

PROJECT NO. 56691

REVIEW OF §24.25

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER ADOPTING AMENDMENTS TO 16 TAC §24.25 AND §24.238

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.25, relating to Form and Filing of Tariffs, and §24.238, relating to Fair Market Valuation with no changes to the proposed text as published in the June 28, 2024 issue of the *Texas Register* (49 TexReg 4671).

The amendment to §24.25 implements House Bill (HB) 2373, passed during the Texas 88th Regular Legislative Session. HB 2373 repealed Texas Water Code (TWC) §13.145. The amendment allows water and sewage utilities to consolidate its tariff and rate design for more than one system without the need to meet the “substantially similar” systems requirement and regardless of whether the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

The amendment to §24.238 removes language referencing §24.25(k), which related to “multiple system consolidation.”

No comments nor requests for hearing were received.

Statutory Authority

The amendments are adopted under Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.136(b), which provides the commission with the authority to specify the form in which utility reports are filed to properly monitor state utilities; Texas Water Code §13.301, which governs the reporting of sales, acquisitions, leases, rentals, mergers, or consolidations of a utility, water supply corporation, or sewer service corporation; Texas Water Code §13.305, which establishes the requirements for voluntarily determining the fair market value associated with a utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b), 13.136(b), 13.301, and 13.305.

§24.25. 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 follows:
- (1) A utility may charge the rates proposed under Texas Water Code (TWC) §§ 13.187, 13.1871, 13.18715, or 13.1872(c)(2) on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.
 - (2) The regulatory assessment fee required in TWC §5.701(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.
 - (3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.
 - (4) 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 or sewer charges and must 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 CCNs.**

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to its certificated service area, each utility must file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility.

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff must include schedules of all the utility's rates, rules, and regulations pertaining to all its utility services when it applies for a CCN to operate as a utility. The tariff must be on the form prescribed by the commission or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) If a person applying for a CCN is not currently a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person must file a proposed tariff with the commission. The person filing the proposed tariff must also:

(i) provide a rate study supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

- (ii) provide all calculations supporting the proposed rates;
 - (iii) provide all assumptions for any projections included in the rate study;
 - (iv) provide an estimated completion date for the construction of the physical plant;
 - (v) provide an estimate of the date service will begin for all phases of construction; and
 - (vi) provide notice to the commission once billing for service begins.
- (C) A person under the original rate jurisdiction of the commission who has obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year. Any dollar amount collected under the rates initially approved by the commission that exceeds the revenue requirement established by the commission during the rate change proceeding must be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. A Class D utility must file a rate change application under TWC §13.1872(c)(2) to satisfy the requirements of this subparagraph.
- (D) A water supply or sewer service corporation must file with the commission a complete tariff containing schedules of all its rates, rules, and regulations pertaining to all its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.

(2) **Minor tariff changes.** Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or amended without commission approval. Changes to any fees charged by affiliates, the addition of a new extension policy to a tariff, or modification of an existing extension policy are not minor tariff changes. An affected county may change rates for retail water or sewer service without commission approval, but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission, or regulatory authority, as appropriate, may approve the following minor changes to utility 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 commission rules;
- (iii) addition of the regulatory assessment fee payable to the Texas Commission on Environmental Quality (TCEQ) as a separate item or to be included in the currently authorized rate;
- (iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);
- (v) rate adjustments to implement commission-authorized phased or multistep rates or downward rate adjustments to reconcile rates with actual costs;

- (vi) implementation of an energy cost adjustment clause under subsection (n) of this section;
 - (vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(F) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;
 - (viii) some surcharges as provided in subparagraph (G) of this paragraph;
 - (ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:
 - (I) the list of the cities, counties, and subdivisions in which service is provided;
 - (II) the public water system name and corresponding identification number issued by the TCEQ; and
 - (III) the sewer system names and corresponding discharge permit number issued by the TCEQ.
- (B) The commission, or other regulatory authority, as appropriate, may approve a minor tariff change for a utility to establish reduced rates for a minimal level of retail water service to be provided solely to a class of customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The utility may establish a fund to receive donations to cover the cost of providing the reduced rates. A utility may not recover the cost of the reduced rates through charges to other customer classes.

