

PROJECT NO. 49798

**RULEMAKING PROJECT TO § PUBLIC UTILITY COMMISSION
AMEND CHAPTER 24 TO REVISE §
CLASSIFICATIONS FOR WATER § OF TEXAS
AND SEWER UTILITIES §**

**ORDER ADOPTING AMENDMENTS TO §§24.3, 24.11, 24.14, 24.25, 24.27, 24.29, 24.33,
24.35, 24.49, 24.127, 24.129, 24.227, AND 24.363 AS APPROVED
AT THE APRIL 17, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §§24.3, 24.11, 24.14, 24.25, 24.27, 24.29, 24.33, 24.35, 24.49, 24.127, 24.129, 24.227, and 24.363, relating to classifications for water and sewer utilities with changes to the proposed text as published in the December 27, 2019 issue of the *Texas Register* (44 TexReg 52). The amendments will implement the changes required by sections 1, 2 (in part), 3, 7, 8, 9, and 11 of Senate Bill 700, passed in the 86th Regular Legislative Session and effective September 1, 2019, relating to changes in the classification of water and sewer utilities, the issuance of emergency orders by the commission and the Texas Commission on Environmental Quality (TCEQ), and the continuation of temporary rates for nonfunctioning utilities that are acquired by another utility. The proposed amendments make changes to 16 TAC §24.3 to conform certain definitions to the definitions found in TWC §13.002, delete terms that are defined using language that is repeated elsewhere in 16 TAC Chapter 24, delete terms that are also defined in 16 TAC Chapter 22, and delete terms that appear only in 16 TAC §24.3 and nowhere else in 16 TAC Chapter 24. Definitions of some commonly used ratemaking terms are also deleted. The amendments are adopted under Project Number 49798.

The commission received comments and reply comments on the proposed amendments from the Office of Public Utility Counsel (OPUC) and the Texas Association of Water Companies (TAWC).

Comments on the preamble.

OPUC recommended modifying the preamble to clarify that the deletion of certain definitions from 16 TAC §24.3 constitutes a repeal of those sections and adding a section-by-section explanation of the proposed deletions to the preamble. TAWC agreed that clarifying the reason why each definition was deleted may be helpful to stakeholders.

Commission response:

The commission declines to amend the preamble as recommended by OPUC because it disagrees with OPUC’s application of the term “repealed” to a subsection within a rule. If a rule as a whole is deleted, then the rule is repealed. If only a subsection of a rule is deleted, then the rule is amended. The commission also declines to provide the definition-by-definition analysis recommended by OPUC and TAWC and instead provides the following summary to address the deleted definitions.

The terms “intervenor” and “protestor” are defined in 16 TAC §22.2 and would not be defined differently for the purposes of a water case under 16 TAC Chapter 24. All defined acronyms such as “TCEQ” were deleted and instead defined when they appear throughout Chapter 24. Terms like “amortization,” “annualization,” “functional cost category,” “functionalization,” and “net book value” were deleted because they are common

ratemaking terms. The terms “acquisition adjustment,” “financial assurance,” “return on invested capital,” and “temporary water rate provision for mandatory water use reduction” are addressed in specific rules within Chapter 24. The terms “general rate revenue,” “license,” “licensing,” “multi-jurisdictional,” “purchased sewage treatment,” and “rate region” are used only once or not at all in Chapter 24 outside of §24.3. The terms “reconnect fee,” “sewage,” and “tap fee” are commonly used terms in the industry. The terms “public utility” and “retail public utility” were combined into a single definition with “water and sewer utility” similar to how they are presented in TWC §13.002(23).

Comments on specific terms deleted from 16 TAC §24.3.

OPUC recommended adding a savings clause to make clear that the amendments to 16 TAC §24.3 do not affect any case filed before the effective date of the amendments. OPUC also recommended that the Commission retain the following terms and definitions: “active connections,” “base rate,” “block rates,” “certificate of convenience and necessity (CCN),” “known and measurable,” “main,” “mandatory water use reduction,” “point of use,” “ratepayer,” and “water use restrictions.” TAWC agreed with retaining these definitions and suggested specific modifications to the existing definitions of the following terms: “active connection,” “inactive connection,” “block rates,” and “ratepayer.” TAWC and OPUC also recommended maintaining a definition of “landowner” that conforms exactly to the definition in TWC §13.002(1-a) and retaining the definition of point of use or point of ultimate use with a modification to clarify that this term refers to a service connection point. Finally, TAWC recommended broadening the definition of “nonfunctioning system or utility” to allow a utility

that acquires a system with “problems” to apply for a temporary rate even if the problems do not rise to the level of those enumerated in the current definition of nonfunctioning system or utility.

