

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

§24.240. Water and Sewer Utility Rates After Acquisition

- (a) **Applicability.** This section applies to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011. For purposes of this section, the term “transaction” is used to align with its usage in the procedural provisions of §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).
- (b) **Definitions.** In this section, the following definitions apply unless the context indicates otherwise.
- (1) **Authorized acquisition rates** -- Initial rates that are in force and shown in a tariff filed with a regulatory authority for the transferee for another water or sewer system owned by the transferee on the date an application is filed for the acquisition of a water or sewer system under §24.239 of this title.
 - (2) **Existing rates** -- Rates a transferor charged its customers under a tariff filed with a regulatory authority prior to the water system or sewer system being acquired.
 - (3) **Initial rates** -- Rates charged by a transferee to the customers of an acquired water or sewer system upon approval of the transaction by the commission. An initial rate may be an existing rate, an authorized acquisition rate, or a rate authorized by other applicable law.
- (c) **Initial Rates.**
- (1) A transferee must use existing rates as initial rates unless the commission authorizes, under this section or other applicable law, the use of different initial rates.
 - (2) A transferee may request commission approval to charge authorized acquisition rates to the customers of the water or sewer system for which the transferee seeks approval to acquire as part of an application filed in accordance with §24.239 of this title .
 - (3) If the transferee has in-force tariffs filed with multiple regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the same regulatory authority that has original jurisdiction over the rates charged to the acquired customers.
 - (4) **Phased-in rates.** If the in-force tariff contains rates that are phased in over time, the provisions of this paragraph apply.
 - (A) Unless determined otherwise by the commission, the schedule in the tariff for the effective period of each phase will be applied to the customers of the acquired water or sewer system. To moderate the effects of a rate increase on customers, the commission may approve

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

authorized acquisition rates that start customers of the acquired water or sewer system on an earlier phase than is in place for the customers to which the tariff already applies or establish a different schedule for the effective period of each phase.

- (B) The transferee's application must include financial projections, rate schedules, and billing comparisons, consistent with the requirements of subsection (d) of this section, for each phase in the in-force tariff.
- (C) The commission's review of whether the authorized acquisition rates are just and reasonable under subsection (f) of this section will include an evaluation of whether the final phase of the requested rates are just and reasonable.
- (5) **Public interest determination.** In determining whether to approve an acquisition under §24.239 of this title, the commission will consider whether approving the transferee's request to charge authorized acquisition rates under this section would change whether the proposed transaction would serve the public interest under §24.239(h)(5) of this title.
- (d) **Application.** In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 proceeding must include the following:
 - (1) a rate schedule showing the existing rates and the requested authorized acquisition rates;
 - (2) financial projections including a comparison of expected revenues under the acquired water or sewer system's existing rates and the requested authorized acquisition rates;
 - (3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;
 - (4) documentation from the most recent base rate case in which the rates that the transferee is requesting to use as authorized acquisition rates were approved; this documentation must be sufficient to allow the commission to evaluate what was included in the revenue requirement for the requested rates and, if available online, may consist solely of a web address where the documentation can be located and the applicable docket number or any other information required to locate the documentation;
 - (5) a disclosure of whether the transferor and transferee are or have been affiliates in the five-year period before the proposed acquisition, and the nature of each applicable affiliate relationship;
 - (6) additional explanation, including any applicable documentation, supporting the request to charge authorized acquisition rates, including:
 - (A) that the requested authorized acquisition rates would be just and reasonable rates for the customers of the acquired system and for the transferee;

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

- (B) how approving the requested rates would change how the commission should evaluate whether the proposed transaction would serve the public interest, according to any applicable criteria listed in §24.239(h)(5) of this title;
 - (C) if the transferee has multiple eligible in-force tariffs or rate schedules, a list of eligible tariffs or rate schedules and an explanation for the tariff or rate schedules the transferee proposes to use for authorized acquisition rates;
 - (D) if the transferor and transferee are affiliates or have been affiliates in the five-year period before the proposed acquisition, the application must also include an explanation for why the transferee is requesting to charge authorized acquisition rates instead of using other available ratemaking proceedings.
- (e) **Notice requirements.** Unless the commission waives notice in accordance with other applicable law, a transferee requesting approval to charge authorized acquisition rates under this section must, as part of the notice provided under §24.239 of this title, also provide notice of the information outlined in this subsection. Commission staff must incorporate this information into the notice provided to the transferee for distribution after the application is determined to be administratively complete.
- (1) How intervention differs from protesting a rate increase.
 - (2) A rate schedule showing the existing rates and the authorized acquisition rates.
 - (3) A billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.
- (f) **Commission review.** The commission will, with or without a public hearing, investigate the request for authorized acquisition rates to determine whether the requested rates are just and reasonable for the acquired customers and the transferee. That a regulatory authority has determined that the requested rates are just and reasonable for a water or sewer system to which the rates already apply is not, in itself, sufficient to conclude that the requested rates are just and reasonable for the acquired water or sewer system.
- (1) **Public hearing.** As part of its determination on whether to require a public hearing on the proposed transaction under §24.239(h) of this title, the commission will also consider whether a hearing is required to determine if the requested authorized acquisition rates are just and reasonable.
 - (A) If the commission requires a public hearing under this section or §24.239(h) of this title, the request to charge authorized acquisition rates will not be approved unless the commission determines that the requested rates are just and reasonable.
 - (B) If the commission does not require a public hearing under this section or §24.239(h) of this title, and the transferee has complied with the

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

notice provisions of this section, the request to charge authorized acquisition rates will be approved in the commission's order approving the transaction. This subparagraph does not apply if the commission does not approve the transaction.

- (2) **Scope of rate review.** The commission will determine whether the requested rates are just and reasonable based on the relevant facts and circumstances, subject to the limitations of subparagraph (A) of this paragraph.
- (A) The transferee is not required to support its request for authorized acquisition rates by initiating a rate proceeding, establishing the cost of service for the acquired water or sewer system, or establishing substantial similarity between the acquired water or sewer system and the water or sewer system to which the requested rates already apply. The transferee is also not required to defend the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.
- (B) The commission may consider whether any charges or significant components of the requested authorized acquisition rates (e.g., local or system-specific charges, pass throughs, etc.) would be unjust or unreasonable if applied to the acquired water or sewer system. The commission may also consider evidence of whether the customers of the acquired water or sewer system are currently receiving continuous and adequate service. The commission may also consider evidence of whether the requested rates are generally consistent with the rates charged to similar water or sewer systems. The commission's review is not limited to the factors enumerated in this subparagraph.