authorized in a written service agreement, a retail public utility is not required to receive, treat and dispose of waste with high BOD or TSS characteristics that cannot be reasonably processed, or storm water, run-off water, food or food scraps not previously processed by a grinder or similar garbage disposal unit, grease or oils, except as incidental waste in the process or wash water used in or resulting from food preparation by sewer utility customers engaged in the preparation

and/or processing of food for domestic consumption or sale to the public. Grease and oils from grease traps or other grease and/or oil storage containers shall not be placed in the wastewater system.

The Water IOUs argued that this language serves to clarify that sewer utilities are not obligated to receive, treat, and dispose of this type of waste as part of adequate sewer service. Also, if adopted, the Water IOUs noted that terms "BOD" and "TSS" should be spelled out instead of abbreviated, if not defined elsewhere in the commission rules.

Commission Response

The commission agrees with TCEQ and the Water IOUs that the phrase "of the commission" in the published version of subsection (a) is unnecessary. The commission, therefore, modifies subsection (a) to read: "These facilities must be of sufficient size to meet TCEQ's minimum design criteria for wastewater facilities for all normal demands for service and provide a reasonable reserve for emergencies."

The commission agrees with the Water IOUs that language previously removed from the published version of subsection (a) does serve to clarify that sewer utilities are not obligated to receive, treat, and dispose of this type of waste as part of adequate sewer service. The commission further finds that the re-insertion of this language provides clarification regarding the commission's evaluation of whether a utility is capable of providing continuous and adequate service pursuant to §24.102, among other provisions, following the September 1, 2014 transfer of economic regulation over water and sewer utilities to the commission.

Accordingly, the commission modifies subsection (a) to include the language related to the obligation to treat certain kinds of waste as proposed by the Water IOUs.

Section 24.95

The TCEQ recommended deleting §24.95 in its entirety because it discusses construction standards for facilities used to provide utility service, which will remain under the TCEQ's jurisdiction after September 1, 2014.

Commission Response

The commission agrees that TCEQ will retain jurisdiction related to approving design criteria for water and wastewater providers. However, the commission declines to delete §24.95 as proposed by the TCEQ. Section 24.95 requires that "each system shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public…" While the TCEQ may make a determination as to whether a plant is constructed properly from a permitting perspective, many of the same concerns relating to proper installation and public accommodation touch upon the criteria set forth in §24.102(d) related to certificates of convenience and necessity (CCN) over which the commission will exercise jurisdiction after September 1, 2014. Section 24.102(d) specifically requires the commission to consider:

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

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

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

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

Many of the above criteria potentially overlap with the standards for facilities used to provide utility service. The commission, therefore, retains § 24.95 in order to preserve the commission's access to adequate information that it deems is necessary for effective regulation of utility certificates of convenience and necessity as required by the criteria set forth in §24.102.

Section 24. 102

Subsection (a)(1)-(2)

The TCEQ recommended deleting the portion of subsection (a)(1) and (2) beginning with "obtained a finding" through the end of the sentence and replacing it with the phrase "a TCEQ approved system." TCEQ recommended this because TCEQ does not have a process for "issuing findings" regarding public water or sewer systems.

The Water IOUs noted that proposed subsection (a)(1)-(2) removes the references related to the commission's role of ensuring compliance as part of the CCN review process with TCEQ's design standards and requirements that are in 30 TAC §291.102(a)(1)-(2). The Water IOUs commented that the rule's requirement to receive a finding from TCEQ "is unclear as to what kind of 'finding' is required." The Water IOUs requested a revision that would identify what type of "finding" or other approval is needed from TCEQ to ensure adequate notice of the commission's expectations.

In reply comments the Coalition of Cities disputed the Water IOUs' contention that water and sewer utilities would not understand what is required to comply with this rule because utilities have been subject to the criteria referenced since 1999. The Coalition of Cities asserted that an affirmative finding regarding these criteria must be made before a certificate can be issued or amended.

Commission Response

The commission agrees with TCEQ that the phrase "obtained a finding" in both subsection (a)(1) and (2) improperly implies that TCEQ will issue formal findings in connection with the approval of water or sewer systems. Accordingly, the commission modifies both subsection (a)(1) and (2) by replacing the phrase "obtained a finding" with the phrase "a TCEQ approved system" as suggested by TCEQ in order to more accurately capture the specific approval process that will occur at TCEQ. The commission notes that these changes should also provide the specificity requested by the Water IOUs with regard to the type of "finding" required from TCEQ. Instead, the modified rule requires TCEQ approval of a system using the existing processes that have been in place at TCEQ since 1999. The commission agrees with the Coalition of Cities that based on this long-standing TCEQ practice, water and sewer utilities should understand what is required to comply with subsection (a)(1) and (2) after the commission assumes jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014.

Section 24. 102

Subsection (e)

The TCEQ recommended striking the sentence, "The form of the financial assurance will be as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)." The TCEQ recommended that the commission establish its own financial assurance process separate from the TCEQ's rules to avoid any potential confusion caused by reliance on the TCEQ's financial assurance process. As an alternative to striking this sentence, the TCEQ suggested that the commission clarify in the rule preamble that a direct application of 30 TAC Chapter 37, Subchapter O to commission applications may not be possible due to organizational differences between the TCEQ and the commission.

The Water IOUs argued that the language included in proposed subsection (e) that states "the obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules" is unclear and seems unnecessary.

The Coalition of Cities submitted a reply to the Water IOUs' comment supportive of the inclusion of the new financial assurance language. The Coalition of Cities noted that each agency will need to be satisfied with regards to financial assurance and this language memorializes that requirement.

Commission Response

The commission declines to modify the proposed rule, as it is important for the commission to have access to a financial assurance mechanism immediately upon the commission's assumption of jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014. The commission recognizes that this rule incorporates TCEQ's financial assurance mechanism and that it may be appropriate for the commission to adopt its own financial assurance process separate from the TCEQ's rules. The commission agrees with TCEQ that a direct or identical application of TCEQ's 30 TAC Chapter 37, Subchapter O to commission applications may not always be possible due to organizational differences between the TCEQ and the commission. However, the commission retains its ability to grant a good cause exception to procedures as needed. The commission also agrees with the Coalition of Cities that each agency will have to be satisfied with regard to its own financial assurance evaluation. The commission clarifies that the use of TCEQ's mechanism at the commission is not intended to satisfy TCEQ requirements.

The commission agrees with the Water IOUs that the proposed language in subsection (e), placing applicants on notice that obtaining financial assurance under the commission's rules, does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules, is unclear and unnecessary. As noted above, both the commission and the TCEQ will continue to exercise jurisdiction over various aspects of water and sewer utility systems. TCEQ may exercise jurisdiction over a water or sewer utility such as the approval of the design criteria and siting prior to construction of a system or permitting of a wastewater discharge. Either of these activities might require a utility to

obtain financial assurance that satisfies TCEQ's requirements related to those programs. Meanwhile, the commission may require financial assurance to comply with an aspect of the regulation of water and sewer utilities for which the commission has jurisdiction. Accordingly, each agency may continue to have a need to require regulated entities to submit specific forms of financial assurance on an ongoing basis.

Section 24.103

Subsection (c)(7)

The Water IOUs suggested the following edit to proposed subsection (c)(7) to add *the* as it appears below: "Unless authorized in writing by *the* commission . . ."

Commission Response

The commission declines to make the change as proposed by the Water IOUs to subsection (c)(7) because the subsection does not appear to contain the language to which the Water IOUs refer. However, the commission finds that the Water IOUs' proposed language does address a typographical error in subsection (d)(7). Accordingly, the commission modifies subsection (d)(7) by inserting the word "the" into the subsection such that it now reads: "Unless authorized in writing by *the* commission, a utility or a water supply corporation operating under these requirements may not cease utility operations."

Section 24.105

Subsection (a)(2)(C) and (F)

The Water IOUs requested an explanation regarding the addition of the phrase "added mapping requirements" to proposed subsection (a)(2)(C) and (F) because it is not included in the TCEQ version of this rule. The Water IOUs noted these are substantive additions that appear to be beyond the scope of this rulemaking.

In response, the Coalition of Cities noted that the mapping requirements in the proposed version of subsection (a)(2)(C) and (F) are required pursuant to the existing TCEQ requirements pursuant to 30 TAC §281.16(2)(A) and (C), respectively, relating to mapping requirements associated with applications for a CCN. Similarly, the Coalition of Cities noted that amendments to CCNs must comply with 30 TAC §291.106(b)(2) where neighboring utilities within two miles of miles of the requested service area must be notified.

Commission Response

The commission agrees with the Coalition of Cities that the mapping requirements in proposed subsection (a)(2)(C) and (F) are already required under the existing TCEQ rules. The specific addition to subsection (a)(2)(C) and (F) does not, therefore, reflect any substantive change to TCEQ's mapping requirements, but rather reflect the consolidation of existing mapping requirements, with some minor modifications discussed below, found in 30 TAC §291.105 and 30 TAC §281.16. The commission finds that combining the requirements from these two rules into one location in proposed §24.105, rather than maintaining separate rules, will promote ease of use for applicants. The commission is not modifying subsection (a)(2)(C) and (F) as a result of the Water IOUs' comment.

Another mapping requirement that the Water IOUs may have considered to be "an added mapping requirement" as compared to the mapping requirements that appear in TCEQ's predecessor rule is the requirement that the map submitted be a state county base map. The commission recognizes that 30 TAC §291.105 and 30 TAC §281.16 (TCEQ's predecessor rules relating to mapping requirements) do not specify that the map be a state county base map. However, to conform to the commission's technical capacity to evaluate maps, the commission is now requiring a state county base map. Therefore, proposed subsection (a)(2) differs from 30 TAC §291.105 and 30 TAC §281.16 by specifying that the required submitted map be a state county base map. In addition, this subsection differs from the TCEQ rules by clarifying that the required map for a proposed service area for a CCN include each neighboring water or sewer utility within five miles of the applicant's proposed service area and the required map for an amendment to a CCN include each neighboring water or sewer utility within two miles of the applicant's proposed service area. The commission consolidates these requirements in this rule and notes that it is not an added mapping requirement. The Coalition of Cities also agreed that current TCEQ requirements necessitate that for any CCN amendment, notice is required for neighboring utilities within two miles of the requested service area. Applicants will benefit by having the differing requirements for a CCN and a CCN amendment outlined.

The commission notes that proposed subsection (a)(2)(F) differs from 30 TAC §291.105 and 30 TAC §281.16 by requiring separate maps for each county in which the applicant *seeks* a CCN or CCN amendment rather than the requirement found in 30 TAC §281.16(1)(C) that requires separate maps for each county in which the reporting utility

***operates*. While this is an adjustment of the current TCEQ requirement, the commission notes that this new requirement will reduce the submission required of the utility and alleviate the burden of staff having to review every county map that a utility operates in rather than just the maps for the county(ies) affected by the application. Applicants will benefit by not having to file maps for counties outside of the proposed service area for a CCN or an amendment to a CCN.**

Section 24.105

Subsection (b)(4)(C)(ii)

The Water IOUs identified a missing word in proposed subsection (b)(4)(C)(ii). According to the TCEQ version of this rule, it reads, with the italicized word appearing in the TCEQ rule but not in the proposed commission rule: "enter into a contract for water or sewer services with the *municipality*." The Coalition of Cities replied and agreed with this comment.

Commission Response

The commission agrees with the Water IOUs and the Coalition of Cities that the word "municipality" was inadvertently left out of the published rule. Therefore, the commission modifies subsection (b)(4)(C)(ii) to state: "enter into a contract for water or sewer services with the *municipality*."

Section 24.109

Subsection (c)

The TCEQ recommended striking the sentence, "The form of the financial assurance will be as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)." The TCEQ recommended that the commission establish its own financial assurance process separate from the TCEQ's rules to avoid any potential confusion caused by reliance on the TCEQ's financial assurance process. As an alternative to striking this sentence, the TCEQ recommended that the commission clarify in the rule preamble that a direct application of 30 TAC Chapter 37, Subchapter O to commission applications may not be possible due to organizational differences between the TCEQ and the commission.

The Water IOUS commented that the language included in proposed subsection (c) "The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules" is unclear and unnecessary.

The Coalition of Cities replied to Water IOUs' comment and disagreed with the contention that the proposed language was either unclear or unnecessary. The Coalition of Cities repeated its support for the inclusion of the financial assurance language, referring to its earlier substantive response to the Water IOUs' comments (reply comment to §24.102**)** where the Coalition of Cities noted that each agency will need to be satisfied with regards to financial assurance and this language memorializes that requirement.

Commission Response

The commission declines to modify the proposed rule, as it is important for the commission to have access to a financial assurance mechanism immediately upon the commission's assumption of jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014. The commission recognizes that this rule incorporates TCEQ's financial assurance mechanism and that it may be appropriate for the commission to adopt its own financial assurance process separate from the TCEQ's rules. The commission agrees with TCEQ that a direct or identical application of TCEQ's 30 TAC Chapter 37, Subchapter O to commission applications may not always be possible due to organizational differences between the TCEQ and the commission. However, the commission retains its ability to make good cause adjustments to procedures as needed. The commission also agrees with the Coalition that each agency will have to be satisfied with regard to its own financial assurance evaluation. The commission clarifies that the use of TCEQ's mechanism at the commission is not intended to satisfy TCEQ requirements.

The commission agrees with the Water IOUs that the proposed language in §24.102(e), placing applicants on notice that obtaining financial assurance under the commission's rules, does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules is unclear and unnecessary. As noted above, both the commission and the TCEQ will continue to exercise jurisdiction over various aspects of water and sewer utility systems. TCEQ may exercise jurisdiction over a water or sewer utility such as the approval of the design criteria and siting prior to construction of a system or permitting of a wastewater discharge. Either of these activities might require a utility to

obtain financial assurance that satisfies TCEQ's requirements related to those programs. Meanwhile, the commission may require financial assurance to comply with an aspect of the regulation of water and sewer utilities for which the commission has jurisdiction. Accordingly, each agency may continue to have a need to require regulated entities to submit specific forms of financial assurance on an ongoing basis.

Section 24.109

Subsection (e)(1) and (3)(A)

The Water IOUs argued that proposed subsection (e)(3)(A) was unclear as to whether the commission intended water and sewer utilities to be in compliance with commission requirements, TCEQ requirements, or both. The Water IOUs noted that the TCEQ "commission" language was not changed to TCEQ in the rule transition and suggested that, as published, this would refer to the commission only.

Commission Response

The commission agrees the language in the published version of subsection (e)(3)(A) was unclear as to which regulatory authority's requirements were applicable. The commission modifies subsection (e)(3)(A) by inserting the phrase, "the TCEQ" so that subsection (e)(3)(A) now reads: "noncompliance with the requirements of *the TCEQ*, the commission or the Texas Department of State Health Services." The commission finds that this modification clarifies that subsection (e)(3)(A) requires compliance with TCEQ, commission and Texas Department of State Health Services rules.

Also, during review of this comment, the commission noted an error and made a non-substantive modification to subsection (e)(1) to reinsert the word "improper." The word "improper" was inadvertently deleted during the process of transcribing the existing TCEQ rule into the commission's new Chapter 24 rule and no modification to the existing rule was intended. Subsection (e)(1) now tracks the TCEQ rule properly, providing: "the application filed with the commission or the public notice was *improper*."

Section 24.110

Subsection (a)

The TCEQ recommended adding the phrase "and the TCEQ" after the phrase "shall notify the commission" to ensure that the TCEQ is also notified if all or part of a utility's facilities are posted for foreclosure. The TCEQ stated that it may need this information to timely address potential interruptions in utility service.

Commission Response

The commission appreciates the TCEQ's concerns related to timely evaluation of interruptions in utility service and will work with TCEQ to ensure that situations such as interruptions are addressed appropriately. The commission will continue to work with the TCEQ to ensure a smooth transition for both agencies and the public, including the regulated community, particularly with respect to the process for addressing any potential service interruptions after the commission assumes jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014. However, the commission finds that placing a requirement in the commission rules for water and sewer utilities or

other regulated entities to file a document with the TCEQ creates an oversight obligation for the commission that would be better addressed through the TCEQ's own rules. Therefore, the commission declines to revise the proposed rule as recommended.

However, in order to ensure that water and sewer utilities and other regulated entities understand it is ultimately their responsibility to remain in compliance with each applicable regulatory authority, the commission modifies §24.1 in response to the TCEQ's concerns by incorporating a new subsection (c) into the text as published. The new subsection (c) states that "it is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by the TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to the TCEQ of regulated activities as required by the TCEQ rules." This language is intended to put each water and sewer utility or other regulated entity on notice that there may be other agency requirements (including those at TCEQ) with which it will be necessary to comply that are also potentially associated with the regulatory activities taking place as the commission. The commission finds that this addresses TCEQ's concerns without creating a potential obligation for the commission to enforce TCEQ's filing requirements.

Subsection (e)

The TCEQ recommended adding the phrase "and the TCEQ" after the phrase "shall report this fact to the commission" to ensure that the TCEQ is also notified if a utility files for bankruptcy because the TCEQ may need this information to timely address potential interruptions in utility service.

Commission Response

The commission appreciates the TCEQ's concerns related to timely evaluation of interruptions in utility service and will work with TCEQ to ensure that situations such as interruptions are addressed appropriately. The commission will continue to work with the TCEQ to ensure a smooth transition for both agencies and the public, including the regulated community, particularly with respect to the process for addressing any potential service interruptions after the commission assumes jurisdiction over the economic regulation of water and sewer utilities after September 1, 2014. However, the commission finds that placing a requirement in the commission rules for water and sewer utilities or other regulated entities to file a document with the TCEQ creates an oversight obligation for the commission that would be better addressed through the TCEQ's own rules. Therefore, the commission declines to revise the proposed rule as recommended.

However, in order to ensure that water and sewer utilities and other regulated entities understand it is ultimately their responsibility to remain in compliance with each applicable regulatory authority, the commission modifies §24.1 in response to the TCEQ's concerns by incorporating a new subsection (c) into the text as published. The new subsection (c) states that "it is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by the TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to the TCEQ of

regulated activities as required by the TCEQ rules." This language is intended to put each water and sewer utility or other regulated entity on notice that there may be other agency requirements (including those at TCEQ) with which it will be necessary to comply that are also potentially associated with the regulatory activities taking place at the commission. The commission finds that this addresses TCEQ's concerns without creating a potential obligation for the commission to enforce TCEQ's filing requirements.

Section 24.111

Subsection (c)

The TCEQ recommended striking the sentence, "[t]he form of the financial assurance will be as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)" from proposed subsection (c). The TCEQ recommended that the commission establish its own financial assurance process separate from the TCEQ's rules to avoid any potential confusion caused by reliance on the TCEQ's financial assurance process. As an alternative to striking this sentence, the TCEQ suggested that the commission clarify in the rule preamble that a direct application of 30 TAC Chapter 37, Subchapter O to commission applications may not be possible due to organizational differences between the TCEQ and the commission.

The Water IOUs commented that the following language included in proposed subsection (c) is unclear and unnecessary: "The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules."

The Coalition of Cities replied to Water IOUs' comment and disagreed with the contention that the proposed language was either unclear or unnecessary. The Coalition of Cities repeated its support for the inclusion of the financial assurance language, referring to its earlier substantive response to the Water IOUs' comments (reply comment to §24.102**)** where the Coalition of Cities noted that each agency will need to be satisfied with regards to financial assurance and this language memorializes that requirement.

Commission Response

The commission declines to modify the proposed rule, as it is important for the commission to have access to a financial assurance mechanism immediately upon the commission's assumption of jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014. The commission recognizes that this rule incorporates TCEQ's financial assurance mechanism and that it may be appropriate for the commission to adopt its own financial assurance process separate from the TCEQ's rules. The commission agrees with TCEQ that a direct or identical application of TCEQ's 30 TAC Chapter 37, Subchapter O to commission applications may not always be possible due to organizational differences between the TCEQ and the commission. However, the commission retains its ability to make good cause adjustments to procedures as needed. The commission also agrees with the Coalition of Cities that each agency will have to be satisfied with regard to its own financial assurance evaluation. The commission clarifies that the use of TCEQ's mechanism at the commission is not intended to satisfy TCEQ requirements.

The commission agrees with the Water IOUs that the proposed language in §24.102(e), placing applicants on notice that obtaining financial assurance under the commission's rules, does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules is unclear and unnecessary. As noted above, both the commission and the TCEQ will continue to exercise jurisdiction over various aspects of water and sewer utility systems. TCEQ may exercise jurisdiction over a water or sewer utility such as the approval of the design criteria and siting prior to construction of a system or permitting of a wastewater discharge. Either of these activities might require a utility to obtain financial assurance that satisfies TCEQ's requirements related to those programs. Meanwhile, the commission may require financial assurance to comply with an aspect of the regulation of water and sewer utilities for which the commission has jurisdiction. Accordingly, each agency may continue to have a need to require regulated entities to submit specific forms of financial assurance on an ongoing basis.

Section 24.112

The Water IOUs argued that proposed §24.112 (relating to Transfer of Certificate of Convenience and Necessity) now conflicts with proposed §24.109 (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) even more than in their TCEQ rule versions. The Water IOUs noted that both rules purport to relate to sale, transfer, or merger transactions for CCNs, certificated service areas, and water/wastewater system assets ("STMs") but are two different mechanisms with the same eventual end result. The Water IOUs explained that historically the TCEQ has required only a single 30 TAC §291.109 application process to obtain approval for STM transactions. The Water IOUs asserted that 30 TAC §291.109 properly

tracks the requirements of TWC, §13.301 with no requirement for approval at a "regular meeting of the commission" prior to closing, while 30 TAC §291.112 does not track any TWC provision. The Water IOUs continued by explaining that STM transactions utilizing 30 TAC §291.109 could close after a receipt of notice that the TCEQ's executive director would not be requesting a hearing.

The Water IOUs noted that references to the "executive director" have been removed in the commission rules and suggested that because both §24.109 and §24.112 refer to the "commission" the rules are unclear about which process must be followed and whether a "regular meeting of the commission" is required, or remains as simply an optional process. The Water IOUs recommended that the commission require §24.109 to be the only STM process because TWC, §13.301 invalidates transactions that do not comply with that process.

The Water IOUs also suggested that the commission clarify any specific notice requirement in the rule and preserve the ability of the commission to waive any or all of those notice requirements if requested. The Water IOUs requested the commission ensure that the STM application form conforms to the §24.109 requirements. As an alternative to the utilizing only §24.109 as the STM process, the Water IOUs requested that §24.112 be revised to note that an applicant may avail itself of that process in place of the §24.109 process but clarify that the process is optional and that neither the standard TCEQ STM application form/process are required for a §24.112 STM application.

The Coalition of Cities replied to the Water IOUs' comment by noting the commission issues orders on a regular basis in proceedings that have not had an evidentiary hearing. The Coalition of Cities argues that the transfer of CCNs by sale or merger is one of the most important matters for the commission to consider because of the impact that a transfer can have on the ratepayer. The Coalition of Cities referred to the Texas Subcommittee on Water Utilities in Rural and Unincorporated Areas recommendations to highlight the importance of transparency in STM transactions and urged the commission to reject the Water IOUs' attempt to have a process by which CCNs can be transferred without an order issued by the commission at a regular meeting.

Commission Response

The commission declines to adopt the proposal from the Water IOUs to eliminate §24.112 (relating to CCN transfers) in favor of §24.109 (relating to STMs) as the sole rule by which to evaluate an application for a sale, transfer, or merger (STM) of a water or sewer utility. The commission disagrees with the Water IOUs that §24.112 now conflicts with proposed §24.109 even more than the predecessor TCEQ rule (30 TAC §291.112). As stated previously, the commission is migrating the TCEQ rules with minimal substantive changes. Any perceived conflict between the proposed §24.112 and §24.109 exists now under the plain language of 30 TAC §291.112 and 30 TAC §291.109.

Additionally, the commission disagrees with the Water IOUs that the process set forth in §24.112 does not track a TWC provision. The commission finds that the *requirements* of §24.112 (migrated from 30 TAC §291.112) derive from TWC, §13.251 (related to Sale, Assignment or Lease of Certificate). Moreover, the *process* in the rule (requiring approval

of an STM application at a regular commission meeting prior to closing) is authorized by the same statute which provides that "[t]he sale, assignment, or lease shall be on the conditions prescribed by the utility commission."

The commission further disagrees with the Water IOUs that the commission should choose §24.109 as the sole STM process for water and sewer utilities. There is considerable overlap in the rules pertaining to STM applications and CCN transfers; however, each rule contains separate and independent statutory requirements for evaluation of an application and each rule specifies a process for approving an application.

The commission disagrees with the Water IOUs that §24.112 and §24.109 are unclear about which process must be followed and whether a regular meeting of the commission is required or remains as simply an optional process. Section 24.112(c)(4) states: "(i)f the commission does not require a hearing, the commission may approve the transfer by order at a regular meeting of the commission." This rule, for CCN transfers, requires approval at a regular meeting of the commission. Section 24.109(e) states: "[p]rior to the expiration of the 120-day notification period, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest… ". For STM applications, the commission agrees with the Coalition of Cities that this rule authorizes the commission to administratively approve an application if a hearing is not held.

The commission disagrees with the Water IOUs that, in the alternative to eliminating the rule, §24.112 should be modified to allow an applicant to avail itself of that rule process in the place of the §24.109. As stated previously, there is considerable overlap in the rules pertaining to STM applications and CCN transfers. However, each rule contains separate and independent statutory requirements for evaluation of an application and each rule specifies a process for approving an application. The commission determines that applicants must follow all applicable rules.

Section 24.113

Subsection (j)(2)

The Water IOUs recommended removing the reference to "executive director" in proposed subsection (j)(2). More substantively, the Water IOUs recommended that the commission establish a process so that CCN holders receive notice when a retail public utility seeks to serve the released area subject to this rule. The Water IOUs contended this is necessary to ensure that such CCN holders receive compensation in a timely manner. The Water IOUs also commented that it would be preferable to require compensation to a CCN holder upon release rather than when the land is being served because the commission may not be aware when a retail public utility seeks to serve a released area when those serving the area are not required to have a CCN. The Water IOUs recommended that the commission establish a requirement in the rule to require retail public utilities to notify the commission so that the commission may notify the CCN holder as part of a compensation process.

In their respective responses to the Water IOUs, OPUC and the Coalition of Cities each argued against creation of any new process for notice because such changes would constitute substantive amendments that would be outside the scope of the proceeding.

The Coalition of Cities further argued that there is no need to amend the rule because the rule clearly requires that the commission ensures that a new retail utility pays compensation to the former CCN holder prior to serving the decertified area. The Coalition of Cities described an example where the TCEQ evaluated an issue related to compensation to be paid to Monarch Utilities by the City of Kyle under the current TCEQ rule. According to the Coalition of Cities, TCEQ specifically relied upon 30 TAC §291.113 in requiring that the City of Kyle first compensate Monarch Utilities before rendering service to the decertified area. (An order determining the amount of compensation owed to Monarch Utilities I, L.P. by EB Windy Hill, TCEQ Docket No. 2013-1871-UCR (Nov. 22, 2013) at 2.) The Coalition of Cities concluded that the commission will clearly retain the same authority as TCEQ exercised to ensure compensation is provided to former CCN holders.

Commission Response

The commission agrees with the Water IOUs that the inclusion of the reference to the "executive director" in the proposed version of subsection (j)(2) was improper. Accordingly, the commission modifies subsection (j)(2) to remove the reference to "executive director." The first sentence of subsection (j)(2) now reads: "[a]fter receiving the appraisals, the

commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals."

However, the commission disagrees with the Water IOUs' comment that the commission should establish a process to ensure that CCN holders who have land released under this proposed rule and the commission receive notice when a retail public utility seeks to serve the released area, with a preference to include a requirement for compensation to a CCN holder upon release. As the Coalition of Cities and OPUC noted, such a change would be substantive and beyond the scope of this rulemaking. Also, the commission agrees with the Coalition of Cities that TWC, §13.254(e) currently specifies that the determination of the monetary amount of compensation, if any, shall be made at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided.

Moreover, the commission finds that TWC, §13.254(e) requires that the utility commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the utility commission of its intent to provide service to the decertified area. Because the statute specifies that compensation be provided within a specified time after a retail public utility notifies the commission of its intent to serve the area, the commission declines to amend the proposed rule to add "with a preference to include a requirement for compensation to a CCN holder upon release" as suggested by the Water IOUs.

In addition, the commission finds that because subsection (j)(1) states that "if the retail public utilities cannot agree on an appraiser…", it is presumed that the CCN holder who had land released from the CCN is aware of the intent of another retail public utility to provide service to the release area. In light of these statutory mandates and requirements within the existing TCEQ rules, as well as the limited scope of this rulemaking, the commission declines to adopt the substantive changes to subsection (j)(2) proposed by the Water IOUs.

Section 24.114

Subsection (b)(1)(B)

The Water IOUs argued that the language included in proposed subsection (b)(1)(B), "the obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules" is unclear and unnecessary.

The Coalition of Cities replied to Water IOUs' comment and disagreed with the contention that the proposed language was either unclear or unnecessary. The Coalition of Cities repeated its support for the inclusion of the financial assurance language, referring to its earlier substantive response to the Water IOUs' comments (reply comment to §24.102**)** where the Coalition of Cities noted that each agency will need to be satisfied with regards to financial assurance and this language memorializes that requirement.

Commission Response

The commission declines to modify the proposed rule, as it is important for the commission to have access to a financial assurance mechanism immediately upon the commission's assumption of jurisdiction over the economic regulation of water and sewer utilities on September 1, 2014. The commission recognizes that this rule incorporates TCEQ's financial assurance mechanism and that it may be appropriate for the commission to adopt its own financial assurance process separate from the TCEQ's rules. The commission agrees with TCEQ that a direct or identical application of TCEQ's 30 TAC Chapter 37, Subchapter O to commission applications may not always be possible due to organizational differences between the TCEQ and the commission. However, the commission retains its ability to grant a good cause exception to procedures as needed. The commission also agrees with the Coalition of Cities that each agency will have to be satisfied with regard to its own financial assurance evaluation. The commission clarifies that the use of TCEQ's mechanism at the commission is not intended to satisfy TCEQ requirements.

The commission agrees with the Water IOUs that the proposed language in §24.102(e), placing applicants on notice that obtaining financial assurance under the commission's rules, does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules, is unclear and unnecessary. As noted above, both the commission and the TCEQ will continue to exercise jurisdiction over various aspects of water and sewer utility systems. TCEQ may exercise jurisdiction over a water or sewer utility such as the approval of the design criteria and siting prior to construction of a system or permitting of a wastewater discharge. Either of these activities might require a utility to

obtain financial assurance that satisfies TCEQ's requirements related to those programs. Meanwhile, the commission may require financial assurance to comply with an aspect of the regulation of water and sewer utilities for which the commission has jurisdiction. Accordingly, each agency may continue to have a need to require regulated entities to submit specific forms of financial assurance on an ongoing basis.

Section 24.115

Subsection (b)

The Water IOUs recommended adding "(4)" before "and a statement that persons who wish to intervene or comment upon the action . . ." in proposed subsection (b).

Commission Response

The commission agrees with the Water IOUs' comment and has made the following modification to subsection (b):

(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers;

(4) and a statement that persons who wish to intervene or comment upon the action sought should file a request with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of mailing or publication of notice, whichever occurs later.

Subchapter H Utility Submetering and Allocation.

TAA recommended that the title of the new Chapter 24, Subchapter H be changed to read: Subchapter H Water Utility Submetering and Allocation in order to avoid confusion with similar rules in 16 TAC Chapter 25, Subchapter G.

Commission Response

The commission agrees with TAA's comment that it would be a useful clarification to add the word "water" to the title of the new Chapter 24, Subchapter H. Accordingly the commission has modified the title of Subchapter H to read: "Subchapter H Water Utility Submetering and Allocation."

Section 24.123

Subsection (a)(9)

TAA proposed a clarification to subsection (a)(9) to ensure that apartment houses that charge the service fee allowed under TWC, §13.503(c) are required to also state the percentage of the service charge in the rental agreement. TAA noted that as proposed, subsection (a)(9) requires manufactured housing communities to state the percentage of the service charge in the rental agreement, but does not require that apartment houses provide this information. TAA believed that this requirement should have been added to the rules when the original TCEQ rule was amended following the passage of Senate Bill 2126, Act of May 23, 2009, 81st Leg., R.S., ch. 151 (codified at TWC, §13.503 (c)-(d)). TAA explained that the TCEQ rule that implements TWC, §13.503 was never amended to include the requirement for apartment houses referenced in TWC, §13.503 (c)-(d) after the statute was amended in 2009.

TAA suggested the following amendment (with additional language noted in italics):

§24.123 Rental Agreement.

(a) Rental agreement content. The rental agreement between the owner and tenant shall clearly state in writing ...

(9) for manufactured home rental communities *and apartment houses* the service charge percentage *permitted under §24.124(d)(3) of this title* that will be billed to tenants.

Commission Response

The commission agrees with TAA that TWC, §13.503(c) applies to both manufactured home rental communities and apartment houses. A review of the legislative history of TWC, §13.503 reveals that the TAA's proposed language was inserted in the law in 2009. Specifically, TWC, §13.503(c) clearly provides that both manufactured home rental communities and apartment houses are subject to the restrictions related to imposition of a service charge for submetering. The commission further finds that subsection (a)(9) is the appropriate rule to implement this statutory requirement in the commission's new Chapter 24. Accordingly, the commission modifies subsection (a)(9) to read: "for manufactured home rental communities *and apartment houses* the service charge *percentage permitted under §24.124(d)(3) of this title* that will be billed to tenants" in order to implement the requirements in TWC, §13.503(c).

Section 24.123

Subsection (b)

TAA noted that TCEQ's rule 30 TAC §291.123(b) allows rental property owners to have the option of providing tenants with a summary of the rules prepared by the Executive Director or of the actual rules. TAA argued that because the option to provide tenants a summary of the rules is beneficial, the commission should retain that option in subsection (b). TAA noted that because the commission is not making substantive changes to the rules, the TCEQ's existing guide should be sufficient.

Commission Response

The commission declines to make TAA's recommended change at this time. The commission may not have a prepared summary of rules available as of September 1, 2014 and will be working on revisions of the current rules as the program is transferred from the TCEQ to the commission. The commission has not reviewed the existing TCEQ summary as part of the transition process, and therefore will not be incorporating the summary into the commission rules at this time. The commission encourages TAA and other parties to reiterate this concern during the next phase of the transition when the commission will consider addressing substantive issues associated with the commission's regulation of water and sewer utilities.

Section 24.124

Subsection (e)(2)(A)(iii)

TAA commented that it recently learned that a TCEQ interpretation of 30 TAC §291.124(e)(2)(A)(iii) requires a rental property owner to incorporate vacant units when calculating this particular allocation formula, which assigns a static occupancy ratio based on the size of a rental unit. TAA recommended against the commission adopting this interpretation for proposed rule subsection (e)(2)(A)(iii) ("allocation method iii"). TAA argued that it worked closely with the TCEQ in the drafting of the current rule and it was not the original intent of the rule to require incorporation of vacant units when utilizing this allocation formula. TAA noted that TCEQ staff agreed that the other recognized allocation methods don't require the rental property owner to allocate a portion of the bill to vacant units. TAA concluded that using allocation method (iii) could result additional costs incurred by the owner passed on to other residents.

According to the TAA, TCEQ suggested TAA petition for a rule change for resolution. TAA further explained that allocation method (iii) was developed to allow owners the ability to allocate water usage charges without recalculating the occupancy of each unit each month and further allows owners to establish a static "occupancy" number for each unit before calculating the water bill for each resident. TAA commented that allocation method (iii) should not be interpreted in a way that would require owners to allocate water usage to vacant units and found the current interpretation of allocation method (iii) to be inconsistent with the other approved allocation formulas related to submetering. Specifically, TAA continued, the other allocation

methods do not require the owner to allocate water usage to vacant units. The allocation methods outlined in proposed subsection (e)(2)(A)(i) and (ii) are based on the number of occupants in dwelling units, without counting the vacant units. According to TAA, the allocation method in subsection (e)(2)(A)(iv) does not consider vacant units for the formula portion based upon occupancy. TAA noted that the allocation formula in subsection (e)(2)(A)(v) does not consider vacant units because hot or cold water would only be used by persons in occupied units. TAA argued that consideration of only occupied units is clearly intended by subsection (e)(2)(A)(iii). TAA pointed to the requirement that the formula calculates the average number of "occupants in all dwelling units" on a per bedroom basis in the "dwelling unit." TAA argued that this language must only apply to occupied units since vacant dwelling units obviously do not have any occupants.

According to TAA, an interpretation of subsection (e)(2)(A)(iii) that requires consideration of the vacant units unfairly penalizes the owner and is a disincentive for owners to use this method. TAA described an example where an owner with a nine-unit apartment community consisting of three efficiencies, three one-bedroom units and three two-bedroom units. Under allocation method (iii), the denominator in the formula would be 16.2 ((3 x 1) + (3 x 1.6) + (3 x 2.8)). The TAA requested the reader to assume that the efficiencies and one-bedrooms are occupied, but the two-bedrooms are vacant. According to TAA, if an owner utilizes the allocation method (iii) to calculate allowable submetering costs, the owner would only be able to recoup about 40 percent of the overall water bill from residents if the vacant units are incorporated. TAA argued that owners should not have to pay for vacant units because vacant units don't use water and if allocation method (iii) requires an owner to allocate based on both occupied and vacant units, the

owner would necessarily be paying for apartment units that don't use water. Moreover, TAA alleged owners are already required to deduct a common area usage charge if all common areas are not separately metered or submetered pursuant to subsection (e)(2)(1)(B). Therefore, TAA requested a revision of subsection (e)(2)(A)(iii) as follows (with the italicized phrase to be deleted) :

§24.124. Charges and Calculations

(e) Calculations for allocated utility service

(2) To calculate a tenant's bill:

(A) for an apartment house, the owner shall multiply the amount established in paragraph (1) of the subsection by:

(iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula must calculate the average number of occupants in all occupied dwelling units based upon the number of bedrooms in the dwelling unit according to the scale below, *notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:*

(I) dwelling unit with an efficiency = 1;

(II) dwelling unit with one bedroom = 1.6;

(III) dwelling unit with two bedrooms = 2.8;

(IV) dwelling unit with three bedrooms = 4 + 1.2 for each additional bedroom.

Commission Response

The commission declines to modify this rule as proposed by TAA. The commission disagrees with TAA that the interpretation that requires rental property owners to allocate a portion of the bill to vacant units when utilizing an allocation formula is inconsistent with the other approved allocation formulas in this section. Moreover, such a revision would create a substantive change to the rule and is beyond the scope of this proceeding. The commission intends to engage in future rulemaking proceedings following the September 1, 2014 transfer of jurisdiction over water and sewer utilities. At that time, the commission will consider addressing substantive issues associated with the economic regulation of such water and sewer utilities. The commission, therefore declines to make TAA's recommended revision as beyond the limited scope of this rulemaking proceeding.

Section 24.143

Subsection (h)

The TCEQ recommended adding the phrase "and the TCEQ" after the word "commission" in the first sentence to ensure that the TCEQ is notified regarding the temporary manager's activities.

Commission Response

The commission recognizes the TCEQ's role in ensuring that a temporary manager is carrying out his or her duties as appropriate. However, the commission finds that placing a requirement in the commission rules for a temporary manager to file a document with

the TCEQ creates an oversight obligation for the commission that would be better addressed through the TCEQ's own rules. Therefore, the commission declines to revise the proposed rule as recommended.

However, in order to ensure that water and sewer utilities and other regulated entities understand it is ultimately their responsibility to remain in compliance with each applicable regulatory authority, the commission modifies §24.1 in response to the TCEQ's concerns by incorporating a new subsection (c) into the text as published. The new subsection (c) states that "it is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by the TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to the TCEQ of regulated activities as required by the TCEQ rules." This language is intended to put each water and sewer utility or other regulated entity on notice that there may be other agency requirements (including those at TCEQ) with which it will be necessary to comply that are also potentially associated with the regulatory activities taking place at the commission. The commission finds that this addresses TCEQ's concerns without creating a potential obligation for the commission to enforce TCEQ's filing requirements.

Section 24.144

Subsection (b)

The TCEQ recommended deleting the portion of this rule which follows the phrase "into compliance with commission rules" in the first sentence because the TCEQ will maintain jurisdiction over water and wastewater system deficiencies and penalties after September 1, 2014.

In reply comments, the Water IOUs disagreed with the TCEQ. The Water IOUs identified the commission as the agency with the authority to negotiate and establish the compliance period for both commission and TCEQ rules. The Water IOUs commented that TCEQ's proposed edit is therefore inaccurate. The Water IOUs relied upon TWC, §13.046(c), as revised by SB 567, which reads:

> The utility commission shall provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with the utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

The Water IOUs noted that according to the statute, the utility commission, not TCEQ is now the agency to negotiate and establish the compliance period for both agencies' rules in the situation where a retail public utility takes over the nonfunctioning system to bring the nonfunctioning system into compliance with both agencies' rules. The Water IOUs suggested TCEQ would be bound by the compliance period negotiated by the commission and therefore, the TCEQ's

suggested edit to this rule is incorrect. The Water IOUs recommended this following revision to §24.144:

> The commission shall provide a reasonable period for a retail public utility that takes over a nonfunctioning system to bring the nonfunctioning system into compliance with commission and TCEQ rules, during which the commission or TCEQ may not impose a penalty for any deficiency in the system that is present at the time the retail public utility takes over the nonfunctioning system. The commission must consult with the retail public utility before determining the period and may grant an extension of the period for good cause.

Commission Response

The commission agrees with TCEQ that the TCEQ will retain jurisdiction over water and wastewater system deficiencies and related penalties. However, the commission declines to modify the rule as recommended by TCEQ in order maintain adequate jurisdiction necessary for effective commission oversight of utility certificates of convenience and necessity as required by §24.102. Additionally, the commission declines to adopt the proposed revision of the Water IOUs at this time. As the Water IOUs note, the TWC establishes concurrent jurisdiction over aspects of water and wastewater deficiencies, and the commission rules are necessarily limited solely to the commission's authority to regulate water and sewer utilities.

Section 24.150

The Water IOUs commented that it would be advantageous for the commission to encourage smaller municipalities to take advantage of the option to surrender ratemaking jurisdiction to the commission because there are many small cities throughout the State of Texas that could benefit from this option to surrender jurisdiction.

ALRA and the Coalition of Cities submitted reply comments disagreeing with the Water IOUs' suggestion for the commission to encourage smaller municipalities to surrender jurisdiction to the commission. The Coalition of Cities noted it would be beyond the scope of this rulemaking for the commission to do so upon the recommendation of the Water IOUs. ALRA suggested that it would be inappropriate and beyond the scope for this proceeding for the commission to contact cities and inform them of their rights under the law or suggesting surrender of jurisdiction to the commission because cities that have original jurisdiction are capable of understanding the law. ALRA commented that itself and similar city coalitions, including but not limited to the Texas Municipal League, are more appropriate resources to aid cities and can explain the advantages of retaining jurisdiction when negotiating with a utility that serves the municipality and its citizens. ALRA noted that there is no law or rule that directs the commission to begin advising municipalities of their rights, advantages and disadvantages associated with the municipality's original jurisdictional powers.

Commission Response

The commission appreciates the comments by the Water IOUs that the commission should encourage smaller municipalities to take advantage of the option to surrender ratemaking authority to the commission. The commission agrees with ALRA and the Coalition of

Cities, however, that any substantive action, including actions by the commission to contact cities and inform them of their rights under the law would be beyond the scope of this rulemaking.

Subsection (f)

The Water IOUs identified a typographical error in proposed subsection (f) adding a letter *s* to "it" in the following statement "The City of San Antonio, a municipality, surrendered its jurisdiction over investor owned utilities within its corporate limits, to the commission, effective January 30, 2014."

Commission Response

The commission agrees with the Water IOUs that the proposed subsection (f) improperly uses the word "it" rather than the word "its." Accordingly, the commission modifies subsection (f) to include the appropriate word "its" in the text. The modified subsection (f) reads: "The City of San Antonio, a municipality, surrendered its jurisdiction over investor owned utilities within its corporate limits, to the commission, effective January 30, 2014."

The new rules are adopted under H.B. 1600 and S.B. 567, 83rd Legislature, Regular Session, which grants the Public Utility Commission of Texas the authority to propose rules beginning September 1, 2013 related to functions to be transferred to the Public Utility Commission of Texas as of September 1, 2014. Specifically, Texas Water Code (TWC), §§5.507-5.508, and

Chapter 13 provide the commission the authority to engage in the economic regulation of water and wastewater utilities, and provide the substantive basis to conduct the regulation. The new rules implement substantive rules pursuant to TWC, Chapter 13 and §§5.507-5.508, 11.041, 12.013.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, H.B. 1600 and S.B. 567, 83rd Legislature, Regular Session.

CHAPTER 24

SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER A: GENERAL PROVISIONS

§24.1. Purpose and Scope of this Chapter.

(a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code (TWC), Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

(b) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality (TCEQ) related to a power, duty, function, program, or activity transferred pursuant to House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session (this Act), continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas (commission) and remains in effect until amended or

replaced by the commission. Beginning September 1, 2013, the commission may propose rules, forms, policies, and procedures related to a function to be transferred to the commission under this Act.

(c) It is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by TCEQ or other agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to TCEQ of regulated activities as required by TCEQ rules.