Commission response:

The commission agrees that the amendments to 16 TAC §24.3 do not affect pending applications that were filed before the effective date of these amendments; therefore, the addition of a savings clause to 16 TAC §24.3 is unnecessary. Additionally, the majority of the amendments delete the definition of a term completely, rather than changing how the term is defined, which should not materially affect a case that was filed before the adoption of the term was deleted. The commission amends the definition of “landowner” in 16 TAC §24.3 to match the definition in TWC §13.002(1-a). The commission retains the definition of “point of use or point of ultimate use” modified as follows: “Point of Use--The primary service connection point where water is used or sewage is generated.” The commission also retains the existing definition of “water use restrictions” because it clarifies the meaning of 16 TAC §24.205, which prohibits a utility from implementing water use restrictions in lieu of providing facilities that meet TCEQ’s minimum capacity requirements or reasonable local demand characteristics during normal use periods.

The commission declines to retain the definition of “base rate” because it was replaced with a definition of “minimum monthly charge.” The phrase “base rate” is often used to collectively refer to a utility’s fixed rate and volumetric charges as opposed to a utility’s pass-through charge that is separate from these base charges; therefore, replacing “base rate” with a more specific term like “minimum monthly charge” will avoid confusion. The

commission declines to retain the definition of “block rate” because it is used only once in 16 TAC Chapter 24 and is not used at all in the sections of the TWC applicable to the commission. The commission declines to retain the definition of “certificate of convenience and necessity” because defining this term does not provide any needed guidance for implementing the sections of the TWC or commission rules that address issuance of and requirements related to CCNs. The commission declines to retain the definition of “known and measurable.” Because this is a commonly used ratemaking term, it can be difficult to provide a definition that is appropriate for every context in which the term could be used. The commission declines to retain the term “main” because it is a common term in the water industry that has the same meaning when used in the commission’s rules.

The commission declines to retain the term “mandatory water use reduction” because the meaning of this term is clear from 16 TAC §24.25(j), which establishes the approval process for a temporary water rate provision. The commission declines to broaden the definition of the term “nonfunctioning utility” because a change that could increase the number of utilities to which this definition applies is beyond the scope of what was contemplated in the proposed rule amendments. The commission declines to retain the term “ratepayer” because the current definition is specific to the contexts addressed in 16 TAC §§24.35(c) and 24.101(d), while the term ratepayer is used more generically in other sections of 16 TAC Chapter 24.

Comments on the amendments to 16 TAC §24.25(b)(2).

TAWC recommended adding a provision to 16 TAC §24.25(b)(2), relating to minor tariff changes, to allow a utility to obtain approval of a new or amended extension policy outside of a base rate proceeding. TAWC also recommended adding three new items to the list of minor tariff changes authorized in 16 TAC §24.25(b)(2)(A), including: changes in policies and fees related to credit card payments; the adoption of rates to recoup costs associated with using a water system for fire suppression; and the adoption of rates for a meter size not included in a utility's current tariff. OPUC encouraged a careful evaluation of TAWC's proposed additions because they would have the effect of increasing the number of tariff changes allowed outside of a base rate case where a utility's costs are reviewed to ensure that the costs are reasonable and necessary for the provision of service.

Commission response:

The commission declines to amend 16 TAC §24.25(b)(2) to allow a utility to obtain approval of a new or amended extension policy outside of a base rate proceeding. The existing rule expressly states that adding or modifying an extension policy is not a minor tariff change and eliminating this language would increase the scope of this rule in a manner not contemplated in the proposed rule amendments. The commission also declines to include changes in policies and fees related to credit card payments. While the commission acknowledges that customers can benefit from having the option to pay by credit card, this recommendation is also outside the scope of the proposed rule amendments, which did not expand the types of minor tariff changes listed in 16 TAC §24.25(b)(2)(A). Due to similar concerns related to the scope of the proposed changes that

were published for comment, the commission declines to expand the list of authorized minor tariff changes to include the adoption of rates to recoup costs associated with using a water system for fire suppression or the adoption of rates for meter sizes not included in a utility's tariff.

Comments on the amendments to 16 TAC §24.29.

