

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed rule is in effect the anticipated public benefit is that it will make it easier for smaller or underperforming water and sewer utilities to be purchased by utilities with more resources that can operate these utilities comparatively efficiently ensuring access to reliable and quality water, wastewater service for acquired utilities' customers. The rule will allow the acquiring utility to recover the costs of implementing system improvements quicker. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by **October 14, 2023**. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Commission Staff requests comments from market participants and other interested persons on the proposed rule. Interested persons may propose alternative language as a part of their filed comments. Interested persons may submit written comments on this proposal for publication draft by **October 14, 2023**. Comments should be organized in a manner consistent with the organization of the proposed draft rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53924.

Each set of comments should include a standalone executive summary as the first page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

Statutory Authority

The new rule is proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also proposed under TWC §13.301 which governs the Sale, Merger, etc.; Investigation; Disallowance of Transaction and TWC §13.3011 that relates to Initial Rates for Certain Water or Sewer Systems after Purchase or Acquisition.

Cross Reference to Statute: Texas Water Code §§13.041, 13.301, and 13.3011.

<rule>

§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.

- (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 by the acquiring utility for another water or sewer system owned by the acquiring utility.
 - (2) **Initial rates** -- Rates charged by an acquiring utility to the customers of an acquired utility upon acquisition.
 - (3) **Existing rates** -- Rates an acquired utility charged its customers under a tariff filed with a regulatory authority prior to the utility being acquired.
- (c) **Rates.**
- (1) An acquiring utility must use existing rates as initial rates until the commission approves other rates. If the acquiring utility requests approval to charge authorized acquisition rates, the acquiring utility must continue to charge existing rates until the request to charge authorized acquisition rates is approved.
 - (2) An acquiring utility may request commission approval to charge authorized acquisition rates to the customers of the system for which the utility seeks approval to acquire as part of an application filed in accordance with §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).
 - (3) An authorized acquisition rate must be in force and shown in a tariff filed with a regulatory authority by the acquiring utility for another water and sewer system on the date an application is filed for the acquisition of the utility under §24.239 of this title.

- (4) If the acquiring utility has multiple in-force tariffs filed with regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the regulatory authority that has original jurisdiction over the rates charged to the acquired customers.
 - (5) If the in-force tariff contains rates that are phased in over time, any step of the phase-in rates included in the tariff may be considered an authorized acquisition rate if it is in the public interest. If the authorized acquisition rate is a phased-in rate, the phases must proceed along a similar schedule as the phases in the in-force tariff.
 - (6) The acquiring utility is not required to initiate a rate proceeding under subchapter F of chapter 13 of the Texas Water Code to request authorized acquisition rates.
- (d) **Application.** In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 of this title proceeding must include the following:
- (1) financial projections including a comparison of expected revenues under the acquired utility's existing rates and the requested authorized acquisition rates;
 - (2) a capital improvements plan for the acquired system;
 - (3) an explanation for the tariff or rate schedule the acquiring utility proposes to use for authorized acquisition rates, if the acquiring utility has multiple eligible in force tariffs or rate schedules;
 - (4) a rate schedule showing the existing rates and the requested authorized acquisition rates;

- (5) a disclosure of whether the acquired and acquiring systems are affiliates or have been affiliates in the five year period before the proposed transaction;
 - (6) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;
 - (7) provide documentation from the most recent base rate case in which the tariff that the acquiring utility is requesting to be approved as Authorized Acquisition Rates was approved; and
 - (8) any other information necessary to demonstrate that the authorized acquisition rates are just and reasonable and that the request is in the public interest.
- (e) **Notice requirements.** In addition to the notice requirements for applications filed under §24.239 of this title, the acquiring utility must include the following information in the application for authorized acquisition rates. Commission staff must incorporate this information into the notice provided to the acquiring utility for distribution after the application is determined to be administratively complete that contains:
- (1) how intervention differs from protesting a rate increase;
 - (2) a rate schedule showing the existing rates and the authorized acquisition rates; and,
 - (3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

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

**ISSUED IN AUSTIN, TEXAS ON THE 14th DAY OF SEPTEMBER 2023 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**