

PROJECT NO. 48526

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
CHAPTER 24 FOR THE SOLE	§	
PURPOSE OF RENUMBERING	§	OF TEXAS
CERTAIN SECTIONS, RENAMING	§	
AND RELETTERING CERTAIN	§	
SUBCHAPTERS, AND ADDING A	§	
NEW SUBCHAPTER	§	

**PROPOSAL FOR PUBLICATION OF THE
REPEAL OF PART OF SUBCHAPTER A §§24.3, 24.8, 24.11, 24.14,
ALL OF SUBCHAPTER B, SUBCHAPTER C §§24.41-24.44,
ALL OF SUBCHAPTERS D THROUGH K, AND
NEW §§24.3, 24.8, 24.11, 24.14 AND NEW SUBCHAPTERS B THROUGH L
AS APPROVED AT THE JULY 26, 2018 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of part of Subchapter A: General Provisions §§24.3, 24.8, 24.11, 24.14, Subchapter B: Rates, Rate-Making and Rates/Tariff Changes §§24.21-24.24, §24.26, §24.28-24.36, Subchapter C: Rate-Making Appeals §§24.41-24.44, Subchapter D: Records and Reports §§24.71-24.76, Subchapter E: Customer Service and Protection §§24.80-24.90, Subchapter F: Quality of Service §§24.91-24.95, Subchapter G: Certificates of Convenience and Necessity §§24.101-24.107, §§24.109-24.111, §§24.113-24.120, Subchapter H: Water Utility Submetering and Allocation §§24.121-24.127, Subchapter I: Wholesale Water or Sewer Service §§24.128-24.138, Subchapter J: Enforcement, Supervision, and Receivership, §§24.140-24.144, §24.146, §24.147, Subchapter K: Provision Regarding Municipalities §§24.150- 24.153, relating to substantive rules applicable to water and sewer service providers and proposes new §§24.3, 24.8, 24.11, 24.14, Subchapter B: Rates and Tariffs §§24.25, 24.27, 24.29, 24.31, 24.33, 24.35, 24.37, 24.39, 24.41, 24.43, 24.44, 24.47, 24.49, Subchapter C: Alternative Rate Methods §24.75, Subchapter D: Rate-Making Appeals §§24.101, 24.103, 24.105, 24.107, Subchapter E: Records and Reports §§24.125, 24.127, 24.129,

24.131, 24.133, 24.135, Subchapter F: Customer Service and Protection §§24.151, 24.153, 24.155, 24.157, 24.159, 24.161, 24.163, 24.165, 24.167, 24.169, 24.171, Subchapter G: Quality of Service §§24.201, 24.203, 24.205, 24.207, 24.209, Subchapter H: Certificates of Convenience and Necessity §§24.225, 24.227, 24.229, 24.231, 24.233, 24.235, 24.237, 24.239, 24.241, 24.243, 24.245, 24.247, 24.249, 24.251, 24.253, 24.255, 24.257, 24.259, Subchapter I: Water Utility Submetering and Allocation §§24.275, 24.277, 24.279, 24.281, 24.283, 24.285, 24.287, Subchapter J: Wholesale Water or Sewer Service §§24.301, 24.303, 24.305, 24.307, 24.309, 24.311, 24.313, 24.315, 24.317, 24.319, 24.321, Subchapter K: Enforcement, Supervision, and Receivership §§24.351, 24.353, 24.355, 24.357, 24.359, 24.361, 24.363, Subchapter L: Provisions Regarding Municipalities §§24.375, 24.377, 24.379, and 24.381 relating to substantive rules applicable to water and sewer service providers. There will be no changes to §§24.1, 24.2, 24.4, 24.5, 24.6, 24.9, 24.12, 24.15, 24.45.

The proposed repeals and new sections will renumber the subject sections only. Project Number 48526 is assigned to this proceeding.

Stephen Journey, Commission Counsel, Office of Policy and Docket Management, has determined that for the first five-year period the proposed repeals and new sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

Stephen Journey has determined that for each year of the first five years the proposed repeals and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be administrative ease.

Stephen Journey has also determined that for each year of the first five years the proposed repeals and new sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under §2001.022 of the Administrative Procedure Act (APA), Tex. Gov't Code Ann. §2001.022 (West 2016).

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed repeals and new sections. There is no significant economic cost anticipated for persons who are required to comply with the proposed repeals and new sections. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Pursuant to Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed repeals and new sections. The agency has determined that for each year of the first five years that the proposed repeals and new sections are in effect, the following statements will apply:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

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

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with §2001.029 of the Administrative Procedure Act, Tex. Gov't Code Ann. §2001.029 (West 2016 and Supp. 2017), at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 11, 2018. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal and new sections may be filed with the Commission's filing clerk at 1701 North Congress Avenue, Austin, TX or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed repeals and new sections are required to be filed by §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 48526.

The repeals and new sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §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.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

The following sections are proposed for repeal:

Subchapter A: General Provisions

§24.3. Definitions of Terms.

§24.8. Administrative Completeness.

§24.11. Financial Assurance.

§24.14. Emergency Orders and Emergency Rates.

Subchapter B: Rates, Rate-Making and Rates/Tariff Changes

§24.21. Form and Filing of Tariffs.

§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code

§13.187 or §13.1871.

§24.23. Time between Filings.

§24.24. Jurisdiction over Affiliated Interests.

§24.26. Suspension of the Effective Date of Rates.

§24.28. Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871.

§24.29. Interim Rates.

§24.30. Escrow of Proceeds Received under Rate Increase.

§24.31. Cost of Service.

§24.32. Rate Design.

§24.33. Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871.

§24.34. Alternative Rate Methods.

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

§24.36. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.

Subchapter C: Rate-Making Appeals

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

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

§24.43. Refunds During Pendency of Appeal.

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

Subchapter D: Records and Reports

§24.71. General Reports.

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

§24.73. Water and Sewer Utilities Annual Reports.

§24.74. Maintenance and Location of Records.

§24.75. Management Audits.

§24.76. Regulatory Assessment.

Subchapter E: Customer Service and Protection

§24.80. Applicability.

§24.81. Customer Relations.

§24.82. Resolution of Disputes.

§24.83. Refusal of Service.

§24.84. Service Applicant and Customer Deposit.

§24.85. Response to Requests for Service by a Retail Public Utility Within Its
Certificated Area.

§24.86. Service Connections.

§24.87. Billing.

§24.88. Discontinuance of Service.

§24.89. Meters.

§24.90. Continuity of Service.

Subchapter F: Quality of Service

§24.91. Applicability.

§24.92. Requirements by Others.

§24.93. Adequacy of Water Utility Service.

§24.94. Adequacy of Sewer Service.

§24.95. Standards of Construction.

Subchapter G: Certificates of Convenience and Necessity

§24.101. Certificate of Convenience and Necessity Required.

§24.102. Criteria for Granting or Amending a Certificate of Convenience and Necessity.

§24.103. Certificate of Convenience and Necessity Not Required.

§24.104. Applicant.

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

§24.106. Notice Requirements for Certificate of Convenience and Necessity Applications.

§24.107. Action on Applications.

§24.109. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental.

§24.110. Foreclosure and Bankruptcy.

§24.111. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

§24.113. Revocation or Amendment of a Certificate of Convenience and Necessity.

§24.114. Requirement to Provide Continuous and Adequate Service.

§24.115. Cessation of Operations by a Retail Public Utility.

§24.116. Exclusiveness of Certificates.

§24.117. Contracts Valid and Enforceable.

§24.118. Contents of Request for Cease and Desist Order by the Commission Under TWC §13.252.

§24.119. Mapping Requirements for Certificate of Convenience and Necessity Applications.

§24.120. Single Certification in Incorporated or Annexed Areas.

Subchapter H: Water Utility Submetering and Allocation

§24.121. General Rules and Definitions.

§24.122. Owner Registration and Records.

§24.123. Rental Agreement.

§24.124. Charges and Calculations.

§24.125. Billing.

§24.126. Complaint Jurisdiction.

§24.127. Submeters or Point-of-Use Submeters and Plumbing Fixtures.

Subchapter I: Wholesale Water or Sewer Service

§24.128. Petition or Appeal Concerning Wholesale Rate.

§24.129. Definitions.

§24.130. Petition or Appeal.

§24.131. Commission's Review of Petition or Appeal Concerning Wholesale Rate.

§24.132. Evidentiary Hearing on Public Interest.

§24.133. Determination of Public Interest.

§24.134. Commission Action to Protect Public Interest, Set Rate.

§24.135. Determination of Cost of Service.

§24.136. Burden of Proof.

§24.137. Commission Order to Discourage Succession of Rate Disputes.

§24.138. Filing of Rate Data.

Subchapter J: Enforcement, Supervision and Receivership

§24.140. Enforcement Action.

§24.141. Supervision of Certain Utilities.

§24.142. Operation of Utility that Discontinues Operation or is Referred for
Appointment of a Receiver.

§24.143. Operation of a Utility by a Temporary Manager.

§24.144. Fines and Penalties.

§24.146. Municipal Rates for Certain Recreational Vehicle Parks.

§24.147. Temporary Rates for Services Provided for a Nonfunctioning System.

Subchapter K: Provisions Regarding Municipalities

§24.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

§24.151. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

§24.152. Notification Regarding Use of Revenue.

§24.153. Fair Wholesale Rates for Wholesale Water Sales to a District.

The following new subchapters and sections are proposed to replace the repeals:

Subchapter A: General Provisions**§24.3. Definitions of Terms.**

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

(1) Acquisition adjustment --

(A) The difference between:

- (i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property, less accumulated depreciation; and
- (ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.

- (B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.
- (C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.
- (2) **Active connections** -- Water or sewer connections currently being used to provide retail water or sewer service, or wholesale service.
- (3) **ADFIT** -- Accumulated deferred federal income tax -- The amount of income-tax deferral, typically reflected on the balance sheet, produced by deferring the payment of federal income taxes by using tax-advantageous methods such as accelerated depreciation.
- (4) **Affected county** -- A county to which Local Government Code, Chapter 232, Subchapter B, applies.
- (5) **Affected person** -- Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.
- (6) **Affiliated interest or affiliate** --
- (A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;
- (B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

- (C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;
- (D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;
- (E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;
- (F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or
- (G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

- (7) **Agency** -- Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Department of Insurance Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.
- (8) **Allocations** -- For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas. A non-municipal allocation is the division of plant, revenues, expenses, taxes and reserves between affiliates, jurisdictions, rate regions, business units, functions, or customer classes defined within a retail public utility's operations for all retail public utilities and affiliates.
- (9) **Amortization** -- The gradual extinguishment of an amount in an account by distributing the amount over a fixed period (such as over the life of the asset or liability to which it applies).
- (10) **Annualization** -- An adjustment to bring a utility's accounts to a 12-month level of activity.
- (11) **Base rate** -- The portion of a consumer's utility bill that is paid for the opportunity to receive utility service, which does not vary due to changes in utility service consumption patterns.
- (12) **Billing period** -- The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.
- (13) **Block rates** -- A rate structure set by using blocks, typically inclining cost for increased usage, which changes the cost per 1,000 gallons as usage increases to the next block.

- (14) **Certificate of Convenience and Necessity (CCN)** -- A permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area. **Certificate** or **Certificate of Public Convenience and Necessity** have the same meaning.
- (15) **Class A Utility** -- A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.
- (16) **Class B Utility** -- A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.
- (17) **Class C Utility** -- A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. A Class C utility filing an application under TWC §13.1871 shall be subject to all requirements applicable to Class B utilities filing an application under TWC §13.1871. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.
- (18) **Commission** -- The Public Utility Commission of Texas or a presiding officer, as applicable.
- (19) **Corporation** -- Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest,

having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the TWC.

- (20) **Customer** -- Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.
- (21) **Customer class** -- A description of utility service provided to a customer that denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.
- (22) **Customer service line or pipe** -- The pipe connecting the water meter to the customer's point of consumption or the pipe that conveys sewage from the customer's premises to the service provider's service line.
- (23) **District** -- District has the meaning assigned to it by TWC §49.001(a).
- (24) **Facilities** -- All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.
- (25) **Financial assurance** -- The demonstration that sufficient or adequate financial resources exist to operate and manage the utility and to provide continuous and adequate service to the utility's service area and/or requested area.

- (26) **Functional cost category** -- Costs related to a particular operational function of a utility for which annual operations & maintenance expenses and utility plant investment records are maintained.
- (27) **Functionalization** -- The assignment or allocation of costs to utility functional cost categories.
- (28) **General rate revenue** -- A rate or the associated revenues designed to recover the cost of service other than certain costs separately identified and recovered through a pass-through or any specific rate such as a surcharge. For water and wastewater utilities, rates typically include the base rate and gallonage rate.
- (29) **Inactive connections** -- Water or wastewater connections tapped to the applicant's utility and that are not currently receiving service from the utility.
- (30) **Incident of tenancy** -- Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.
- (31) **Intervenor** -- A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.
- (32) **Known and measurable (K&M)** -- Verifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year.
- (33) **Landowner** -- An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.
- (34) **License** -- The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

- (35) **Licensing** -- The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the TWC.
- (36) **Main** -- A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.
- (37) **Mandatory water use reduction** -- The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.
- (38) **Member** -- A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property within a water supply or sewer service corporation's service area, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.
- (39) **Membership fee** -- A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed

under said bylaws. For purposes of TWC §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

- (40) **Multi-jurisdictional** -- A utility that provides water and/or wastewater service in more than one state, country, or separate rate jurisdiction by its own operations, or through an affiliate.
- (41) **Municipality** -- A city, existing, created, or organized under the general, home rule, or special laws of this state.
- (42) **Municipally owned utility** -- Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.
- (43) **Net Book Value** -- The amount of the asset that has not yet been recovered through depreciation. It is the original cost of the asset minus accumulated depreciation.
- (44) **Nonfunctioning system or utility** -- A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN; or a retail public utility under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or a retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, in accordance with §24.355 of this title (relating to Operation of Utility that Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.357 of this title (relating to Operation of a Utility by a Temporary Manager).

- (45) **Person** -- Includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.
- (46) **Point of use or point of ultimate use** -- The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.
- (47) **Potable water** -- Water that is used for or intended to be used for human consumption or household use.
- (48) **Potential connections** -- Total number of active plus inactive connections.
- (49) **Premises** -- A tract of land or real estate including buildings and other appurtenances thereon.
- (50) **Protestor** -- A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.
- (51) **Public utility** -- The definition of public utility is that definition given to a water and sewer utility in this subchapter.
- (52) **Purchased sewage treatment** -- Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.
- (53) **Purchased water** -- Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.
- (54) **Rate** -- Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or

contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

- (55) **Rate region** -- An area within Texas for which the applicant has set or proposed uniform tariffed rates by customer class.
- (56) **Ratepayer** -- Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.
- (57) **Reconnect fee** -- A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §24.167 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.
- (58) **Requested area** -- The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.
- (59) **Retail public utility** -- Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
- (60) **Retail water or sewer utility service** -- Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.
- (61) **Return on invested capital** -- The rate of return times invested capital.

- (62) **Service** -- Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.
- (63) **Service area** -- Area to which a retail public utility is obligated to provide retail water or sewer utility service.
- (64) **Service line or pipe** -- A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.
- (65) **Sewage** -- Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.
- (66) **Stand-by fee** -- A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.
- (67) **Tap fee** -- A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

- (68) **Tariff** -- The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.
- (69) **TCEQ** -- Texas Commission on Environmental Quality.
- (70) **Temporary rate for services provided for a nonfunctioning system** -- A temporary rate for a retail public utility that takes over the provision of service for a nonfunctioning retail public water or sewer utility service provider.
- (71) **Temporary water rate provision for mandatory water use reduction** -- A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.
- (72) **Test year** -- The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.
- (73) **Tract of land** -- An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.
- (74) **TWC** -- Texas Water Code.
- (75) **Utility** -- The definition of utility is that definition given to water and sewer utility in this subchapter.
- (76) **Water and sewer utility** -- Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the

state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

- (77) **Water supply or sewer service corporation** -- Any nonprofit corporation organized and operating under TWC chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions:

- (A) All members of the corporation meet the definition of “member” under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.
 - (B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.
 - (C) A majority of the directors and officers of the corporation must be members of the corporation.
 - (D) The corporation’s bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.
- (78) **Water use restrictions** -- Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.
- (79) **Wholesale water or sewer service** -- Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§24.8. Administrative Completeness.

- (a) Any application under chapter 24, except as otherwise noted by this chapter, shall be reviewed for administrative completeness within 30 calendar days from the date the application is file stamped by the commission’s Central Records office. If the applicant

is required to issue notice, the applicant shall be notified upon determination that the notice or application is administratively complete.

- (b) If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.
- (c) In cases involving a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, of any water or sewer system or utility owned by an entity required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received and file stamped by the commission's Central Records office and public notice is provided, unless notice is waived for good cause shown.
- (d) Applications under subchapter H of chapter 24 are not considered filed until the commission makes a determination that the application is administratively complete.

§24.11. Financial Assurance.

- (a) **Purpose.** This section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.
- (b) **Application.** This section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance pursuant to this chapter.

- (c) Financial assurance must be demonstrated by compliance with subsection (d) or (e) of this section, unless the commission requires compliance with both subsections (d) and (e) of this section.
- (d) **Irrevocable stand-by letter of credit.** Irrevocable stand-by letters of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The retail public utility must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than five years, payable to the commission, and permit a draw to be made in part or in full. The irrevocable stand-by letter of credit must permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit if the retail public utility has failed to provide continuous and adequate service or the retail public utility cannot demonstrate its ability to provide continuous and adequate service.
- (e) **Financial test.**
- (1) An owner or operator may demonstrate financial assurance by satisfying a financial test including the leverage and operations tests that conform to the requirements of this section, unless the commission finds good cause exists to require only one of these tests.
- (2) **Leverage test.**
- To satisfy this test, the owner or operator must meet one or more of the following criteria:

- (A) The owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets;
 - (B) The owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments;
 - (C) The owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Restricted cash includes monetary resources that are committed as a debt service reserve which will not be used for operations, maintenance or other payables;
 - (D) The owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc.; or
 - (E) The owner or operator must demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must be found to satisfy the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph.
- (3) **Operations test.** The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

(4) To demonstrate that the requirements of the leverage and operations tests are being met, the owner or operator shall submit the following items to the commission:

(A) An affidavit signed by the owner or operator attesting to the accuracy of the information provided. The owner or operator may use the affidavit included with an application filed pursuant to §24.233 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) pursuant to the commission's form for the purpose of meeting the requirements of this subparagraph; and

(B) A copy of one of the following:

(i) the owner or operator's independently audited year-end financial statements for the most recent fiscal year including the "unqualified opinion" of the auditor; or

(ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); or

(iii) internally produced financial statements meeting the following requirements:

(I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; or

- (II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility shall provide all documents supporting projected lot sales or customer growth.
 - (C) In lieu of meeting the leverage and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.
- (5) If the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000, the applicant must provide the following:
 - (A) The owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger; or

- (B) The owner must submit loan approval documents or firm capital commitments affirming funds are available to install plant and equipment necessary to serve projected customers in the first two years of projections or a new water system or substantial addition to a currently operating water system if the application includes added CCN area with the intention of serving a new area or subdivision.
- (6) If the applicant is a nonfunctioning utility, as defined in §24.3(44) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder has the capability of meeting the leverage and operations tests.

§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 §24.355 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.357 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 §24.41 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 §24.39 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.

Subchapter B: Rates and Tariffs**§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 the Texas Water Code (TWC) §13.187 or §13.1871 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 shall 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 charges and shall at the

earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for 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, every utility shall 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 shall contain schedules of all the utility's rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) 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 a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person shall file a proposed tariff with the commission. The person filing the proposed tariff shall 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(s) for the physical plant(s);
 - (v) provide an estimate of the date(s) service will begin for all phases of construction; and
 - (vi) provide notice to the commission once billing for service begins.
- (C) A person who has obtained an approved tariff for the first time and is under the original rate jurisdiction of the commission shall file a rate change application within 18 months from the date service begins in order to revise its tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. An application for a price index rate adjustment under TWC §13.1872 does not satisfy the requirements of this subparagraph.
- (D) Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls,

charges, rules, and regulations pertaining to all of 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. Minor tariff changes shall not be allowed for any fees charged by affiliates. The addition of a new extension policy to a tariff or modification of an existing extension policy is not a minor tariff change. An affected county may change rates for retail water or sewer service without commission approval, but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.
- (A) The commission, 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 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 multi-step 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(s) and corresponding identification number(s) issued by the TCEQ; and
 - (III) the sewer system names and corresponding discharge permit number(s) 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 elderly customers 65 years of age or older to ensure that those customers

receive that level of retail water service at more affordable rates. The regulatory authority shall allow a utility to establish a fund to receive donations to recover the costs of providing the reduced rates. A utility may not recover those costs through charges to its other customer classes.

- (i) To request a rate as defined in this subparagraph, the utility must file a proposed plan for review by the commission.

The plan shall include:

- (I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.
- (II) The National Association of Regulatory Utility Commissioners (NARUC) account or subaccount name and number in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program are 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) An 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 in

this subparagraph of this clause to the utility's revenue account. The annual accounting shall be available to 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 shall only include 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 shall be no more than 3,000 gallons per month per connection. Additional gallons used shall 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 proper 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 or TWC §13.1871. 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 in the following situation(s):
- (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 over-collections 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 only be implemented 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(s) shall be included in the provision. The true-up report shall 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 shall 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 wishes to revise or implement an approved pass-through provision shall 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) the affected CCN number(s);
 - (II) a list of the affected subdivision(s), public water system name(s) and corresponding number(s) issued by the TCEQ, and the water quality system name(s) and corresponding number(s) 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 shall use the revenues collected through a surcharge approved by the commission only for the purposes noted in the order approving the surcharge. A utility shall handle the funds in the manner specified 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 shall 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 the public water system name(s) and the corresponding identification number(s) issued by the TCEQ or the sewer system name(s) and the corresponding identification number(s) issued by the TCEQ for each discharge permit, 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 subdivision(s) in which service is provided, along with the public water system name(s) and corresponding identification number(s) issued by the TCEQ and sewer system names and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;
 - (3) the CCN number(s) 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 shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility also shall 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 shall 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 shall 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 shall 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 or §13.1871 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.** Every water supply or sewer service corporation shall file, 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, the CCN number(s), 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 shall file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection shall 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 = 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)

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

- (A) The utility shall file a temporary water rate provision for mandatory water use reduction request 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, the customer class(es) affected, the rates affected, information on how to protest and/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 shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay

reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

- (4) A utility may request a temporary water rate provision 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, it shall 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 shall 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 shall 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 shall 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 shall 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 shall 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) **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.
- (l) **Regional rates.** The regulatory authority, where practicable, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 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.
- (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 shall file a request with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, 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(s) of such delivery shall be filed with the

commission by the utility as part of the request. Notice must be provided on the form prescribed by the commission for a rate application package filed under TWC §13.187 or §13.1871 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 class(es) 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 an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested 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, shall be implemented on at least an annual basis, unless the commission determines a

special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection. Copies of notices to customers shall 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 shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:

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

(B) 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, or 13.1872.

§24.27. 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(72) 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.

§24.29. Time Between Filings.

- (a) **Application.** The following provisions are applicable to utilities, including those with consolidated or regional tariffs, under common control or ownership with any utility that has filed a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871.
- (b) A utility or two or more utilities under common control and ownership may not file a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871 more than once in a 12-month period except:
- (1) to implement an approved purchase water pass through provision;
 - (2) to adjust the rates of a newly acquired utility system;
 - (3) to comply with a commission order;
 - (4) to adjust rates authorized by §24.25(b)(2) of this title (relating to Form and Filing of Tariffs);

- (5) when the regulatory authority requires the utility to deliver a corrected statement of intent; or
- (6) when the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:
 - (A) cover reasonable and necessary operating expenses;
 - (B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements specific to utility operations; or
 - (C) support a determination that the utility is able to provide continuous and adequate service to its existing service area.
- (c) A Class C utility under common control or ownership with a utility that has filed an application to change rates pursuant to TWC §13.187 or §13.1871 within the preceding 12 months may not file an application to change rates pursuant to TWC §13.187 or §13.1871 unless it is filed pursuant to an exception listed in subsection (b) of this section.

§24.31. Jurisdiction over Affiliated Interests.

- (a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited

to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

- (b) The owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:
- (1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or
 - (2) the commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

§24.33. Suspension of the Effective Date of Rates.

- (a) Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (b) of this section, after written notice to the utility, the commission may suspend the effective date of a rate change for not more than:
- (1) 150 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.187; or
 - (2) 265 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.1871.
- (b) Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (a) of this section, the commission may suspend the effective date of a change in rates requested pursuant to TWC §13.187 or §13.1871 if the utility:

- (1) has failed to properly complete the rate application as required by §24.27 of this title (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871), has failed to comply with the notice requirements and proof of notice requirements, or has for any other reason filed a request to change rates that is not deemed administratively complete until a properly completed request to change rates is accepted by the commission;
 - (2) does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission; or
 - (3) is delinquent in paying the regulatory assessment fee and any applicable penalties or interest required by TWC §5.701(n) until the delinquency is remedied.
- (c) If the commission suspends the effective date of a requested change in rates pursuant to subsection (b) of this section, the requirement under §24.35(b)(1) of this title (relating to Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871) to begin a hearing within 30 days of the effective date does not apply and the utility may not notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.
- (d) A suspension ordered pursuant to subsection (a) of this section shall be extended two days for each day a hearing on the merits exceeds 15 days.
- (e) If the commission does not make a final determination on the proposed rate before the expiration of the suspension period described by subsections (a) and (d) of this section,

the proposed rate shall be considered approved. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

- (f) The effective date of any rate change may be suspended at any time during the pendency of a proceeding, including after the date on which the proposed rates are otherwise effective.
- (g) For good cause shown, the commission may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate.

§24.35. Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871.

- (a) **Purpose.** This section describes requirements for the processing of applications to change rates filed pursuant to TWC §13.187 or §13.1871.
- (b) **Proceedings pursuant to TWC §13.187.** The following criteria apply to applications to change rates filed by Class A utilities pursuant to TWC §13.187.
 - (1) Not later than the 30th day after the effective date of the change, the commission shall begin a hearing to determine the propriety of the change.
 - (2) The matter may be referred to the State Office of Administrative Hearings and the referral shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

- (3) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.
- (c) **Proceedings pursuant to TWC §13.1871.** The following criteria apply to applications to change rates filed by a Class B utility or a Class C utility pursuant to TWC §13.1871.
- (1) The commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.
- (2) The commission shall set the matter for a hearing if it receives a complaint from any affected municipality or protests from the lesser of 1,000 or 10 percent of the affected ratepayers of the utility over whose rates the commission has original jurisdiction, during the first 90 days after the effective date of the proposed rate change.
- (A) Ratepayers may file individual protests or joint protests. Each protest must contain the following information:
- (i) a clear and concise statement that the ratepayer is protesting a specific rate action of the water or sewer service utility in question; and
- (ii) the name and service address or other identifying information of each signatory ratepayer. The protest shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer.
- (B) For the purposes of this subsection, 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 protest is properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

- (3) Referral to SOAH at any time during the pendency of the proceeding is deemed to be setting the matter for hearing as required by paragraphs (1) and (2) of this subsection.
 - (4) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing required by paragraph (2) of this subsection.
- (d) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of the law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.
- (e) The utility may begin charging the proposed rates on the proposed effective date, unless the proposed rate change is suspended by the commission pursuant to §24.33 of this title (relating to Suspension of the Effective Date of Rates) or interim rates are set by the presiding officer pursuant to §24.37 of this title (relating to Interim Rates). Rates charged under a proposed rate during the pendency of a proceeding are subject to refund to the extent the commission ultimately approves rates that are lower than the proposed rates.

§24.37. Interim Rates.

- (a) The commission may, on a motion by the commission staff or by the appellant under TWC, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made.
- (b) At any time after the filing of a statement of intent to change rates under Chapter 13 of the TWC the commission staff may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.
- (c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.
- (d) Interim rates may be established by the commission in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.
- (e) In making a determination under subsection (d) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:
 - (1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;
 - (2) deny interim rate relief; and

- (3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with §24.39 of this title (relating to Escrow of Proceeds Received under Rate Increase).
- (f) The commission may also remand the request for interim rates to the State Office of Administrative Hearings for an evidentiary hearing on interim rates. The presiding officer shall issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.
- (g) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.
- (h) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.
- (i) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.
- (j) The retail public utility shall provide a notice to its customers including the interim rates set by the commission or presiding officer with the first billing at the interim rates with the following wording: “The commission (or presiding officer) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established.”

§24.39. Escrow of Proceeds Received under Rate Increase.

- (a) Rates received during the pendency of a rate proceeding.
 - (1) During the pendency of its rate proceeding, a utility may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.
 - (2) The utility shall file a completed escrow agreement between the utility and the financial institution with the commission for review and approval.
 - (3) If necessary to meet the utility's current operating expenses, or for other good cause shown, the commission may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.
 - (4) The commission, except for good cause shown, shall give all parties-of-record at least 10 days notice of an intent to release funds from an escrow account. Any party may file a motion with the commission objecting to the release of escrow funds or to establish different terms and conditions for the release of escrowed funds.
 - (5) Upon the commission's establishment of final rates, all funds remaining in the escrow account shall be released to the utility or ratepayers in accordance with the terms of the commission's order.
- (b) Surcharge revenues granted by commission order at the conclusion of a rate proceeding.
 - (1) A utility may be required to deposit all or part of surcharge funds authorized by the commission into an interest-bearing escrow account with a federally insured

financial institution, under such terms and conditions as determined by the commission.

- (2) Prior to collecting any surcharge revenues that are required to be escrowed, the utility shall submit for commission approval the completed escrow agreement between the utility and the financial institution. If the utility fails to promptly remedy any deficiencies in the agreement noted by the commission, the commission may suspend the collection of surcharge revenues until the agreement is properly amended.
- (3) In order to allow the utility to complete the improvements for which surcharge funds were granted, the commission may authorize the release of funds to the utility from the escrow account after receiving a written request including appropriate documentation.

§24.41. Cost of Service.

- (a) **Components of cost of service.** Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.
- (b) **Allowable expenses.** Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's test year expenses as adjusted for known and measurable changes may be considered. A change in rates must be based on a test year as defined in §24.3(72) of this title (relating to Definitions of Terms).

- (1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:
 - (A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in TWC §13.185(e));
 - (B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service. On all applications, the depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The depreciation rate and expense must be calculated on a straight line basis over the expected or remaining life of the asset. Utilities must calculate depreciation on a straight line basis, but are not required to use the remaining life method if salvage value is zero. When submitting an application that includes

salvage value in depreciation calculations, the utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. Such evidence will be included for the asset group in depreciation studies for those utilities practicing group accounting while such evidence will relate to specific assets for those utilities practicing itemized accounting;

- (C) assessments and taxes other than income taxes;
- (D) federal income taxes on a normalized basis (federal income taxes must be computed according to the provisions of TWC §13.185(f), if applicable);
- (E) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership; and
- (F) advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the water or wastewater utility for services rendered to the public. The following expenses are the only expenses that shall be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:
 - (i) funds expended advertising methods of conserving water;
 - (ii) funds expended advertising methods by which the consumer can effect a savings in total water or wastewater utility bills; and
 - (iii) funds expended advertising water quality protection.

- (2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:
- (A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;
 - (B) funds expended in support of political candidates;
 - (C) funds expended in support of any political movement;
 - (D) funds expended in promotion of political or religious causes;
 - (E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;
 - (F) funds promoting increased consumption of water;
 - (G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;
 - (H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission;
 - (I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and
 - (J) the costs of purchasing groundwater from any source if:

- (i) the source of the groundwater is located in a priority groundwater management area; and
 - (ii) a wholesale supply of surface water is available.
- (c) **Return on invested capital.** The return on invested capital is the rate of return times invested capital.
 - (1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.
 - (A) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.
 - (B) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.
 - (i) Debt capital. The cost of debt capital is the actual cost of debt.

- (ii) Equity capital. The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.
 - (I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.
 - (II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.
- (2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:
 - (A) Original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service;
 - (B) Original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility; and
 - (i) For original cost under this subparagraph or subparagraph (A) of this paragraph, cost of plant and equipment allowed in the cost of service that has been estimated by trending studies or other means, which has no historical records for verification purposes, may receive an adjustment to rate base and/or an adjustment to the rate of return on equity.

- (ii) Original cost in this subparagraph or subparagraph (A) of this paragraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system. On all assets retired from service after June 19, 2009, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation(s) in its net plant calculation(s) in the first full rate change application (excluding alternative rate method applications as described in §24.75 of this title (relating to Alternative Rate Methods)) it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset shall be combined with over accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount shall be amortized over a reasonable period of time taking into account prudent

regulatory principles. The following list shall govern the manner by which depreciation will be accounted for.

- (I) Accelerated depreciation is not allowed.
- (II) For those utilities that elect a group accounting approach, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:
 - (-a-) investment by homogenous category;
 - (-b-) expected level of gross salvage by category;
 - (-c-) expected cost of removal by category;
 - (-d-) the accumulated provision for depreciation as appropriately reflected on the company's books by category;
 - (-e-) the average service life by category;
 - (-f-) the remaining life by category;
 - (-g-) the Iowa Dispersion Pattern by category; and
 - (-h-) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

- (iii) Reserve for depreciation under this subparagraph or subparagraph (A) of this paragraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. If individual accounting is used, a utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation shall include any additional depreciation expense accrued past the estimated useful or remaining life of the asset. If salvage value is zero, depreciation must be computed on a straight line basis over the expected useful life or remaining life of the item or facility. If salvage value is not zero, depreciation must also be computed on a straight line basis over the expected useful life or the remaining life. For an asset removed from service after June 19, 2009, accumulated depreciation will be calculated on book cost less net salvage of the asset. The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered. Return may be allowed for assets removed from service after June 19, 2009, that result in an increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially

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

- accounting, while retired assets will be specifically identified for those utilities practicing itemized accounting;
- (iv) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC §13.185(e);
 - (v) utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and
- (C) Working capital allowance to be composed of, but not limited to the following:
- (i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service. This amount excludes inventories found by the commission to be unreasonable, excessive, or not in the public interest;
 - (ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests are subject to the standards set forth in TWC §13.185(e); and
 - (iii) a reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:
 - (I) Cash working capital for water and wastewater utilities shall in no event be greater than one-eighth of total annual

operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

- (II) For Class C utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or through charges other than base rate and gallonage charges, prepayments will be considered a reasonable allowance for cash working capital.
- (III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.
- (IV) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:
 - (-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to

depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long-term debt and dividends on preferred stock), will not be considered.

- (-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.
- (-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the water or wastewater utility.
- (-d-) All funds received by the water or wastewater utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the water or wastewater utility (e.g., lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

- (-e-) For water and wastewater utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all noninterest bearing demand deposits and working cash funds.
- (-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the mid-point of the annual service period and the actual payment date of the water or wastewater utility.
- (-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.
- (V) If cash working capital is required to be determined by the use of a lead-lag study under subclause (VI) of this clause and either the water or wastewater utility does not file a lead-lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, zero will be presumed to be the reasonable level of cash working capital.
- (VI) A lead lag study completed within five years of the application for rate/tariff change shall be deemed adequate

for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

(VII) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(3) **Deduction of certain items from rate base, which include, but are not limited to, the following.** Unless otherwise determined by the commission, for good cause shown, the following items will be deducted from the overall rate base in the consideration of applications filed pursuant to TWC §13.187 or §13.1871:

- (A) accumulated reserve for deferred federal income taxes;
- (B) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;
- (C) contingency and/or property insurance reserves;
- (D) contributions in aid of construction; and
- (E) other sources of cost-free capital, as determined by the commission.

(4) **Construction work in progress (CWIP).** The inclusion of construction work in progress is an exceptional form of relief. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

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

- (B) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.
- (5) **Requirements for post-test year adjustments.**
- (A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:
- (i) the addition represents a plant which would appropriately be recorded for investor-owned water or wastewater utilities in NARUC account 101 or 102;
 - (ii) the addition comprises at least 10% of the water or wastewater utility's requested rate base, exclusive of post-test year adjustments and CWIP;
 - (iii) the addition is in service before the rate year begins; and
 - (iv) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.
- (B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility or the

reasonable price, if the addition represents a purchase, is subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

(I) plant which was appropriately recorded in the accounts set forth in subparagraph (A) of this paragraph;

(II) plant held for future use;

(III) CWIP (mirror CWIP is not considered CWIP); or

(IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents a plant that has been removed from service, sold, or removed from the water or wastewater utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) **Recovery of positive acquisition adjustments.**

(1) For utility plant, property, and equipment acquired by a utility from another retail public utility as a sale, merger, etc. of utility service area for which an application for approval of sale has been filed with the commission on or after September 1,

1997, and that sale application closed thereafter, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

- (A) the property is used and useful in providing water or sewer service at the time of the acquisition or as a result of the acquisition;
- (B) reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;
- (C) as a result of the sale, merger, etc.:
 - (i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;
 - (ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service) was achieved; or
 - (iii) the acquiring system will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;
- (D) any and all transactions between the buyer and the seller entered into as a part or condition of the sale are fully disclosed to the commission and were conducted at arm's length;

- (E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired;
 - (F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997 and February 4, 1999 is exempt from the requirement for commission notification at the time of the approval of the initial sale, but must provide such notification by April 5, 1999; and
 - (G) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.
- (2) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

- (3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.
 - (4) The acquisition adjustment can only be included in rates as a part of a rate change application.
- (e) **Negative acquisition adjustment.** When a retail public utility acquires plant, property, or equipment pursuant to §24.239 of this chapter (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and the original cost of the acquired property less depreciation exceeds the actual purchase price, the utility shall record the negative acquisition adjustment separately from the original cost of the acquired property. For purposes of ratemaking, the following shall apply:
- (1) If a utility acquires plant, property, or equipment from a nonfunctioning retail public utility through a sale, transfer, or merger, receivership, or the utility is acting as a temporary manager, a negative acquisition adjustment shall be recorded and amortized on the utility's books with no effect on the utility's rates.
 - (2) If a utility acquires plant, property, or equipment from a retail public utility through a sale, transfer, or merger and paragraph (1) of this subsection does not apply, the commission may, at its sole discretion, recognize the negative acquisition adjustment in the ratemaking proceeding, by amortizing the negative acquisition adjustment through a bill credit for a defined period of time or by other means determined appropriate by the commission. Except for good cause found by the commission, the negative acquisition adjustment shall not be used to reduce the balance of invested capital.

- (3) Notwithstanding paragraph (2) of this subsection, the acquiring utility may show cause as to why the commission should not account for the negative acquisition adjustment in the ratemaking proceeding.
- (f) Intangible assets shall not be allowed in rate base unless:
- (1) The amount requested has been verified by documentation as to amount and exact nature;
 - (2) Testimony has been submitted as to reasonableness and necessity and benefit of the expense to the customers; and
 - (3) The testimony must further show how the amount is properly considered as part of an actual asset purchased or installed, or a source of supply, such as water rights.
 - (4) If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount shall be amortized over a reasonable period and the amortization shall be allowed in the cost of service. The amount shall be considered a non-recurring expense. Unamortized amounts shall not be included in rate base for purposes of calculating return on equity.

§24.43. Rate Design.

- (a) **General.** In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above

its reasonable and necessary operating expenses (unless an alternative rate method is used as set forth in §24.75 of this title (relating to Alternative Rate Methods), and preserve the financial integrity of the utility.

(b) **Conservation.**

(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage within any customer class.

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the TCEQ's minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A) to reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's approved drought contingency plan required by 30 TAC §288.20 (TCEQ rules relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers) included in its tariff in order to:

(i) comply with mandatory reductions directed by a wholesale supplier or underground water district; or

- (ii) conserve water supplies, maintain acceptable pressure or storage, or other reasons identified in its approved drought contingency plan;
 - (B) to generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production, or distribution capacity.
- (3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:
 - (A) must be accounted for separately and reported to the commission, as requested; and
 - (B) are considered customer contributed capital unless otherwise specified in a commission order.
- (c) **Volume charges.** Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

§24.44. Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871.

- (a) A utility may recover rate-case expenses, including attorney fees, incurred as a result of filing a rate-change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are just, reasonable, necessary, and in the public interest.

- (b) A utility may not recover any rate-case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.
- (c) A utility may not recover any rate-case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.
- (d) Unamortized rate-case expenses may not be a component of invested capital for calculation of rate-of-return purposes.

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

- (a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:
 - (1) is failing to conduct annual or special meetings in compliance with TWC, §67.007; or

- (2) is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation prescribed by TWC, §13.002(11) and (24).
- (b) The commission's jurisdiction provided by this section ends if:
- (1) the water supply or sewer service corporation voluntarily converts to a special utility district operating under TWC, Chapter 65;
 - (2) the time period specified in the commission order expires; or
 - (3) the water supply or sewer service corporation demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC, §67.007 and has operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).

§24.49. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.

- (a) **Purpose.** This section establishes procedures for a Class C utility to apply for an adjustment to its water or wastewater rates pursuant to TWC §13.1872.
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:
 - (1) **Application** -- an application for a rate adjustment filed pursuant to this section and TWC §13.1872.

- (2) **Price index** -- a price index established annually by the commission for the purposes of this section.
- (c) **Requirements for filing of the application.** Subject to the limitations set out in subsection (f) of this section, a Class C utility may file an application with the commission.
- (1) The utility may request to increase its tariffed monthly fixed customer or meter charges and monthly gallonage charges by the lesser of:
- (A) five percent; or
- (B) the percentage increase in the price index between the year preceding the year in which the utility requests the adjustment and the year in which the utility requests the adjustment.
- (2) The application shall be on the commission's form and shall include:
- (A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and
- (B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.
- (d) **Processing of the application.** The following criteria apply to the processing of an application.
- (1) **Determining whether the application is administratively complete.**
- (A) If commission staff requires additional information in order to process the application, commission staff shall file a notification to the utility within

10 days of the filing of the application requesting any necessary information.

(B) An application may not be deemed administratively complete pursuant to §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under subparagraph (A) of this paragraph.

(2) Within 30 days of the filing of the application, Staff shall file a recommendation stating whether the application should be deemed administratively complete pursuant to §24.8 of this title. If Staff recommends that the application should be deemed to be administratively complete, Staff shall also file a recommendation on final disposition, including, if necessary, proposed tariff sheets reflecting the requested rate change.

(e) **Notice of Approved Rates.** After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility shall send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:

(1) a statement that the utility requested a rate adjustment based on the commission's approved price index and must state the percentage change in the price index during the previous year;

- (2) the existing rate;
 - (3) the approved rate; and
 - (4) a statement that the rate adjustment was requested pursuant to TWC §13.1872 and that a hearing will not be held for the request.
- (f) **Time between filings.** The following criteria apply to the timing of the filing of an application.
- (1) A Class C utility may adjust its rates pursuant to this section not more than once each calendar year and not more than four times between rate proceedings described by TWC §13.1871.
 - (2) Effective January 1, 2016, the filing of applications pursuant to this section is limited to a specific month based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below unless good cause is shown for filing in a different month. For a utility holding multiple CCNs, the utility may file an application in any month for which any of its CCN numbers is eligible.
 - (A) January: CCNs ending in 00 through 09;
 - (B) February: CCNs ending in 10 through 18;
 - (C) March: CCNs ending in 19 through 27;
 - (D) April: CCNs ending in 28 through 36;
 - (E) May: CCNs ending in 37 through 45.
 - (F) June: CCNs ending in 46 through 54;
 - (G) July: CCNs ending in 55 through 63;
 - (H) August: CCNs ending in 64 through 72;

- (I) September: CCNs ending in 73 through 81;
 - (J) October: CCNs ending in 82 through 90; and
 - (K) November: CCNs ending in 91 through 99.
- (g) **Establishing the price index.** The commission shall, on or before December 1 of each year, establish a price index as required by TWC §13.1872(b) based on the following criteria. The price index will be established in an informal project to be initiated by commission staff.
- (1) The price index shall be equal to Gross Domestic Product Implicit Price Deflator index published by the Bureau of Economic Analysis of the United States Department of Commerce for the prior 12 months ending on September 30 unless the commission finds that good cause exists to establish a different price index for that year.
 - (2) For calendar year 2015, until the commission adopts its first order establishing a price index pursuant to this subsection, applications for an annual rate adjustment will use a price index percentage difference of 1.57%. The percentage difference of 1.57% is calculated using indices set in paragraph (3) of this subsection.
 - (3) For the purpose of implementing this section, the initial indices are equal to:
 - (A) 106.923 for 2014; and
 - (B) 108.603 for 2015.