§24.2. Severability Clause.

(a) The adoption of this chapter will in no way preclude the commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a retail public utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

(b) The commission may make exceptions to this chapter for good cause.

§24.3. Definitions of Terms.

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

(1) 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 to which Local Government Code, Chapter 232, Subchapter B, applies.

(3) Affected person — Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; 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 Texas Department of Insurance Division of Workers' Compensation, 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 (TWC). Any reference to TWC, §13.187 is to be construed to reference the substantive requirements of TWC, §13.187 as the TWC existed on August 31, 2013, until such time as the commission adopts rules to implement the changes in law made by this Act to TWC, Chapter 13 and §12.013, not later than September 1, 2015.

(14) Commission — The Public Utility Commission of Texas or a presiding officer, as applicable.

(15) 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 TWC.

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

(17) 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.

(18) 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.

(19) 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.

(20) Landowner — An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

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

(22) 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 in accordance with its authority under the TWC.

(23) Main — A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(24) Mandatory water use reduction — The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This

does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(25) 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.

(26) Membership fee — A fee assessed each water supply or sewer service corporation service applicant that 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 under said bylaws. For purposes of TWC, §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.

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

(28) 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.

(29) Nonfunctioning system — A retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §24.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.143 of this title (relating to Operation of a Utility by a Temporary Manager).

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

(31) 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.

(32) 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.

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

(34) Premises — A tract of land or real estate including buildings and other appurtenances thereon.

(35) Public utility — The definition of public utility is that definition given to water and sewer utility in this subchapter.

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

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

(38) 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 TWC, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(39) 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.

(40) 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 §24.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(41) 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.

(42) 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.

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

(44) Service — Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC 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.

(45) 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.

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

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

(48) 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.

(49) 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.

(50) TCEQ — Texas Commission on Environmental Quality.

(51) 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.

(52) 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.

(53) Utility — The definition of utility is that definition given to water and sewer utility in this subchapter.

(54) 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.

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

(56) Water supply or sewer service corporation — Any nonprofit corporation organized and operating under TWC, Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws 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 bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(57) 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.

§24.4. Cooperative Corporation Rebates.

Nothing in this chapter prevents a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

§24.5. Submission of Documents.

All documents to be considered by the commission under this chapter are subject to Chapter 22 of this title (relating to Procedural Rules).

§24.6. Signatories to Applications.

(a) All applications shall be signed by a corporate officer, partner, proprietor, their attorney-at-law, or the principal executive officer or ranking elected official of a governmental entity, or other person having representative capacity to transact business on behalf of the retail public utility. If the signer is not a corporate officer, partner, proprietor, their attorney-at-law, or principal executive officer or ranking elected official of a governmental entity, the application must contain written proof that such signature is duly authorized.

(b) Applications shall contain a certification stating that the person signing has personally examined and is familiar with the information submitted in the application and that the information is true, accurate, and complete.

§24.8. Administrative Completeness.

(a) Notice of rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and sale, assignment of, or lease of a certificate; and applications for certificates of convenience and necessity shall be reviewed for administrative completeness within ten working days of receipt of the application. A notice or an application for rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the applicant shall be notified by mail of that determination. If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days after:

(1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed;

(2) the date that the application and notice are determined to be administratively complete for previously rejected applications and notices; or

(3) the date that the notice is delivered to each ratepayer, whichever is later.

(c) In cases involving a proposed sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

§24.9. Agreements To Be in Writing.

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the commission shall be enforced, unless it shall have been reduced to writing and signed by the parties or representatives authorized by these sections to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

§24.11. Informal Proceedings.

(a) Any hearing involving a retail public water or sewer utility as defined in §24.3 of this title (relating to Definitions of Terms) may be conducted as an informal proceeding when, in the judgment of the presiding officer, the conduct of a hearing under informal procedures will:

(1) result in savings of time or costs to all parties;

(2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) not prejudice the rights of any party.

(b) If during an informal proceeding, all parties reach a negotiated or agreed settlement which in the judgment of the presiding officer settles all facts or issues in controversy, the proceeding shall not be a contested case under the Texas Administrative Procedure Act, Government Code, Chapter 2001, and no proposal for decision nor detailed findings of fact and conclusions of law are required.

(c) If the parties do not reach a negotiated or agreed settlement of all facts and issues in controversy, the presiding officer may adjourn the informal proceeding and reconvene it as a contested case hearing under standard hearing procedures as otherwise provided for in this chapter.

§24.12. Burden of Proof.

In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

§24.14. Emergency Orders.

(a) The commission may issue emergency orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;

(2) to 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 service discontinuance or serious impairment in service is imminent or has occurred; and/or

(3) to establish reasonable compensation for the temporary service required under paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(b) The commission may also issue orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities):

(1) to appoint a temporary manager under TWC, §5.507 and §13.4132; and/or

(2) to approve an emergency rate increase under TWC, §5.508 and §13.4133.

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

§24.15. Notice of Wholesale Water Supply Contract.

(a) A district or authority created under Texas Constitution, §52, Article III, or §59, Article XVI, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract.

(b) The submission must include:

(1) the amount of water being supplied;

(2) term of the contract;

(3) consideration being given for the water;

(4) purpose of use;

(5) location of use;

(6) source of supply;

(7) point of delivery;

(8) limitations on the reuse of water;

(9) a disclosure of any affiliated interest between the parties to the contract; and

(10) any other condition or agreement relating to the contract.

(c) The certified copy of the contract should be submitted to the commission.

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

§24.21. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not 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 TWC, §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 TWC, §5.235(n) does not have to be listed on the utility's approved tariff to be charged and collected but must 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 that enters into an agreement in accordance with TWC, §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. A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees 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 its tariff with the commission 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 must 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 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 may change rates for water or wastewater service without commission approval but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission 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 to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or as appropriate, 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 in accordance with TWC, §13.250(b)(2) or §13.147(d);

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

(viii) addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons; or

(ix) implementation of an energy cost adjustment clause.

(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 its revision with the commission. Each revision must be accompanied by a cover page that 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) Rate schedule. Each rate schedule must clearly state the territory, subdivision, city, or county in which the schedule is applicable.

(5) Tariff sheets. Tariff sheets must be numbered consecutively. Each sheet must 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 must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must 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 30 TAC §290.46(j) (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the form used deviates from that specified in 30 TAC §290.47(d) (relating to Appendices);

(6) the extension policy;

(7) an approved drought contingency plan as required by 30 TAC §288.20 (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 must include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket 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 must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariffs must 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 this section must 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 must include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission a copy of its current tariff that has been authorized by the municipality.

(h) Purchased water or sewage treatment provision.

(1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must 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 review of a proposed revision is an informal proceeding. Only the commission staff, 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 commission; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must 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 must 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 must 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 commission 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 TWC, §13.187 is the proposed date on the notice to customers and the commission, unless suspended and must comply with the requirements of §24.8(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 must 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 certificate of convenience and necessity 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) If specifically authorized for the utility in writing by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(A) sampling fees not already included in rates;

(B) inspection fees not already included in rates;

(C) production fees or connection fees not already included in rates charged by a groundwater conservation district; or

(D) other governmental requirements beyond the control of 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 The utility may redirect or use the revenues for other purposes only after first obtaining the approval of commission.

(l) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision that 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 that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover from customers' revenues that 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 may not be implemented by a utility if there exists an available, unrestricted, alternative water supply that 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)

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

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

(A) The utility shall file a temporary water rate application prescribed by the commission 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, the time frame for protests, and any other information that is required by the commission in the temporary water rate application. The utility's existing rates are not subject to review in the proceeding and the utility is only 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 §24.23 of this title (relating to Time between Filings).

(B) The utility shall establish 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 shall 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 shall complete a rate application and provide notice in accordance with the requirements of §24.22 of this title (relating to Notice of Intent to Change Rates). The utility's existing rates are subject to review in addition to the temporary water rate provision.

(B) The utility shall establish 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 that 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 that affect the utility's customers' use of utility services; and

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

(6) The utility may 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 commission's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding. Only the commission 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 commission; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas 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 shall stop charging a temporary water rate as soon as is practical after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall 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.

(m) Multiple system consolidation. Except as otherwise provided in subsection (o) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single- family residences and landscape irrigation.

(n) Regional rates. The commission, where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

(o) Exemption. Subsection (m) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(p) Energy cost adjustment clause.

(1) utility that purchases energy (electricity or natural gas) that is necessary for the provision of water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file an application with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was mailed to affected customers and stating the dates of such mailing shall be filed with the commission by the applicant utility as part of the application. Notice must be provided on the notice form included in the commission’s application package and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the application form.

(3) The commission's review of the utility's application is an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested public meeting on the application if requested by a member of the legislature who represents the area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass through, whether an increase or decrease, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) mail either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly complete the application or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional

documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case, and TWC, §13.187 does not apply.

§24.22. Notice of Intent to Change Rates.

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission a completed application package and shall give notice of the proposed rate change by mail, e-mail, or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) 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;

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services;

(5) disclosure of an ongoing proceeding under §24.113 of this title (relating to Revocation or Amendment of Certificate), if any;

(6) the reason or reasons for the proposed rate change;

(7) any bill payment assistance program available to low-income ratepayers; and

(8) any other information that is required by the commission in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be

mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-mailed, or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

(f) Standby fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change

application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission may authorize an emergency rate increase under TWC, §5.508 and §13.4133 and Chapter 22, Subchapter P of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

(1) for which a person has been appointed under TWC, §13.4132; or

(2) for which a receiver has been appointed under TWC, §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

§24.23. Time between Filings.

Unless the commission requires it to deliver a corrected statement of intent, a utility or two or more utilities under common control or ownership may not file a notice of intent to increase rates more than once in a 12-month period except:

(1) to implement an approved purchase water pass through provision;

(2) to adjust the rates of a newly acquired utility system;

(3) to comply with a commission order;

(4) to adjust rates authorized by §24.21(b)(2) of this title (relating to Form and Filing of Tariffs); or

(5) unless the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

(A) cover reasonable and necessary operating expenses; or

(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements.

24.24. Jurisdiction over Affiliated Interests.

(a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

(b) The owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or

(2) the commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

§24.25. Rate Change Applications, Testimony and Exhibits.

(a) A change in rates under the TWC, §13.187, is initiated by the submission of a rate filing package which consists of a rate/tariff change application form, or such other forms as prescribed by the commission, a statement of intent to change rates, and a copy of the notice the applicant has provided to customers and other affected parties.

(b) A utility filing for a change in rates under the TWC, §13.187, shall be prepared to go forward at a hearing on the data which has been submitted under subsection (a) of this section and sustain the burden of proof of establishing that its proposed changes are just and reasonable.

(c) An original of the completed rate filing package and the required number of copies shall be submitted and filed with the commission. In the event that the proposed rate change becomes the subject of a hearing, the commission may require or allow, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.

(d) The book data included in the schedules and information prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that books amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation

and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained.

(e) All parties shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the judge assigned to the application.

(f) The items in the rate filing package may be modified on a showing of good cause.

§24.26. Suspension of Rates.

(a) 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 may not re-notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(b) The effective date of any rate change may be suspended by the commission 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.

(c) If the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. The proposed rate may not be suspended for more than 150 days.

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

(a) Petitions for review of rate actions filed by ratepayers pursuant to the TWC, §13.187(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action; and

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer (the petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer).

(b) Ratepayers may initiate a review of a rate change application by filing individual complaints rather than joint petitions. Each complaint should contain the information required in subsection (a) of this section.

(c) In order for a review to be initiated under subsection (a) or (b) of this section, complaints must be received from a total of 1,000 or 10% of the affected ratepayers, whichever is less.

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

The commission may conduct a public hearing on any application.

(1) If, before the 91st day after the effective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

(2) If a hearing is scheduled, the commission may require the utility to provide notice of the time and place of the hearing to its customers through a billing insert or separate mailing.

(3) If sufficient customer complaints are not received or if the commission staff does not request a hearing within 120 days after the effective date, the utility's proposed tariff will be reviewed for compliance with the TWC and the provisions of this chapter. If the proposed tariff complies with the TWC and the provisions of this chapter, it shall be stamped approved and a copy returned to the utility. The utility may be required to notify its customers that sufficient complaints were not received to schedule a hearing and the proposed rates were approved without hearing.

(4) Additional information may be requested from any utility in the course of evaluating the rate/tariff change request, and the utility shall provide that information within 20 days of receipt of the request, unless a different time is agreed to. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported costs or expenses.

(5) If the commission sets a rate different from that proposed by the utility in its notice of intent, the utility shall include in its first billing at the new rate a notice to the customers of the rate set by the commission including the following statement: "The Public Utility Commission of Texas, after public hearing, has established the following rates for utility service:"

(6) If the commission conducts a hearing, it may establish rates different from those currently being charged or proposed to be charged by the utility, but the total annual revenue increase resulting from the commission's rates may not exceed the greater of the annual revenue increase provided in the customer notice or revenue increase that would have been produced by the proposed rates except for the inclusion of reasonable rate case expenses. The commission may reclassify a portion of a utility's proposed rates as a capital improvement surcharge if the revenues are to be used for capital improvements or are to service debt on capital items.

(7) A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.

(8) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.

(9) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

§24.29. Interim Rates.

(a) The commission may, on a motion by the commission staff or by the appellant under TWC, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under Chapter 13 of the TWC the commission staff may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.

(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(d) Interim rates may be established by the commission in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(e) In making a determination under subsection (d) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:

(1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(2) deny interim rate relief; and

(3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(f) The commission may also remand the request for interim rates to the State Office of Administrative Hearings for an evidentiary hearing on interim rates. The presiding officer shall issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(g) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(h) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.

(i) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(j) The retail public utility shall provide a notice to its customers including the interim rates set by the commission or presiding officer with the first billing at the interim rates with the following wording: "The commission (or presiding officer) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established."

§24.30. Escrow of Proceeds Received under Rate Increase.

(a) Rates received during the pendency of a rate proceeding.

(1) During the pendency of its rate proceeding, a utility may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(2) The utility shall file a completed escrow agreement between the utility and the financial institution with the commission for review and approval.

(3) If necessary to meet the utility's current operating expenses, or for other good cause shown, the commission may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

(4) The commission, except for good cause shown, shall give all parties-of-record at least 10 days notice of an intent to release funds from an escrow account. Any party may file a motion with the commission objecting to the release of escrow funds or to establish different terms and conditions for the release of escrowed funds.

(5) Upon the commission's establishment of final rates, all funds remaining in the escrow account shall be released to the utility or ratepayers in accordance with the terms of the commission's order.

(b) Surcharge revenues granted by commission order at the conclusion of a rate proceeding.

(1) A utility may be required to deposit all or part of surcharge funds authorized by the commission into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(2) Prior to collecting any surcharge revenues that are required to be escrowed, the utility shall submit for commission approval the completed escrow agreement between the utility and the financial institution If the utility fails to promptly remedy any deficiencies in the agreement noted by the commission, the commission may suspend the collection of surcharge revenues until the agreement is properly amended.

(3) In order to allow the utility to complete the improvements for which surcharge funds were granted, the commission may authorize the release of funds to the utility from the escrow account after receiving a written request including appropriate documentation.

§24.31. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes may be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in TWC, §13.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer

agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service. On all applications, the depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The depreciation rate and expense must be calculated on a straight line basis over the expected or remaining life of the asset. Utilities must calculate depreciation on a straight line basis, but are not required to use the remaining life method if salvage value is zero. When submitting an application that includes salvage value in depreciation calculations, the utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. Such evidence will be included for the asset group in deprecation studies for those utilities practicing group accounting while such evidence will relate to specific assets for those utilities practicing itemized accounting;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes must be computed according to the provisions of TWC, §13.185(f), if applicable);

(E) reasonable expenditures for ordinary advertising, contributions, and donations; and

(F) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;

(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal

expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new

capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service;

(B) original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility; and

(i) original cost under subparagraph (A) of this paragraph or this subparagraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the

time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system. On all assets retired from service after June 19, 2009, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation(s) in its net plant calculation(s) in the first full rate change application (excluding alternative rate method applications as described in §24.34 of this title (relating to Alternative Rate Methods)) it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset shall be combined with over accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount shall be amortized over a reasonable period of time taking into account prudent regulatory principles. The following list shall govern the manner by which depreciation will be accounted for.

(I) Accelerated depreciation is not allowed.

(II) For those utilities that elect a group accounting approach, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

(-a-) investment by homogenous category;

(-b-) expected level of gross salvage by category;

(-c-) expected cost of removal by category;

(-d-) the accumulated provision for depreciation as appropriately reflected on the company's books by category;

(-e-) the average service life by category;

(-f-) the remaining life by category;

(-g-) the Iowa Dispersion Pattern by category; and

(-h-) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(ii) reserve for depreciation under subparagraph (A) of this paragraph or this subparagraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over

the estimated useful life or remaining life of the asset. If individual accounting is used, a utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation shall include any additional depreciation expense accrued past the estimated useful or remaining life of the asset. If salvage value is zero, depreciation must be computed on a straight line basis over the expected useful life or remaining life of the item or facility. If salvage value is not zero, depreciation must also be computed on a straight line basis over the expected useful life or the remaining life. For an asset removed from service after June 19, 2009, accumulated depreciation will be calculated on book cost less net salvage of the asset. The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered. Return is allowed for assets removed from service after June 19, 2009, that result in an increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially prudent, unavoidable, necessary because of technological obsolescence, or otherwise reasonable. The utility must also provide evidence establishing the original cost of the asset, the cost of removal,

salvage value, any other amounts recovered, the useful life of the asset (or remaining life as may be appropriate), the date the asset was taken out of service, and the accumulated depreciation up to the date it was taken out of service. Additionally, the utility must show that it used due diligence in recovering maximum salvage value of a retired asset. The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets only apply to those utilities using itemized accounting. For those utilities practicing group accounting, the depreciation study will provide similar information by category. TWC, §13.185(e) relating to dealings with affiliated interests, will apply to business dealings with any entity involved in the retirement, removal, or recovery of assets. Assets retired subsequent to June 19, 2009, will be included in a utility's application for a rate change if the application is the first application for a rate change filed by the utility after the date the asset was retired and specifically identified if the utility uses itemized accounting. Retired assets will be reported for the asset group in depreciation studies for those utilities practicing group accounting, while retired assets will be specifically identified for those utilities practicing itemized accounting;

(iii) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC, §13.185(e);

(iv) utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and

(C) working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;

(ii) reasonable prepayments for operating expenses (prepayments to affiliated interests) are subject to the standards set forth in TWC, §13.185(e); and

(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).

(3) Terms not included in rate base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

(A) Miscellaneous items. Certain items that include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(iii) contingency and/or property insurance reserves;

(iv) contributions in aid of construction; and

(v) other sources of cost-free capital, as determined by the commission.

(B) Construction work in progress. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.

(d) Recovery of positive acquisition adjustments.

(1) For utility plant, property, and equipment acquired by a utility from another retail public utility as a sale, merger, etc. of utility service area for which an application for approval of sale has been filed with the commission on or after September 1, 1997, and that sale application closed thereafter, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

(A) the property is used and useful in providing water or sewer service at the time of the acquisition or as a result of the acquisition;

(B) reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;

(C) as a result of the sale, merger, etc.:

(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service) was achieved; or

(iii) the acquiring system will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) any and all transactions between the buyer and the seller entered into as a part or condition of the sale are fully disclosed to the commission and were conducted at arm's length;

(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired;

(F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997 and February 4, 1999 is exempt from the requirement for commission notification at the time of the approval of the initial sale, but must provide such notification by April 5, 1999; and

(G) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

(2) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and

equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.

(4) The acquisition adjustment can only be included in rates as a part of a rate change application.

§24.32. 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 §24.34 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 Texas Commission on Environmental Quality's (TCEQ) 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 30 TAC §288.20 (TCEQ rules

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 commission, 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 commission for applications not subject to hearing under TWC, §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.

§24.34. Alternative Rate Methods.

(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The commission may prescribe modified rate filing packages for these alternate methods of establishing rates.

(b) Single issue rate change. Unless a utility is using the cash needs method, it may request approval to increase rates to reflect a change in any one specific cost component. The following conditions apply to this type of request.

(1) The proposed effective date of the single issue rate change request must be within 24 months of the effective date of the last rate change request in which a complete rate change application was filed.

(2) The change in rates is limited to those amounts necessary to recover the increase in the specific cost component and the increase will be allocated to the rate structure in the same manner as in the previous rate change.

(3) The scope of a single issue rate proceeding is limited to the single issue prompting a change in rates. For capital items this includes depreciation and return determined using the rate of return established in the prior rate change proceeding.

(4) The utility shall provide notice as described in §24.22(a) - (e) of this title (relating to Notice of Intent to Change Rates), and the notice must describe the cost component and reason for the increased cost.

(5) A utility exercising this option shall submit a complete rate change application within three years following the effective date of the single issue rate change request.

(c) Phased and multi-step rate changes. In a rate proceeding, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.

(1) A utility may request to use the phased or multi-step rate method:

(A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;

(B) to provide additional construction funds after major milestones are met;

(C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;

(D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;

(E) to phase in increased rates when a utility has been acquired by another utility with higher rates;

(F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or

(G) when requested by the utility.

(2) Construction schedules and cost estimates for new facilities that are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.

(3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.

(4) At the time each rate step is implemented, the utility shall review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the commission prior to implementing the next phase or step. Unless otherwise specified in a commission order, the utility may:

(A) refund or credit the overage to the customers in a lump sum; or

(B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.

(5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the commission 30 days prior to the implementation of each step.

(6) A utility that requests and receives a phased or multi-step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:

(A) the utility can prove financial hardship; or

(B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.

(d) Cash needs method. The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.

(1) A utility may request to use the cash needs method of setting rates if:

(A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or

(B) the utility can demonstrate that use of the cash needs basis:

(i) is necessary to preserve the financial integrity of the utility;

(ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and

(iii) will result in higher quality and more reliable utility service for customers.

(2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements,

replacements, and extensions that are not debt-financed; and a reasonable cash reserve account.

(A) Allowable operating and maintenance expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's historical test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.

(B) Depreciation expense. Depreciation expense may be included on any used and useful depreciable plant, property, or equipment that was paid for by the utility and that has a positive net book value on the effective date of the rate change in the same manner as described in §24.31(b)(1)(B) of this title (relating to Cost of Service).

(C) Debt service costs. Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:

(i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with

the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed; and

(ii) prospective loans to be executed after the new rates are effective. Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

(D) Recurring capital improvements, replacements, and extensions that are not debt-financed. Capital assets, repairs, or extensions that are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses that are specifically debt-financed.

(E) Cash reserve account. A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the commission. The utility shall account for these funds separately and report to the commission.. Unless the utility requests an exception in writing and the exception is explicitly allowed by the commission in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that explains the method used to

calculate the amounts to be refunded. Each customer must receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the commission.

(3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)(D) of this subsection and are subject to the same restrictions.

(4) If the utility demonstrates to the commission that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the commission may allow the utility to retain 50% of the savings that result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.

(5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover through rates, the depreciation expense for capital assets that were not

paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.

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

(a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with TWC, §67.007; or

(2) is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation prescribed by TWC, §13.002(11) and (24).

(b) The commission's jurisdiction provided by this section ends if:

(1) the water supply or sewer service corporation voluntarily converts to a special utility district operating under TWC, Chapter 65;

(2) the time period specified in the commission order expires; or

(3) the water supply or sewer service corporation demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC, §67.007 and has operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).

SUBCHAPTER C: RATE-MAKING APPEALS

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

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative. and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body.

(b) An appeal under TWC, §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC, §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) in an appeal under the TWC, §13.043(a), include reasonable expenses incurred in the appeal proceedings;

(2) in an appeal under the TWC, §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;

(3) establish the effective date;

(4) order refunds or allow surcharges to recover lost revenues;

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC, §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(2) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC, §49.2122, TWC, §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under TWC, §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission shall approve the water supply corporation’s water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

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

(a) Petitions for review of rate actions filed pursuant to the TWC, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;

(3) the effective date of the decision being appealed;

(4) the basis of the request for review of rates; and

(5) any other information the commission may require.

(b) A petition must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.

(c) A filing fee is not required for appeals or complaints filed under the TWC, §13.043(b).

§24.43. Refunds During Pendency of Appeal.

A utility which is appealing the action of the governing body of a municipality under the TWC, §13.043, shall not be required to make refunds of any over-collections during the pendency of the appeal.

§24.44. Seeking Review of Rates for Sales of Water Under the Texas Water Code, §11.041 and §12.013.

(a) Ratepayers seeking commission participation under the TWC, §11.041 or action under TWC, §12.013 should include in a written petition to the commission, the following information:

(1) the petitioner's name;

(2) the name of the water supplier from which water supply service is received or sought;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to receive or use the water;

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

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

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

(b) Water suppliers seeking commission participation under the TWC, §11.041, or action under TWC, §12.013 should include in a written petition for relief to the commission, the following information:

(1) petitioner's name;

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

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;

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

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

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

(a) A district created pursuant to Texas Constitution, Article XVI, §59, which district is located within the corporate limits or the extraterritorial jurisdiction of a municipality and which receives water or sewer service or whose residents receive water or sewer service from the municipality may by filing a petition with the commission appeal the rates charged by the municipality if the resolution, ordinance, or agreement of the municipality consenting to the creation of the district required the district to purchase water or sewer service from the municipality.

(b) The commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable.

(c) After the commission establishes just and reasonable rates, the municipality may not increase those rates without approval of the commission. A municipality desiring to increase rates must provide the commission with updated information in a format specified in the current rate data package developed by the Rates Section.

SUBCHAPTER D: RECORDS AND REPORTS

§24.71. General Reports.

(a) Who shall file. The recordkeeping, reporting, and filing requirements listed in this section shall apply only to water and sewer utilities, unless otherwise noted in this subchapter.

(b) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(c) Due dates of reports. All reports must be received by the commission on or before the dates specified.

(d) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(e) Special and additional reports. Each utility shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(f) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(g) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

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

Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) Classification. For the purposes of accounting and reporting to the commission, each public water and/or sewer utility shall be classified with respect to its annual operating revenues as follows:

(A) Class A-annual operating revenues exceeding $750,000;

(B) Class B-annual operating revenues exceeding $150,000 but not more than $750,000;

(C) Class C-annual operating revenues not exceeding $150,000;

(2) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A-system of accounts approved by the commission which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities;

(B) Class B-system of accounts approved by the commission which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities;

(C) Class C-system of accounts approved by the commission which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities.

(3) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

§24.73. Water and Sewer Utilities Annual Reports.

(a) Each utility, except a utility operated by an affected county, shall file a service and financial report by April 1 of each year unless otherwise specified in a form prescribed by the commission.

(b) Contents of report. The annual report shall disclose the information required on the forms and may include:

(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;

(2) rules and regulations relating to or affecting the rates, utility service, product or commodity furnished by the utility;

(3) all ownership and management relationships among the utility and other entities, including individuals, with which the utility has had financial transactions during the reporting period;

(4) all transactions with affiliates, including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing;

(5) information on receipts and disbursements of revenues;

(6) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and

(7) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.

§24.74. 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 commission may consider alternate hours of inspection if the utility provides a written request 72 hours in advance of any scheduled inspection.

§24.75. Management Audits.

The commission may inquire into the management and affairs of all utilities and the affiliated interests of those utilities in order to keep itself informed as to the manner and method in which they are conducted and may obtain all information to enable it to perform management audits. The utility and, if applicable, the affiliated interest shall report to the commission on the status of the implementation of the recommendations of the audit and shall file subsequent reports at the times the commission considers appropriate.

§24.76. 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 the TWC, §13.002, or a district as defined in the 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, as required by TWC, §5.701(n), and remit such fee to the TCEQ.

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

(d) 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.

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

SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION

§24.80. Applicability.

Unless otherwise noted, this subchapter is applicable only to “water and sewer utilities” as defined under Subchapter A of this chapter (relating to General Provisions) and includes affected counties.

§24.81. 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 §24.85 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 30 TAC §290.44(h) (relating to Water Distribution) if such is required. The utility shall 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 that 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 must 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.) must be labeled to indicate the size, design capacity, and any pertinent information that 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 must be available for commission inspection during normal working hours.

(5) Each utility shall maintain a current copy of the commission's substantive rules of this chapter 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 30 TAC Chapter 290, Subchapter D (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 §24.82 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 shall advise the complainant of recourse through the Public Utility Commission of Texas complaint process. 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 commission within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant. The commission may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission 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 must 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 shall 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.

(1) Unless otherwise authorized by the commission in response 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.

(2) Unless otherwise authorized by the commission in response to a written request, each utility shall make available and notify customers of a business location where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in §24.88 of this title (relating to Discontinuance of Service). The business location must be located:

(A) in each county where utility service is provided; or

(B) not more than 20 miles from any residential customer if there is no location to receive payments in that county.

(3) Upon request by the utility, the requirement for a local office may be waived by the commission if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers. Unless otherwise authorized by the commission in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §24.88 of this title.

§24.82. Resolution of Disputes.

(a) Any customer or service applicant requesting the opportunity to dispute any action or determination of a utility under the utility's customer service rules shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer will not allow an inspection or chooses not to participate in such review or not to make arrangements for such review to take place within five working days after requesting it, the utility may disconnect service for the reasons listed in §24.88 of this title (relating to Discontinuance of Service), provided notice has been given in accordance with that section.

(b) In regards to a customer complaint arising out of a charge made by a public utility, if the commission finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 working days of receiving the order is a violation for which the commission may impose an administrative penalty under TWC, §13.4151.

§24.83. 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 §24.84 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 §24.87(l) of this title (relating to Billing);

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

(5) standby fees authorized under §24.87(o) of this title 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 30 TAC §290.44(h) (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.

§24.84. Service Applicant and Customer Deposit.

(a) Deposit on Tariff. Deposits may only be charged if listed on the utility's approved tariff.

(1) Residential service applicants. If a residential service applicant does not establish credit to the satisfaction of the utility, the residential service applicant may be required to pay a deposit that does not exceed $50 for water service and $50 for sewer service.

(2) Commercial and Nonresidential service applicants. If a commercial or nonresidential service applicant does not establish credit to the satisfaction of the utility, the service applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings.