If the commission declines to adopt the recommendation to expand the types of minor tariff changes authorized in 16 TAC §24.25(b)(2), TAWC recommended amending 16 TAC §24.29, which limits a utility to filing a base rate case only once in a 12-month period. Specifically, TAWC recommended creating an exception to this filing limitation for requests to change extension and construction policies or fees and policies related to payments by credit card; requests to adopt or revise rates charged to recover costs associated with using a water system for fire suppression; and requests to add rates for new meter sizes not currently served by a utility. OPUC opposed this recommendation on the grounds that expanding the list of exceptions could unnecessarily create rate uncertainty for customers.

Commission response:

The commission declines to adopt TAWC's recommendation to expand the existing list of exceptions to the time required between filings made to increase rates under TWC §§13.187, 13.1871, 13.18715, and 13.1872(c)(2) that is included in 16 TAC §24.29(c). Currently, this list includes exceptions for filings classified as a minor tariff change under 16 TAC §24.25(b)(2). The commission declines to expand the list at this time for the same reason the commission has declined to adopt the additions TAWC proposed to 16 TAC

§24.25(b)(2). Namely, that such a change is beyond the scope of the proposed rule amendments, which amended 16 TAC §24.29(c) only to the extent necessary to reflect the addition of a fourth classification, Class D, for water and sewer utilities.

Comments on 16 TAC §24.44.

TAWC suggested that amendments to 16 TAC §24.44, relating to recovery of rate-case expenses, may be appropriate because the current rule does not address recovery of rate-case expenses incurred for applications filed by a Class C utility under TWC §13.18715 or a Class D utility under TWC §13.1872(c)(2). OPUC recommended that such a change is unnecessary because 16 TAC §24.44 applies to rate-case expenses incurred as a result of filing a rate change application pursuant to TWC §13.187 or TWC §13.1871 and both TWC §13.18715 (applicable to Class C utilities) and TWC §13.1872(c)(2) (applicable to Class D utilities) reference the procedures used in TWC §13.1871.

Commission response:

The commission acknowledges that amendments to 16 TAC §24.44 may be necessary to expressly reflect the increase in the number of water and sewer utility classes from three to four because the existing rule specifically references rate change applications filed under TWC §§13.187 and 13.1871 and not TWC §§13.18715 and 13.1872(c)(2). However, no proposed amendments to 16 TAC §24.44. were published as part of this project, and the commission declines to adopt a change that was not noticed.

Comments on the amendments to 16 TAC §24.127.

TAWC recommended additional amendments to 16 TAC §24.127, relating to financial records, to allow utilities to use the National Association of Regulatory Utility Commissioners' uniform system of accounts based on annual operating revenues, rather than the number of connections, if appropriate.

Commission response:

The commission declines to adopt TAWC's proposed changes to 16 TAC §24.127 because TWC §13.002 classifies utilities based on the number of connections served, and not on annual revenues.

Comments on the amendments to 16 TAC §24.227.

TAWC pointed out that new 16 TAC §24.227(c) includes requirements for applications submitted under TWC §13.258, which provides for a Class A utility to apply for an amendment of CCN held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district, that exceed the requirements in the statute. TAWC recommended that the commission adopt a separate rule to implement TWC § 13.258 and consider adopting a special form for this type of CCN amendment.

Commission response:

The commission modifies the proposed version of 16 TAC §24.227(c) to conform with TWC §13.258. The commission declines to adopt a special form for this type of CCN amendment because TWC §13.258(c) clearly enumerates the information that must be submitted with

an application of this type and bars the commission from requiring any additional information.

All initial and reply comments, including any not specifically referenced herein, were fully considered by the commission.

The amendments are adopted 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 §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the

applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.

Cross reference to statutes: Texas Water Code §§13.041, 13.046, 13.131, 13.136(b), 13.181(b), 13.1871, 13.1872, 13.1873, 13.246.

§24.3. Definitions of Terms.

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

- (1) **Affected county** -- A county to which Local Government Code, Chapter 232, Subchapter B, applies.
- (2) **Affected person** -- Any landowner within an area for which a 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.
- (3) **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.
- (4) **Billing period** -- The period between meter reading dates for which a bill is issued or, if usage is not metered, the period between bill issuance dates.
- (5) **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.