Subchapter C: Alternative Rate Methods

§24.75. Alternative Rate Methods.

- (a) **Alternative rate methods.** To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The commission may prescribe modified rate filing packages for these alternate methods of establishing rates.
- (b) **Phased and multi-step rate changes.** In a rate proceeding under TWC §13.187 or §13.1871, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.
- (1) A utility may request to use the phased or multi-step rate method:
- (A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with TCEQ or commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;
 - (B) to provide additional construction funds after major milestones are met;
 - (C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;
 - (D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;
 - (E) to phase in increased rates when a utility has been acquired by another utility with higher rates;

- (F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or
 - (G) when requested by the utility.
- (2) Construction schedules and cost estimates for new facilities that are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.
- (3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.
- (4) At the time each rate step is implemented, the utility shall review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the commission prior to implementing the next phase or step. Unless otherwise specified in a commission order, the utility may:
- (A) refund or credit the overage to the customers in a lump sum; or
 - (B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.
- (5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the commission 30 days prior to the implementation of each step.

- (6) A utility that requests and receives a phased or multi-step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:
- (A) the utility can prove financial hardship; or
 - (B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.
- (c) **Cash needs method.** The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.
- (1) A utility may request to use the cash needs method of setting rates if:
- (A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or
 - (B) the utility can demonstrate that use of the cash needs basis:
 - (i) is necessary to preserve the financial integrity of the utility;
 - (ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and
 - (iii) will result in higher quality and more reliable utility service for customers.
- (2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements, and extensions that are not debt-financed; and a reasonable cash reserve account.

- (A) **Allowable operating and maintenance expenses.** Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.
- (B) **Depreciation expense.** Depreciation expense may be included on any used and useful depreciable plant, property, or equipment that was paid for by the utility and that has a positive net book value on the effective date of the rate change in the same manner as described in §24.41(b)(1)(B) of this title (relating to Cost of Service).
- (C) **Debt service costs.** Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:
- (i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed; and

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

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

(E) **Cash reserve account.** A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the commission. The utility shall account for these funds separately and report to the commission. Unless the utility requests an exception in writing and the exception is explicitly allowed by the commission in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that explains the method used to calculate the amounts to be refunded. Each customer must receive the same refund amount. These reserves are not for the personal use of the

management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the commission.

- (3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)(E) of this subsection and are subject to the same restrictions.
- (4) If the utility demonstrates to the commission that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the commission may allow the utility to retain 50% of the savings that result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.
- (5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover through rates, the depreciation expense for capital assets that were not paid for by customers as a result of including debt service costs in rates. The net

book value of these assets may be recovered over the remaining useful life of the asset.

Subchapter D: Rate-Making Appeals

§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 TWC §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the

governing body whose decision is being appealed if it is not the entity providing service.

The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water 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;

(A) A municipally owned utility shall:

(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 Ann. §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 shall inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code Ann. §182.052 in any notice provided under the requirement of Tex. Water Code Ann §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) shall 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.
- (4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users;
- (5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and
- (6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the commission.
- (d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of

the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

- (e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:
- (1) in an appeal under the TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;
 - (2) in an appeal under the TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;
 - (3) establish the effective date;
 - (4) order refunds or allow surcharges to recover lost revenues;
 - (5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or
 - (6) establish interim rates to be in effect until a final decision is made.
- (f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

- (g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.
- (1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any 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 shall 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 shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

- (3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.
- (h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.
- (i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.
- (j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission shall approve the water supply corporation's water conservation penalty if:
- (1) the penalty is clearly stated in the tariff;
 - (2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

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

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

- (a) Petitions for review of rate actions filed pursuant to the TWC, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:
 - (1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;
 - (2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;
 - (3) the effective date of the decision being appealed;
 - (4) the basis of the request for review of rates; and
 - (5) any other information the commission may require.
- (b) A petition must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.

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

§24.105. Refunds During Pendency of Appeal.

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

§24.107. Seeking Review of Rates for Sales of Water Under the Texas Water Code §12.013.

- (a) Ratepayers seeking commission action under TWC §12.013 should include in a written petition to the commission, the following information:
- (1) the petitioner's name;
 - (2) the name of the water supplier from which water supply service is received or sought;
 - (3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to receive or use the water;
 - (4) that the petitioner is willing and able to pay a just and reasonable price for the water;
 - (5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
 - (6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

- (b) Water suppliers seeking commission action under TWC §12.013 should include in a written petition for relief to the commission, the following information:
- (1) petitioner's name;
 - (2) the name of the ratepayers to whom water supply service is rendered;
 - (3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;
 - (4) that the petitioner is willing and able to supply water at a just and reasonable price; and
 - (5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

Subchapter E: Records and Reports

§24.125. General Reports.

- (a) **Who shall file.** The recordkeeping, reporting, and filing requirements listed in this section shall apply only to water and sewer utilities, unless otherwise noted in this subchapter.
- (b) **Report attestation.** All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

- (c) **Due dates of reports.** All reports must be received by the commission on or before the dates specified.
- (d) **Information omitted from reports.** The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.
- (e) **Special and additional reports.** Each utility shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.
- (f) **Report amendments.** Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.
- (g) **Penalty for refusal to file on time.** In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

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

Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by

these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

- (1) **System of accounts.** For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:
 - (A) Class A Utility, as defined by §24.3(15) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the (NARUC) for a utility classified as a NARUC Class A utility.
 - (B) Class B Utility, as defined by §24.3(16) of this title; the uniform system of accounts as adopted and amended by NARUC for a utility classified as a NARUC Class B utility.
 - (C) Class C Utility, as defined by §24.3(17) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.
- (2) **Accounting period.** Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

§24.129. Water and Sewer Utilities Annual Reports.

- (a) Each utility, except a utility operated by an affected county, shall file a service, financial, and normalized earnings report by June 1 of each year.

- (b) Contents of report. The annual report shall disclose the information required on the forms approved by the commission and may include any additional information required by the commission.
- (c) A Class C utility's normalized earnings shall be equal to its actual earnings during the reporting period for the purposes of compliance with TWC §13.136.

§24.131. Maintenance and Location of Records.

Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located in the immediate area served. These records shall be available for examination by the commission or its authorized representative between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, except holidays. The commission may consider alternate hours of inspection if the utility provides a written request 72 hours in advance of any scheduled inspection.

§24.133. Management Audits.

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

the implementation of the recommendations of the audit and shall file subsequent reports at the times the commission considers appropriate.

§24.135. Regulatory Assessment.

- (a) For the purpose of this section, utility service provider means a public utility, water supply or sewer service corporation as defined in the TWC, §13.002, or a district as defined in the TWC, §49.001.
- (b) Except as otherwise provided, a utility service provider which provides potable water or sewer utility service shall collect a regulatory assessment from each retail customer, as required by TWC, §5.701(n), and remit such fee to the TCEQ.
- (c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.
- (d) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.
- (e) The utility service provider shall be responsible for keeping proper records of the annual charges and assessment collections for retail water and sewer service and provide such records to the commission upon request.

Subchapter F: Customer Service and Protection**§24.151. Applicability.**

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

§24.153. Customer Relations.**(a) Information to customers.**

- (1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §24.161 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area).
- (2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant’s or customer’s right to get a second customer service inspection performed by a qualified inspector at their expense and their right to use the least expensive backflow prevention assembly acceptable under 30 TAC §290.44(h) (relating to Water Distribution) if such is required. The utility shall

ensure that the customer or service applicant receives a copy of the completed and signed customer service inspection form and information related to thermal expansion problems that may be created if a backflow prevention assembly or device is installed.

- (3) Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff must be available at its local office for review by a customer or service applicant upon request.
- (4) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) must be labeled to indicate the size, design capacity, and any pertinent information that will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and must be available for commission inspection during normal working hours.
- (5) Each utility shall maintain a current copy of the commission's substantive rules of this chapter at each office location and make them available for customer inspection during normal working hours.
- (6) Each water utility shall maintain a current copy of 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems), at each office location and make them available for customer inspection during normal working hours.

- (b) **Customer complaints.** Customer complaints are also addressed in §24.155 of this title (relating to Resolution of Disputes).
- (1) Upon receipt of a complaint from a customer or service applicant, either in person, by letter or by telephone, the utility shall promptly conduct an investigation and report its finding(s) to the complainant.
 - (2) In the event the complainant is dissatisfied with the utility's report, the utility shall advise the complainant of recourse through the Public Utility Commission of Texas complaint process. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.
 - (3) Each utility shall make an initial response to the commission within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant. The commission may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission may require continuation or restoration of service.
 - (4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint must include the name and address of the complainant, the date the complaint was received by the utility, a description of the nature of the complaint, and the adjustment or disposition of the complaint.
- (c) **Telephone number.** For each of the systems it operates, the utility shall maintain and note on the customer's monthly bill either a local or toll free telephone number (or numbers) to which a customer can direct questions about their utility service.

(d) **Local office.**

- (1) Unless otherwise authorized by the commission in response to a written request, each utility shall have an office in the county or immediate area (within 20 miles) of a portion of its utility service area in which it keeps all books, records, tariffs, and memoranda required by the commission.
- (2) Unless otherwise authorized by the commission in response to a written request, each utility shall make available and notify customers of a business location where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in §24.167 of this title (relating to Discontinuance of Service). The business location must be located:
 - (A) in each county where utility service is provided; or
 - (B) not more than 20 miles from any residential customer if there is no location to receive payments in that county.
- (3) Upon request by the utility, the requirement for a local office may be waived by the commission if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers. Unless otherwise authorized by the commission in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §24.167 of this title.

§24.155. Resolution of Disputes.

- (a) Any customer or service applicant requesting the opportunity to dispute any action or determination of a utility under the utility's customer service rules shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer will not allow an inspection or chooses not to participate in such review or not to make arrangements for such review to take place within five working days after requesting it, the utility may disconnect service for the reasons listed in §24.167 of this title (relating to Discontinuance of Service), provided notice has been given in accordance with that section.
- (b) In regards to a customer complaint arising out of a charge made by a public utility, if the commission finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 working days of receiving the order is a violation for which the commission may impose an administrative penalty under TWC, §13.4151.

§24.157. Refusal of Service.

- (a) **Grounds for refusal to serve.** A utility may decline to serve a service applicant for the following reasons:
- (1) the service applicant is not in compliance with state or municipal regulations applicable to the type of service requested;
 - (2) the service applicant is not in compliance with the rules and regulations of the utility governing the type of service requested which are in its approved tariff on file with the commission;
 - (3) the service applicant is indebted to any utility for the same type of service as that requested. However, in the event the indebtedness of the service applicant is in dispute, the service applicant shall be served upon complying with the deposit requirements in §24.159 of this title (relating to the Service Applicant and Customer Deposit) and upon a demonstration that the service applicant has complied with all of the provisions of §24.165(l) of this title (relating to Billing);
 - (4) the service applicant's primary point of use is outside the certificated area;
 - (5) standby fees authorized under §24.165(p) of this title have not been paid for the specific property or lot on which service is being requested; or
 - (6) the utility is prohibited from providing service under Vernon's Texas Civil Statutes, Local Government Code, §212.012 or §232.029.
- (b) **Service Applicant's recourse.** In the event the utility refuses to serve a service applicant under the provisions of these sections, the utility shall inform the service applicant in

writing of the basis of its refusal and that the service applicant may file a complaint with the commission thereon.

(c) **Insufficient grounds for refusal to serve.** The following shall not constitute sufficient cause for refusal of service to a present customer or service applicant:

- (1) delinquency in payment for service by a previous occupant of the premises to be served;
- (2) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;
- (3) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;
- (4) failure to pay the bill of another customer at the same address except where a change of customer identity is made to avoid or evade payment of a utility bill;
- (5) failure to pay for the restoration of a tap removed by the utility at its option or removed as the result of tampering or delinquency in payment by a previous customer;
- (6) the service applicant or customer chooses to use a type of backflow prevention assembly approved under 30 TAC §290.44(h) (relating to Water Distribution) even if the assembly is not the one preferred by the utility; or
- (7) failure to comply with regulations or rules for anything other than the type of utility service specifically requested including failure to comply with septic tank regulations or sewer hook-up requirements.

§24.159. Service Applicant and Customer Deposit.

- (a) **Deposit on Tariff.** Deposits may only be charged if listed on the utility's approved tariff.
- (1) Residential service applicants. If a residential service applicant does not establish credit to the satisfaction of the utility, the residential service applicant may be required to pay a deposit that does not exceed \$50 for water service and \$50 for sewer service.
 - (2) Commercial and Nonresidential service applicants. If a commercial or nonresidential service applicant does not establish credit to the satisfaction of the utility, the service applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings.
 - (3) Commercial and Nonresidential Customers. If actual monthly billings of a commercial or nonresidential customer are more than twice the amount of the estimated billings at the time service was established, a new deposit amount may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.
- (b) **Customers not disconnected.** Current customers who have not been disconnected for nonpayment or other similar reasons in §24.167 of this title (relating to Discontinuance of Service) shall not be required to pay a deposit.

- (c) **Applicants 65 years of age or older.** No deposit may be required of a residential service applicant who is 65 years of age or older if the applicant does not have a delinquent account balance with the utility or another water or sewer utility.
- (d) **Interest on deposits.** Each utility shall pay a minimum interest on all customer deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission of Texas in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be made annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the appropriate interest rate to be paid each year a deposit is held may be directed to the commission
- (e) **Landlords/tenants.** In cases of landlord/tenant relationships, the utility may require both parties to sign an agreement specifying which party is responsible for bills and deposits. This agreement may be included as a provision of the utility's approved service application form. The utility shall not require the landlord to guarantee the tenant's customer deposit or monthly service bill as a condition of service. The utility may require the landlord to guarantee the payment of service extension fees under the utility's approved tariff if these facilities will remain in public service after the tenant vacates the leased premises. If the landlord signs a guarantee of payment for deposits or monthly service bills, the guarantee shall remain in full force and effect until the guarantee is withdrawn in writing and copies are provided to both the utility and the tenant.
- (f) **Reestablishment of credit or deposit.** Every service applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter or failure to comply with applicable state and

municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and may be required to pay a deposit if the utility does not currently have a deposit from the customer. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(g) **Records of deposits.**

- (1) The utility shall keep records to show:
 - (A) the name and address of each depositor;
 - (B) the amount and date of the deposit;
 - (C) each transaction concerning the deposit; and
 - (D) the amount of interest earned on customer deposit funds.
- (2) The utility shall issue a receipt of deposit to each service applicant or customer from whom a deposit is received.
- (3) A record of each unclaimed deposit shall be maintained for at least seven years, during which time the utility shall make a reasonable effort to return the deposit or may transfer the unclaimed deposit to the [Texas Comptroller of Public Accounts](#). If not already transferred, after seven years, unclaimed deposits shall be transferred to the [Texas Comptroller of Public Accounts](#).

(h) **Refund of deposit.**

- (1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the service applicant's or customer's deposit

plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The utility may refund deposits plus accumulated interest at any time prior to termination of utility service. The utility's policy for refunds to current customers must be consistent and nondiscriminatory.

- (2) When a residential customer has paid bills for service for 18 consecutive billings without being delinquent, the utility shall promptly refund the deposit with interest to the customer either by payment or credit to the customer's bill. Deposits from customers who do not meet this criteria may be retained until service is terminated.
- (i) **Transfer of service.** A transfer of service from one service location to another within the service area of the utility shall not be deemed a disconnection within the meaning of this section, and no additional deposit may be demanded unless permitted by this subchapter.

§24.161. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area.

- (a) Except as provided for in subsection (e) of this section, every retail public utility shall serve each qualified service applicant within its certificated area as soon as is practical after receiving a completed application. A qualified service applicant is an applicant who has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any service connection inspection certificates required by law.

- (1) Where a new service tap is required, the retail public utility may require that the property owner make the request for the tap to be installed.
 - (2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service.
 - (3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within one working day after the applicant has submitted a completed application for service and met any other requirements in the utility's approved tariff.
 - (4) A request for service that requires a tap but does not require line extensions, construction, or new facilities shall be filled within five working days after a completed service application has been accepted.
 - (5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.
- (b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.
- (c) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing

upon assessment of the costs of necessary line work, but before construction begins.

Also see §24.153 (a)(1) of this title (relating to Customer Relations).

(d) Easements.

(1) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the public utility which will provide a reasonable right of access and use to allow the public utility to construct, install, maintain, inspect and test water and/or sewer facilities necessary to serve that applicant.

(2) As a condition of service to a new subdivision, public utilities may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water and/or sewer facilities necessary to serve the subdivision's anticipated service demands upon full occupancy.

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

(e) Service Extensions by a Water Supply or Sewer Service Corporation or Special Utility District.

(1) A water supply or sewer service corporation or a special utility district organized under Chapter 65 of the code is not required to extend retail water or sewer utility service to a service applicant in a subdivision within its certificated area if it documents that:

- (A) the developer of the subdivision has failed to comply with the subdivision service extension policy as set forth in the tariff of the corporation or the policies of the special utility district; and
 - (B) the service applicant purchased the property after the corporation or special utility district gave notice of its rules which are applicable to service to subdivisions in accordance with the notice requirements in this subsection.
- (2) Publication of notice, in substantial compliance with the form notice in Appendix A, in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this subsection. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated:

Appendix A

**NOTICE OF REQUIREMENT TO COMPLY WITH THE
SUBDIVISION SERVICE EXTENSION POLICY OF {name
of water supply corporation/special utility district}**

Pursuant to Texas Water Code, §13.2502, _____
Water Supply Corporation/Special Utility District hereby gives
notice that any person who subdivides land by dividing any lot,
tract, or parcel of land, within the service area of
_____ Water Supply Corporation/Special Utility
District, Certificate of Convenience and Necessity No.
_____, in _____ County, into two or
more lots or sites for the purpose of sale or development, whether
immediate or future, including re-subdivision of land for which a
plat has been filed and recorded or requests more than two water or
sewer service connections on a single contiguous tract of land must
comply with {title of subdivision service extension policy stated in
the tariff/policy} (the “Subdivision Policy”) contained in
_____ Water Supply Corporation’s
tariff/Special Utility District’s policy.

_____ Water Supply Corporation/Special Utility
District is not required to extend retail water or sewer utility
service to a service applicant in a subdivision where the developer
of the subdivision has failed to comply with the Subdivision
Policy.

Applicable elements of the Subdivision Policy include:

Evaluation by _____ Water Supply Corporation/Special Utility District of the impact a proposed subdivision service extension will make on _____ Water Supply Corporation's/ Special Utility District's water supply/sewer service system and payment of the costs for this evaluation;

Payment of reasonable costs or fees by the developer for providing water supply/sewer service capacity;

Payment of fees for reserving water supply/sewer service capacity;

Forfeiture of reserved water supply/sewer service capacity for failure to pay applicable fees;

Payment of costs of any improvements to _____ Water Supply Corporation's/Special Utility District's system that are necessary to provide the water/sewer service;

Construction according to design approved by _____ Water Supply Corporation/Special Utility District and dedication by the developer of water/sewer facilities within the subdivision following inspection.

_____ Water Supply Corporation's/Special Utility District's tariff and a map showing _____ Water Supply Corporation's/Special Utility District's service area may be reviewed at _____ Water Supply Corporation's/ Special Utility District's offices, at {address of the

water supply corporation/special utility district}; the tariff/policy and service area map also are filed of record at the Public Utility Commission of Texas.

- (3) As an alternative to publication of notice, a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified of the requirement to comply with the subdivision service extension policy, including:
 - (A) an agreement executed by the developer;
 - (B) correspondence with the developer that sets forth the subdivision service extension policy; or
 - (C) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.
- (4) For purposes of this subsection:
 - (A) “Developer” means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.
 - (B) “Service applicant” means a person, other than a developer, who applies for water or sewer utility service.

§24.163. Service Connections.**(a) Water Service Connections.**

- (1) Tap Fees. The fees for initiation of service, where no service previously existed, shall be in accordance with the following:
 - (A) The fee charged by a utility for connecting a residential service applicant's premises to the system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.
 - (B) Whether listed on the utility's approved tariff or not, the tap fee charged for all service connections requiring meters larger than 3/4 inch shall be limited to the actual cost of materials, labor and administrative costs for making the individual service connection and road construction or impact fees charged by authorities with control of road use and a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.
 - (C) An additional fee may be charged to a residential service applicant, if stated on the approved tariff, for a tap expense not normally incurred; for

example, a road bore for customers outside of subdivisions or residential areas.

(2) Installation and Service Connection.

- (A) The utility shall furnish and install, for the purpose of connecting its distribution system to the service applicant's property, the service pipe from its main to the meter location on the service applicant's property. See also paragraph (3) of this subsection. For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve on the customer's property as near the property line as possible. This does not relieve the utility of the obligation to comply with §24.169 of this title (relating to Meters).
- (B) The service applicant shall be responsible for furnishing and laying the necessary service line from the meter to the place of consumption and shall keep the service line in good repair. For new taps or for new service at a location with an existing tap, service applicants may be required to install a customer owned cut-off valve on the customer's side of the meter or connection. Customers who have damaged the utility's cut-off valve or curb stop through unauthorized use or tampering may be required to install a customer owned cut-off valve on the customer's side of the meter or connection within a reasonable time frame of not less than 30 days if currently connected or prior to restoration of service if the customer has been lawfully disconnected under these rules. The customer's

responsibility shall begin at the discharge side of the meter or utility's cut-off valve if there are no meters. If the utility's meter or cut-off valve is not on the customer's property, the customer's responsibility will begin at the property line.

- (3) Location of meters. Meters shall be located on the customer's property, readily accessible for maintenance and reading and, so far as practicable, the meter shall be at a location mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from damage.
- (4) Relocation and conversion of meters. If an existing meter is moved to a location designated by the customer for the customer's convenience, the utility may not be responsible except for negligence. The customer may be charged the actual cost of relocating the meter. If the customer requests that an existing meter be replaced with a meter of another size or capacity, the customer may be charged the actual cost of converting the meter including enlarging the line from the main to the meter if necessary.