(3) Commercial and Nonresidential Customers. If actual monthly billings of a commercial or nonresidential customer are more than twice the amount of the estimated billings at the time service was established, a new deposit amount may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.

(b) Customers not disconnected. Current customers who have not been disconnected for nonpayment or other similar reasons in §24.88 of this title (relating to Discontinuance of Service) shall not be required to pay a deposit.

(c) Applicants 65 years of age or older. No deposit may be required of a residential service applicant who is 65 years of age or older if the applicant does not have a delinquent account balance with the utility or another water or sewer utility.

(d) Interest on deposits. Each utility shall pay a minimum interest on all customer deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission of Texas in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be made annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the appropriate interest rate to be paid each year a deposit is held may be directed to the commission

(e) Landlords/tenants. In cases of landlord/tenant relationships, the utility may require both parties to sign an agreement specifying which party is responsible for bills and deposits. This agreement may be included as a provision of the utility's approved service application form. The utility shall not require the landlord to guarantee the tenant's customer deposit or monthly service bill as a condition of service. The utility may require the landlord to guarantee the payment of service extension fees under the utility's approved tariff if these facilities will remain in public service after the tenant vacates the leased premises. If the landlord signs a guarantee of payment for deposits or monthly service bills, the guarantee shall remain in full force and effect until the guarantee is withdrawn in writing and copies are provided to both the utility and the tenant.

(f) Reestablishment of credit or deposit. Every service applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and may be required to pay a deposit if the utility does not currently have a deposit from the customer. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(g) Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit;

(C) each transaction concerning the deposit; and

(D) the amount of interest earned on customer deposit funds.

(2) The utility shall issue a receipt of deposit to each service applicant or customer from whom a deposit is received.

(3) A record of each unclaimed deposit shall be maintained for at least seven years, during which time the utility shall make a reasonable effort to return the deposit or may transfer the unclaimed deposit to the Texas Comptroller of Public

Accounts. If not already transferred, after seven years, unclaimed deposits shall be transferred to the Texas Comptroller of Public Accounts.

(h) Refund of deposit.

(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the service applicant's or customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The utility may refund deposits plus accumulated interest at any time prior to termination of utility service. The utility's policy for refunds to current customers must be consistent and nondiscriminatory.

(2) When a residential customer has paid bills for service for 18 consecutive billings without being delinquent, the utility shall promptly refund the deposit with interest to the customer either by payment or credit to the customer's bill. Deposits from customers who do not meet this criteria may be retained until service is terminated.

(i) Transfer of service. A transfer of service from one service location to another within the service area of the utility shall not be deemed a disconnection within the meaning of this section, and no additional deposit may be demanded unless permitted by this subchapter.

§24.85. 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 service connection inspection certificates required by law.

(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.

(2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service.

(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within one working day 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 five 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 §24.81 (a)(1) of this title (relating to Customer Relations).

(d) Easements.

(1) 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 public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the public utility which will provide a reasonable right of access and use to allow the public utility to construct, install, maintain, inspect and test water and/or sewer facilities necessary to serve that applicant.

(2) As a condition of service to a new subdivision, 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.

(3) A district or water supply corporation may require an applicant for service to grant an easement as allowed under applicable law.

(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 Texas Water Code, §13.2502, _____ 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 Public Utility Commission of Texas.

(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 water or sewer utility service.

§24.86. 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 paragraph (3) of this subsection. 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 §24.89 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 commission, 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 §24.88 of this title (relating to Discontinuance of Service). Less than ten days notice may be given if authorized by the commission

(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 commission 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.

§24.87. Billing.

(a) Authorized rates. Bills must 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.

(1) The due date of the bill for utility service may 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 may not be 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, constitutes 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 is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §24.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(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 charged for 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 §24.88 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 that 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 that may 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 must include the following information, if applicable, and must 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 or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the Texas Water 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 that 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 that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(h) 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 must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §24.89 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 §24.88 of this title.

(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that 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 will 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 will 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 may 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 §24.88 of this title.

(m) Notification of alternative payment programs or payment assistance. Any time customers contact 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 customers 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.

(n) Adjusted bills. There is 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 must 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.

(o) 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 that 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 commission.

(p) 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;

(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

(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 §24.88(h)(2) and §24.89(c) of this title 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.

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

(r) 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.

§24.88. 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 commission 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 commission;

(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 §24.84 of this title (relating to Service Applicant and Customer Deposit);

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

(F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.

(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 §24.89 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 §24.89 of this title;

(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 §24.114 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.

(3) This section outlines the duties of a water service provider to an area served by a sewer service provider of certain political subdivisions.

(A) This section applies only to an area:

(i) that is located in a county that has a population of more than 1.3 million; and

(ii) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.

(B) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.

(C) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other water utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public

accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.

(D) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by First Class mail or hand-delivered to the location at which the sewer service is provided.

(E) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under subparagraph (D) of this paragraph. The notice must indicate the number of days the person has failed to pay for sewer service and the total amount past due. On receipt of the notice, the water service provider shall discontinue water service to the person.

(F) This subsection does not apply to a nonprofit water supply or sewer service corporation created under Texas Water Code, Chapter 67, or a district created under Texas Water Code, Chapter 65.

(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 §24.89(c) of this title 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.

(D A reconnect fee cannot be charged for reconnecting service after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency.

§24.89. 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 commission 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 §24.88 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 commission.

(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. The commission 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 commission 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.

§24.90. Continuity of Service.

(a) Service interruptions.

(1) Every utility or water supply or sewer service corporation shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

SUBCHAPTER F: QUALITY OF SERVICE

§24.91. Applicability.

Except where otherwise noted, this chapter applies to retail public utilities as defined by §24.3 of this title (relating to Definitions of Terms) which possess or are required to possess a Certificate of Convenience and Necessity.

§24.92. Requirements by Others.

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

(b) The commission's rules in this chapter relating to rates, records and reporting, customer service and protection and quality of service shall apply to utilities operating within the corporate limits of a municipality exercising original rate jurisdiction, unless the municipality adopts its own rules.

§24.93. 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 TCEQ 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 30 TAC §288.20 (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 TCEQ, retail public utilities may not use water use restrictions in lieu of providing facilities which meet the minimum capacity requirements of 30 TAC Chapter 290 (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) A utility must file a copy of its TCEQ-approved drought contingency plan with the utility's approved tariff. The utility may not implement mandatory water use restrictions without an approved drought contingency plan unless authorized by the TCEQ. If TCEQ provides such authorization, the utility must provide immediate notice to the commission.

(B) Temporary restrictions must be in accordance with the utility's approved drought contingency plan on file or specifically authorized by the TCEQ. The utility shall file a copy of any status report required to be filed with the TCEQ with the commission at the same time it is required to file the report with the TCEQ.

(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. The utility must provide written notice to the commission prior to implementing the provisions of the plan.

(3) A retail public utility that possesses a certificate of public convenience and necessity that is required to file a planning report with the TCEQ under requirements in 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems) shall also file a copy of the planning report with the commission at the same time it is required to file the report with the TCEQ.

(A) If the TCEQ waives or limit the reporting requirements, the utility shall file with the commission within ten days a notice that the reporting requirements have been waived or limited, including a copy of any order or other authorization.

(B) A retail public utility shall file a copy of any updated or amended plan or report required to be filed under this section.

(C) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §24.92 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 TCEQ's minimum quality criteria for drinking water.

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

§24.94. Adequacy of Sewer Service.

(a) Sufficiency of service. Each retail public utility shall plan, furnish, operate, and maintain collection, treatment, and disposal facilities to collect, treat and dispose of waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation. These facilities must be of sufficient size to meet TCEQ's minimum design criteria for wastewater facilities for all normal demands for service and provide a reasonable reserve for emergencies. Unless specifically authorized in a written service agreement, a retail public utility is not required to receive, treat and dispose of waste with high biological oxygen demand (BOD) or total suspended solids (TSS) characteristics that cannot be reasonably processed, or storm water, run-off water, food or food scraps not previously processed by a grinder or similar garbage disposal unit, grease or oils, except as incidental waste in the process or wash water used in or resulting from food preparation by sewer utility customers engaged in the preparation and/or processing of food for domestic consumption or sale to the public. Grease and oils from grease traps or other grease and/or oil storage containers shall not be placed in the wastewater system.

(b) Sufficiency of treatment. Each retail public utility shall maintain and operate treatment facilities of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

(c) Maintenance of facilities.

(1) The retail public utility shall maintain its collection system and appurtenances to minimize blockages.

(2) If the utility retains ownership of receiving tanks located on the customer's property or other facilities and appurtenances, it is the utility's responsibility and liability to perform routine maintenance and repair.

§24.95. Standards of Construction.

In determining standard practice, the commission will be guided by the provisions of the American Water Works Association, and such other codes and standards that are generally accepted by the industry, except as modified by this commission, or municipal regulations within their jurisdiction. Each system shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other retail public utilities insofar as practical.

SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

§24.101. Certificate Required.

(a) Unless otherwise specified, a utility, a utility operated by an affected county except an affected county to which Local Government Code, §412.017 applies, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the TWC, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

(c) A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district

without the district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

§**24.102. Criteria for Considering and Granting Certificates or Amendments**.

(a) In determining whether to grant or amend a certificate of public convenience and necessity (CCN), 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 has a TCEQ approved system that it is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant has a TCEQ approved system that it is capable of meeting the TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC.

(b) Where a new CCN 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 or amendment 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, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

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

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other 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 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(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 TWC, §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC, §15.001, the commission 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 commission 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.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN or for an amendment to an existing CCN. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason,

including the violation of law or commission rules by the water or sewer system of another person.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

§24.103. Certificates Not Required.

(a) Extension of Service.

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:

(A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or

(B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.

(b) Construction of Facilities. A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase

or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

(c) Municipality Pursuant to the TWC, §13.255. A municipality which has given notice under the TWC, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:

(1) a copy of the notice required pursuant to the TWC, §13.255; and

(2) a map showing the area affected under the TWC, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.

(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.

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

(A) has less than 15 potential service connections;

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

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

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

(2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.

(3) The commission may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.

(4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.80 - 24.90 of this title.

(5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.

(6) Exempt Utility Tariff and Rate Change Requirements. An exempted utility operating with or without a certificate of convenience and necessity:

(A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and

(B) may change its rates without following the requirements in §24.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address.

If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the commission will review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the exempt utility, the commission will establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission..

(C) The exempt utility or water supply corporation, office of public utility counsel, commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the request or protest.

(D) A rate change application filed by an exempt utility that follows the rate change procedures in §24.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.

(7) Unless authorized in writing by the commission, a utility or a water supply corporation operating under these requirements may not cease utility operations. A utility may not discontinue service to a customer with or without notice except in accordance with the Exempt Utility Tariff Form and a water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

(8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the commission shall be subject to any and all enforcement remedies provided by this chapter and the TWC, Chapter 13.

(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under TWC, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC, §13.255(b).

§24.104. Applicant.

(a) It is the responsibility of the owner of the utility or the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county, district, or municipality to submit an application for a certificate of convenience and necessity.

(b) The applicant shall have the continuing duty to submit information regarding any material change in the applicant's financial, managerial, or technical status that arises during the application review process.

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

(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment. Applications for CCNs or for an amendment to a certificate must contain the following materials, unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a map and description of only the proposed service area by:

(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;

(C) a state county base map, scale one inch equals two-miles showing the area to be served that clearly defines the proposed location of the applicant and each neighboring water or sewer utility within five miles of the applicant's proposed service area for a CCN and within two miles of the applicant's proposed service area for a CCN amendment;

(D) verifiable landmarks, including a road, creek, or railroad line; or a copy of the recorded plat of the area, if it exists, with lot and block number

(E) maps as described in §24.119 of this title (relating to Filing of Maps);

(F) a separate map for each county in which the applicant seeks a CCN or CCN amendment;

(G) a general location map; and

(H) other maps as requested

(3) a description of any requests for service in the proposed service area;

(4) any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities;

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §24.3 of this title (relating to Definitions of Terms);

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 25 acres; and

(B) wholly or partially located within the proposed service area;

(13) if dual certification is being requested, and an agreement between the affected utilities exists, a copy of the agreement;

(14) for a water CCN for a new or existing system, a copy of:

(A) the approval letter for the plans approved by the TCEQ and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless 30 TAC §290.39(j)(1)(D) (relating to General Provisions) applies;

(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;

(15) for a sewer CCN for a new or existing facility, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the Texas Commission on Environmental Quality;

(B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and

(16) any other item required by the commission.

(b) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraphs (3) - (7) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by TWC, §13.244(d)(3) or a subdivision plat, the commission may grant the CCN without the consent of the municipality if:

(A) the commission makes the findings required by paragraph (3) of this subsection;

(B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(i) comply with the municipality's service extension and development process; or

(ii) enter into a contract for water or sewer services with the municipality

(5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.

(8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the

municipality or the retail public utility may appeal the decision to the appropriate state district court.

(c) Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(4) To the extent of a conflict between this subsection and TWC, §13.245, TWC, §13.245 prevails.

(d) Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC, §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

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

(a) If an application for issuance or amendment of a certificate of public convenience and necessity (CCN) 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, Texas Government Code, Chapter 2001;

(2) all information stipulated in the commission's instructions for completing an application for a CCN; and

(3) a statement that persons who wish to intervene or comment upon the action sought file a request with the commission, 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 CCN, 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 extraterritorial jurisdiction that overlaps the proposed service area boundaries. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.

(2) For applications for an amendment of a CCN, 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 that overlaps the proposed service area boundaries. If decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.

(3) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

(A) TWC, §13.248 or §13.255; or

(B) TWC, Chapter 65.

(4) 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.

(5) 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.

(6) 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 CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission. Proof of publication in the form of a publisher's affidavit shall be filed with 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.

(e) In this section, utility service provider means a retail public utility other than a district subject to TWC, §49.452.

(f) A utility service provider shall:

(1) record in the real property records of each county in which the service area, or a portion of the service area is located, a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the commission evidence of the recording.

(g) The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

(h) The recording required by this section for holders of certificates of public convenience and necessity already in existence as of September 1, 2005 must be completed not later than January 1, 2007.

§24.107. Action on Applications.

(a) The commission may conduct a public hearing on any application.

(b) The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested.

(c) The commission may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn.

(d) If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

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

(a) On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the commission for good cause shown. The 120-day period begins on the last date of whichever of the following events occur:

(1) the date the applicant files an application under this section;

(2) if mailed notice is required, the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or

(3) if newspaper notice is required, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.

(b) A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The

commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.

(e) Prior to the expiration of the 120-day notification period, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to that person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;

(5) it is in the public interest to investigate the following factors:

(A) whether the seller has failed to comply with a commission order;

(B) the adequacy of service currently provided to the area;

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

(D) the effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) the ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

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

(G) the financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(f) Unless the commission requires that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed:

(1) at the end of the 120-day period;

(2) or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

(g) Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(h) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, merger, consolidation, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(i) A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the TWC, §13.301 is void.

(j) The requirements of the TWC, §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under the TWC, §13.255; or

(3) foreclosure on the physical assets of a utility.

(k) If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(l) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

§24.110. Foreclosure and Bankruptcy.

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

(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing utility service unless the person has a completed application for a certificate of convenience and necessity or to transfer the current certificate of convenience and necessity on file with the commission within 30 days after the foreclosure is completed.