- (i) To request approval of a rate as defined in this subparagraph, the utility must file a proposed plan for consideration by the commission. The plan must include:
 - (I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.
 - (II) The account or subaccount name and number, as included in the system of accounts described in §24.127(1) of this title (relating to Financial Records and Reports—Uniform System of Accounts), in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program will be accounted for and removed from the cost of service for rate making purposes. Any interest earned on donated funds will be considered a donation to the fund.
 - (III) The proposed effective date of the program and an example of an annual accounting for donations received and a calculation of all lost revenues and the journal entries that transfer the funds from the account described in this subparagraph of this clause to the utility's revenue account. The annual accounting must be available for audit by the commission upon request.
 - (IV) An example bill with the contribution line item, if receiving contributions from customers.

- (ii) For the purpose of clause (i) of this subparagraph, recovery of lost revenues from donations is limited to the lost revenues due to the difference in the utility's tariffed retail water rates and the reduced rates established by this subparagraph.
- (iii) The minimal level of retail water service requested by the utility must not exceed 3,000 gallons per month per connection. Additional gallons used must be billed at the utility's tariffed rates.
- (iv) For purposes of the provision in this subparagraph, a reduced rate authorized under this section does not:
 - (I) Make or grant an unreasonable preference or advantage to any corporation or person;
 - (II) Subject a corporation or person to an unreasonable prejudice or disadvantage; or
 - (III) Constitute an unreasonable difference as to retail water rates between classes of service.
- (C) If a utility has provided notice as required in subparagraph (F) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §§ 13.187, 13.1871, 13.18715, or 13.1872. A pass-through provision may only include passing through of

the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved as follows:

- (i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission 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.
- (ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.
- (iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered in to by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.
- (iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

- (v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (D) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must remain constant, e.g., January through December.
 - (vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a true-up report and all overcollections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.
- (D) A change in the combined pass-through provision may be implemented only once per year. The utility must file a true-up report within one month after the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period. If the true-up report reflects an over-collection from customers, the utility must change its combined pass-through rate using the confirmed rate changes to charges being passed through and the over-collection from

customers reflected in the true-up report. If the true-up report does not reflect an over-collection from the customers, the implementation of a change to the pass-through rate is optional. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider may be included in the provision. The true-up report must include:

- (i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;
- (ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;
- (iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;
- (iv) all calculations and supporting documentation;
- (v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility's booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(E) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs must be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: $R = G / (1 - L)$, where R is the utility's new proposed pass-through rate, G equals the new gallonage charge by source supplier or conservation district, and L equals the actual line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Line loss will be considered on a case-by-case basis.

(F) A utility that requests to revise or implement an approved pass-through provision must take the following actions prior to the beginning of the billing period in which the revision takes effect:

- (i) file a written notice with the commission that must include:
 - (I) each affected CCN number;
 - (II) a list of each affected subdivision public water system (including name and corresponding number issued by the TCEQ), and water quality system (including name and corresponding number issued by the TCEQ), if applicable;
 - (III) a copy of the notice to the customers;

- (IV) documentation supporting the stated amounts of any new or modified pass-through costs; (V) historical documentation of line loss for one year;
 - (VI) all calculations and assumptions for any true-up of pass-through costs;
 - (VII) the calculations and assumptions used to determine the new rates; and
 - (VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved; and
- (ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:
- (I) the effective date of the change;
 - (II) the present calculation of customer billings;
 - (III) the new calculation of customer billings;
 - (IV) an explanation of any corrections to the pass-through formula, if applicable;
 - (V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and
 - (VI) the following language: "This tariff change is being implemented in accordance with the minor tariff changes

allowed by 16 Texas Administrative Code §24.25. The cost to you as a result of this change will not exceed the costs charged to your utility.”