(b) **Sewer Service Connections.**

- (1) Tap Fees. The fees for initiation of sewer service, where no service previously existed, shall be in accordance with the following:
 - (A) The fee charged by a utility for connecting a residential service applicant's premises to the sewer system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such

service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

- (B) The fee charged for all commercial or nonstandard service connections shall be set at the actual cost of materials, labor and administrative costs for making the service connection and road construction or impact fees charged by authorities with control of road use and may include a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.
- (C) A fee in addition to the standard tap fee may be charged for a new residential service connection which requires expenses not normally incurred if clearly identified on the approved tariff; for example, a road bore for service applicants outside of subdivisions or residential areas.
- (D) Tap fees for sewer systems designed to receive effluent from a receiving tank located on the customer's property, whether fed by gravity or pressure into the utility's sewer main, may include charges to install a receiving tank and appurtenances on the customer's property and service line from the tank to the utility's main which meets the minimum standards set by the utility and authorized by the commission. The tank may include grinder pumps, etc. to pump the effluent into the utility's main. Ownership of and maintenance responsibilities for the receiving tank and appurtenances shall be specified in the utility's approved tariff.

- (2) Installation and Service Connections.
 - (A) The utility shall furnish and install, for the purpose of connecting its collection system to the service applicant's service line, the service pipe from its main to a point on the customer's property.
 - (B) The customer shall be responsible for furnishing and laying the necessary customer service line from the utility's line to the residence.
- (3) Maintenance by Customer.
 - (A) The customer service line and appurtenances installed by the customer shall be constructed in accordance with the laws and regulations of the State of Texas governing plumbing practices which must be at least as stringent and comprehensive as one of the following nationally recognized codes: the Southern Standard Plumbing Code, the Uniform Plumbing Code, and/or the National Standard Plumbing Code, or other standards as prescribed by the commission.
 - (B) It shall be the customer's responsibility to maintain the customer service line and any appurtenances which are the customer's responsibility in good operating condition, such as, clear of obstruction, defects, leaks or blockage. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line or failure to provide proper pretreatment, the utility may, with the written approval of the commission, require that the customer repair the line or eliminate the infiltration or inflow or take such actions necessary to correct the problem. If the customer fails to correct the problem within a reasonable time, the utility

may disconnect the service after notice as required under §24.167 of this title (relating to Discontinuance of Service). Less than ten days notice may be given if authorized by the commission

- (C) If the customer retains ownership of receiving tanks and appurtenances located on the customer's property under the utility's tariff, routine maintenance and repairs are the customer's responsibility. The utility may require in its approved tariff that parts and equipment meet the minimum standards set by the utility to ensure proper and efficient operation of the sewer system but cannot require that the customer purchase parts or repair service from the utility.

- (c) **Line extension and construction charges.** Each utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent and nondiscriminatory. No contribution in aid of construction may be required of any service applicant except as provided for in the approved extension policy.

- (1) Contributions in aid of construction shall not be required of individual residential service applicants for production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system, in which case, the customer may be charged the additional cost of extending service to and throughout his property, including the cost of all necessary collection or transmission facilities necessary to meet the service demands anticipated to be created by that property.
- (2) Developers may be required to provide contributions in aid of construction in amounts sufficient to reimburse the utility for:

- (A) existing uncommitted facilities at their original cost if the utility has not previously been reimbursed. A utility shall not be reimbursed for facilities in excess of the amount the utility paid for the facilities. A utility is not required to allocate existing uncommitted facilities to a developer for projected development beyond a reasonable planning period; or
 - (B) additional facilities compliant with the commission's minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or the commission's minimum design criteria for wastewater collection and treatment facilities and to provide for reasonable local demand requirements. Income tax liabilities which may be incurred due to collection of contributions in aid of construction may be included in extension charges to developers. Additional tax liabilities due to collection of the original tax liability may not be collected unless they can be supported and are specifically noted in the approved extension policy.
- (3) For purposes of this subsection, a developer is one who subdivides or requests more than two water service connections or sewer service connections on a single contiguous tract of land.
- (d) **Cost utilities and service applicants shall bear.**
- (1) Within its certificated area, a utility shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential service applicant within a platted subdivision unless the utility can document:

- (A) that the developer of the subdivision refused to provide facilities compatible with the utility's facilities in accordance with the utility's approved extension policy after receiving a written request from the utility; or
 - (B) that the developer of the subdivision defaulted on the terms and conditions of a written agreement or contract existing between the utility and the developer regarding payment for services, extensions, or other requirements; or in the event the developer declared bankruptcy and was therefore unable to meet obligations; and
 - (C) that the residential service applicant purchased the property from the developer after the developer was notified of the need to provide facilities to the utility.
- (2) A residential service applicant may be charged the remaining costs of extending service to his property; provided, however, that the residential service applicant may only be required to pay the cost equivalent to the cost of extending the nearest water main or wastewater collection line, whether or not that line has adequate capacity to serve that residential service applicant. The following criteria shall be considered to determine the residential service applicant's cost for extending service:
- (A) The residential service applicant shall not be required to pay for costs of main extensions greater than two inches in diameter for water distribution and pressure wastewater collection lines and six inches in diameter for gravity wastewater lines.

- (B) Exceptions may be granted by the commission if:
- (i) adequate service cannot be provided to the applicant using the maximum line sizes listed due to distance or elevation, in which case, it shall be the utility's burden to justify that a larger diameter pipe is required for adequate service;
 - (ii) larger minimum line sizes are required under subdivision platting requirements or building codes of municipalities within whose corporate limits or extraterritorial jurisdiction the point of use is located; or
 - (iii) the residential service applicant is located outside the CCN service area.
- (C) If an exception is granted, the utility must establish a proportional cost plan for the specific extension or a rebate plan which may be limited to seven years to return the portion of the applicant's costs for oversizing as new customers are added to ensure that future applicants for service on the line pay at least as much as the initial service applicant.
- (3) The utility shall bear the cost of any oversizing of water distribution lines or wastewater collection lines necessary to serve other potential service applicants or customers in the immediate area or for fire flow requirements unless an exception is granted under paragraph (2)(B) of this subsection.
- (4) For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certificated area, industrial, and wholesale customers may be

treated as developers. A service applicant requesting a one inch meter for a lawn sprinkler system to service a residential lot is not considered nonstandard service.

- (e) **Other Fees for Service Applicants.** Except for an affected county, utilities shall not charge membership fees or application fees.

§24.165. Billing.

- (a) **Authorized rates.** Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.
- (b) **Due date.**
- (1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

- (2) If a utility has been granted an exception to the requirements for a local office in accordance with §24.153(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.
- (c) **Penalty on delinquent bills for retail service.** Unless otherwise provided, a one-time penalty of either \$5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §24.167 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.
- (d) **Deferred payment plan.** A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot

pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) **Rendering and form of bills.**

- (1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.
- (2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:
 - (A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;
 - (B) the number and kind of units metered;
 - (C) the applicable rate class or code;
 - (D) the total amount due for water service;
 - (E) the amount deducted as a credit required by a commission order;
 - (F) the amount due as a surcharge;
 - (G) the total amount due on or before the due date of the bill;
 - (H) the due date of the bill;

- (I) the date by which customers must pay the bill in order to avoid addition of a penalty;
 - (J) the total amount due as penalty for nonpayment within a designated period;
 - (K) a distinct marking to identify an estimated bill;
 - (L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;
 - (M) the total amount due for sewer service;
 - (N) the gallonage used in determining sewer usage; and
 - (O) the local telephone number or toll free number where the utility can be reached.
- (3) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the Texas Water Code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.
- (f) **Charges for sewer service.** Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal

service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) **Consolidated billing and collection contracts.**

- (1) This subsection applies to all retail public utilities.
- (2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.
- (3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.
- (4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:
 - (A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and
 - (B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

- (5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.
- (h) **Overbilling and underbilling.** If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §24.169 of this title (relating to Meters). If the underbilling is \$25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.
- (i) **Estimated bills.** When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.
- (j) **Prorated charges for partial-month bills.** When a bill is issued for a period of less than one month, charges should be computed as follows.

- (1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.
 - (2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.
 - (3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.
- (k) **Prorated charges due to utility service outages.** In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.
- (l) **Disputed bills.**
- (1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by §24.167 of this title.
 - (2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's

average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.

- (3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §24.167 of this title.
- (m) **Notification of alternative payment programs or payment assistance.** Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.
- (n) **Adjusted bills.** There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:
 - (1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months.

This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

- (2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;
 - (3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or
 - (4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.
- (o) **Equipment damage charges.** A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has

been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the commission.

- (p) **Fees.** Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.
- (1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:
- (A) under a contract and only in accordance with the terms of the contract;
 - (B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission; or
 - (C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.
- (2) Except as provided in §24.167(h)(2) and §24.169(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

- (q) **Payment with cash.** When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.
- (r) **Voluntary contributions for certain emergency services.**
- (1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:
- (A) describing the procedure by which the customer may make a contribution with the customer's bill payment;
 - (B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;
 - (C) informing the customer that a contribution is voluntary;
 - (D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and
 - (E) describing the deductibility status of the contribution under federal income tax law.
- (2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

- (3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:
 - (A) the utility's expenses in administering the contribution program; or
 - (B) 5.0% of the amount collected as contributions.
- (4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

§24.167. Discontinuance of Service.

(a) **Disconnection with notice.**

- (1) Notice requirements. Proper notice shall consist of a separate written statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:
 - (A) the words "termination notice" or similar language approved by the commission written in a way to stand out from other information on the notice;
 - (B) the action required to avoid disconnection, such as paying past due service charges,

- (C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the commission;
 - (D) the intended date of disconnection;
 - (E) the office hours, telephone number, and address of the utility's local office;
 - (F) the total past due charges;
 - (G) all reconnect fees that will be required to restore water or sewer service if service is disconnected.
 - (H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:
 - (i) that failure to pay past due sewer charges will result in termination of water service; and
 - (ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.
- (2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:
- (A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.
 - (i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

- (ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.
 - (iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;
 - (B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;
 - (C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;
 - (D) failure to comply with deposit or guarantee arrangements where required by §24.159 of this title (relating to Service Applicant and Customer Deposit);
 - (E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and
 - (F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.
- (b) **Disconnection without notice.** Utility service may be disconnected without prior notice for the following reasons:
- (1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common

entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

- (2) where service is connected without authority by a person who has not made application for service;
- (3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;
- (4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §24.169 of this title (relating to Meters).

(c) **Disconnection prohibited.** Utility service may not be disconnected for any of the following reasons:

- (1) failure to pay for utility service provided to a previous occupant of the premises;
- (2) failure to pay for merchandise, or charges for non-utility service provided by the utility;
- (3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;
- (4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;
- (5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §24.169 of this title;

- (6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;
 - (7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;
 - (8) refusal of a current customer to sign a service agreement; or,
 - (9) failure to pay standby fees.
- (d) **Disconnection due to utility abandonment.** No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §24.247 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.
- (e) **Disconnection of water service due to nonpayment of sewer charges.**
- (1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.
 - (A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer

service provider. Such notice must be in conformity with subsection (a) of this section.

- (B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed \$50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.
- (C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.
- (D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:
- (i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or,
 - (ii) the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

- (2) A utility providing water service to customers who are provided sewer service by another retail public utility may enter into an agreement to provide billing services for the sewer service provider. In this instance, the customer may only be charged the tariffed reconnect fee for nonpayment of a bill on the water service provider's tariff.
- (3) This section outlines the duties of a water service provider to an area served by a sewer service provider of certain political subdivisions.
 - (A) This section applies only to an area:
 - (i) that is located in a county that has a population of more than 1.3 million; and
 - (ii) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.
 - (B) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.

- (C) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other water utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.
- (D) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by First Class mail or hand-delivered to the location at which the sewer service is provided.
- (E) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under subparagraph (D) of this paragraph. The notice must indicate the number of days the person has failed to pay for sewer service and the total amount past due. On receipt of the notice, the water service provider shall discontinue water service to the person.

- (F) This subsection does not apply to a nonprofit water supply or sewer service corporation created under Texas Water Code, Chapter 67, or a district created under Texas Water Code, Chapter 65.
- (f) **Disconnection for ill customers.** No utility may discontinue service to a delinquent residential customer when that customer establishes that some person residing at that residence will become seriously ill or more seriously ill if service is discontinued. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the utility prior to the stated date of disconnection. Service may be disconnected in accordance with subsection (a) of this section if the next month's bill and the past due bill are not paid by the due date of the next month's bill, unless the customer enters into a deferred payment plan with the utility.
- (g) **Disconnection upon customer request.** A utility shall disconnect service no later than the end of the next working day after receiving a written request from the customer.
- (h) **Service restoration.**
- (1) Utility personnel must be available during normal business hours to accept payment on the day service is disconnected and the day after service is disconnected, unless the disconnection is at the customer's request or due to the existence of a dangerous condition related to the type of service provided. Once the past due service charges and applicable reconnect fees are paid or other circumstances which resulted in disconnection are corrected, the utility must restore service within 36 hours.
- (2) Reconnect Fees.

- (A) A reconnect fee, or seasonal reconnect fee as appropriate, may be charged for restoring service if listed on the utility's approved tariff.
- (B) A reconnect fee may not be charged where service was not disconnected, except in circumstances where a utility representative arrives at a customer's service location with the intent to disconnect service because of a delinquent bill, and the customer prevents the utility from disconnecting the service.
- (C) Except as provided under §24.169(c) of this title when a customer prevents disconnection at the water meter or connecting point between the utility and customer sewer lines, a reconnect fee charged for restoring water or sewer service after disconnection for nonpayment of monthly charges shall not exceed \$25 provided the customer pays the delinquent charges and requests to have service restored within 45 days. If a request to have service reconnected is not made within 45 days of the date of disconnection, the utility may charge its approved reconnect fee or seasonal reconnect fee.
- (D) A reconnect fee cannot be charged for reconnecting service after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency.

§24.169. Meters.

- (a) **Meter requirements.**

- (1) Use of meter. All charges for water service shall be based on meter measurements, except where otherwise authorized in the utility's approved tariff.
 - (2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide, install, own and maintain all meters necessary for the measurement of water provided to its customers.
 - (3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.
 - (4) One meter is required for each residential, commercial, or industrial service connection. An apartment building, condominium, manufactured housing community, or mobile home park may be considered by the utility to be a single commercial facility for the purpose of these sections. The commission may grant an exception to the individual meter requirement if the plumbing of an existing multiple use or multiple occupant building would prohibit the installation of individual meters at a reasonable cost or would result in unreasonable disruption of the customary use of the property.
- (b) **Meter readings.**
- (1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.
 - (2) Reading of meters.

- (A) Service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each month, but may be read at other than monthly intervals if authorized in the utility's approved tariff.
 - (B) The utility shall charge for volume usage at the lowest block charge on its approved tariff when the meter reading date varies by more than two days from the normal meter reading date.
- (c) **Access to meters and utility cutoff valves.**
- (1) At the customer's request, utility employees must present information identifying themselves as employees of the utility in order to establish the right of access.
 - (2) Utility employees shall be allowed access for the purpose of reading, testing, installing, maintaining and removing meters and using utility cutoff valves. Conditions that may hinder access include, but are not limited to, fences with locked gates, vehicles or objects placed on top of meters or meter boxes, and unrestrained animals.
 - (3) When access is hindered on an ongoing basis, utilities may, but are not required to, make alternative arrangements for obtaining meter readings as described in paragraphs (4) and (5) of this subsection. Alternative arrangements for obtaining meter readings shall be made in writing with a copy provided to the customer and a copy filed in the utility's records on that customer.
 - (4) If access to a meter is hindered and the customer agrees to read his own meter and provide readings to the utility, the utility may bill according to the customer's readings; provided the meter is read by the utility at regular intervals (not

exceeding six months) and billing adjustments are made for any overcharges or undercharges.

- (5) If access to a meter is hindered and the customer does not agree to read their own meter, the utility may bill according to estimated consumption; provided the meter is read by the utility at regular intervals (not exceeding three months) and billing adjustments are made for any overcharges or undercharges.
- (6) If access to a meter is hindered and the customer will not arrange for access at regular intervals, the utility may relocate the meter to a more accessible location and may charge the customer for the actual cost of relocating the meter. Before relocating the meter, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of relocating the meter, an explanation of the condition hindering access and what the customer can do to correct that condition, and information on how to contact the utility. The notice shall give the customer a reasonable length of time to arrange for utility access so the customer may avoid incurring the relocation cost. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.
- (7) If access to a meter, cutoff valve or sewer connection is hindered by the customer and the customer's service is subject to disconnection under §24.167 of this title (relating to Discontinuance of Service), the utility may disconnect service at the main and may charge the customer for the actual cost of disconnection and any subsequent reconnection. The utility shall document the condition preventing access by providing photographic evidence or a sworn affidavit. Before

disconnecting service at the main, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of disconnecting service at the main and reconnecting service and shall give the customer at least 72 hours to correct the condition preventing access and to pay any delinquent charges due the utility before disconnection at the main. The customer may also be required to pay the tariffed reconnect fee for nonpayment in addition to delinquent charges even if service is not physically disconnected. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(d) **Meter tests on request of customer.**

- (1) Upon the request of a customer, each utility shall make, without charge a test of the accuracy of the customer's meter. If the customer asks to observe the test, the test shall be conducted in the customer's presence or in the presence of the customer's authorized representative. The test shall be made during the utility's normal working hours at a time convenient to the customer. Whenever possible, the test shall be made on the customer's premises, but may, at the utility's discretion, be made at the utility's testing facility.
- (2) Following the completion of any requested test, the utility shall promptly advise the customer of the date of the test, the result of the test, who made the test and the date the meter was removed if applicable.
- (3) If the meter has been tested by the utility or a testing facility at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy

standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than \$25 for a residential customer.

(e) **Meter testing.**

- (1) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association or other procedures approved by the commission.
- (2) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that satisfactory arrangements are made for testing its meters by another utility or testing facility equipped to test meters in compliance with these sections.
- (3) Measuring devices for testing meters may consist of a calibrated tank or container for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission. The commission can also authorize the use of a volumetric container for testing meters without a laboratory certification when it is in the best interest of the customer and utility to reduce the cost of testing. If a weight standard is used, the scales shall be tested and calibrated periodically by an approved laboratory and a record maintained of the results of the test.
- (4) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of meter accuracy and shall be subject to the approval of the commission.

- (5) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated at least once per year unless a longer period is approved by the commission to insure its accuracy within the limits required by these sections. A record of such tests shall be kept by the utility for at least three years following the tests.
- (f) **Meter test prior to installation.** No meter shall be placed in service unless its accuracy has been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.
- (g) **Bill adjustment due to meter error.** If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.
- (h) **Meter tampering.** For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment

causing damage or unnecessary expense to the utility, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, other electrical and mechanical means of tampering with, bypassing, or diverting utility service, removal or alteration of utility-owned equipment or locks, connection or reconnection of service without utility authorization, or connection into the service line of adjacent customers or of the utility. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

§24.171. Continuity of Service.

(a) Service interruptions.

- (1) Every utility or water supply or sewer service corporation shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.
- (2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

- (3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.
- (b) **Record of interruption.** Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

Subchapter G: Quality of Service

§24.201. Applicability.

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

§24.203. Requirements by Others.

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

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

§24.205. Adequacy of Water Utility Service.

Sufficiency of service. Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

- (1) The water system quantity and quality requirements of the TCEQ shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.
- (2) In cases of drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, to comply with a state agency or court order on conservation or other reasons identified in the utility's approved drought contingency plan required by 30 TAC §288.20 (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers), restrictions may be instituted to limit water usage in accordance with the utility's approved

drought contingency plan. For utilities, these temporary restrictions must be in accordance with an approved drought contingency plan. Unless specifically authorized by TCEQ, retail public utilities may not use water use restrictions in lieu of providing facilities which meet the minimum capacity requirements of 30 TAC Chapter 290 (relating to Public Drinking Water), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

- (A) A utility must file a copy of its TCEQ-approved drought contingency plan with the utility's approved tariff. The utility may not implement mandatory water use restrictions without an approved drought contingency plan unless authorized by the TCEQ. If TCEQ provides such authorization, the utility must provide immediate notice to the commission.
- (B) Temporary restrictions must be in accordance with the utility's approved drought contingency plan on file or specifically authorized by the TCEQ. The utility shall file a copy of any status report required to be filed with the TCEQ with the commission at the same time it is required to file the report with the TCEQ.
- (C) The utility must provide written notice to each customer in accordance with the drought contingency plan prior to implementing the provisions of the plan. The utility must provide written notice to the commission prior to implementing the provisions of the plan.

- (3) A retail public utility that possesses a certificate of public convenience and necessity that is required to file a planning report with the TCEQ under requirements in 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems) shall also file a copy of the planning report with the commission at the same time it is required to file the report with the TCEQ.
 - (A) If the TCEQ waives or limits the reporting requirements, the utility shall file with the commission within ten days a notice that the reporting requirements have been waived or limited, including a copy of any order or other authorization.
 - (B) A retail public utility shall file a copy of any updated or amended plan or report required to be filed under this section.
 - (C) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §24.203 of this title (relating to Requirements by Others).
- (4) Each retail public utility which possesses or is required to possess a certificate of convenience and necessity shall furnish safe water which meets TCEQ's minimum quality criteria for drinking water.
- (5) Every retail public utility shall maintain its facilities to protect them from contamination, ensure efficient operation, and promptly repair leaks.

§24.207. Adequacy of Sewer Service.

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

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

§24.209. Standards of Construction.

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

Subchapter H: Certificates of Convenience and Necessity

§24.225. Certificate of Convenience and Necessity Required.

- (a) Unless otherwise specified, a utility or a water supply or sewer service corporation may not in any way provide retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate of convenience and necessity (CCN). Except as otherwise provided by this subchapter, a retail public utility may not provide, make available, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully provided by

another retail public utility without first obtaining a CCN that includes the area in which the consuming facility is located.

- (b) A district may not provide services within the certificated service area of a retail public utility or within the boundaries of another district without the retail public utility's or district's consent, unless the district has a CCN to provide retail water or sewer utility service to that area.
- (c) Except as otherwise provided by this subchapter, a retail public utility may not provide retail water or sewer utility service within the boundaries of a district that provides the same type of retail water or sewer utility service without the district's consent, unless the retail public utility has a CCN to provide retail water or sewer utility service to that area.
- (d) A person that is not a retail public utility, a utility, or a water supply or sewer service corporation that is operating under provisions in accordance with TWC §13.242(c) may not construct facilities to provide retail water or sewer utility service to more than one service connection that is not on the property owned by the person and that is within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.
- (e) A supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN if the purchaser is not otherwise required by this chapter to obtain a CCN.

§24.227. Criteria for Granting or Amending a Certificate of Convenience and Necessity.

- (a) In determining whether to grant or amend a certificate of convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.
- (1) For retail water utility service, the commission shall ensure that the applicant has:
- (A) a TCEQ-approved public water system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and
 - (B) access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.
- (2) For retail sewer utility service, the commission shall ensure that the applicant has:
- (A) a TCEQ-approved system that is capable of meeting TCEQ design criteria for sewer treatment plants, TCEQ rules, and the TWC; and
 - (B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.
- (b) When applying for a new CCN or a CCN amendment for an area that would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

- (1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area;
- (2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within one half mile from the outer boundary of the requested area;
- (3) copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection;
- (4) copies of written responses from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;
- (5) if a neighboring retail public utility has agreed to provide service to a requested area, then the following information must also be provided by the applicant:
 - (A) a description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;
 - (B) an analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and

- (C) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.
- (c) The commission may approve applications and grant or amend a CCN only after finding that granting or amending the CCN is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant or amend the CCN as applied for, or refuse to grant it, or grant it for the construction of only a portion of the contemplated facilities or extension thereof, or for only the partial exercise of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.
- (d) In considering whether to grant or amend a CCN, the commission shall also consider:
- (1) the adequacy of service currently provided to the requested area;
 - (2) the need for additional service in the requested area, including, but not limited to:
 - (A) whether any landowners, prospective landowners, tenants, or residents have requested service;
 - (B) economic needs;
 - (C) environmental needs;
 - (D) written application or requests for service; or
 - (E) reports or market studies demonstrating existing or anticipated growth in the area;
 - (3) the effect of granting or amending a CCN on the CCN recipient, on any landowner in the requested area, and on any retail public utility that provides the same service and that is already serving any area within two miles of the

- boundary of the requested area. These effects include but are not limited to regionalization, compliance, and economic effects;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the requested area;
 - (5) the feasibility of obtaining service from an adjacent retail public utility;
 - (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
 - (7) environmental integrity;
 - (8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the new CCN or a CCN amendment; and
 - (9) the effect on the land to be included in the requested area.
- (e) The commission may require an applicant seeking to obtain a new CCN or a CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.
- (f) Where applicable, in addition to the other factors in this chapter the commission shall consider the efforts of the applicant to extend retail water and/or sewer utility service to

any economically distressed areas located within the applicant's certificated service area. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.

- (g) For two or more retail public utilities that apply for a CCN to provide retail water and/or sewer utility service to an unserved area located in an economically distressed area as defined in TWC §15.001, the commission shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties cannot agree among themselves regarding who will provide service. The assessment shall be conducted considering the following information:
- (1) all criteria from subsections (a)-(f) of this section;
 - (2) source-water adequacy;
 - (3) infrastructure adequacy;
 - (4) technical knowledge of the applicant;
 - (5) ownership accountability;
 - (6) staffing and organization;
 - (7) revenue sufficiency;
 - (8) creditworthiness;
 - (9) fiscal management and controls;
 - (10) compliance history; and
 - (11) planning reports or studies by the applicant to serve the proposed area.

- (h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the requested area may elect to exclude some or all of the landowner's property from the requested area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the requested area shall be modified to remove the electing landowner's property. An applicant that has land removed from its requested area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including a violation of law or commission rules.
- (1) The landowner's request to opt out of the requested area shall be filed with the commission and shall include the following information:
- (A) the commission docket number and CCN number if applicable;
 - (B) the total acreage of the tract of land subject to the landowner's opt-out request; and
 - (C) a metes and bounds survey for the tract of land subject to the landowner's opt-out request, that is sealed or embossed by either a licensed state land surveyor or registered professional land surveyor.
- (2) The applicant shall file the following mapping information to address each landowner's opt-out request:
- (A) a detailed map identifying the revised requested area after removing the tract of land subject to each landowner's opt-out request. The map shall

also identify the outer boundary of each tract of land subject to each landowner's opt-out request, in relation to the revised requested area. The map shall identify the tract of land and the requested area in reference to verifiable man-made and/or natural landmarks such as roads, rivers, and railroads;

(B) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters) for the revised requested area after removing each tract of land subject to any landowner's opt-out request. The digital mapping data shall include a single, continuous polygon record; and

(C) the total acreage for the revised requested area after removing each tract of land subject to the landowner's opt-out requests. The total acreage for the revised requested area must correspond to the total acreage included with the digital mapping data.

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

§24.229. Certificate of Convenience and Necessity Not Required.**(a) Extension of Service.**

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

(A) an extension into territory contiguous to that already served by the retail public utility if:

(i) the point of ultimate use is within one quarter mile of the outer boundary of its existing certificated service area;

(ii) the area is not receiving similar service from another retail public utility; and

(iii) the area is not located inside another retail public utility's certificated service area; or

(B) an extension within or to territory already served by it or to be served by it under a CCN.

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

(b) Construction of Facilities. A CCN is not required for the construction or upgrading of distribution facilities within the retail public utility's certificated service area, or for the

purchase or condemnation of real property for use as facility sites or rights-of-way. Prior acquisition of facility sites or rights-of-way, and prior construction or upgrading of distribution facilities, does not entitle a retail public utility to be granted a CCN or CCN amendment without a showing that the proposed CCN or CCN amendment is necessary for the service, accommodation, convenience, or safety of the public.

(c) **Single Certification Under TWC §13.255.** A municipality that has given notice under TWC §13.255 that it intends to provide retail water or sewer utility service to an area or to customers not currently being served is not required to obtain a CCN prior to commencing service in the area if the municipality:

- (1) provides a copy of the notice required in TWC §13.255 to the retail public utility;
- (2) files a copy of the notice with the commission; and
- (3) files an application for single certification as required by TWC §13.255 and §24.259 of this title (relating to Single Certification in Incorporated or Annexed Areas).

(d) **Municipal Systems in Unserved Area.**

- (1) This subsection applies only to a home-rule municipality that is:
 - (A) located in a county with a population of more than 1.75 million; and
 - (B) adjacent to a county with a population of more than 1 million and has within its boundaries a part of a district.
- (2) If a district does not establish a fire department under TWC §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of

potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.

- (3) For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC §13.255(b).

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

- (1) A water utility or water supply corporation is exempt from the requirement to possess a CCN to provide retail water utility service if it:
 - (A) has less than 15 potential service connections;
 - (B) is not owned by or affiliated with a retail public water utility, or any other entity, that provides potable water service;
 - (C) is not located within the certificated service area of another retail public water utility; and
 - (D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.
- (2) A water utility or water supply corporation with less than 15 potential connections currently operating under a CCN may request cancellation of the CCN at any time.
- (3) The commission may cancel the current CCN upon written request by the exempt utility or water supply corporation.

- (4) An exempt utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.151 - 24.171 of this title (relating to Customer Service and Protection).
- (5) The exempt utility shall provide a copy of its tariff to each future customer at the time service is requested and upon request to each current customer.
- (6) An applicant requesting registration status as an exempt utility shall comply with the mapping documents as prescribed in §24.257(a)(2)-(3) of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).
- (7) Exempt-Utility Tariff and Rate Change Requirements. An exempt utility operating under registration status as an exempt utility:
 - (A) must maintain a current copy of the exempt-utility's tariff with its current rates at its business location; and
 - (B) may change its rates without following the requirements in §24.27 of this title (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871) if it provides each customer with written notice of the rate change prior to the effective date of the rate change. The written notice shall indicate the old rates, the new rates, the effective date of the new rates, and the address of the commission along with a statement that written comments or requests to intervene may be filed with the commission at the following mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North

Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. If the commission receives written comments or requests to intervene from at least 50% of the customers of an exempt utility within 90 days after the effective date of the rate change, the commission shall review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments or requests to intervene from customers or the exempt utility, the commission shall establish the rates to be charged by the exempt utility. Those rates shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and intervenors. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission.

- (C) The exempt utility or water supply corporation, Office of Public Utility Counsel, commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the motion for rehearing.
- (8) Unless authorized in writing by the commission, an exempt water utility or a water supply corporation operating under these requirements may not cease operations. An exempt water utility may not discontinue service to a customer with or without notice except in accordance with its commission approved

exempt-utility tariff and an exempt water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

- (9) An exempt water utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the exempt-utility tariff approved by the commission shall be subject to any and all enforcement remedies provided by this chapter and TWC chapter 13.

§24.231. Applicant.

- (a) It is the responsibility of the owner of the utility, the utility's designated representative or authorized agent, the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality to file an application for a certificate of convenience and necessity (CCN) with the commission to obtain or amend a CCN.
- (b) The applicant shall have the continuing duty to submit information regarding any material change in the applicant's financial, managerial, or technical status that arises during the application review process.

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

- (a) **Application.** To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or a CCN amendment. Applications must contain the following materials, unless otherwise specified in the application form:
- (1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;
 - (2) mapping documents as prescribed in §24.259 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);
 - (3) information to demonstrate a need for service in the requested area, including:
 - (A) a copy of each written request for service received, if any; and
 - (B) a map showing the location of each request for service, if any;
 - (4) if applicable, a statement that the requested area overlaps with the corporate boundaries of a district, municipality, or other public authority, including:
 - (A) a list of the entities that overlap with the requested area; and
 - (B) evidence to show that the applicant has received the necessary approvals including any consents, franchises, permits, or licenses to provide retail water or sewer utility service in the requested area from the applicable municipality, district, or other public authority that:

- (i) currently provides retail water or sewer utility service in the requested area;
 - (ii) is authorized to provide retail water or sewer service by enabling statute or order; or
 - (iii) has an ordinance in effect that allows it to provide retail water or sewer service in the requested area, if any.
- (5) an explanation from the applicant demonstrating that issuance of a new CCN or a CCN amendment is necessary for the service, accommodation, convenience, or safety of the public;
- (6) if the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the requested area, a capital improvement plan, including a budget and an estimated timeline for construction of all facilities necessary to provide full service to the requested area, keyed to a map showing where such facilities will be located to provide service;
- (7) a description of the sources of funding for all facilities that will be constructed to serve the requested area, if any;
- (8) disclosure of all affiliated interests as defined by §24.3 of this title;
- (9) to the extent known, a description of current and projected land uses, including densities;
- (10) a current financial statement of the applicant;
- (11) according to the tax roll of the central appraisal district for each county in which the requested area is located, a list of the owners of each tract of land that is:

- (A) at least 25 acres; and
 - (B) wholly or partially located within the requested area;
- (12) if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the requested area. Where such an agreement is not practicable, a statement of why dual certification is in the public interest;
- (13) if an amendment is being requested with the consent of the existing CCN holder, a copy of the executed agreement to amend the existing certificated service area;
- (14) for an application for a new water CCN or a CCN amendment that will require the construction of a new public drinking water system or facilities to provide retail water utility service, a copy of:
- (A) the approval letter for the plans and specifications issued by the TCEQ for the public drinking water system or facilities. Proof that the applicant has submitted plans and specifications for the proposed drinking water system is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new water CCN or a CCN amendment may be subject to dismissal without prejudice. Any approval letter for the proposed public drinking water system or facilities must be filed with the commission before the issuance of a new CCN or a CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in dismissal of the application without prejudice. Plans and specifications are only

- required if the proposed change in the existing capacity is required by TCEQ rules;
- (B) other information that indicates the applicant is in compliance with §24.205 of this title (relating to Adequacy of Water Utility Service) for the system; or
 - (C) a contract with a wholesale provider that meets the requirements in §24.205 of this title;
- (15) for an application for a new sewer CCN or CCN amendment that will require the construction of a new sewer system or new facilities to provide retail sewer utility service, a copy of:
- (A) a wastewater permit or proof that a wastewater permit application for the additional facility has been filed with the TCEQ. Proof that the applicant has submitted an application for a wastewater permit is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new sewer CCN or CCN amendment may be subject to dismissal without prejudice. Any approval letter for the permit application must be filed with the commission before the issuance of a new CCN or a CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application without prejudice. Plans and

specifications are only required if the proposed change in the existing capacity is required by TCEQ rules.

(B) other information that indicates that the applicant is in compliance with §24.207 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §24.207 of this title; and

(16) any other item or information required by the commission.

(b) If the requested area overlaps the boundaries of a district, and the district does not intervene in the docket by the intervention deadline after notice of the application is given, the commission shall determine that the district is consenting to the applicant's request to provide service in the requested area.

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

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

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

- (3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:
- (A) does not have the ability to provide service; or
 - (B) has failed to make a good faith effort to provide service on reasonable terms and conditions.
- (4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvement plan required by TWC §13.244(d)(3) or a subdivision plat, the commission may grant the new CCN or a CCN amendment without the consent of the municipality if:
- (A) the commission makes the findings required by paragraph (3) of this subsection;
 - (B) the municipality has not entered into a binding commitment to serve the requested area before the 180th day after the date the formal request was made; and
 - (C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

- (i) comply with the municipality's service extension and development process; or
 - (ii) enter into a contract for retail water or sewer utility service with the municipality.
- (5) If a municipality refuses to provide service in the requested area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.
- (6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.
- (7) Paragraphs (4)-(6) of this subsection do not apply to Cameron, Hidalgo, or Willacy Counties, or to a county:
 - (A) with a population of more than 30,000 and less than 35,000 that borders the Red River;
 - (B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;
 - (C) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

- (D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river.
 - (E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.
- (8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.
- (9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.
- (d) **Extension beyond extraterritorial jurisdiction.**
- (1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area in the certificated service area of a retail public utility, the retail public utility may continue and extend service in its certificated service area under the rights granted by its CCN and this chapter.
 - (2) The commission may not extend a municipality's certificated service area beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within the requested area in accordance with TWC §13.246(h). This subsection does not apply to a sale, transfer, merger,

consolidation, acquisition, lease, or rental of a CCN as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Hidalgo, or Willacy Counties, or in a county:

(A) with a population of more than 30,000 and less than 35,000 that borders the Red River;

(B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;

(C) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river.

(E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.

(4) To the extent of a conflict between this subsection and TWC §13.245, TWC §13.245 prevails.

(e) **Area within municipality.**

(1) If an area is within the boundaries of a municipality, any retail public utility holding or entitled to hold a CCN under this chapter to provide retail water and/or sewer utility service or operate facilities in that area may continue and extend service in its certificated service area, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this

subsection. Except as provided by TWC §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the certificated service area of another retail public utility without first having obtained from the commission a CCN that includes the area to be served.

- (2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code §182.025.
- (3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.
 - (A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.
 - (B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the

municipality, and the commission shall take such requested action upon notification of acquisition of the system.

§24.235. Notice Requirements for Certificate of Convenience and Necessity Applications.

- (a) If an application to obtain or amend a certificate of convenience and necessity (CCN) is filed, the applicant will prepare the notice prescribed in the commission's application form, which will include the following:
- (1) all information outlined in the Administrative Procedure Act, Texas Government Code, Chapter 2001;
 - (2) all information listed in the commission's instructions for completing a CCN application;
 - (3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."; and
 - (4) except for publication of notice, the notice must include a map showing the requested area.

- (b) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the applicant for publication and/or mailing.
- (1) For applications for a new CCN or a CCN amendment, the applicant shall mail the notice to the following:
- (A) cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or certificated service area are located within two miles from the outer boundary of the requested area.
 - (B) the county judge of each county that is wholly or partially included in the requested area; and
 - (C) each groundwater conservation district that is wholly or partially included in the requested area.
- (2) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area. Notice required under this subsection must be mailed by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the CCN. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:
- (A) TWC §13.248 or §13.255; or
 - (B) TWC Chapter 65.

- (3) Utilities that are required to possess a CCN but that are currently providing service without a CCN must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date of the current rates, and any other information required in the application or notice form or by the commission.
 - (4) Within 30 days of the date of the notice, the applicant shall file in the docket an affidavit specifying every person and entity to whom notice was provided and the date that the notice was provided.
- (c) The applicant shall publish the notice in a newspaper having general circulation in the county where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission. Proof of publication in the form of a publisher's affidavit shall be filed with the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.
 - (d) The commission may require the applicant to deliver notice to other affected persons or agencies.
 - (e) The recording in the county records required by this section must be completed not later than the 31st day after the date a CCN holder receives a final order from the commission that grants or amends a CCN and thus changes the CCN holder's certificated service area.

§24.237. Action on Applications.

- (a) The commission may conduct a public hearing on any application.

- (b) After proper notice, the commission may take action on an uncontested application at any time after the later of the expiration of the intervention period or for which all interventions are subsequently withdrawn.
- (c) If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

§24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental

- (a) Any water supply or sewer service corporation, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) shall, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:
 - (1) the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or
 - (2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.
- (b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days unless good cause is shown. Public notice may be waived by the commission for good cause shown.
- (c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the

commission and on the form prescribed by the commission which shall include the following:

- (1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);
 - (2) a description of the requested area; and
 - (3) the following statement: “Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date.”
- (d) The commission may waive notice under this subsection if the requested area does not include unserved area, or for good cause shown. If notice is not waived by the commission, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

- (e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.
- (f) The commission may allow published notice in lieu of individual notice as required in this subsection.
- (g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title (relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity).
- (h) If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission shall set the amount of financial assurance. The form of the financial assurance shall be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.
- (i) The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the

transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(j) Prior to the expiration of the 120-day period described in subsection (a) of this section, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:

- (1) the application filed with the commission or the public notice was improper;
- (2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;
- (3) the transferee has a history of:
 - (A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or
 - (B) continuing mismanagement or misuse of revenues as a utility service provider;
- (4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or
- (5) there are concerns that the transaction does not serve the public interest. It is in the public interest to investigate the following factors:
 - (A) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental if

conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;

- (B) the adequacy of service currently provided to the requested area;
- (C) the need for additional service in the requested area;
- (D) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;
- (E) the ability of the transferee to provide adequate service;
- (F) the feasibility of obtaining service from an adjacent retail public utility;
- (G) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;
- (H) the environmental integrity; and
- (I) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction.

(k) Unless the commission requires that a public hearing be held, the sale, transfer, merger, consolidation, acquisition, lease, or rental may be completed as proposed:

- (1) at the end of the 120-day period described in subsection (a) of this section; or
- (2) at any time after the transferee receives notice from the commission that a hearing will not be requested.

(l) Within 30 days of the commission order that allows the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee shall provide a written update on the status of the transaction, and every 30 days thereafter,

until the transaction is complete. The transferee shall inform the commission of any material changes in its financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's service area.

- (m) If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee shall file with the commission, under oath, in addition to other information, a list showing the following:
- (1) the names and addresses of all customers who have a deposit on record with the transferor;
 - (2) the date such deposit was made;
 - (3) the amount of the deposit; and
 - (4) the unpaid interest on the deposit. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.
- (n) Within 30 days after the actual effective date of the transaction, the transferee and the transferor shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and the transferee. If there were outstanding customer deposits, the transferor and the transferee shall also file documentation as evidence that customer deposits have been transferred or refunded to the customers with interest as required by this section.
- (o) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed. If the sale has not

been completed within that 180-day time period, the approval is void, unless the commission in writing extends the time period for good cause shown.

- (p) If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue an order approving the transaction.
- (q) A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers and/or service area, owned by an entity required by law to possess a CCN that is not completed in accordance with the provisions of TWC §13.301 is void.
- (r) The requirements of TWC §13.301 do not apply to:
 - (1) the purchase of replacement property;
 - (2) a transaction under TWC §13.255; or
 - (3) foreclosure on the physical assets of a utility.
- (s) If a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

- (t) For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest shall provide the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.

§24.241. Foreclosure and Bankruptcy.

- (a) If a utility that is required by law to possess a certificate of convenience and necessity (CCN) receives notice that all or a portion of the utility's or system's facilities or property used to provide utility service is being posted for foreclosure, the utility shall notify the commission in writing of that fact and shall provide a copy of the foreclosure notice to the commission not later than the tenth day after the date on which the retail public utility or system receives the notice.
- (b) A person other than a financial institution that forecloses on facilities used to provide utility service shall not charge or collect rates for providing retail public water or sewer service unless the person has a completed application for a CCN or to transfer the current CCN on file with the commission within 30 days after the foreclosure is completed.
- (c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by TWC §13.301, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

- (d) The financial institution may operate the utility for an interim period not to exceed 12 months before selling, transferring, merging, consolidating, acquiring, leasing, or renting its facilities or otherwise obtaining a CCN unless the commission in writing extends the time period for good cause shown. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.
- (e) Not later than the 48th hour after a retail public utility files a bankruptcy petition, the retail public utility shall report this fact to the commission and the TCEQ in writing.

§24.243. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

- (a) A utility may not purchase voting stock, and a person may not acquire a controlling interest, in a utility doing business in this state unless the utility or person files a written application with the commission no later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as
 - (1) a person or a combination of a person and the person's family members that possess at least 50% of a utility's voting stock; or
 - (2) a person that controls at least 30% of a utility's voting stock and is the largest stockholder.
- (b) A person acquiring a controlling interest in a utility shall be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any.

- (c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require the person to provide financial assurance to ensure continuous and adequate utility service is provided to the service area. The commission shall set the amount of financial assurance. The form of the financial assurance shall be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.
- (d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.239(j) of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental) applies.
- (e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:
 - (1) at the end of the 60 day period; or
 - (2) at any time after the commission notifies the person or utility that a hearing will not be requested.
- (f) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.
- (g) The utility or person shall notify the commission within 30 days after the date that the transaction is completed.

- (h) Within 30 days of the commission order that allows a utility's purchase of voting stock or a person's acquisition of a controlling interest to proceed as proposed, the utility purchasing voting stock or the person acquiring a controlling interest shall file a written update on the status of the transaction. A written update shall also be filed every 30 days thereafter, until the transaction has been completed.
- (i) The commission's approval of a utility's purchase of voting stock or a person's acquisition of a controlling interest in a utility expires 180 days after the date of the commission order approving the transaction as proposed. If the transaction has not been completed within the 180-day time period, and unless the utility purchasing voting stock or the person acquiring a controlling interest has requested and received an extension for good cause from the commission, the approval is void.

§24.245. Revocation or Amendment of a Certificate of Convenience and Necessity.

- (a) **Applicability.** This section applies to the revocation or amendment of a certificate of convenience and necessity (CCN).
- (b) **Definitions.**
 - (1) **Alternate retail public utility** --The retail public utility from which a landowner plans to request service after the landowner obtains expedited release under subsection (k) of this section. An alternate retail public utility is limited to the following:
 - (A) an existing retail public utility; or

- (B) a district proposed to be created under Article 16, §59 or Article 3, §52 of the Texas Constitution.
- (2) **Current CCN holder** --An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.
- (3) **Former CCN holder** --An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment under this section.
- (4) **Prospective retail public utility** --A retail public utility seeking to provide service to a requested area or to a removed area.
- (5) **Removed area** --Area that has been removed under this section from the certificated service area of a former CCN holder.
- (6) **Useless or valueless property** --Property that has been rendered useless or valueless to a former CCN holder by revocation or amendment, including by expedited release or streamlined expedited release, under this section.
- (c) A CCN or other order of the commission in any proceeding under this section does not create a vested property right.
- (d) An order of the commission issued under this section does not transfer any property, except as provided under subsection (p) of this section.
- (e) A former CCN holder shall not be required to provide service within the removed area.
- (f) If the CCN of any retail public utility is revoked or amended, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only if each retail public utility that is to provide service consents.

- (g) **Cancellation.** Upon written request from the current CCN holder, the commission may cancel the CCN if the current CCN holder is authorized to operate without a CCN under §24.229(c) or (e) of this title relating to Certificate of Convenience and Necessity not Required.
- (h) **Revocation or amendment by consent.** The commission may revoke or amend any CCN with the written consent of the current CCN holder after notice and a hearing.
- (i) **Revocation or amendment.**
- (1) At any time after notice and a hearing, the commission may revoke or amend any CCN if the commission finds that any of the circumstances identified in this paragraph exist.
- (A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area.
- (B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments started after September 1, 1997 or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

- (C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area, except for an interim period, without amending its CCN.
 - (D) The current CCN holder has failed to file a cease-and-desist action under TWC §13.252 within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless good cause is demonstrated for failure to file the cease-and-desist action within 180 days.
- (2) **Mapping Information.** For petitions submitted under this subsection or under subsection (j) of this section, mapping information is required for the requested area in accordance with §24.257 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application.
- (j) After notice to a municipality and an opportunity for a hearing, the commission may remove from the municipality's certificated service area an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.

(k) Expedited release.

- (1) This subsection provides an alternative to revocation or amendment under subsections (h) or (i) of this section.
- (2) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area if the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service.
- (3) The fact that a current CCN holder is a borrower under a federal loan program does not prevent either the granting of a petition under this subsection or an alternate retail public utility from providing service to the removed area.
- (4) A landowner may not submit a petition under this subsection to the commission until at least 90 calendar days after the landowner has submitted the notice required by paragraph (5) of this subsection to the current CCN holder.
- (5) The landowner shall submit to the current CCN holder a written request for service, other than a request for standard residential or commercial service. The written request shall identify the following:
 - (A) the tract of land or portion of the tract of land for which service is sought;
 - (B) the time frame within which service is needed for current and projected service demands in the tract of land;
 - (C) the reasonable level and manner of service needed for current and projected service demands in the area;

- (D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;
 - (E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and
 - (F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.
- (6) The landowner shall submit a petition that is verified through a notarized affidavit and demonstrates the following information:
- (A) the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service;
 - (B) a written request
 - (i) was submitted by the landowner to the current CCN holder at least 90 calendar days before the petition was submitted to the commission, and
 - (ii) complied with paragraph (5) of this subsection;
 - (C) the current CCN holder
 - (i) has refused to provide service;
 - (ii) cannot provide service as identified in the notice provided under paragraph (5)(A)-(D) of this subsection on a continuous and adequate basis; or

- (iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission;
 - (D) the alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the notice provided under paragraph (5)(A)-(D) of this subsection on a continuous and adequate basis; and
 - (E) a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition to the commission.
- (7) The landowner shall submit, as part of the petition, the mapping information described in subsection (m) of this section.
- (8) The current CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.
- (9) A presiding officer shall determine whether the petition is administratively complete. When the petition is determined to be administratively complete, the presiding officer shall establish a procedural schedule that is consistent with paragraph (10) of this subsection. The presiding officer may dismiss the petition if the petitioner fails to supplement or amend the petition after the presiding officer has determined that the petition is not administratively complete.
- (10) The commission shall grant the petition within 60 calendar days from the date the petition was found administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this

subsection. The commission shall support its express finding with separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner and the current CCN holder. The determination of what property, if any, is useless or valueless property will be made according to the procedures defined in subsection (n) of this section.

- (11) Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The commission's decision on the petition is subject to rehearing on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.
- (12) **Finding regarding never having made service available.**
- (A) The commission is required to find only that the alternate retail public utility can provide the requested service if the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land. In such instance, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder.
- (B) This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:
- (i) the county has a population of more than 30,000 and less than 35,000 and borders the Red River;

- (ii) the county has a population of more than 100,000 and less than 200,000 and borders a county described by clause (i) of this subparagraph;
 - (iii) the county has a population of 130,000 or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or
 - (iv) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.
 - (C) The commission will maintain on its website a list of counties that are presumed to meet the requirements of subparagraph (B) of this paragraph.
- (13) If the petitioner is a proposed district, then the commission may condition the release and CCN amendment or revocation on the final and unappealable creation of the district. The duty of the proposed district to provide continuous and adequate service is held in abeyance until this condition is satisfied.
- (14) The commission may require an award of compensation to the former CCN holder under subsections (n) and (o) of this section.
- (I) **Streamlined expedited release.**
- (1) This subsection provides an alternative to the following:
 - (A) revocation or amendment under subsections (h) or (i) of this section; or
 - (B) revocation or amendment by expedited release under subsection (k) of this section.

- (2) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if the following conditions are met:
- (A) the tract of land is at least 25 acres in size;
 - (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and
 - (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.
 - (D) A qualifying county under subparagraph (C) of this paragraph does not have a population of more than 45,000 and less than 47,500 and is a county
 - (i) with a population of at least one million,
 - (ii) adjacent to a county with a population of at least one million, or
 - (iii) with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.
- (3) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.
- (4) A landowner seeking streamlined expedited release under this subsection shall submit the information listed in this paragraph with the commission.
- (A) The landowner shall submit a petition that is verified through a notarized affidavit and contains the following information:

- (i) a statement that the petition is being submitted under TWC §13.254(a-5) and this subsection;
 - (ii) proof that the tract of land is at least 25 acres in size;
 - (iii) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;
 - (iv) a statement of facts that demonstrate that the tract of land is not currently receiving service;
 - (v) copies of all deeds demonstrating ownership of the tract of land by the landowner; and
 - (vi) proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition with the commission; and
- (B) The landowner shall submit the mapping information described in subsection (m) of this section.
- (5) The current CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.
- (6) The commission shall grant a petition filed under this subsection no later than the 60th calendar day after a presiding officer by order determines that the petition is administratively complete. The determination of what property, if any, is rendered useless or valueless property will be made according to the procedures defined in subsection (n) of this section.

- (7) The fact that a CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection.
 - (8) The commission may require an award of compensation by the landowner to the former CCN holder.
- (m) **Mapping information.**
- (1) For proceedings under subsections (k) or (l) of this section, the following mapping information must be filed:
 - (A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;
 - (B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map should also identify the location and acreage of land conveyed by each deed; and
 - (C) one of the following for the tract of land:
 - (i) a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;
 - (ii) a recorded plat; or
 - (iii) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data shall include a single, continuous polygon record.

- (2) Commission staff may request additional mapping information.
 - (3) All maps shall be filed in accordance with §22.71 and §22.72 of this title.
- (n) **Determination of property rendered useless or valueless.**
- (1) **Applicability.** This subsection governs the determination of whether property is rendered useless or valueless in proceedings under subsections (k) and (l) of this section.
 - (2) A current CCN holder has a right to intervene in a proceeding under this subsection and a right to a determination of useless or valueless property.
 - (3) There is a rebuttable presumption that there is no useless or valueless property if the current CCN holder fails to intervene by the intervention deadline established by the presiding officer.
 - (4) The current CCN holder and the petitioner may reach an agreement at any time during the pendency of a proceeding under subsections (k) or (l) of this section regarding what property is useless or valueless property, and if such an agreement is reached, they may also agree on what is the appropriate amount of compensation for such property. If the current CCN holder and the petitioner reach an agreement under this paragraph, the agreement shall be presented to the commission at an open meeting for consideration and action.
 - (5) The current CCN holder bears the burden to prove what property is useless or valueless property.
 - (6) The commission shall identify in its order granting release under subsections (k) or (l) of this section what property, if any, is useless or valueless property. This order is the commission's final determination of what property, if any, is useless

or valueless property, subject to motions for rehearing in accordance with the process provided by commission rules.

- (7) If the commission determines that there is not any useless or valueless property, then no proceeding under subsection (o) of this section is required.

(o) **Compensation for property rendered useless or valueless.**

- (1) A retail public utility may not provide service directly or indirectly to the public in a removed area until any compensation ordered under this subsection is provided to the former CCN holder. Such compensation shall be for useless or valueless property, as such is determined by the commission under subsection (n) of this section.

(2) **Notice of intent to provide service.**

(A) After the commission has issued its order granting release under subsections (k) or (l) of this section, if a prospective retail public utility and a former CCN holder have not agreed on compensation, then the prospective retail public utility shall file a notice of intent to provide service.

(B) A notice of intent to provide service may be filed only after the commission has issued an order under subsections (k) or (l) of this section. A notice of intent filed before the commission issues its order under subsections (k) or (l) of this section is deemed to be filed on the date the commission's order is signed.

(C) The notice of intent to provide service shall include all of the information required by this subparagraph.

- (i) The notice of intent shall state that it is a notice of intent to provide service under TWC §13.254(e) and this subsection.
 - (ii) If applicable, the notice of intent shall include an agreement between the former CCN holder and the prospective retail public utility regarding compensation for the useless or valueless property. If an agreement is filed, the agreement shall not be evidence in a future rate case.
- (3) After the notice of intent to provide service is filed, a presiding officer shall establish a procedural schedule. The schedule shall ensure that the total compensation for any property identified in the order issued under subsections (k) or (l) of this section will be determined no later than the 90th day after the date the notice of intent is filed.
- (4) Within ten calendar days after the filing of the notice of intent to provide service, the prospective retail public utility shall file one of the following items:
 - (A) a letter identifying the qualified individual or firm serving as the agreed independent appraiser; or
 - (B) a letter stating that the former CCN holder and prospective retail public utility will each engage its own appraiser, at its own expense.
- (5) The former CCN holder has a right to intervene in a proceeding under this subsection.
- (6) The former CCN holder and the prospective retail public utility may reach an agreement at any time during the pendency of a proceeding under this subsection regarding what is the appropriate amount of compensation for the useless or

valueless property. If the former CCN holder and the prospective retail public utility reach an agreement under this paragraph, the agreement shall be presented to the commission at an open meeting for consideration and action.

- (7) If the former CCN holder and the prospective retail public utility agree on a qualified individual or firm to serve as an independent appraiser, then all of the requirements listed in this paragraph apply.
 - (A) The independent appraiser shall be limited to appraising the useless or valueless property.
 - (B) The former CCN holder and the prospective retail public utility shall file the appraisal within 65 calendar days after the filing of the notice of intent to provide service.
 - (C) The prospective retail public utility shall bear the costs of the independent appraiser.
 - (D) The commission is bound by the independent appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.
- (8) If the former CCN holder and the prospective retail public utility do not agree on an independent appraiser, each shall engage its own qualified appraiser at its own expense.
 - (A) Each appraiser shall be limited to appraising the useless or valueless property.
 - (B) Each appraiser shall file its appraisal with the commission within 60 calendar days after the filing of the notice of intent to provide service.

- (C) After the two appraisals are filed, the commission shall appoint a qualified individual or firm to serve as a third appraiser who shall make a valuation within 30 calendar days of the date the independent appraisals are filed.
 - (D) The third appraiser's valuation shall be limited to the useless or valueless property and may not be less than the lower appraisal valuation or more than the higher appraisal valuation.
 - (E) The former CCN holder and the prospective retail public utility shall each pay one-half of the cost of the third appraisal. Payment shall be made directly to the third appraiser. Proofs of payment shall be separately filed with the commission by the former CCN holder and the prospective retail public utility.
 - (F) The commission is bound by the third appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.
- (9) **Valuation of real property.** The value of real property that the commission identified in the order issued under subsections (k) or (l) of this section as useless or valueless shall be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.
- (10) **Valuation of personal property.** The value of personal property that the commission identified in the order issued under subsections (k) or (l) of this section as useless or valueless shall be determined according to this paragraph. To ensure that compensation to a former CCN holder is just and adequate, the following factors shall be used in valuing such personal property:

- (A) the amount of the former CCN holder's debt allocable to service to the removed area;
 - (B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;
 - (C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;
 - (D) the amount of the former CCN holder's contractual obligations allocable to the removed area;
 - (E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;
 - (F) the impact on future revenues lost from existing customers;
 - (G) necessary and reasonable legal expenses and professional fees; and
 - (H) any other relevant factors as determined by the commission.
- (11) If the presiding officer determines that all requirements of this subsection have been met, the presiding officer shall issue an order setting the compensation due to the former CCN holder at the valuation established by the appraisal. This order shall be the final act of the commission, subject to motions for rehearing. Alternatively, the presiding officer may issue a proposed order for consideration by the commission.

(p) **Additional conditions.**

- (1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:
 - (A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and
 - (B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.
- (2) The commission shall order the prospective retail public utility to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.
 - (A) The commission shall order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and shall establish the terms under which service must be provided.
 - (B) The commission may order any of the following terms:
 - (i) transfer of debt and other contract obligations;
 - (ii) transfer of real and personal property;
 - (iii) establishment of interim rates for affected customers during specified times; and

- (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.
- (3) The prospective retail public utility shall not charge the affected customers any transfer fee or other fee to obtain service, except for the following:
 - (A) the prospective retail public utility's usual and customary rates for monthly service, or
 - (B) interim rates set by the commission, if applicable.
- (4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission shall not order compensation to the current CCN holder, the commission shall not make a determination of whether property is rendered useless or valueless under subsection (n) of this section, and the prospective retail public utility shall not file a petition under subsection (o) of this section.

§24.247. Requirement to Provide Continuous and Adequate Service.

- (a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:
 - (1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

- (2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;
 - (3) nonuse; or
 - (4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.
- (b) After notice and hearing, the commission may:
- (1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in TWC §16.341, to:
 - (A) provide specified improvements in its service in a defined area if:
 - (i) service in that area is inadequate as set forth in §24.205 and §24.207 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or
 - (ii) is substantially inferior to service in a comparable area; and
 - (iii) it is reasonable to require the retail public utility to provide the improved service; or
 - (B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous

and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules as specified in §24.11 of this title (relating to Financial Assurance), or as specified by the commission. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules;

- (2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service after TCEQ approves the interconnecting service pursuant to 30 TAC Chapter 290 (relating to Public Drinking Water) or 30 TAC 217 (relating to Design Criteria for Domestic Wastewater Systems);
 - (3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or
 - (4) issue an emergency order, with or without a hearing, under §24.14 of this title (relating to Emergency Orders).
- (c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Texas Health and Safety Code, §341.0355, or under

this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:

- (1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance in an amount determined by the commission not to exceed the amount of the financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and
- (2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

§24.249. Cessation of Operations by a Retail Public Utility.

- (a) Any retail public utility that possesses or is required to possess a certificate of convenience and necessity (CCN) and seeks to discontinue, reduce, or impair retail water or sewer utility service, except under the conditions listed in TWC §13.250(b), must file a petition with the commission which sets out the following:
 - (1) the action proposed by the retail public utility;
 - (2) the proposed effective date of the actions, which must be at least 120 days after the petition is filed with the commission;
 - (3) a concise statement of the reasons for proposing the action; and

- (4) the part of the petitioner's service area affected by the action, including maps as described by §24.257 of this title (relating to Mapping Requirements for Certificates of Convenience and Necessity Applications).

- (b) The petitioner shall file a proposed notice to customers and any other affected parties. The proposed notice shall include:
 - (1) the name, CCN number, if any, mailing address, and business telephone number of the petitioner;
 - (2) a description of the service area of the petitioner involved;
 - (3) the anticipated effect of the cessation of operations on the rates and services provided to all customers; and
 - (4) a statement that a person who wishes to intervene or comment should file a request to intervene or comments with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326.

- (c) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the petitioner for mailing to:
 - (1) cities and neighboring retail public utilities providing the same utility service within two miles of the outer boundary of the petitioner's certificated service area;
 - (2) any city whose extraterritorial jurisdiction overlaps the petitioner's certificated service area;
 - (3) the customers of the petitioner; and

- (4) any person that has requested service from the petitioner but that has not yet received service.
- (d) The petitioner may be required by the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county(ies) of operation. In addition to the information specified in subsection (b) of this section, the notice shall include the following:
- (1) the sale price of the facilities;
 - (2) the name, CCN number, if any, and mailing address of the petitioner's owner or authorized representative; and
 - (3) the business telephone of the petitioner.
- (e) The commission may require the petitioner to deliver notice to other affected persons or agencies.
- (f) If no hearing is requested by the 30th day after the required notice has been mailed or published, whichever occurs later, the commission may consider the petition for final decision without further hearing.
- (g) If a hearing is requested, the petition will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).
- (h) Under no circumstance may any of the following entities cease operations without the approval of the regulatory authority: a retail public utility that possesses or is required to possess a CCN, a person who possesses facilities used to provide retail water or sewer utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a CCN under §24.229 of this title (relating to Certificate of Convenience and Necessity Not Required).

- (i) In determining whether to authorize a retail public utility to discontinue, reduce, or impair retail water or sewer utility service, the commission shall consider, but is not limited to, the following factors:
- (1) the effect on the customers and landowners;
 - (2) the costs associated with bringing the utility into compliance;
 - (3) the applicant's diligence in locating alternative sources of service;
 - (4) the applicant's efforts to sell the utility, such as running advertisements, contacting other retail public utilities, or discussing cooperative organization with the customers;
 - (5) the asking price for purchase of the utility as it relates to the undepreciated original cost of the system for ratemaking purposes;
 - (6) the relationship between the applicant and the original developer of the area services;
 - (7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and
 - (8) the feasibility of customers and landowners obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.
- (j) If a utility discontinues or otherwise abandons operation of its facilities without commission authorization, the commission may appoint a temporary manager or place the utility under supervision to take over the utility's operations, management, finances, and facilities to ensure continuous and adequate retail water and/or sewer utility service.

§24.251. Exclusiveness of Certificates.

Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certificated pursuant to this chapter.

§24.253. Contracts Valid and Enforceable.

- (a) If approved by the commission after notice and hearing, contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities are valid and enforceable and are incorporated into the corresponding certificates of convenience and necessity (CCNs). This section only applies to the transfer of certificated service area and customers between existing CCN holders. Nothing in this provision negates the requirements of TWC §13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities.
- (b) Retail public utilities may request approval of a contract by filing a written petition with the commission. The written petition shall include the following:
 - (1) maps of the requested area in accordance with §24.257(a) of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);
 - (2) a copy of the executed contract or agreement;

- (3) the number of customers to be transferred, if any;
 - (4) information described in subsection (c)(3) of this section; and
 - (5) any other information required by the commission.
- (c) For the purpose of this section, notice under §24.235 of this title (relating to Notice Requirements for Certificate of Convenience and Necessity Applications) does not apply. Notice under this section shall be as follows:
- (1) If affected customers will be transferred as part of the contract, then individual notice shall be provided to the affected customers by mail, e-mail, or hand delivery. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the commission.
 - (2) If the decision to enter into a contract under this section was discussed at a meeting of a city council, a water supply or sewer service corporation's board, district board, county commissioner's court, or other regulatory authority, a copy of the meeting agenda and minutes for the meeting during which the item was discussed may be considered sufficient notice.
 - (3) If notice was provided in accordance with paragraph (1) or (2) of this subsection, both parties to the contract under this section shall ensure that the following are filed with the commission: an affidavit attesting to the date that notice was provided and copies of the notice that was sent.

§24.255. Contents of Request for Cease and Desist Order by the Commission Under TWC**§13.252.**

- (a) If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or provides, makes available, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of convenience and necessity (CCN), the commission may issue an order that prohibits the construction or extension of the interfering line, plant, or system or the provision of service or that prescribes terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for a commission order shall include the following:
- (1) the name, CCN number, if applicable,, e-mail address, phone number, and mailing address of the retail public utility making the request;
 - (2) the name, CCN number, if applicable,, mailing address, phone number, if known, and e-mail address, if known, of the retail public utility which is to be the subject of the order;
 - (3) a description of the alleged interference or unlawful provision of service;
 - (4) a map of the service area of the requesting utility that clearly shows the location of the alleged interference or unlawful provision of service;
 - (5) copies of any other information or documentation which would support the position of the requesting utility; and
 - (6) other information as required by the commission.

- (b) A request for a commission order under this section shall be filed with the commission in the form of a petition and shall contain the necessary information under subsection (a) of this section. The petition must be filed within 180 days from the date the petitioner becomes aware that another retail public utility is interfering or attempting to interfere with the operation of a line, plant or system or is providing retail water or sewer utility service within the service area of another retail public, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days.

§24.257. Mapping Requirements for Certificate of Convenience and Necessity Applications.

- (a) Applications to obtain or amend a certificate of convenience and necessity (CCN) shall include the following mapping information:
- (1) a general location map identifying the requested area in reference to the nearest county boundary, city, or town;
 - (2) a detailed map identifying the requested area in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads;
 - (3) one of the following for the requested area:
 - (A) a metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;
 - (B) a recorded plat; or
 - (C) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83

Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record; and

- (4) if applicable, maps identifying any facilities for production, transmission, or distribution of services, customers, or area currently being served outside the certificated service area. Facilities shall be identified on subdivision plats, engineering planning maps, or other large scale maps. Color coding may be used to distinguish the types of facilities identified. The location of any such facility shall be described with such exactness that the facility can be located “on the ground” from the map and may be identified in reference to verifiable man-made and natural landmarks where necessary to show its actual location.
- (b) All maps shall be filed under §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).

§24.259. Single Certification in Incorporated or Annexed Areas.

- (a) **Applicability.** This section applies to a requested area that also meets the following criteria:
- (1) the requested area has been incorporated or annexed by a municipality;
 - (2) a retail public utility provides service to the requested area under a certificate of convenience and necessity (CCN); and
 - (3) the retail public utility that holds the CCN under which the requested area is currently certificated is one of the following:

- (A) a water supply or sewer service corporation, a special utility district under chapter 65 of the Texas Water Code, or a fresh water supply district under chapter 53 of the Texas Water Code; or
 - (B) not a water supply or sewer service corporation, and its service area is located entirely within the boundaries of a municipality that has a population of at least 1.7 million according to the most recent federal census.
- (b) **Definitions.** In this section, the following words and terms have the definitions provided by this subsection.
- (1) **Impaired property** -- Property remaining in the ownership of the current CCN holder after single certification that would sustain damages from the transfer of property to the municipality.
 - (2) **Franchised utility** -- A retail public utility that has been granted a franchise by a municipality to provide service inside the municipal boundaries.
 - (3) **Current CCN holder** -- The retail public utility that holds a CCN to provide service to the municipality's requested area.
 - (4) **Transferred property** -- Property that the municipality has requested be transferred to it or to a franchised utility from the current CCN holder.
 - (5) **Useless or valueless property** -- Property that would be rendered useless or valueless to the current CCN holder by single certification.
- (c) **Notice of intent to provide service in incorporated or annexed area.** A municipality that intends to provide service itself or through a franchised utility to all or part of an annexed or incorporated area shall notify the current CCN holder in writing of the

municipality's intent. The written notice to the current CCN holder shall specify the following information:

- (1) the municipality's requested area;
- (2) any transferred property;
- (3) the municipal ordinance or other action that annexed or incorporated the municipality's requested area;
- (4) what kind of service will be provided;
- (5) whether a municipally owned utility or franchised utility will provide the service;
and
- (6) the municipally owned utility's or the franchised utility's identity and contact information.

(d) **Written agreement regarding service to area.** The municipality and the current CCN holder may agree in writing that all or part of the area incorporated or annexed by the municipality may receive service from a municipally owned utility, a franchised utility, or the current CCN holder, or any combination of those entities.

- (1) If a franchised utility is to provide service to any part of the area, the franchised utility shall also be a party to the agreement.
- (2) The executed agreement may provide for single or dual certification of all or part of the area incorporated or annexed by the municipality, for the purchase of facilities or property, and may contain any other terms agreed to by the parties.
- (3) The executed agreement shall be filed with the commission. The commission shall incorporate the agreement's terms into the respective CCNs of the municipality, current CCN holder, and franchised utility, as appropriate.

- (e) **Application for single certification.** If an agreement is not executed within 180 calendar days after the municipality provides written notice under subsection (c) of this section and the municipality intends to provide service to the municipality's requested area, the municipality shall submit an application to the commission to grant single certification to a municipally owned utility or a franchised utility.
- (1) If a franchised utility will provide service to any part of the municipality's requested area, the franchised utility shall join the application.
 - (2) The application shall include all of the information listed in this paragraph.
 - (A) The application shall identify the municipal ordinance or other action that annexed or incorporated the municipality's requested area.
 - (B) The application shall identify the type of service that will be provided to the municipality's requested area.
 - (C) The application shall identify the municipally owned utility or franchised utility that will provide service to the municipality's requested area and, if each will serve part of the area, the area that each will serve.
 - (D) The application shall identify contact information for the current CCN holder.
 - (E) The application shall demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems if the municipality owns a public drinking water system.
 - (F) The application shall demonstrate that at least 180 calendar days have passed since the date that the municipality provided written notice under subsection (c) of this section.

- (G) The application shall identify with specificity any property that the municipality requests be transferred from the current CCN holder.
 - (H) The application shall identify the boundaries of the municipality's incorporated area or extraterritorial jurisdiction by providing digital-mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data shall include a single, continuous polygon record.
 - (I) The application shall identify the municipality's requested area by providing mapping information to clearly identify the area the municipality is seeking in accordance with §24.257 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application. Commission staff may request additional mapping information after the application is submitted.
- (3) Within 30 calendar days of the filing of the application, commission staff shall file a recommendation regarding whether the application meets the requirements of this subsection.
- (f) **Notices for single-certification application.** The applicant shall send a copy of the application to the current CCN holder by certified mail or hand-delivery on the same day that the applicant submits the application to the commission.
 - (g) **Response to single-certification application.** The current CCN holder shall file a response to the application for single certification in conformance with this subsection.
 - (1) The response shall be filed within 40 calendar days of the filing of the application.

- (2) The response shall state the following information:
 - (A) whether the single certification is agreed to; and
 - (B) if there is no agreement for single certification, any conditions that, if met, would cause the current CCN holder to agree to single certification.
 - (3) In its response, the current CCN holder shall identify any useless or valueless property, or impaired property, that would result from certification of the municipality's requested area to the municipality.
 - (4) There is a rebuttable presumption that there is no useless or valueless property or impaired property if the current CCN holder fails to timely respond as required under paragraph (1) of this subsection. Upon motion and proof of service consistent with the requirements of subsection (f) of this section, the presiding officer may issue an order determining that there is no useless or valueless property or impaired property.
- (h) **Referral to SOAH.**
- (1) Within 50 calendar days of the filing of the application, a presiding officer shall determine whether an application for single certification meets the requirements of subsection (e) of this section.
 - (2) If the presiding officer determines that the application meets the requirements of subsection (e) of this section, the application shall be referred to the State Office of Administrative Hearings (SOAH) for a hearing. SOAH shall fix a time and place for a hearing on the application and shall notify the current CCN holder, municipality, and franchised utility, if any, of the hearing.
 - (3) Except as provided under paragraph (4) of this subsection, if the presiding officer

determines that the application does not meet the requirements of subsection (e) of this section, the applicant shall supplement its application to correct the identified deficiencies within a timeframe, and under a process, established by the presiding officer.

- (4) The application shall be denied if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.
- (i) **Hearing at SOAH.**
 - (1) The hearing at SOAH shall be limited to determining what property, if any, is useless or valueless property, impaired property, or transferred property.
 - (2) The current CCN holder bears the burden to prove what property is useless or valueless property or impaired property.
 - (3) The transferred property shall be limited to the specific property identified in the application.
 - (4) The SOAH administrative law judge shall issue a proposal for decision for the commission's consideration.
 - (j) **Interim order.** The commission shall issue an interim order identifying what property, if any, is useless or valueless property, impaired property, or transferred property.
 - (k) **Administrative Completeness.** Section 24.8 of this title relating to Administrative Completeness does not apply to the determination of administrative completeness under this section. After the commission has issued its interim order under subsection (j) of this section, a presiding officer shall determine that the application for single certification is

administratively complete and shall establish a procedural schedule that will allow total compensation for any property identified in the interim order to be determined not later than 90 calendar days after the application is determined to be administratively complete.

- (l) **Valuation of real property.** The value of real property that the commission identified in the interim order issued under subsection (j) of this section shall be determined according to the standards set forth in Texas Property Code, chapter 21, governing actions in eminent domain.
- (m) **Valuation of personal property.** The value of personal property that the commission identified in the interim order issued under subsection (j) of this section shall be determined according to this subsection.
 - (1) This subsection is intended to ensure that the compensation to a current CCN holder is just and adequate as provided by these rules.
 - (2) The following factors shall be used to value personal property that the commission identified in the interim order issued under subsection (j) of this section:
 - (A) the impact on the current CCN holder's existing indebtedness and the current CCN holder's ability to repay that debt;
 - (B) the value of the current CCN holder's service facilities located within the municipality's requested area;
 - (C) the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the municipality's requested area;
 - (D) the amount of the current CCN holder's contractual obligations allocable

to the municipality's requested area;

- (E) any demonstrated impairment of service or increase of cost to the current CCN holder's customers that remain after the single certification;
- (F) the impact on future revenues lost from existing customers;
- (G) necessary and reasonable legal expenses and professional fees;
- (H) factors relevant to maintaining the current financial integrity of the current CCN holder; and
- (I) other relevant factors as determined by the commission.

(n) **Valuation Process.**

- (1) For an area incorporated by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (j) of this section shall be determined by a qualified individual or firm serving as an independent appraiser. The independent appraiser shall be limited to appraising the property that the commission identified in the interim order issued under subsection (j) of this section. The current CCN holder shall select the independent appraiser by the 21st calendar day after the date of the order determining that the application is administratively complete. The municipality shall pay the independent appraiser's costs. The independent appraiser shall file its appraisal with the commission by the 70th calendar day after the date of the order determining that the application is administratively complete. The valuation of property under this paragraph is binding on the commission.
- (2) For an area annexed by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (j) of this

section shall be determined by one or more independent appraisers under the process set forth in this paragraph. All independent appraisers shall be limited to appraising the property that the commission identified in the interim order issued under subsection (j) of this section. All independent appraisers shall be qualified individuals or firms.

(A) If the current CCN holder and the municipality can agree on an independent appraiser within ten calendar days after the application is found administratively complete, the agreed-upon independent appraiser shall make a valuation of the property that the commission identified in the interim order issued under subsection (j) of this section.

(i) The agreed-upon independent appraiser shall file its appraisal with the commission by the 70th calendar day after the date of the order determining that the application is administratively complete.

(ii) A valuation of property under this subparagraph is binding on the commission.

(B) If the current CCN holder and the municipality cannot agree on an independent appraiser within ten calendar days after the application is found administratively complete, the municipality shall notify the serving CCN holder in writing of the failure to agree.

(i) If the parties still cannot agree within 11 calendar days of the written notification, on the 11th day, the current CCN holder and the municipality shall each file with the commission a letter appointing a qualified individual or firm to serve as an independent

appraiser.

- (I) Within 10 business days of their appointment, the independent appraisers shall meet to reach an agreed valuation of property that the commission identified in the interim order issued under subsection (j) of this section.
 - (II) If the independent appraisers reach an agreed valuation of property, the agreed valuation under this subclause is binding on the commission.
- (ii) If the appraisers cannot agree on a valuation before the 16th business day after the date of their first meeting under this subsection, then both parties shall file separate appraisals by that date, and either the current CCN holder or the municipality shall petition the commission to appoint a third appraiser to reconcile the two appraisals.
- (I) The commission may delegate authority to appoint the third appraiser.
 - (II) The third appraiser shall file an appraisal that reconciles the two other appraisals by the 80th calendar day after the application is found administratively complete.
 - (III) The third appraiser's valuation may not be less than the lower or more than the higher of the two original appraisals filed under subparagraph (B)(ii) of this paragraph.
 - (IV) A valuation of property under this clause is binding on the

commission.

- (C) The current CCN holder and the municipality shall each pay one-half of the costs of all of the appraisers appointed under this paragraph. Payment shall be made directly to the appraisers, and proofs of payment shall be separately filed by the current CCN holder and the prospective retail public utility within 30 calendar days of the date of the invoice.

(o) **Action after receipt of appraisals.**

- (1) An order incorporating the valuation determined under subsection (n) of this section shall be issued by the 90th calendar day after the application is found administratively complete.
- (2) The commission shall deny the application if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.
- (3) If the commission does not deny the application, the commission shall do the following:
- (A) determine what property, if any, is useless or valueless property, impaired property, or transferred property;
- (B) determine the monetary amount that is adequate and just to compensate the current CCN holder for any such useless or valueless property, impaired property, and transferred property; and
- (C) grant single certification to the municipality or franchised utility.
- (4) The granting of single certification shall be effective on the date that

- (A) the municipality or franchised utility pays adequate and just compensation under a court order;
 - (B) the municipality or franchised utility pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f); or
 - (C) the Travis County district court's judgment becomes final, if the court's judgment provides that the current CCN holder is not entitled to any compensation.
- (5) The commission's order does not transfer any property, except as provided under subsection (u) of this section. Any other transfer of property under this section shall be obtained only by a court judgment rendered under TWC §13.255(d) or (e).
- (6) A presiding officer may issue an order under this section. Any such order shall be the final act of the commission subject to motions for rehearing under the commission's rules.
- (p) Appeal to district court, district court judgment, and transfer of property.**
- (1) Under TWC §13.255(e), any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.
 - (2) Under TWC §13.255(d), if the commission's final order is not appealed within 30 days, the municipality may request the Travis County district court to enter a judgment consistent with the commission's order.
- (q) Withdrawal of application for single certification.** A municipality or a franchised utility may withdraw an application for single certification without prejudice at any time

before a court judgment becomes final, provided that the municipality or the franchised utility has not taken physical possession of property owned by the current CCN holder or made payment for the right to take physical possession under TWC §13.255(f).

- (r) **Additional requirements regarding certain current CCN holders.** The following subsection applies to proceedings under this section in which the current CCN holder meets the criteria of subsection (a)(3)(B) of this section.
- (1) The commission or a court, as appropriate, must determine that the service provided by the current CCN holder is substandard or its rates are unreasonable in view of the current CCN holder's reasonable expenses.
 - (2) If the municipality abandons its application, the commission is authorized to award to the current CCN holder its reasonable expenses incurred to participate in the proceeding addressing the municipality's application, including attorney's fees.
 - (3) Unless the current CCN holder otherwise agrees, the municipality shall take all of the current CCN holder's personal and real property that is used and useful to provide service or is eligible to be deemed so in a future rate case.
- (s) **Notice of single certification.** Within 60 days of a transfer of property under a court judgment, the municipality or franchised utility shall provide written notice to each customer within the service area that is now singly certificated. The written notice shall provide the following information: the identity of the municipality or franchised utility, the reason for the transfer, the rates to be charged by the municipality or franchised utility, and the effective date of those rates.

(t) **Provision of service.**

- (1) A municipally owned utility or a franchised utility may provide service to all or a portion of an incorporated or annexed area on one of the following dates:
 - (A) the date that the commission incorporates the terms of an executed agreement filed with the commission under subsection (d)(3) of this section into the CCNs of the municipality, current CCN holder, and franchised utility, if applicable; or
 - (B) the date that the municipality or franchised utility
 - (i) pays adequate and just compensation under court order, or
 - (ii) pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f).
- (2) If the court judgment provides that the current CCN holder is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final.

(u) **Additional conditions.**

- (1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:
 - (A) ordering the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder; and
 - (B) transferring the entire CCN of the current CCN holder to the municipality or franchised utility, as applicable.
- (2) The commission shall order the municipality or franchised utility, as applicable,

to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.

- (A) The commission shall order the municipality or franchised utility, as applicable, to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the municipality's or franchised utility's other customers and shall establish the terms under which service must be provided.
- (B) The commission may order the following terms:
 - (i) transfer of debt and other contract obligations;
 - (ii) transfer of real and personal property;
 - (iii) establishment of interim service rates for affected customers during specified times; and
 - (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.
- (3) The municipality or franchised utility, as applicable, shall not charge the affected customers any transfer fee or other fee to obtain service, except
 - (A) the municipality's or franchised utility's usual and customary rates for monthly service, or
 - (B) interim rates set by the commission, if applicable.
- (4) If the commission orders the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder, the

proceeding shall not be referred to SOAH for a hearing to determine the useless or valueless property, impaired property, or transferred property, and the commission shall not order compensation to the current CCN holder.

Subchapter I: Water Utility Submetering and Allocation

§24.275. General Rules and Definitions.

- (a) **Purpose and scope.** The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.
- (b) **Application.** The provisions of this subchapter apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis. The provisions of this subchapter do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to water and sewer utility service costs.
- (c) **Definitions.** The following words and terms, when used in this subchapter, have the defined meanings, unless the context clearly indicates otherwise.

- (1) **Allocated utility service**--Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.
- (2) **Apartment house**--A building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rent paid at intervals of one month or more.
- (3) **Condominium manager**--A condominium unit owners' association organized under Texas Property Code §82.101, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code. **Condominium Manager** and **Manager of a Condominium** have the same meaning.
- (4) **Customer service charge**--A customer service charge is a rate that is not dependent on the amount of water used through the master meter.
- (5) **Dwelling unit**--One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.
- (6) **Dwelling unit base charge**--A flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.
- (7) **Manufactured home rental community**--A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

- (8) **Master meter**--A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.
- (9) **Multiple use facility**--A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.
- (10) **Occupant**--A tenant or other person authorized under a written agreement to occupy a dwelling.
- (11) **Overcharge**--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter. **Overcharge** and **Overbilling** have the same meaning.
- (12) **Owner**--The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.
- (13) **Point-of-use submeter**--A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

- (14) **Submetered utility service**--Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.
- (15) **Tenant**--A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.
- (16) **Undercharge**--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit less than the amount the tenant would have been charged under this subchapter. **Undercharge** and **Underbilling** have the same meaning.
- (17) **Utility costs**--Any amount charged to the owner by a retail public utility for water or wastewater service. **Utility Costs** and **Utility Service Costs** have the same meaning.
- (18) **Utility service**--For purposes of this subchapter, utility service includes only drinking water and wastewater.

§24.277. Owner Registration and Records.

- (a) **Registration.** An owner who intends to bill tenants for submetered or allocated utility service or who changes the method used to bill tenants for utility service shall register with the commission in a form prescribed by the commission.
- (b) **Water quantity measurement.** Except as provided by subsections (c) and (d) of this section, a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction began after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:
- (1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or
 - (2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.
- (c) **Plumbing system requirement.** An owner of an apartment house on which construction began after January 1, 2003, and that provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.
- (d) **Installation of individual meters.** On the request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction began after January 1, 2003, unless the retail public utility determines

that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(e) **Records.** The owner shall make the following records available for inspection by the tenant or the commission or commission staff at the on-site manager's office during normal business hours in accordance with subsection (g) of this section. The owner may require that the request by the tenant be in writing and include:

- (1) a current and complete copy of TWC, Chapter 13, Subchapter M;
- (2) a current and complete copy of this subchapter;
- (3) a current copy of the retail public utility's rate structure applicable to the owner's bill;
- (4) information or tips on how tenants can reduce water usage;
- (5) the bills from the retail public utility to the owner;
- (6) for allocated billing:
 - (A) the formula, occupancy factors, if any, and percentages used to calculate tenant bills;
 - (B) the total number of occupants or equivalent occupants if an equivalency factor is used under §24.281(e)(2) of this title (relating to Charges and Calculations); and
 - (C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental

community, or multiple use facility used for billing if dwelling unit size or rental space is used;

- (7) for submetered billing:
 - (A) the calculation of the average cost per gallon, liter, or cubic foot;
 - (B) if the unit of measure of the submeters or point-of-use submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;
 - (C) all submeter readings; and
 - (D) all submeter test results;
 - (8) the total amount billed to all tenants each month;
 - (9) total revenues collected from the tenants each month to pay for water and wastewater service; and
 - (10) any other information necessary for a tenant to calculate and verify a water and wastewater bill.
- (f) **Records retention.** Each of the records required under subsection (e) of this section shall be maintained for the current year and the previous calendar year, except that all submeter test results shall be maintained until the submeter is permanently removed from service.
- (g) **Availability of records.**
- (1) If the records required under subsection (e) of this section are maintained at the on-site manager's office, the owner shall make the records available for inspection at the on-site manager's office within three days after receiving a written request.

- (2) If the records required under subsection (e) of this section are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant or the commission or commission staff.
- (3) If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant.
- (4) Copies of the records may be provided by mail if postmarked by midnight of the last day specified in paragraph (1), (2), or (3) of this subsection.

§24.279. Rental Agreement.

- (a) **Rental agreement content.** The rental agreement between the owner and tenant shall clearly state in writing:
 - (1) the tenant will be billed by the owner for submetered or allocated utility services, whichever is applicable;
 - (2) which utility services will be included in the bill issued by the owner;
 - (3) any disputes relating to the computation of the tenant's bill or the accuracy of any submetering device will be between the tenant and the owner;
 - (4) the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month's bills for that period;
 - (5) if not submetered, a clear description of the formula used to allocate utility services;

- (6) information regarding billing such as meter reading dates, billing dates, and due dates;
 - (7) the period of time by which owner will repair leaks in the tenant's unit and in common areas, if common areas are not submetered;
 - (8) the tenant has the right to receive information from the owner to verify the utility bill; and
 - (9) for manufactured home rental communities and apartment houses, the service charge percentage permitted under §24.281(d)(3) of this title (relating to Charges and Calculations) that will be billed to tenants.
- (b) **Requirement to provide rules.** At the time a rental agreement is discussed, the owner shall provide a copy of this subchapter or a copy of the rules to the tenant to inform the tenant of his rights and the owner's responsibilities under this subchapter.
- (c) **Tenant agreement to billing method changes.** An owner shall not change the method by which a tenant is billed unless the tenant has agreed to the change by signing a lease or other written agreement. The owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.
- (d) **Change from submetered to allocated billing.** An owner shall not change from submetered billing to allocated billing, except after receiving written approval from the commission after a demonstration of good cause and if the rental agreement requirements under subsections (a), (b), and (c) of this section have been met. Good cause may include:
- (1) equipment failures; or
 - (2) meter reading or billing problems that could not feasibly be corrected.

- (e) **Waiver of tenant rights prohibited.** A rental agreement provision that purports to waive a tenant's rights or an owner's responsibilities under this subchapter is void.

§24.281. Charges and Calculations.

- (a) **Prohibited charges.** Charges billed to tenants for submetered or allocated utility service may only include bills for water or wastewater from the retail public utility and must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.
- (b) **Dwelling unit base charge.** If the retail public utility's rate structure includes a dwelling unit base charge, the owner shall bill each dwelling unit for the base charge applicable to that unit. The owner may not bill tenants for any dwelling unit base charges applicable to unoccupied dwelling units.
- (c) **Customer service charge.** If the retail public utility's rate structure includes a customer service charge, the owner shall bill each dwelling unit the amount of the customer service charge divided by the total number of dwelling units, including vacant units, that can receive service through the master meter serving the tenants.
- (d) **Calculations for submetered utility service.** The tenant's submetered charges must include the dwelling unit base charge and customer service charge, if applicable, and the gallonage charge and must be calculated each month as follows:
- (1) water utility service: the retail public utility's total monthly charges for water service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the

retail public utility to obtain an average water cost per gallon, liter, or cubic foot, multiplied by the tenant's monthly consumption or the volumetric rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

- (2) wastewater utility service: the retail public utility's total monthly charges for wastewater service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the retail public utility, multiplied by the tenant's monthly consumption or the volumetric wastewater rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;
- (3) service charge for manufactured home rental community or the owner or manager of apartment house: a manufactured home rental community or apartment house may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water and wastewater service, except when;
 - (A) the resident resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Texas Government Code, Chapter 2306, Subchapter DD; or
 - (B) the apartment resident receives tenant-based voucher assistance under United States Housing Act of 1937 Section 8, (42 United States Code, §1437f); and
- (4) final bill on move-out for submetered service: if a tenant moves out during a billing period, the owner may calculate a final bill for the tenant before the owner receives the bill for that period from the retail public utility. If the owner is

billing using the average water or wastewater cost per gallon, liter, or cubic foot as described in paragraph (1) of this subsection, the owner may calculate the tenant's bill by calculating the tenant's average volumetric rate for the last three months and multiplying that average volumetric rate by the tenant's consumption for the billing period.

(e) **Calculations for allocated utility service.**

- (1) Before an owner may allocate the retail public utility's master meter bill for water and sewer service to the tenants, the owner shall first deduct:
 - (A) dwelling unit base charges or customer service charge, if applicable; and
 - (B) common area usage such as installed landscape irrigation systems, pools, and laundry rooms, if any, as follows:
 - (i) if all common areas are separately metered or submetered, deduct the actual common area usage;
 - (ii) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is an installed landscape irrigation system, deduct at least 25% of the retail public utility's master meter bill;
 - (iii) if all water used for an installed landscape irrigation system is metered or submetered and there are other common areas such as pools or laundry rooms that are not metered or submetered, deduct at least 5% of the retail public utility's master meter bill; or
 - (iv) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or

submetered and there is no installed landscape irrigation system, deduct at least 5% of the retail public utility's master meter bill.

(2) To calculate a tenant's bill:

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

(i) the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered; or

(ii) the number of occupants in the tenant's dwelling unit using a ratio occupancy formula divided by the total number of occupants in all dwelling units at the beginning of the retail public utility's billing period using the same ratio occupancy formula to determine the total. The ratio occupancy formula will reflect what the owner believes more accurately represents the water use in units that are occupied by multiple tenants. The ratio occupancy formula that is used must assign a fractional portion per tenant of no less than that on the following scale:

(I) dwelling unit with one occupant = 1;

(II) dwelling unit with two occupants = 1.6;

(III) dwelling unit with three occupants = 2.2; or

(IV) dwelling unit with more than three occupants = $2.2 + 0.4$ per each additional occupant over three; or

- (iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula must calculate the average number of occupants in all dwelling units based on the number of bedrooms in the dwelling unit according to the scale below, notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:
 - (I) dwelling unit with an efficiency = 1;
 - (II) dwelling unit with one bedroom = 1.6;
 - (III) dwelling unit with two bedrooms = 2.8;
 - (IV) dwelling unit with three bedrooms = 4 + 1.2 for each additional bedroom; or
 - (iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion must be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house; or
 - (v) the individually submetered hot or cold water usage of the tenant's dwelling unit divided by all submetered hot or cold water usage in all dwelling units;
- (B) a condominium manager shall multiply the amount established in paragraph (1) of this subsection by any of the factors under subparagraph

- (A) of this paragraph or may follow the methods outlined in the condominium contract;
 - (C) for a manufactured home rental community, the owner shall multiply the amount established in paragraph (1) of this subsection by:
 - (i) any of the factors developed under subparagraph (A) of this paragraph; or
 - (ii) the area of the individual rental space divided by the total area of all rental spaces; and
 - (D) for a multiple use facility, the owner shall multiply the amount established in paragraph (1) of this subsection by:
 - (i) any of the factors developed under subparagraph (A) of this paragraph; or
 - (ii) the square footage of the rental space divided by the total square footage of all rental spaces.
- (3) If a tenant moves in or out during a billing period, the owner may calculate a bill for the tenant. If the tenant moves in during a billing period, the owner shall prorate the bill by calculating a bill as if the tenant were there for the whole month and then charging the tenant for only the number of days the tenant lived in the unit divided by the number of days in the month multiplied by the calculated bill. If a tenant moves out during a billing period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for

the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.

- (f) **Conversion to approved allocation method.** An owner using an allocation formula other than those approved in subsection (e) of this section shall immediately provide notice as required under §24.279(c) of this title (relating to Rental Agreement) and either:
- (1) adopt one of the methods in subsection (e) of this section; or
 - (2) install submeters and begin billing on a submetered basis; or
 - (3) discontinue billing for utility services.

§24.283. Billing.

- (a) **Monthly billing of total charges.** The owner shall bill the tenant each month for the total charges calculated under §24.281 of this title (relating to Charges and Calculations). If it is permitted in the rental agreement, an occupant or occupants who are not residing in the rental unit for a period longer than 30 days may be excluded from the occupancy calculation and from paying a water and sewer bill for that period.
- (b) **Rendering bill.**
- (1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public utility bill.
 - (2) Submeter bills shall be rendered as promptly as possible after the owner receives the retail public utility bill or according to the time schedule in the rental agreement if the owner is billing using the retail public utility's rate.

- (c) **Submeter reading schedule.** Submeters or point-of-use submeters shall be read within three days of the scheduled reading date of the retail public utility's master meter or according to the schedule in the rental agreement if the owner is billing using the retail public utility's rate.

- (d) **Billing period.**
- (1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.
 - (2) Submeter bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period. If the owner uses the retail public utility's actual rate, the billing period may be an alternate billing period specified in the rental agreement.
- (e) **Multi-item bill.** If issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill.
- (f) **Information on bill.** The bill must clearly state that the utility service is submetered or allocated, as applicable, and must include all of the following:
- (1) total amount due for submetered or allocated water;
 - (2) total amount due for submetered or allocated wastewater;
 - (3) total amount due for dwelling unit base charge(s) or customer service charge(s) or both, if applicable;
 - (4) total amount due for water or wastewater usage, if applicable;
 - (5) the name of the retail public utility and a statement that the bill is not from the retail public utility;
 - (6) name and address of the tenant to whom the bill is applicable;
 - (7) name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute; and

- (8) name, address, and telephone number of the party to whom payment is to be made.
- (g) **Information on submetered service.** In addition to the information required in subsection (f) of this section, a bill for submetered service must include all of the following:
- (1) the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters;
 - (2) the cost per gallon, liter, or cubic foot for each service provided; and
 - (3) total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable.
- (h) **Due date.** The due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following work day will be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.
- (i) **Estimated bill.** An estimated bill may be rendered if a master meter, submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.
- (j) **Payment by tenant.** Unless utility bills are paid to a third-party billing company on behalf of the owner, or unless clearly designated by the tenant, payment must be applied first to rent and then to utilities.

- (k) **Overbilling and underbilling.** If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment must be calculated for all of that tenant's bills that included overcharges. If the overbilling or underbilling affects all tenants, an adjustment must be calculated for all of the tenants' bills. If the tenant was undercharged, and the cause was not due to submeter or point-of-use submeter error, the owner may calculate an adjustment for bills issued in the previous six months. If the total undercharge is \$25 or more, the owner shall offer the tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be back billed to a current tenant.
- (l) **Disputed bills.** In the event of a dispute between a tenant and an owner regarding any bill, the owner shall investigate the matter and report the results of the investigation to the tenant in writing. The investigation and report must be completed within 30 days from the date the tenant gives written notification of the dispute to the owner.
- (m) **Late fee.** A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty.

§24.285. Complaint Jurisdiction.

- (a) **Jurisdiction.** The commission has exclusive jurisdiction for violations under this subchapter.

- (b) **Complaints.** If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a commission rule regarding utility costs, the person claiming the violation may file a complaint with the commission and may appear remotely for a hearing.

§24.287. Submeters or Point-of-Use Submeters and Plumbing Fixtures.

- (a) **Submeters or point-of-use submeters.**
- (1) Same type submeters or point-of-use submeters required. All submeters or point-of-use submeters throughout a property must use the same unit of measurement, such as gallon, liter, or cubic foot.
 - (2) Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters or point-of-use submeters necessary for the measurement of water to tenants and to common areas, if applicable.
 - (3) Submeter or point-of-use submeter tests prior to installation. No submeter or point-of-use submeter may be placed in service unless its accuracy has been established. If any submeter or point-of-use submeter is removed from service, it must be properly tested and calibrated before being placed in service again.
 - (4) Accuracy requirements for submeters and point-of-use submeters. Submeters must be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters. Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards

established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch- water submetering systems.

- (5) Location of submeters and point-of-use submeters. Submeters and point-of-use submeters must be installed in accordance with applicable plumbing codes and AWWA standards for water meters or ASME standards for point-of-use submeters, and must be readily accessible to the tenant and to the owner for testing and inspection where such activities will cause minimum interference and inconvenience to the tenant.
- (6) Submeter and point-of-use submeter records. The owner shall maintain a record on each submeter or point-of-use submeter which includes:
 - (A) an identifying number;
 - (B) the installation date (and removal date, if applicable);
 - (C) date(s) the submeter or point-of-use submeter was calibrated or tested;
 - (D) copies of all tests; and
 - (E) the current location of the submeter or point-of-use submeter.
- (7) Submeter or point-of-use submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:
 - (A) provide evidence, at no charge to the tenant, that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters or ASME standards for point-of-use submeters; or
 - (B) have the submeter or point-of-use submeter removed and tested and promptly advise the tenant of the test results.

- (8) Billing for submeter or point-of-use submeter test.
 - (A) The owner may not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards for water meters or ASME standards for point-of-use submeters.
 - (B) The owner may not bill the tenant for testing costs if there is no evidence that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months.
 - (C) The owner may bill the tenant for actual testing costs (not to exceed \$25) if the submeter meets AWWA accuracy standards or the point-of-use submeter meets ASME accuracy standards and evidence as described in paragraph (7)(A) of this subsection was provided to the tenant.
- (9) Bill adjustment due to submeter or point-of-use submeter error. If a submeter does not meet AWWA accuracy standards or a point-of-use submeter does not meet ASME accuracy standards and the tenant was overbilled, an adjusted bill must be rendered in accordance with §24.283(k) of this title (relating to Billing). The owner may not charge the tenant for any underbilling that occurred because the submeter or point-of-use submeter was in error.
- (10) Submeter or point-of-use submeter testing facilities and equipment. For submeters, an owner shall comply with the AWWA's meter testing requirements. For point-of-use meters, an owner shall comply with ASME's meter testing requirements.
- (b) **Plumbing fixtures.** After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a

condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall adhere to the following standards:

- (1) Texas Health and Safety Code, §372.002, for sink or lavatory faucets, faucet aerators, and showerheads;
 - (2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found; and
 - (3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:
 - (A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush; and
 - (B) install toilets that meet the standards prescribed by Texas Health and Safety Code, §372.002.
- (c) **Plumbing fixture not applicable.** Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

Subchapter J: Wholesale Water or Sewer Service

§24.301. Petition or Appeal Concerning Wholesale Rate.

This subchapter sets forth substantive guidelines and procedural requirements concerning:

- (1) a petition to review rates charged for the sale of water for resale filed pursuant to TWC, Chapter 12; or
- (2) an appeal pursuant to TWC, §13.043(f) (appeal by retail public utility concerning a decision by a provider of water or sewer service).

§24.303. Definitions.

For purposes of this subchapter, the following definitions apply:

- (1) **Petitioner** -- The entity that files the petition or appeal.
- (2) **Protested rate** -- The rate demanded by the seller.
- (3) **Cash Basis calculation of cost of service** -- A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and capital expenditures which are not debt financed. Other cash revenue requirements should be considered where applicable. Basic revenue requirement components under the cash basis do not include depreciation.
- (4) **Utility Basis calculation of cost of service** -- A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, depreciation, and return on investment.

§24.305. Petition or Appeal.

- (a) The petitioner must file a written petition with the commission. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.
- (b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.
- (c) The petitioner must file an appeal pursuant to TWC, §13.043(f) in accordance with the time frame provided therein.

§24.307. Commission's Review of Petition or Appeal Concerning Wholesale Rate.

- (a) When a petition or appeal is filed, the commission shall determine within 30 days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements §24.305 of this title (relating to Petition or Appeal). If the commission determines that the petition or appeal does not meet the requirements of §24.305 of this title, the commission shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the commission determines that the petition or appeal does meet the requirements of §24.305

of this title, the commission shall forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.

- (b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on public interest.
- (c) For a petition or appeal to review a rate that is not charged pursuant to a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.
- (d) If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.

§24.309. Evidentiary Hearing on Public Interest.

- (a) If the commission forwards a petition to the State Office of Administrative Hearings pursuant to §24.307(a) and (b) of this title (relating to Commission's Review of Petition or Appeal), the State Office of Administrative Hearings shall conduct an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.
- (b) Prior to the evidentiary hearing on public interest, discovery shall be limited to matters relevant to the evidentiary hearing on public interest.

- (c) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law concerning whether the protested rate adversely affects the public interest, and shall submit this recommendation to the commission.
- (d) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on cost of service. If the seller and buyer so agree the administrative law judge shall hold a consolidated evidentiary hearing.

§24.311. Determination of Public Interest.

- (a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:
 - (1) the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;
 - (2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;
 - (3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:

- (A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;
 - (B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;
 - (C) the seller changed the computation of the revenue requirement or rate from one methodology to another;
 - (D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;
 - (E) incentives necessary to encourage regional projects or water conservation measures;
 - (F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;
 - (G) the rates charged in Texas by other sellers of water or sewer service for resale; or
 - (H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser; or
- (4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.
- (b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.

§24.313. Commission Action to Protect Public Interest, Set Rate.

- (a) If as a result of the evidentiary hearing on public interest the commission determines the protested rate does not adversely affect the public interest, the commission will deny the petition or appeal by final order. The commission must state in the final order that dismisses a petition or appeal the bases upon which the commission finds the protested rate does not adversely affect the public interest.
- (b) If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate. The remand order is not a final order subject to judicial review.
- (c) No later than 90 days after the petition or appeal is forwarded to the State Office of Administrative Hearings for an evidentiary hearing on the rate pursuant to subsection (b) of this section or §24.307(a) and (c) of this title (relating to Commission's Review of Petition or Appeal), the seller shall file with the commission a cost of service study and other information which supports the protested rate
- (d) Prior to the evidentiary hearing on the rate, discovery shall be limited to matters relevant to the evidentiary hearing on the rate.
- (e) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law recommending a rate and shall submit this recommendation to the commission. The commission shall set a rate consistent with the ratemaking mandates of TWC, Chapters 12 and 13. If the protested rate was charged

pursuant to a written contract, the commission must state in a final order the bases upon which the commission finds the protested rate adversely affects the public interest.

§24.315. Determination of Cost of Service.

- (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.
- (b) When the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.

§24.317. Burden of Proof.

The petitioner shall have the burden of proof in the evidentiary proceedings to determine if the protested rate is adverse to the public interest. The seller of water or sewer service (whether the

petitioner or not) shall have the burden of proof in evidentiary proceedings on determination of cost of service.

§24.319. Commission Order to Discourage Succession of Rate Disputes.

- (a) If the commission finds the protested rate adversely affects the public interest and sets rates on a cost of service basis, then the commission shall add the following provisions to its order:
 - (1) If the purchaser files a new petition or appeal, and the commission forwards the petition or appeal to the State Office of Administrative Hearings pursuant to §24.307 of this title (relating to Commission's Review of Petition or Appeal), then the administrative law judge shall set an interim rate immediately. The interim rate shall equal the rate set by the commission in this proceeding where the commission granted the petition or appeal and set a cost of service rate.
 - (2) The commission shall determine in the proceedings pursuant to the new petition or appeal that the protested rate adversely affects the public interest. The administrative law judge shall not hold an evidentiary hearing on public interest but rather shall proceed with the evidentiary hearing to determine a rate consistent with the ratemaking mandates of the TWC, Chapters 12 and 13.
- (b) The effective period for the provisions issued pursuant to subsection (a) of this section shall expire upon the earlier of three years after the end of the test year period, or upon the seller and purchaser entering into a new written agreement for the sale of water or sewer service which supersedes the agreement which was the subject of the proceeding

where the commission granted the petition or appeal and set a cost of service rate. The provisions shall be effective in proceedings pursuant to a new petition or appeal if the petition or appeal is filed before the date of expiration.

- (c) For purposes of subsection (b) of this section, the “test year period” is the test year used by the commission in the proceeding where the commission granted the petition or appeal and set rates on a cost of service basis.

§24.321. Filing of Rate Data.

- (a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission may require each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.
- (b) Within 30 days after receiving a written request from the commission, a provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.

Subchapter K: Enforcement, Supervision, and Receivership

§24.351. Enforcement Action

If the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the commission shall immediately:

- (1) notify the utility’s representative; and

- (2) initiate enforcement action consistent with:
 - (A) this subchapter; and
 - (B) procedural rules adopted by the commission.

§24.353. Supervision of Certain Utilities.

- (a) The commission may place a utility under supervision where:
 - (1) the utility has exhibited gross or continuing mismanagement; or
 - (2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the TWC or commission rules; or
 - (3) the utility has exhibited noncompliance with commission orders; and
 - (4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.
- (b) The commission may require the utility to abide by conditions and requirements, including but not limited to:
 - (1) management requirements;
 - (2) additional reporting requirements;
 - (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;
 - (4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the commission and restricting use of funds in that account to reasonable and necessary expenses;

- (5) operational requirements;
 - (6) priority order of payments or obligations; and,
 - (7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.
- (c) Any utility under supervision may be required to obtain the approval of the commission before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided.

§24.355. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

- (a) After providing a utility with notice and an opportunity for a hearing, the commission may appoint a willing person, municipality, or political subdivision to temporarily manage and/or operate a utility that:
- (1) has discontinued or abandoned operations or the provision of services; or
 - (2) is being referred to the attorney general for the appointment of a receiver under TWC §13.412 for:
 - (A) having expressed an intent to abandon or abandoned operation of its facilities;
 - (B) having violated a final order of the commission;
 - (C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or

- (D) having violated a final judgment issued by a district court in a suit brought by the attorney general under:
 - (i) Chapter 13, Texas Water Code;
 - (ii) Chapter 7, Texas Water Code; or
 - (iii) Chapter 341, Texas Health and Safety Code.

- (b) Appointment under this section may be by emergency order under chapter 22, subchapter P of this title (relating to Emergency Orders for Water Utilities). A corporation may be appointed as a temporary manager.

- (c) Abandonment includes, but is not limited to:
 - (1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;
 - (2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;
 - (3) failure to adequately maintain facilities or provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;
 - (4) failure to provide customers adequate notice of a health hazard or potential health hazard;
 - (5) failure to secure an alternative available water supply during an outage;
 - (6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and
 - (7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

- (d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

§24.357. Operation of a Utility by a Temporary Manager.

- (a) By emergency order under TWC §13.4132, the commission may appoint a person, municipality, or political subdivision under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage and/or operate a utility that has discontinued or abandoned operations or the provision of service, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC §13.412.
- (b) A person, municipality, or political subdivision appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate service to customers, including the power and duty to:
- (1) read meters;
 - (2) bill for utility services;
 - (3) collect revenues;
 - (4) disburse funds;
 - (5) request rate increases if needed;
 - (6) access all system components;
 - (7) conduct required sampling;

- (8) make necessary repairs; and
 - (9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.
- (c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.
- (d) The temporary manager shall serve a term of 180 days, unless:
 - (1) specified otherwise by the commission;
 - (2) an extension is requested by the commission staff or the temporary manager and granted by the commission;
 - (3) the temporary manager is discharged from his responsibilities by the commission;or,
 - (4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general.
- (e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.
- (f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement may be approved by the commission.
- (g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to

ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

- (h) The temporary manager shall report to the commission on a monthly basis. This report shall include:
 - (1) an income statement for the reporting period;
 - (2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and
 - (3) any other information required by the commission.
- (i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

§24.359. Fines and Penalties.

- (a) Fines and penalties collected under TWC, Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.
- (b) The commission shall provide a reasonable period for a retail public utility that takes over a nonfunctioning system to bring the nonfunctioning system into compliance with commission rules, during which the commission may not impose a penalty for any deficiency in the system that is present at the time the retail public utility takes over the

nonfunctioning system. The commission must consult with the retail public utility before determining the period and may grant an extension of the period for good cause.

§24.361. Municipal Rates for Certain Recreational Vehicle Parks.

- (a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
- (1) Nonsubmetered master metered utility service -- Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.
 - (2) Recreational vehicle -- Includes a:
 - (A) house trailer as that term is defined by Texas Transportation Code, §501.002; and
 - (B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.
 - (3) Recreational vehicle park -- A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.
- (b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

- (c) Notwithstanding any other provision of this chapter, the commission has jurisdiction to enforce this section.

§24.363. Temporary Rates for Services Provided for a Nonfunctioning System.

- (a) Notwithstanding other provisions of this chapter, upon sending written notice to the commission, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.
- (b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.
- (c) Within 90 days of receiving notice of the temporary rate increase, the commission will issue an order regarding the reasonableness of the temporary rates. In making the determination, the commission will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.

Subchapter L: Provisions Regarding Municipalities**§24.375. Jurisdiction of Municipality: Surrender of Jurisdiction.**

- (a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.
- (b) The commission shall post on its website a list of municipalities that surrendered original jurisdiction to the commission.

§24.377. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters F and G of this chapter (relating to Customer Service and Protection and Quality of Service).

§24.379. Notification Regarding Use of Revenue.

At least annually, and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure, not water or sewer related, funded in whole or in part by customer revenue.

§24.381. Fair Wholesale Rates for Wholesale Water Sales to a District.

- (a) A municipality that makes a wholesale sale of water to a special district created under §52, Article III, or §59, Article XVI, Texas Constitution, and that operates under Title 4 (General Law Districts), or under Chapter 36 (Groundwater Conservation Districts) shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.
- (b) This section does not apply to a sale of water under a contract executed before September 1, 1997.

This agency 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 26th DAY OF JULY 2018 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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