

PROJECT NO. 45115

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| PROJECT TO AMEND CHAPTERS 22 | § | PUBLIC UTILITY COMMISSION |
| AND 24 - IMPLEMENTATION OF | § | |
| SENATE BILL 1148 (VARIOUS WATER | § | OF TEXAS |
| REGULATIONS MODIFICATIONS) | § | |

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §24.14 AND §24.22
AS APPROVED AT THE MARCH 3, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §24.14, relating to Emergency Orders, and §24.22, relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871. Consistent with 1 Tex. Admin. Code §91.35(d), the commission also proposes amendments to chapter 22 of the commission's rules in a separate notice preamble as part of this project.

The proposed amendments will allow the commission's substantive rules relating to emergency orders to conform to §2, §3, §5, §6, and §§8–10 of Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). The proposed amendments will also allow provisions relating to notice of ratemaking proceedings in §24.22 to implement §5 and §6 of SB 1148, which grant the commission the authority to delegate to the State Office of Administrative Hearings (SOAH) the responsibility and authority to give reasonable notice of hearings in Class A and Class B rate cases. Project Number 45115 is assigned to this proceeding.

Tammy Benter, Division Director of the commission's Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there

will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with SB 1148. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Benter has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on May 10, 2016. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are

required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 40 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to amend the identified sections. All comments should refer to Project Number 45115.

These amendments are proposed under TWC §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, and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§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 §24.142 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.143 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)(4)~~ 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 or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;
- ~~(3)(2)~~ 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 service discontinuance of service or serious impairment in service is imminent or has occurred. ~~;~~ and/or

- ~~(3) to establish reasonable compensation for the temporary service required under paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to raise its rate structure to ensure proper payment.~~
- ~~(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.~~The commission may also issue orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities):~~
- (1) ~~to appoint a temporary manager under TWC §5.507 and §13.4132; and/or~~
- (2) ~~to approve an emergency rate increase under TWC §5.508 and §13.4133 in certain circumstances:~~
- (A) ~~for which a temporary manager has been appointed under TWC §13.4132;~~
- ~~or~~
- (B) ~~for which a receiver has been appointed under TWC §13.412; and~~
- (C) ~~if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.~~
- (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 §24.31 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 §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

~~If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.~~

- (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.

§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.

(a)-(b) (No change.)

(c) Notice requirements specific to applications filed pursuant to TWC §13.187.

(1) (No change.)

(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) (No change.)

(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) (No change.)

(e)-(g) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 4th DAY OF MARCH 2016 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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