(G) The following provisions apply to surcharges:

- (i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.
- (ii) If authorized 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:
 - (I) sampling fees not already recovered by rates;
 - (II) inspection fees not already recovered by rates;
 - (III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or
 - (IV) other governmental requirements beyond the control of the utility.
- (iii) A utility must use the revenues collected through a surcharge approved by the commission to cover the costs listed in subparagraph (G)(ii) of this section or for any purpose noted in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

- (iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

(3) **Tariff revisions and tariffs filed with rate changes.**

- (A) If the commission is the regulatory authority, the utility must file its revisions with the commission. 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.
- (B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.

(4) **Rate schedule.** Each rate schedule must clearly state:

- (A) the name of each public water system and corresponding identification number issued by the TCEQ, or the name of each sewer system and corresponding identification number issued by the TCEQ for each discharge permit, to which the schedule is applicable; and
- (B) the name of each subdivision, city, and county in which the schedule is applicable.

(5) **Tariff pages.** Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.

- (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, counties, and subdivisions in which service is provided, along with each public water system name and corresponding identification number issued by the TCEQ and each sewer system name and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;
 - (3) each CCN 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 to be completed as required by the TCEQ;
 - (6) the extension policy;
 - (7) an approved drought contingency plan as required by the TCEQ; and
 - (8) the forms 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 tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's tariff form or any modifications of a rule in the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

- (e) **Availability of tariffs.** Each utility must 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 must lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility must also provide copies of any portion of the tariffs at a reasonable cost to a requesting party.
- (f) **Rejection.** Any tariff filed with the commission and found not to be in compliance with this section must be returned to the utility with a brief explanation of the reasons for rejection.
- (g) **Change by other regulatory authorities.** Each utility operating within the corporate limits of a municipality exercising original jurisdiction must file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for one or more service areas under the jurisdiction of the municipality, the utility must file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.
- (h) **Effective date.** The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC

§§13.187, 13.1871, 13.18715, or 13.1872 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

- (i) **Tariffs filed by water supply or sewer service corporations.** A water supply or sewer service corporation must file with the commission, for informational purposes only, 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 rates, rules, and regulations relating to utility service or extension of service, each CCN number under which service is provided, and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation must file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection must be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).
- (j) **Temporary water rate provision for mandatory water use reduction.**
 - (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 revenues that the utility would otherwise have lost due to mandatory water

use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

- (2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction 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 provision 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 for mandatory water use reduction 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. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is $TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$ where,

TGC = Temporary gallonage charge

cgc = current gallonage charge r = water use reduction expressed as a decimal fraction (the pumping restriction)

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

- (A) The utility must file a request for a temporary water rate provision for mandatory water use reduction and provide customer notice as required by the regulatory authority, 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, a list of all customer classes affected, the rates affected, information on how to protest or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.29 of this title (relating to Time Between Filings).
- (B) The utility must 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 for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority 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, the utility must submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.
- (B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction 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 regulatory authority 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 provision into effect only after:
 - (A) it has been approved by the regulatory authority 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 temporary water rate provision to respond to modifications or changes to the original required water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.
- (7) A utility implementing a temporary water rate for mandatory water use reduction must take the following actions prior to the beginning of the billing period in which the temporary water rate provision 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 regulatory authority; and
 - (B) e-mail, if the customer has agreed to receive communications electronically, or 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 provision is implemented. If the commission is the regulatory authority, 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 must stop charging a temporary water rate provision as soon as is practicable 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 must notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision must be filed with the commission.
- (9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.
- (k) **Regional rates.** The regulatory authority, where practicable, will consolidate the rates by region for applications submitted by a Class A, B, or C utility, or a Class D utility filing under TWC §13.1872(c)(2), with a consolidated tariff and rate design for more than one system.

(1) **Energy cost adjustment clause.**

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail 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 must file a request with the commission. The utility must also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, by e-mail, 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 delivered to affected customers and stating the date of such delivery must be filed with the commission by the utility as part of the request. Notice must be provided on a form prescribed by the commission 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 commission.
- (3) The commission's review of the utility's request is not subject to a contested case hearing. However, the commission will hold a public meeting if requested by a member of the legislature who represents an 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, must be implemented on at least an annual basis, unless the commission determines otherwise. Before making a change to the energy cost adjustment clause, notice must be provided as required by paragraph (5) of this subsection. Copies of notices to customers must be filed with the commission.
- (5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility must 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) e-mail, if the customer has agreed to receive communications electronically, 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 file the request 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 under TWC §§13.187, 13.1871, 13.18715, or 13.1872.

§24.238. Fair Market Valuation.

- (a) **Applicability.** This section applies to a voluntary arm's length transaction between an acquiring utility and a retail public utility under TWC §13.305 for which approval is required under TWC §13.301. This section does not apply to a transaction between a utility and its affiliate.
- (b) **Definitions.** In this section, the following words and terms have the following meanings, unless the context indicates otherwise.
- (1) **Acquiring utility** -- A Class A or Class B utility that is acquiring a selling utility, or the facilities of a selling utility.
 - (2) **Allowance for funds used during construction (AFUDC)** -- An accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance a transferee's construction costs of an improvement to a purchased asset.
 - (3) **Fair market value** -- The average of the three appraisals conducted under subsection (f) of this section.
 - (4) **Ratemaking rate base** -- The dollar value of the selling utility or the sold facilities of a selling utility that is incorporated into the rate base of the acquiring utility for post-acquisition purposes. The ratemaking rate base is the lesser of the purchase price negotiated by an acquiring utility and a selling utility or the fair market value. The ratemaking rate base does not include transaction and closing costs.

- (5) **Selling utility** -- A retail public utility that is being purchased by an acquiring utility or is selling facilities to an acquiring utility.

(c) **List of qualified utility valuation experts.** The commission will maintain a list of qualified utility valuation experts to perform appraisals to determine a fair market value of a selling utility or facilities of a selling utility.

- (1) A utility valuation expert may request to be included on the commission's list by submitting, under the control number designated for that purpose, the required information.

- (2) The request filed by the utility valuation expert must include:

- (A) The expert's name, mailing address, telephone number, and email address;
- (B) The name of the company with which the expert is employed or associated, or the name under which the expert conducts business;
- (C) The names of the principal officers of the company with which the expert is employed or associated, if applicable;
- (D) The name and mailing addresses of any affiliates of the company with which the expert is employed or associated, if applicable; and
- (E) A detailed description of the utility valuation expert's qualifications, such as professional licensing, certifications, training or past experience conducting economic evaluations of water and sewer utilities.

- (3) The utility valuation expert must update the information in its request on file with the commission within ten business days of a material change to the information.

- (4) A utility valuation expert who wishes to be removed from the list maintained by the commission under this subsection must file a letter with the commission requesting to be removed from the list. This letter must be filed under the control number designated for that purpose. The commission will acknowledge the removal request in writing.

(d) **Notice of intent to determine fair market value.**

- (1) A selling utility and an acquiring utility that agree to use the fair market valuation process described in subsection (f) of this section must file a notice of intent to determine fair market value in the control number designated for that purpose.
- (2) The notice of intent must include the following:
- (A) The name and certificate of convenience and necessity (CCN) number of the acquiring utility. If the acquiring utility holds multiple CCN numbers, the acquiring utility must provide all the CCN numbers.
 - (B) The name and contact information of the acquiring utility's representative.
 - (C) The number of connections served by the acquiring utility.
 - (D) The name and CCN number of the selling utility.
 - (E) The name and contact information of the selling utility's representative.
 - (F) The number of connections served by the selling utility.
 - (G) The estimated closing date of the planned acquisition.
 - (H) A list of the utility valuation experts on the commission's list of qualified experts who, as of the date of the notice of intent, are precluded under

subsection (e)(2)(B) of this section from performing an appraisal of the transaction.

- (3) The notice of intent must not include the purchase price agreed upon by the acquiring utility and the selling utility.

(e) Selection of utility valuation experts.

- (1) The commission's executive director or the executive director's designee will select three utility valuation experts from the list maintained under subsection (c) of this section no later than 30 days after the filing of a notice of intent to determine fair market value that meets the requirements of subsection (d) of this section.
- (2) The utility valuation experts selected under paragraph (1) of this subsection may not:
 - (A) derive material or financial benefit from the sale other than fees for services rendered;
 - (B) be or have been within the year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility; or
 - (C) have received compensation under a contract for consulting or other services with the acquiring or selling utility, or executed a contract for consulting or other services with the acquiring or selling utility, within the year preceding the date the utility valuation expert is selected.

- (3) The commission's executive director or the executive director's designee will base the selection of utility valuation experts on the following:
- (A) Qualifications of the utility valuation expert.
 - (B) Availability of the utility valuation expert during the required time frame.
 - (C) Absence of conflicts of interest described in paragraph (2) of this subsection.
 - (D) Other factors relevant to a utility valuation expert's ability to perform an appraisal under this section.
- (4) The acquiring utility must contract directly with the selected utility valuation experts and the commission will not be a party to the contract. Subsection (k)(2) of this section, which limits the amount of transaction and closing costs that may be recovered in rates, does not apply to the fees for service agreed to in the contract. If the acquiring utility and any of the utility valuation experts selected under subsection (e)(1) of this section are unable to reach agreement on the terms and conditions for performing the appraisal, including the amount of the service fee, the acquiring utility or utility valuation expert may submit a request for selection of a different utility valuation expert under the control number designated for that purpose. If the commission's executive director or the executive director's designee selects a different utility valuation expert, the time period for all utility valuation expert to submit a report under subsection (f)(5) of this section begins when the different utility valuation expert is selected.

(f) **Determination of fair market value.**

- (1) The three utility valuation experts selected under subsection (e) of this section jointly must retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or the facilities to be sold to the acquiring utility.
 - (A) The engineer may not be or have been within one year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.
 - (B) The engineer must provide the following information to the valuation experts:
 - (i) Qualifications that demonstrate the engineer's ability to provide the requested assessment;
 - (ii) The engineer's fees for other similar assessments; and
 - (iii) Other relevant information requested by the utility valuation experts.
 - (C) The engineer's assessment must include a separate assessment for each type of facility based on the applicable National Association of Regulatory Utility Commissioners (NARUC) account for the facility.
 - (D) The fee charged by the engineer must be shared and paid equally by the three utility valuation experts and may be included as part of the utility valuation expert compensation under subsection (k) of this section.
- (2) Each utility valuation expert must perform an independent appraisal of the selling utility, including the valuation of intangible assets as appropriate, in compliance

with Uniform Standards of Professional Appraisal Practice, using the cost, market, and income approaches in accordance with subsections (g) through (i) of this section.

- (3) The appraisal must not take into account the original sources of funding, including developer contributions or customer contributions in aid of construction, for any of the utility plant that is assessed by the engineer or the utility valuation experts.
- (4) The appraisal must not take into account the purchase price negotiated by the acquiring utility and the selling utility or methodologies or process used to arrive at the purchase price.
- (5) Each utility valuation expert must submit a completed report to the acquiring utility and the selling utility no later than 120 days after the date the commission's executive director or the executive director's designee selects the utility valuation expert under subsection (e) of this section. Before the submission of the report, the acquiring and selling utilities must review the report for mathematical and factual errors, and notify the utility valuation expert of any mathematical any factual errors they identify. The utility valuation expert may promptly revise the report in response to the utilities' notification.
- (6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction.

(g) **Cost approach.**

- (1) A cost approach appraisal performed under this section must be based on one of the following:

- (A) the investment required to replace or reproduce future service capability; or
 - (B) the original cost of the facilities as adjusted for depreciation.
- (2) A cost approach appraisal performed under this section must:
 - (A) incorporate the results of the assessment performed by the engineer selected under subsection (f)(1) of this section;
 - (B) exclude from consideration overhead costs, future improvements, and going concern value; and
 - (C) use a consistent rate of inflation for all classes of assets unless use of different rates is reasonably justified.
- (h) **Income approach.**
 - (1) An income approach appraisal performed under this section must be based on one of the following:
 - (A) capitalization of earnings or cash flow; or
 - (B) the discounted cash flow method.
 - (2) An income approach appraisal performed under this section must exclude consideration of the following:
 - (A) going concern value;
 - (B) future capital improvements; and
 - (C) erosion of cash flow or erosion on return.
 - (3) An income approach appraisal performed under this section must be supported by the following:

- (A) an explanation of how the capitalization rate was calculated, if a capitalization rate was used;
- (B) an explanation of the basis for the discount rates used; and
- (C) an explanation of the capital structure, cost of equity and cost of debt used.

(i) **Market approach.**

- (1) A market approach appraisal performed under this section must be based on the following:

- (A) the current connection count of the selling utility at the time of the appraisal;
- (B) use of a proxy group that includes companies that have made acquisitions that were not based on a fair market valuation methodology; or
- (C) comparable sales that did not include the value of future capital improvement projects in the selling price.

- (2) A market approach appraisal performed under this section must not consider the following:

- (A) a net book financials multiplier or speculative growth adjustments;
- (B) the value of future capital improvement projects; or
- (C) a value or adjustment for the goodwill of the selling utility.

(j) **Contents of utility valuation expert report.** A report submitted under paragraph (f)(5) of this section must include:

- (1) a copy of the service contract executed by the utility valuation expert and the acquiring and selling utilities;

- (2) the fee charged by the utility valuation expert along with documentation supporting the amount of the fee;
- (3) a copy of the engineer's report, including a detailed list of the utility plant assessed by the engineer;
- (4) an explanation of how the cost, market, and income approaches were incorporated into the calculation of the fair market value of the selling utility or the selling utility's facilities; and
- (5) a notarized affidavit stating that:
 - (A) the appraisals described in the report were conducted in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice;
 - (B) the utility valuation expert will not derive material or financial benefit from the sale other than the fee for services rendered;
 - (C) the utility valuation expert is not currently and was not within the year preceding the date of the contract for service executed between the utility valuation expert and the acquiring and selling utilities, a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility; and
 - (D) the utility valuation expert did not receive compensation under a contract for consulting or other services with the acquiring utility or selling utility, or execute a contract for consulting or other services with the acquiring or

selling utility, within the year preceding the date the utility valuation expert was selected to perform the appraisal that is the subject of the report.

(k) **Transaction and closing costs.**

- (1) A fee paid to a utility valuation expert to perform an appraisal under subsection (f) of this section may be included in the transaction and closing costs associated with a transaction approved under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental.
- (2) The commission will review the transaction and closing costs, including fees paid to utility valuation experts, in the rate case in which the acquiring utility requests rate recovery of those costs. The fee amounts included in transaction and closing costs that are recoverable in the acquiring utility's rates may not exceed the lesser of:
 - (A) five percent of the fair market value; or
 - (B) the fee amounts approved by the commission in the rate case in which the acquiring utility requests rate recovery of the transaction and closing costs.

This agency hereby certifies that the rules, as adopted, have 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 §24.25, relating to Form and Filing of Tariffs, and §24.238, relating to Fair Market Valuation are hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the ____ day of AUGUST 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

COURTNEY K. HJALTMAN, COMMISSIONER