

PROJECT NO. 54932

**REVIEW OF §24.101 -
WATER RATE APPEALS**

§ **PUBLIC UTILITY COMMISSION**
§
§ **OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §24.101
AS APPROVED AT THE SEPTEMBER 14, 2023 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.101, relating to Appeal of Rate-making Decision. The commission adopts these amendments with changes to the proposed text as published in the May 26, 2023, issue of the Texas Register (48 TexReg 2649). This rule implements Texas Water Code §13.043 as revised by Senate Bill 387 and House Bill 3689 during the 87th Regular Legislative Session. The amended rule reflects the commission's appellate authority by allowing ratepayers to appeal an increase in municipally owned utility (MOU) water and sewer rates, including a rate increase resulting from a decision by the governing body of the municipality that takes over the provision of service to ratepayers previously served by another retail public utility. The amended rule also clarifies that in an appeal under this section, the commission will ensure that every appealed rate is just and reasonable.

The commission received comments on the proposed rule from the Office of Public Utility Counsel (OPUC).

General Comments

OPUC expressed general support for the proposed rule.

24.101(c)

Proposed §24.101(c) delineates which retail ratepayers may appeal the decision of the governing body of an entity that regulates their water, sewer and drainage rates. Further, §24.101(c)(3) specifies which MOU ratepayers can appeal such rate decisions under §24.101(c).

OPUC commented that the proposed language may lead to misinterpretations over the commission's authority to consider certain appeals and recommended language. Specifically, OPUC argued that the rule language should be clarified to reflect that the commission can also consider appeals of rate increases that resulted from a municipality expanding its corporate limits to include the affected customers.

Commission Response

The commission declines to modify the proposed rule to clarify that the commission can consider an appeal of MOU rates that increase as a result of a municipality expanding its corporate limits. The proposed rule language mirrors the statutory language. If a ratepayer initially resides outside the corporate limits of a municipality, but the MOU then takes over the provision of service to that ratepayer *as part of an expansion of the municipality's corporate limits*, by definition, the ratepayer no longer “resides outside the corporate limits of the municipality.” Accordingly, the statutory provision allowing a rate appeal before the commission no longer applies. Once a ratepayer is within the corporate limits of an MOU, it can appeal to the governing body of the municipality via the political process or through a locally established appeals process, if available.

Section 24.101(c)(3)(D)

Proposed §24.101(c)(3)(D) delineates the conditions under which a municipally owned utility's water, sewer and drainage rates cannot be appealed to the commission.

OPUC recommended clarifying the language in 16 TAC §24.101(c)(3)(D) to ensure the provision is consistent with Texas Water Code §13.043(b-4).

Commission Response

The commission modifies the language for clarity as recommended by OPUC.

Section 24.101(e)

Proposed §24.101(e) states the commission will 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 that is being appealed. Paragraphs (1) and (2) of this subsection also states that the commission can include reasonable expenses incurred during the appeal proceeding in the final rates.

OPUC recommended that the standard for expenses incurred for appeal proceedings before the commission be revised from "reasonable" to "*reasonable and necessary* expenses."

Commission Response

The commission declines to amend the standard for appeal proceeding expenses as recommended by OPUC. Texas Water Code §13.043(a) and (e) only require that appeal expenses be *reasonable*. The proposed rule accurately reflects the statutory language.

OPUC also recommended clerical edits to subsection (e)(2) for consistency with other provisions in the rule.

Commission Response

The commission agrees with OPUC's recommendation and implements the proposed changes.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment is adopted under TWC §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 all things specifically designated or implied by TWC necessary and convenient to the exercise of that power and jurisdiction; TWC §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. The amendment is adopted under TWC §13.043, which relates to appellate jurisdiction of the commission.

Cross Reference to Statute: Texas Water Code §13.041(a); §13.041(b); and §13.043.

§24.101. Appeal of Rate-making Decision, 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 petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.
- (b) An appeal under Texas Water Code (TWC) §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under TWC §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 utility, sewer utility, or drainage 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, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;
- (A) A municipally owned utility must:
- (i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and
 - (ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.
- (B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility must inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code §182.052 in any notice provided under the requirement of TWC§13.043(i).

- (C) In complying with this subsection, the municipally owned utility:
 - (i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;
 - (ii) will provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and
 - (iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.
- (D) Paragraph (3) of this subsection does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if the municipally owned utility:
 - (i) takes over the service at the request of the ratepayer;
 - (ii) takes over the service in the manner provided by TWC Chapter 13, Subchapter H; or
 - (iii) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the commission.
- (4) a district or authority created under Article III, §52, or Article XVI, §59 of the Texas Constitution, that provides water or sewer service to household users;
- (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 will be considered a separate class from ratepayers who reside inside those boundaries; and

- (6) in an appeal under this subsection, the retail public utility must 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 will 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 TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;
 - (2) in an appeal under TWC §13.043(b), include 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 will establish the fee to be paid and will establish conditions for the applicant to pay any amount(s) 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(s) determined in the commission's order must be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

- (2) In an appeal brought under this subsection, the commission will 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 will ensure that every appealed rate 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 will 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 must 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 will 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.

This agency hereby certifies that the rule, as adopted, 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 §24.101 relating to Appeal of Rate-making Decision is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the ____ day of SEPTEMBER 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER