

PROJECT NO. 56691

REVIEW OF §24.25 AND §24.238

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PUBLIC UTILITY COMMISSION

OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENTS
TO 16 TAC §24.25 AND §24.238**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.25, relating to Form and Filing of Tariffs, and §24.238, relating to Fair Market Valuation.

This proposed 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 HB 2373 repealed Texas Water Code (TWC) §13.145.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 proposal also amends §24.238 to remove language referencing §24.25(k), which related to “multiple system consolidation.”

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

(1) the proposed rules will not create a government program and will not eliminate a government program;

- (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not create a new regulation;
- (6) the proposed rules will expand, limit, or repeal an existing regulation;
- (7) the proposed rules will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rules will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in Texas Government Code chapter 2007.

Fiscal Impact on State and Local Government

Tammy Benter, Division Director, Division of Utility Outreach, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient consolidation of water and sewage utility systems. There will not be any probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by July 25, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by July 25, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56691.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

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) - (j) (No change.)

~~(k) **Multiple system consolidation.** Except as otherwise provided in subsection (m) 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.~~

~~(k)~~**(l) 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.

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

~~(l)~~**(n) 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)-(d) (No change.)

(e) **Selection of utility valuation experts.**

(1) - (3) (No change.)

(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~~~~subsection~~ 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)-(5) (No change.)

(6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction. ~~Nothing in this section alters~~

~~the requirements for multiple system consolidation in §24.25(k) of this title,
relating to Form and Filing of Tariffs.~~

(g)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 13th DAY OF JUNE 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**