

**PROJECT NO. 45115**

<b>PROJECT TO AMEND CHAPTERS 22</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AND 24 - IMPLEMENTATION OF</b>	<b>§</b>	
<b>SENATE BILL 1148 (VARIOUS WATER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>REGULATIONS MODIFICATIONS)</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENTS TO §24.14 AND §24.22  
APPROVED AT THE JUNE 9, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §24.14, relating to Emergency Orders and Emergency Rates, and §24.22, relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871, with changes to the proposed text as published in the March 18, 2016 issue of the *Texas Register* (41 TexReg 2050). The amendments will allow the commission's procedural rules relating to emergency orders to conform to §§2, 3, 5, 6, and 8–10 of Senate Bill 1148 (SB 1148) of the 84<sup>th</sup> Legislature, Regular Session, which amended chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). The proposed amendments will also allow provisions relating to notice of ratemaking proceedings in §24.22 to implement §5 and §6 of SB 1148, which grant the commission the authority to delegate to the State Office of Administrative Hearings (SOAH) the responsibility and authority to give reasonable notice of hearings in Class A and Class B rate cases. These amendments are adopted under Project Number 45115. Consistent with 1 Tex. Admin. Code §91.36(e), the commission also adopts amendments to chapter 22 of the commission's rules in a separate order as part of this project.

The commission did not receive comments on the proposed amendments.

In adopting this section, the commission makes minor modifications for the purpose of clarifying its intent.

These amendments are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

**§24.14. Emergency Orders and Emergency Rates.**

- (a) The commission may issue emergency orders in accordance with the Texas Water Code Chapter 13, Subchapter K-1 under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:
- (1) to appoint a person under §24.142 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.143 of this title (relating to Operation of a Utility by a Temporary Manager), or Texas Water Code §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the Office of the Texas Attorney General for the appointment of a receiver under Texas Water Code §13.412.
  - (2) 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 retail 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 inactions.
  - (3) 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 discontinuance of service or serious impairment in service is imminent or has occurred.

- (4) to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate retail water or sewer service to the utility's customers pursuant to Texas Water Code §13.4133:
    - (A) for a utility for which a person has been appointed under Texas Water Code §13.4132 to temporarily manage and operate the utility; or
    - (B) for a utility for which a receiver has been appointed under Texas Water Code §13.412.
  - (5) to compel a retail public utility to make specified improvements and repairs to the water or sewer system(s) owned or operated by the utility pursuant to Texas Water Code §13.253(b):
    - (A) 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;
    - (B) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission; and
    - (C) if the retail public utility has provided financial assurance under Texas Health and Safety Code §341.0355 or Texas Water Code Chapter 13.
  - (6) to order an improvement in service or an interconnection pursuant to Texas Water Code §13.253(a)(1)-(3).
- (b) The commission may establish reasonable compensation for temporary service ordered under subsection (a)(3) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

- (c) For an emergency order issued pursuant to subsection (a)(4) of this section and in accordance with §22.296 of this title (relating to Additional Requirements for Emergency Rate Increases):
- (1) the commission shall coordinate with the TCEQ as needed;
  - (2) an emergency rate increase may be granted for a period not to exceed 15 months from the date on which the increase takes effect;
  - (3) the additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service;
  - (4) the effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission;
  - (5) any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission;
  - (6) the utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.31 of this title (relating to Cost of Service); and
  - (7) during the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

- (d) The costs of any improvements ordered pursuant to subsection (a)(5) of this section may be paid by bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.
- (e) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.
- (f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days.
- (g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued pursuant to subsection (a)(4) of this section.

**§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.**

- (a) **Purpose.** This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice pursuant to TWC §13.187 or §13.1871.
- (b) **Contents of the application.** An application to change rates pursuant to TWC §13.187 or §13.1871 is initiated by the filing of a rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities pursuant to subsection (c) of this section.
- (1) The application shall include the commission's rate filing package form and include all required schedules.
  - (2) The application shall be based on a test year as defined in §24.3(71) of this title (relating to Definitions of Terms).
  - (3) For an application filed pursuant to TWC §13.187, the rate filing package, including each schedule, shall be supported by pre-filed direct testimony. The pre-filed direct testimony shall be filed at the same time as the application to change rates.
  - (4) For an application filed pursuant to TWC §13.1871, the rate filing package, including each schedule, shall be supported by affidavit. The affidavit shall be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the

application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

- (5) **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 date(s) of such delivery shall be filed with the commission by the applicant utility as part of the rate change application.
- (c) **Notice requirements specific to applications filed pursuant to TWC §13.187.**
- (1) **Notice of the application.** In order to change rates pursuant to TWC §13.187, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.
    - (A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.
    - (B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may intervene in the proceeding.
    - (C) This notice shall state the docket number assigned to the rate application. Prior to the provision of notice, the utility shall file a request for the assignment of a docket number for the rate application.



- (D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.
  - (E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.
- (2) **Notice of the hearing.** After the rate application is set for a hearing, the commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.
- (d) **Notice requirements specific to applications filed pursuant to TWC §13.1871.**
- (1) **Notice of the application.** In order to change rates pursuant to TWC §13.1871, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.
    - (A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change and to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

- (B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may file a protest pursuant to TWC §13.1871(i).
  - (C) For Class B utilities, the notice shall state the docket number assigned to the rate application. Prior to providing notice, Class B utilities shall file a request for the assignment of a docket number for the rate application.
  - (D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.
  - (E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.
- (2) **Notice of the hearing.** After the rate application is set for a hearing, the following notice requirements shall apply.
- (A) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county.

- (B) The utility shall mail notice of the hearing to each affected ratepayer at least 20 days before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the proceeding.
- (e) **Line extension and construction policies.** A request to approve or amend a utility's line extension and construction policy shall be filed in a rate change application under TWC §13.187 or §13.1871. The application filed under TWC §13.187 or §13.1871 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.
- (f) **Capital improvements surcharge.** In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from the customers pursuant to a surcharge to provide funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.
- (g) **Debt repayments surcharge.** In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from customers pursuant to a surcharge 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.

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 §24.14, relating to Emergency Orders and Emergency Rates, and §24.22, relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871, are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of JUNE 2016.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**