(c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by TWC, §13.301, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring or otherwise obtaining a certificate of convenience and necessity unless the commission in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.

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

§24.111. Purchase of Voting Stock in Another Utility.

(a) A utility may not purchase voting stock in and a person may not acquire a controlling interest in a utility doing business in this state unless the utility or person files a written application with the commission not later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency’s rules.

(d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.110 of this title (relating to Foreclosure and Bankruptcy) applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60 day period; or

(2) at any time after the commission notifies the person or utility that a hearing will not be requested.

(f) The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(g) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

§24.112. 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 TWC, §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 TWC, §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 commission 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 commission on the form prescribed by the commission 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 a statement that persons who wish to comment upon the action sought should file comments with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, 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 commission does not require 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 TWC, §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, the TCEQ, or the Texas Department of State Health Services 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 commission's approval for sale. The commission's approval of a sale expires one year from the date of the commission'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 commission, the approval is void and the applicant must reapply for approval of the sale. The commission will review the application as though it was being filed for the first time (*de novo*).

§24.113. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity (CCN) with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;

(4) the certificate holder has failed to file a cease and desist action under TWC, §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or

(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area, except that an area that was transferred to a municipality on approval of the commission and in which the municipality has spent public funds may not be revoked or amended under this paragraph.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a CCN so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §24.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsection (b) or (r) of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 60 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission on the petition is final after any reconsideration authorized by applicable procedural rules and may not be appealed.

(f) Upon written request from the certificate holder, the commission may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN under TWC, §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in

question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under TWC, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire CCN of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the commission a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.

(s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under subsection (r) of this section as otherwise provided by this section. An award of compensation is governed by subsections (h) - (k) of this section.

(t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find

that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

§24.114. Requirement to Provide Continuous and Adequate Service.

(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

(b) After notice and hearing, the commission may:

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

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

(i) service in that area is inadequate as set forth in §24.93 and §24.94 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

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

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

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities), or as specified by the commission. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service after TCEQ approves the interconnecting service pursuant to 30 TAC Chapter 290 (relating to Public Drinking Water) or 30 TAC 217 (relating to Design Criteria for Domestic Wastewater Systems);

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

(4) issue an emergency order, with or without a hearing, under §24.14 of this title (relating to Emergency Orders).

(c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Texas Health and Safety Code, §341.0355, or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:

(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance in an amount determined by the commission not to exceed the amount of the financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and

(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

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

(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity desiring to discontinue, reduce or impair utility service, except under the conditions listed in the TWC, §13.250(b), must file a petition with the commission which sets out:

(1) the action proposed by the retail public utility;

(2) the proposed effective date of the actions which must be at least 120 days after the petition is filed with the commission;

(3) a concise statement of the reasons for proposing the action; and

(4) the area affected by the action, including maps as described by §24.106(f)(1) of this title (relating to Notice and Mapping Requirements for Certificates of Convenience and Necessity Applications).

(b) The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:

(1) the name and business address of the retail public utility which seeks to cease operations;

(2) a description of the service area of the retail public utility involved;

(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers;

(4) and a statement that persons who wish to intervene or comment upon the action sought should file a request with the commission at the commission's mailing

address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of mailing or publication of notice, whichever occurs later.

(c) After review by the commission, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps the applicant's service area, and to the customers of the applicant proposing to cease operations.

(d) The applicant may be required by the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county of operation which shall include, in addition to the information specified in subsection (b) of this section:

(1) the sale price of the facilities;

(2) the name and mailing address of the owner of the retail public utility; and

(3) the business telephone of the retail public utility.

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

(f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the application for final decision without further hearing.

(g) If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

(h) In no circumstance may a retail public utility which possesses or is required to possess a certificate of convenience and necessity, a person who possesses facilities used to provide utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a certificate of convenience and necessity pursuant to §24.103 of this title (relating to Certificates Not Required) cease operations without commission authorization.

(i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of utility service, the commission shall consider, but is not limited to, the following factors:

(1) the effect on the customers and landowners;

(2) the costs associated with bringing the system into compliance;

(3) the applicant's diligence in locating alternative sources of service;

(4) the applicant's efforts to sell the system, such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;

(5) the asking price for purchase of the system as it relates to the undepreciated original cost of the system for ratemaking purposes;

(6) the relationship between the applicant and the original developer of the area served;

(7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and

(8) the feasibility of customers and landowners obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

(j) If a utility does abandon operation of its facilities without commission authorization, the commission may appoint a temporary manager to take over operations of the facilities to ensure continuous and adequate service.

§24.116. Exclusiveness of Certificates.

Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certificated pursuant to this chapter.

§24.117. Contracts Valid and Enforceable.

(a) Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the certificates of public convenience and necessity. Nothing in this provision negates the requirements of TWC, §13.301.

(b) Retail public utilities may request approval of contracts by filing a written request with the commission including:

(1) maps of the area to be transferred;

(2) a copy of the executed contract or agreement;

(3) if applicable, an affidavit that notice has been provided under TWC, §13.301; and

(4) any other information requested by the commission.

§24.118. Contents of Request for Commission Order Under the Texas Water Code, §13.252.

If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

(1) the name and business address of the retail public utility making the request;

(2) the name and business address of the retail public utility which is to be the subject of the order;

(3) a description of the alleged interference;

(4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;

(5) copies of any other information or documentation which would support the position of the requesting utility; and

(6) other information as the commission may require.

§24.119. Filing of Maps.

With applications to obtain or amend a certificate of convenience and necessity, each public utility and water supply or sewer service corporation shall file with the commission a map or maps of the area or areas being requested in the application showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas. Facilities shall be shown on United States Geological Survey 7.5”-minute series maps, subdivision plats, engineering planning maps, or other large scale maps. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located “on the ground” from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location.

§24.120. Single Certification in Incorporated or Annexed Areas.

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area under a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase franchised utility means a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the commission, and the commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the commission

shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility. Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the commission a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property under the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of property may only be obtained under this

section by a court judgment rendered under TWC, §13.255(d) or (e). The grant of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation in accordance with court order, or pays an amount into the registry of the court or to the retail public utility under TWC, §13.255(f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the commission.

(e) Any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.

(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or franchised utility may take

possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with subsection (g) of this section.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards in Texas Property Code, Chapter 21, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for

planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.

(h) The total compensation to be paid to a retail public utility under subsections (g) and (m) of this section must be determined not later than the 90th calendar day after the date on which the commission determines that the municipality's application is administratively complete.

(i) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right under TWC, §13.255(f).

(j) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment

to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.

(k) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under TWC, Chapter 65, or a fresh water supply district under TWC, Chapter 53; or

(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(l) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in subsection (k)(2) of this section:

(1) the commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding under this section.

(m) For an area incorporated by a municipality, the compensation provided under subsection (g) of this section shall be determined by a qualified individual or firm to serve as independent appraiser, which shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under subsection (g) of this section shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the tenth business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the commission or a person the commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the

municipality. The determination of compensation under this subsection is binding on the commission.

(n) The commission shall deny an application for single certification by a municipality that fails to obtain a finding from TCEQ that it is will demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems, pursuant to 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems).

SUBCHAPTER H: WATER UTILITY SUBMETERING AND ALLOCATION

§24.121. General Rules and Definitions.

(a) Purpose and scope. The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.

(b) Application. The provisions of this subchapter apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis.

(c) Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Allocated utility service - Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.

(2) Apartment house - A building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rental paid at intervals of one month or longer.

(3) Customer service charge - A customer service charge is a rate that is not dependent on the amount of water used through the master meter.

(4) Dwelling unit - One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.

(5) Dwelling unit base charge - A flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.

(6) Master meter - A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.

(7) Manufactured home rental community - A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

(8) Multiple use facility - A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(9) Occupant - A tenant or other person authorized under a written agreement to occupy a dwelling.

(10) Owner - The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; a condominium association; or any individual, firm, or corporation that purports to be the landlord of tenants in an apartment house, manufactured home rental community, or multiple use facility.

(11) Point-of-use submeter - A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

(12) Submetered utility service - Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.

(13) Tenant - A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.

(14) Utility service - For purposes of this subchapter, utility service includes only drinking water and wastewater.

§24.122. Owner Registration and Records.

(a) Registration. An owner who intends to bill tenants for submetered or allocated utility service or who changes the method used to bill tenants for utility service shall register with the commission in a form prescribed by the commission.

(b) Water quantity measurement. Except as provided by subsections (c) and (d) of this section, a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction began after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:

(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or

(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) Plumbing system requirement. An owner of an apartment house on which construction began after January 1, 2003, and that provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

(d) Installation of individual meters. On the request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction began after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(e) Records. The owner shall make the following records available for inspection by the tenant or the commission or commission staff at the on-site manager's office during normal business hours in accordance with subsection (g) of this section. The owner may require that the request by the tenant be in writing and include:

(1) a current and complete copy of TWC, Chapter 13, Subchapter M;

(2) a current and complete copy of this subchapter;

(3) a current copy of the retail public utility's rate structure applicable to the owner's bill;

(4) information or tips on how tenants can reduce water usage;

(5) the bills from the retail public utility to the owner;

(6) for allocated billing:

(A) the formula, occupancy factors, if any, and percentages used to calculate tenant bills;

(B) the total number of occupants or equivalent occupants if an equivalency factor is used under §24.124(e)(2) of this title (relating to Charges and Calculations); and

(C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental community, or multiple use facility used for billing if dwelling unit size or rental space is used;

(7) for submetered billing:

(A) the calculation of the average cost per gallon, liter, or cubic foot;

(B) if the unit of measure of the submeters or point-of-use submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;

(C) all submeter readings; and

(D) all submeter test results;

(8) the total amount billed to all tenants each month;

(9) total revenues collected from the tenants each month to pay for water and wastewater service; and

(10) any other information necessary for a tenant to calculate and verify a water and wastewater bill.

(f) Records retention. Each of the records required under subsection (e) of this section shall be maintained for the current year and the previous calendar year, except that all

submeter test results shall be maintained until the submeter is permanently removed from service.

(g) Availability of records.

(1) If the records required under subsection (e) of this section are maintained at the on-site manager's office, the owner shall make the records available for inspection at the on-site manager's office within three days after receiving a written request.

(2) If the records required under subsection (e) of this section are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant or the commission or commission staff.

(3) If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant.

(4) Copies of the records may be provided by mail if postmarked by midnight of the last day specified in paragraph (1), (2), or (3) of this subsection.

§24.123. Rental Agreement.

(a) Rental agreement content. The rental agreement between the owner and tenant shall clearly state in writing:

(1) the tenant will be billed by the owner for submetered or allocated utility services, whichever is applicable;

(2) which utility services will be included in the bill issued by the owner;

(3) any disputes relating to the computation of the tenant's bill or the accuracy of any submetering device will be between the tenant and the owner;

(4) the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month's bills for that period;

(5) if not submetered, a clear description of the formula used to allocate utility services;

(6) information regarding billing such as meter reading dates, billing dates, and due dates;

(7) the period of time by which owner will repair leaks in the tenant's unit and in common areas, if common areas are not submetered;

(8) the tenant has the right to receive information from the owner to verify the utility bill; and

(9) for manufactured home rental communities and apartment houses, the service charge percentage permitted under §24.124(d)(3) of this title (relating to Charges and Calculations) that will be billed to tenants.

(b) Requirement to provide rules. At the time a rental agreement is discussed, the owner shall provide a copy of this subchapter or a copy of the rules to the tenant to inform the tenant of his rights and the owner's responsibilities under this subchapter.

(c) Tenant agreement to billing method changes. An owner shall not change the method by which a tenant is billed unless the tenant has agreed to the change by signing a lease or other written agreement. The owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.

(d) Change from submetered to allocated billing. An owner shall not change from submetered billing to allocated billing, except after receiving written approval from the commission after a demonstration of good cause and if the rental agreement requirements under subsections (a), (b), and (c) of this section have been met. Good cause may include:

(1) equipment failures; or

(2) meter reading or billing problems that could not feasibly be corrected.

(e) Waiver of tenant rights prohibited. A rental agreement provision that purports to waive a tenant's rights or an owner's responsibilities under this subchapter is void.

§24.124. Charges and Calculations.

(a) Prohibited charges. Charges billed to tenants for submetered or allocated utility service may only include bills for water or wastewater from the retail public utility and must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.

(b) Dwelling unit base charge. If the retail public utility's rate structure includes a dwelling unit base charge, the owner shall bill each dwelling unit for the base charge applicable to that unit. The owner may not bill tenants for any dwelling unit base charges applicable to unoccupied dwelling units.

(c) Customer service charge. If the retail public utility's rate structure includes a customer service charge, the owner shall bill each dwelling unit the amount of the customer service charge divided by the total number of dwelling units, including vacant units, that can receive service through the master meter serving the tenants.

(d) Calculations for submetered utility service. The tenant's submetered charges must include the dwelling unit base charge and customer service charge, if applicable, and the gallonage charge and must be calculated each month as follows:

(1) water utility service: the retail public utility's total monthly charges for water service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the

retail public utility to obtain an average water cost per gallon, liter, or cubic foot, multiplied by the tenant's monthly consumption or the volumetric rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(2) wastewater utility service: the retail public utility's total monthly charges for wastewater service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the retail public utility, multiplied by the tenant's monthly consumption or the volumetric wastewater rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(3) service charge for manufactured home rental community or the owner or manager of apartment house: a manufactured home rental community or apartment house may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water and wastewater service, except when;

(A) the resident resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Texas Government Code, Chapter 2306, Subchapter DD; or

(B) the apartment resident receives tenant-based voucher assistance under United States Housing Act of 1937 Section 8, (42 United States Code, §1437f); and

(4) final bill on move-out for submetered service: if a tenant moves out during a billing period, the owner may calculate a final bill for the tenant before the owner receives the bill for that period from the retail public utility. If the owner is billing

using the average water or wastewater cost per gallon, liter, or cubic foot as described in paragraph (1) of this subsection, the owner may calculate the tenant's bill by calculating the tenant's average volumetric rate for the last three months and multiplying that average volumetric rate by the tenant's consumption for the billing period.

(e) Calculations for allocated utility service.

(1) Before an owner may allocate the retail public utility's master meter bill for water and sewer service to the tenants, the owner shall first deduct:

(A) dwelling unit base charges or customer service charge, if applicable; and

(B) common area usage such as installed landscape irrigation systems, pools, and laundry rooms, if any, as follows:

(i) if all common areas are separately metered or submetered, deduct the actual common area usage;

(ii) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is an installed landscape irrigation system, deduct at least 25% of the retail public utility's master meter bill;

(iii) if all water used for an installed landscape irrigation system is metered or submetered and there are other common areas such as pools or laundry rooms that are not metered or submetered, deduct at least 5% of the retail public utility's master meter bill; or

(iv) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is no installed landscape irrigation system, deduct at least 5% of the retail public utility's master meter bill.

(2) To calculate a tenant's bill:

(A) for an apartment house, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(i) the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered; or

(ii) the number of occupants in the tenant's dwelling unit using a ratio occupancy formula divided by the total number of occupants in all dwelling units at the beginning of the retail public utility's billing period using the same ratio occupancy formula to determine the total. The ratio occupancy formula will reflect what the owner believes more accurately represents the water use in units that are occupied by multiple tenants. The ratio occupancy formula that is used must assign a fractional portion per tenant of no less than that on the following scale:

(I) dwelling unit with one occupant = 1;

(II) dwelling unit with two occupants = 1.6;

(III) dwelling unit with three occupants = 2.2; or

(IV) dwelling unit with more than three occupants = 2.2 + 0.4 per each additional occupant over three; or

(iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula must calculate the average number of occupants in all dwelling units based on the number of bedrooms in the dwelling unit according to the scale below, notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:

(I) dwelling unit with an efficiency = 1;

(II) dwelling unit with one bedroom = 1.6;

(III) dwelling unit with two bedrooms = 2.8;

(IV) dwelling unit with three bedrooms = 4 + 1.2 for each additional bedroom; or

(iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion must be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house; or

(v) the individually submetered hot or cold water usage of the tenant's dwelling unit divided by all submetered hot or cold water usage in all dwelling units;

(B) a condominium manager shall multiply the amount established in paragraph (1) of this subsection by any of the factors under subparagraph (A) of this paragraph or may follow the methods outlined in the condominium contract;

(C) for a manufactured home rental community, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(i) any of the factors developed under subparagraph (A) of this paragraph; or

(ii) the area of the individual rental space divided by the total area of all rental spaces; and

(D) for a multiple use facility, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(i) any of the factors developed under subparagraph (A) of this paragraph; or

(ii) the square footage of the rental space divided by the total square footage of all rental spaces.

(3) If a tenant moves in or out during a billing period, the owner may calculate a bill for the tenant. If the tenant moves in during a billing period, the owner shall prorate the bill by calculating a bill as if the tenant were there for the whole month and then charging the tenant for only the number of days the tenant lived in the unit divided by the number of days in the month multiplied by the calculated bill. If a tenant moves out during a billing period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final

bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.

(f) Conversion to approved allocation method. An owner using an allocation formula other than those approved in subsection (e) of this section shall immediately provide notice as required under §24.123(c) of this title (relating to Rental Agreement) and either:

(1) adopt one of the methods in subsection (e) of this section; or

(2) install submeters and begin billing on a submetered basis; or

(3) discontinue billing for utility services.

§**24.125. Billing.**

(a) Monthly billing of total charges. The owner shall bill the tenant each month for the total charges calculated under §24.124 of this title (relating to Charges and Calculations). If it is permitted in the rental agreement, an occupant or occupants who are not residing in the rental unit for a period longer than 30 days may be excluded from the occupancy calculation and from paying a water and sewer bill for that period.

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public utility bill.

(2) Submeter bills shall be rendered as promptly as possible after the owner receives the retail public utility bill or according to the time schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(c) Submeter reading schedule. Submeters or point-of-use submeters shall be read within three days of the scheduled reading date of the retail public utility's master meter or according to the schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(d) Billing period.

(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.

(2) Submeter bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period. If the owner uses the retail public utility's actual rate, the billing period may be an alternate billing period specified in the rental agreement.

(e) Multi-item bill. If issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill.

(f) Information on bill. The bill must clearly state that the utility service is submetered or allocated, as applicable, and must include all of the following:

(1) total amount due for submetered or allocated water;

(2) total amount due for submetered or allocated wastewater;

(3) total amount due for dwelling unit base charge(s) or customer service charge(s) or both, if applicable;

(4) total amount due for water or wastewater usage, if applicable;

(5) the name of the retail public utility and a statement that the bill is not from the retail public utility;

(6) name and address of the tenant to whom the bill is applicable;

(7) name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute; and

(8) name, address, and telephone number of the party to whom payment is to be made.

(g) Information on submetered service. In addition to the information required in subsection (f) of this section, a bill for submetered service must include all of the following:

(1) the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters;

(2) the cost per gallon, liter, or cubic foot for each service provided; and

(3) total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable.

(h) Due date. The due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following work day will be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.

(i) Estimated bill. An estimated bill may be rendered if a master meter, submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.

(j) Payment by tenant. Unless utility bills are paid to a third-party billing company on behalf of the owner, or unless clearly designated by the tenant, payment must be applied first to rent and then to utilities.

(k) Overbilling and underbilling. If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment must be calculated for all of that tenant's bills that included overcharges. If the overbilling or underbilling affects all tenants, an adjustment must be calculated for all of the tenants' bills. If the tenant was undercharged, and the cause was not due to submeter or point-of-use submeter error, the owner may calculate an adjustment for bills issued in the previous six months. If the total undercharge is $25 or more, the owner shall offer the tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be back billed to a current tenant.

(l) Disputed bills. In the event of a dispute between a tenant and an owner regarding any bill, the owner shall investigate the matter and report the results of the investigation to the tenant in writing. The investigation and report must be completed within 30 days from the date the tenant gives written notification of the dispute to the owner.

(m) Late fee. A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is

incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty.

§24.127. Submeters or Point-of-Use Submeters and Plumbing Fixtures. (a) Submeters or point-of-use submeters.

(a) Submeters or point-of-use submeters

(1) Same type submeters or point-of-use submeters required. All submeters or point-of-use submeters throughout a property must use the same unit of measurement, such as gallon, liter, or cubic foot.

(2) Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters or point-of-use submeters necessary for the measurement of water to tenants and to common areas, if applicable.

(3) Submeter or point-of-use submeter tests prior to installation. No submeter or point-of-use submeter may be placed in service unless its accuracy has been established. If any submeter or point-of-use submeter is removed from service, it must be properly tested and calibrated before being placed in service again.

(4) Accuracy requirements for submeters and point-of-use submeters. Submeters must be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters. Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch- water submetering systems.

(5) Location of submeters and point-of-use submeters. Submeters and point-of-use submeters must be installed in accordance with applicable plumbing codes and AWWA standards for water meters or ASME standards for point-of-use

submeters, and must be readily accessible to the tenant and to the owner for testing and inspection where such activities will cause minimum interference and inconvenience to the tenant.

(6) Submeter and point-of-use submeter records. The owner shall maintain a record on each submeter or point-of-use submeter which includes:

(A) an identifying number;

(B) the installation date (and removal date, if applicable);

(C) date(s) the submeter or point-of-use submeter was calibrated or tested;

(D) copies of all tests; and

(E) the current location of the submeter or point-of-use submeter.

(7) Submeter or point-of-use submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:

(A) provide evidence, at no charge to the tenant, that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters or ASME standards for point-of-use submeters; or

(B) have the submeter or point-of-use submeter removed and tested and promptly advise the tenant of the test results.

(8) Billing for submeter or point-of-use submeter test.

(A) The owner may not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards for water meters or ASME standards for point-of-use submeters.

(B) The owner may not bill the tenant for testing costs if there is no evidence that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months.

(C) The owner may bill the tenant for actual testing costs (not to exceed $25) if the submeter meets AWWA accuracy standards or the point-of-use submeter meets ASME accuracy standards and evidence as described in paragraph (7)(A) of this subsection was provided to the tenant.

(9) Bill adjustment due to submeter or point-of-use submeter error. If a submeter does not meet AWWA accuracy standards or a point-of-use submeter does not meet ASME accuracy standards and the tenant was overbilled, an adjusted bill must be rendered in accordance with §24.125(k) of this title (relating to Billing). The owner may not charge the tenant for any underbilling that occurred because the submeter or point-of-use submeter was in error.

(10) Submeter or point-of-use submeter testing facilities and equipment. For submeters, an owner shall comply with the AWWA's meter testing requirements. For point-of-use meters, an owner shall comply with ASME's meter testing requirements.

(b) Plumbing fixtures. After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall adhere to the following standards:

(1) Texas Health and Safety Code, §372.002, for sink or lavatory faucets, faucet aerators, and showerheads;

(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found; and

(3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:

(A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush; and

(B) install toilets that meet the standards prescribed by Texas Health and Safety Code, §372.002.

(c) Plumbing fixture not applicable. Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

SUBCHAPTER I: WHOLESALE WATER OR SEWER SERVICE

§24.128. 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 TWC, Chapter 12; or

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

§24.129. Definitions.

For purposes of this subchapter, the following definitions apply:

(1) Petitioner - The entity that files the petition or appeal.

(2) Protested rate - The rate demanded by the seller.

(3) Cash Basis calculation of cost of service - A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and capital expenditures which are not debt financed. Other cash revenue requirements should be considered where applicable. Basic revenue requirement components under the cash basis do not include depreciation.

(4) Utility Basis calculation of cost of service - A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, depreciation, and return on investment.

§24.130. Petition or Appeal.

(a) The petitioner must file a written petition with the commission. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.

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

(c) The petitioner must file an appeal pursuant to TWC, §13.043(f) in accordance with the time frame provided therein.

§24.131. Commission's Review of Petition or Appeal.

(a) When a petition or appeal is filed, the commission 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 initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements §24.130 of this title (relating to Petition or Appeal). If the commission determines that the petition or appeal does not meet the requirements of §24.130 of this title, the commission shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the commission determines that the petition or appeal does meet the requirements of §24.130 of this title, the commission 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 commission 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 commission 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.

§24.132. Evidentiary Hearing on Public Interest.

(a) If the commission forwards a petition to the State Office of Administrative Hearings pursuant to §24.131(a) and (b) of this title (relating to Commission'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.

§24.133. Determination of Public Interest.

(a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:

(1) the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;

(2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;

(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:

(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;

(B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) the seller changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in Texas by other sellers of water or sewer service for resale;

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser;

(4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.

(b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.

§24.134. 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 §24.131(a) and (c) of this title (relating to Commission's Review of Petition or Appeal), the seller shall file with the commission 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 TWC, Chapters 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.

§24.135. Determination of Cost of Service.

(a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

(b) When the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.

§24.136. Burden of Proof.

The petitioner shall have the burden of proof in the evidentiary proceedings to determine if the protested rate is adverse to the public interest. The seller of water or sewer service (whether the petitioner or not) shall have the burden of proof in evidentiary proceedings on determination of cost of service.

§24.137. Commission Order to Discourage Succession of Rate Disputes.

(a) If the commission finds the protested rate adversely affects the public interest and sets rates on a cost of service basis, then the commission shall add the following provisions to its order:

(1) If the purchaser files a new petition or appeal, and the commission forwards the petition or appeal to the State Office of Administrative Hearings pursuant to §24.131 of this title (relating to Commission's Review of Petition or Appeal), then the administrative law judge shall set an interim rate immediately. The interim rate shall equal the rate set by the commission in this proceeding where the commission granted the petition or appeal and set a cost of service rate.

(2) The commission shall determine in the proceedings pursuant to the new petition or appeal that the protested rate adversely affects the public interest. The administrative law judge shall not hold an evidentiary hearing on public interest but rather shall proceed with the evidentiary hearing to determine a rate consistent with the ratemaking mandates of the TWC, Chapters 12 and 13.

(b) The effective period for the provisions issued pursuant to subsection (a) of this section shall expire upon the earlier of three years after the end of the test year period, or upon the seller and purchaser entering into a new written agreement for the sale of water or sewer service which supersedes the agreement which was the subject of the proceeding where the commission granted the petition or appeal and set a cost of service rate. The

provisions shall be effective in proceedings pursuant to a new petition or appeal if the petition or appeal is filed before the date of expiration.

(c) For purposes of subsection (b) of this section, the “test year period” is the test year used by the commission in the proceeding where the commission granted the petition or appeal and set rates on a cost of service basis.

§24.138. Filing of Rate Data.

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission may require each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.

(b) Within 30 days after receiving a written request from the commission, a provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.

SUBCHAPTER J: ENFORCEMENT, SUPERVISION AND RECEIVERSHIP

§24.140. Enforcement Action

If the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the commission shall immediately:

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with:

(A) this subchapter; and

(B) procedural rules adopted by the commission.

§24.141. Supervision of Certain Utilities.

(a) The commission may place a utility under supervision where:

(1) the utility has exhibited gross or continuing mismanagement; or

(2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the TWC or commission rules; or

(3) the utility has exhibited noncompliance with commission orders; and

(4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.

(b) The commission may require the utility to abide by conditions and requirements, including but not limited to:

(1) management requirements;

(2) additional reporting requirements;

(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;

(4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the commission and restricting use of funds in that account to reasonable and necessary expenses;

(5) operational requirements;

(6) priority order of payments or obligations; and,

(7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.

(c) Any utility under supervision may be required to obtain the approval of the commission before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided.

§24.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

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

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

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

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

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

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

(b) The commission may appoint a person under this section by emergency order under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities). A corporation may be appointed a temporary manager.

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

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

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

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

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

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

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

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

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

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

(a) By emergency order under TWC, §5.507 and §13.4132, the commission may appoint a person under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC, §13.412.

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

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

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

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

(d) The temporary manager shall serve a term of one year, unless:

(1) specified otherwise by the commission;

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

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

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

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

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

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

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

(1) an income statement for the reporting period;

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

(3) any other information required by the commission.

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

§24.144. Fines and Penalties.

(a) Fines and penalties collected under TWC, Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(b) The commission shall provide a reasonable period for a retail public utility that takes over a nonfunctioning system to bring the nonfunctioning system into compliance with commission rules, during which the commission may not impose a penalty for any deficiency in the system that is present at the time the retail public utility takes over the nonfunctioning system. The commission must consult with the retail public utility before determining the period and may grant an extension of the period for good cause.

§24.146. Municipal Rates for Certain Recreational Vehicle Parks.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Nonsubmetered master metered utility service** -- Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) **Recreational vehicle** -- Includes a:

(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and

(B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.

(3) **Recreational vehicle park** -- A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(c) Notwithstanding any other provision of this chapter, the commission has jurisdiction to enforce this section.

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

(a) Notwithstanding other provisions of this chapter, upon sending written notice to the commission, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.

(b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.

(c) Within 90 days of receiving notice of the temporary rate increase, the commission will issue an order regarding the reasonableness of the temporary rates. In making the determination, the commission will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.

SUBCHAPTER K : PROVISIONS REGARDING MUNICIPALITIES

§24.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(b) The City of Coffee City, a municipality, surrendered its jurisdiction to the commission effective December 4, 1993.

(c) The City of Nolanville, a municipality, surrendered its jurisdiction to the commission effective April 18, 1996.

(d) The City of Aurora, a municipality, surrendered its jurisdiction to the commission effective April 14, 1997.

(e) The City of Arcola, a municipality, surrendered its jurisdiction to the commission effective May 5, 1998.

(f) The City of San Antonio, a municipality, surrendered its jurisdiction over investor owned utilities within its corporate limits, to the commission, effective January 30, 2014.

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

The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters E and F of this chapter (relating to Customer Service and Protection and Quality of Service).

§24.152. Notification Regarding Use of Revenue.

At least annually, and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure, not water or sewer related, funded in whole or in part by customer revenue.

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

(a) A municipality that makes a wholesale sale of water to a special district created under §52, Article III, or §59, Article XVI, Texas Constitution, and that operates under Title 4 (General Law Districts), or under Chapter 36 (Groundwater Conservation Districts) shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before September 1, 1997.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that new Chapter 24 relating to Substantive Rules Applicable to Water and Sewer Service Providers is hereby adopted. Sections 24.1, 24.14, 24.21, 24.22, 24.28, 24.41, 24.76, 24.83, 24.93, 24.94, 24.102, 24.103, 24.105, 24.109, 24.113, 24.115, 24.123, 24.150 are adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER