

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

**Subchapter J. WHOLESALE WATER OR SEWER SERVICE.**

**§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.