- (6) **Class B Utility** -- A public utility that provides retail water or sewer utility service to 2,300 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.
- (7) **Class C Utility** -- A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 2,300 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.
- (8) **Class D Utility** -- A public utility that provides retail water or sewer utility service to fewer than 500 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.
- (9) **Commission** -- The Public Utility Commission of Texas.
- (10) **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 or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided in TWC Chapter 13.
- (11) **Customer** -- Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.
- (12) **Customer class** -- A group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

- (13) **Customer service line** -- 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.
- (14) **District** -- District has the meaning assigned to it by TWC §49.001(a).
- (15) **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.
- (16) **Inactive connection** -- A water or wastewater connection that is not currently receiving service from a retail public utility.
- (17) **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.
- (18) **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.
- (19) **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 in an area served by a water supply or sewer service corporation 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.

- (20) **Minimum Monthly Charge** -- The fixed amount billed to a customer each month even if the customer uses no water or wastewater.
- (21) **Municipality** -- Cities existing, created, or organized under the general, home rule, or special laws of this state.
- (22) **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.
- (23) **Nonfunctioning system or utility** -- A system that is operating as a retail public utility and
- (A) is required to have a CCN and is operating without a CCN; or
 - (B) is under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or
 - (C) is under the supervision of a receiver, temporary manager, or 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).
- (24) **Person** -- 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.
- (25) **Point of use** -- The primary service connection point where water is used or sewage is generated.

- (26) **Potable water** -- Water that is used for or intended to be used for human consumption or household use.
- (27) **Potential connections** -- Total number of active plus inactive connections.
- (28) **Premises** -- A tract of land or real estate including buildings and other appurtenances thereon.
- (29) **Rate** -- Every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.
- (30) **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.
- (31) **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.
- (32) **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.
- (33) **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 TWC Chapter 13 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.

- (34) **Service area** -- Area to which a retail public utility is obligated to provide retail water or sewer utility service.
- (35) **Stand-by fee** -- A charge, other than a tax, imposed on undeveloped property:
- (A) with no water or wastewater connections; and
 - (B) for which water, sanitary sewer, or drainage facilities and services are available; water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.
- (36) **Temporary rate for services provided for a nonfunctioning system** -- A rate charged under TWC §13.046 to the customers of a nonfunctioning system by a retail public utility that takes over the provision of service for a nonfunctioning retail public water or sewer utility service provider.
- (37) **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.
- (38) **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.
- (39) **Water and sewer utility, utility, or public 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 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.

- (40) **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.
- (41) **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.

- (42) **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.

§24.11. 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 under 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, be 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 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 must 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 Applicant's Oath adopted by the commission as part of an application filed under §24.233 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) 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 must 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:

(i) the plant and equipment necessary to serve projected customers in the first two years of projections; or

(ii) a new water system or substantial addition to an existing water system if the applicant is proposing service to a new CCN area or a new subdivision.

(6) If the applicant is a nonfunctioning utility, as defined in §24.3(23) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder is capable of meeting the leverage and operations tests.

§24.14. Emergency Orders and Emergency Rates.

- (a) The commission may issue an emergency order in accordance with Texas Water Code (TWC) 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 TWC §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 TWC §13.412;
 - (2) to compel a retail public utility 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 retail public utility'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 under TWC §13.4133:

- (A) for a utility for which a person has been appointed under TWC §13.4132 to temporarily manage and operate the utility; or
 - (B) for a utility for which a receiver has been appointed under TWC §13.412;
 - (5) to establish, on an expedited basis, in response to a request by the Texas Commission on Environmental Quality (TCEQ), reasonable compensation for the temporary service required under TWC §13.041(h)(2) and to allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment;
 - (6) to compel a retail public utility to make specified improvements and repairs to a water or sewer system owned or operated by the utility under TWC §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 TWC Chapter 13;
 - (7) to order an improvement in service or an interconnection under TWC §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 under subsection (a)(4) of this section:
- (1) the commission will 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 must 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 under subsection (a)(6) 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 under subsection (a)(4) of this section.

§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 Texas Water Code (TWC) §§ 13.187, 13.1871, 13.18715, or 13.1872(c)(2) 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 must 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 or sewer charges and must 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, each utility must 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 must include schedules of all the utility's rates, rules, and regulations pertaining to all its utility services 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 currently a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person must file a proposed tariff with the commission. The person filing the proposed tariff must 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 for the construction of the physical plant;
 - (v) provide an estimate of the date service will begin for all phases of construction; and
 - (vi) provide notice to the commission once billing for service begins.
- (C) A person under the original rate jurisdiction of the commission who has obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year. Any dollar amount collected under the rates initially approved by the commission that exceeds the revenue requirement established by the commission during the rate change proceeding must be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. A Class D utility must file a rate change application under TWC §13.1872(c)(2) to satisfy the requirements of this subparagraph.
- (D) A water supply or sewer service corporation must file with the commission a complete tariff containing schedules of all its rates, rules, and regulations pertaining to all 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. Changes to any fees charged by affiliates, the addition of a new extension policy to a tariff, or modification of an existing extension policy are not minor tariff changes. An affected county may change rates for retail water or sewer service without commission approval, but must 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 Texas Commission on Environmental Quality (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 multistep 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 and corresponding identification number issued by the TCEQ; and
 - (III) the sewer system names and corresponding discharge permit number 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 customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The utility may establish a fund to receive donations to cover the cost of providing the reduced rates. A utility may not recover the cost of the reduced rates through charges to other customer classes.

- (i) To request approval of a rate as defined in this subparagraph, the utility must file a proposed plan for consideration by the commission. The plan must include:
- (I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.
 - (II) The account or subaccount name and number, as included in the system of accounts described in §24.127(1) of this title (relating to Financial Records and Reports—Uniform System of Accounts), in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program will be 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) The proposed 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 described in this subparagraph of this clause to the utility's revenue account. The annual accounting must be available for 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 is limited to 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 must not exceed 3,000 gallons per month per connection.
Additional gallons used must 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 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, 13.1871, 13.18715, or 13.1872. 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 as follows:

- (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 trueed up in a true-up report and all overcollections 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 be implemented only 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 may be included in the provision. The true-up report must 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 must 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 requests to revise or implement an approved pass-through provision must 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) each affected CCN number;

(II) a list of each affected subdivision public water system

(including name and corresponding number issued by the

- TCEQ), and water quality system (including name and corresponding number 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 must use the revenues collected through a surcharge approved by the commission to cover the costs listed in subparagraph (G)(ii) of this section or for any purpose noted 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 must 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:
- (A) the name of each public water system and corresponding identification number issued by the TCEQ, or the name of each sewer system and corresponding identification number issued by the TCEQ for each discharge permit, to which the schedule is applicable; and

- (B) the name of each 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 subdivisions in which service is provided, along with each public water system name and corresponding identification number issued by the TCEQ and each sewer system name and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;
 - (3) each CCN number 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 must 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 must lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility must also 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 must 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 must 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 must 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, 13.1871, 13.18715, or 13.1872 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.** A water supply or sewer service corporation must file with the commission, 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, each CCN number under which service is provided, 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 must file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection must 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 $TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$ where,

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)

- (A) The utility must file a request for a temporary water rate provision for mandatory water use reduction 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, a list of all customer classes affected, the rates affected, information on how to protest 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 must 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, the utility must 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 must 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 must 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 must 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 must 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 must 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, will consolidate the rates by region for applications submitted by a Class A, B, or C utility, or a Class D utility filing under TWC §13.1872(c)(2), 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 must file a request with the commission. The utility must also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, by 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 of such delivery must be filed with the commission by the utility as part of the request. Notice must be provided on a form prescribed by the commission 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 classes 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 not subject to a contested case hearing. However, the commission will hold a 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, must be implemented on at least an annual basis, unless the commission determines otherwise. Before making a change to the energy cost adjustment clause, notice must be provided as required by paragraph (5) of this subsection. Copies of notices to customers must 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 must 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, 13.18715, or 13.1872.

§24.27. Notice of Intent and Application to Change Rates.

- (a) **Purpose.** This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice of an application to change rates filed by a Class A, B, or C utility, or a Class D utility filing under Texas Water Code (TWC) §13.1872(c)(2).
- (b) **Contents of the application.** An application to change rates is initiated by the filing of the applicable rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities under subsection (c) of this section.
- (1) The application must include the commission's rate filing package form and include all required schedules.
 - (2) The application must be based on a test year as defined in §24.3(36) of this title (relating to Definitions of Terms).
 - (3) For an application filed by a Class A utility, the rate filing package, including each schedule, must be supported by pre-filed direct testimony. The pre-filed direct testimony must be filed at the same time as the application to change rates.
 - (4) For an application filed by a Class B utility, Class C utility, or Class D utility filing under TWC §13.1872(c)(2), the applicable rate filing package, including each schedule, must be supported by affidavit. The affidavit must 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 dates of such delivery must be filed with the commission by the applicant utility as part of the rate change application.
- (c) **Notice requirements specific to applications filed by a Class A Utility under TWC §13.187.**
- (1) **Notice of the application.** In order to change rates under 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 must be provided using the commission-approved form and must include a description of the process by which a ratepayer may intervene in the proceeding.
- (C) This notice must state the docket number assigned to the rate application. Prior to the provision of notice, the utility must 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 will 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 by Class B, C, and D utilities.**
 - (1) **Notice of the application.** In order to change rates, a Class B or C utility, or a Class D utility filing under TWC §13.1872(c)(2), 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, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.
 - (B) Notice must be provided using the commission-approved form and must include a description of the process by which a ratepayer may file a protest under TWC §13.1871(i).
 - (C) The notice must state the docket number assigned to the rate application. Prior to providing notice, a Class B or C utility, or a Class D utility filing

under TWC §13.1872(c)(2), must 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 apply.
- (A) The commission will give reasonable notice of the prehearing conference, including notice to the governing body of each affected municipality and county. The commission may require the utility to provide this notice. 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 prehearing conference, including notice to the governing body of each affected municipality and county.
 - (B) A Class B utility must mail notice of the prehearing conference to each affected ratepayer at least 20 days before the prehearing conference.
 - (C) A Class C utility, or a Class D utility filing under TWC §13.1872(c)(2), must mail, e-mail, or hand deliver notice of the prehearing conference to each affected ratepayer at least 20 days before the prehearing conference.

- (D) A notice provided under subparagraph (B) or (C) of this paragraph 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 must be filed in a rate change application under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2). The application 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 under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2), the commission may approve a surcharge to collect 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 under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2), the commission may approve a surcharge to collect 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 the requirements of the Texas Water Development Board regarding 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 under TWC §§13.187, 13.1871, or 13.18715.
- (b) A utility, or two or more utilities under common control and ownership, may not file a statement of intent to increase rates 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 D utility under common control or ownership with a utility that has filed an application to change rates under TWC §§13.187, 13.1871, or 13.18715 within the preceding 12 months may not file an application to change rates under TWC §13.1872(c)(2) unless one of the exceptions listed in subsection (b) of this section applies.

§24.33. Suspension of the Effective Date of Rates.

- (a) Regardless of, and in addition to, any period of suspension ordered under 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 under Texas Water Code (TWC) §13.187; or
 - (2) 265 days from the date the proposed rates would otherwise be effective for an application filed under TWC §§13.1871, 13.18715, or 13.1872(c)(2).
- (b) Regardless of, and in addition to, any period of suspension ordered under subsection (a) of this section, the commission may suspend the effective date of a change in rates 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), 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 under subsection (b) of this section, the requirement under §24.35(b)(1) of this title (relating to Processing and Hearing Requirements for an Application to Change Rates), 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 under subsection (a) of this section will 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 will 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 to Change Rates.

- (a) **Purpose.** This section describes the requirements for the processing of applications to change rates filed by a Class A, B, or C utility, or a Class D utility filing under Texas Water Code (TWC) §13.1872(c)(2).
- (b) **Proceedings Under TWC §13.187.** The following criteria apply to applications to change rates filed by Class A utilities under TWC §13.187.
- (1) Not later than the 30th day after the effective date of the change, the commission will 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 will 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 will be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.
- (c) **Proceedings Under TWC §13.1871.** The following criteria apply to applications to change rates filed by a Class B, C, or D utility, using the procedures in 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 will 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 must 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 the State Office of Administrative Hearings 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 is 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 will determine the rates to be charged by the utility and will 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 under §24.33 of this title (relating to Suspension of the Effective Date of Rates) or interim rates are set by the presiding officer under §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.

§24.49. Application for a Rate Adjustment by a Class D Utility Under Texas Water Code §13.1872.

- (a) **Purpose.** This section establishes procedures for a Class D utility to apply for an adjustment to its water or wastewater rates as allowed by Texas Water Code (TWC) §13.1872(c)(1).
- (b) **Definitions.** In this section, the term application means an application for a rate adjustment filed under this section and TWC §13.1872(c)(1).
- (c) **Requirements for filing of the application.** Subject to the limitations set out in subsection (f) of this section, a Class D 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 no more than five percent.
- (2) The application must be on the commission's form and must 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 must 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 as required by §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, commission staff must file a recommendation stating whether the application should be deemed administratively complete as required by §24.8 of this title. If commission staff recommends that the application be deemed administratively complete, commission staff must also file a recommendation on final disposition, including, if necessary, a proposed tariff sheet 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 must 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 an annual rate adjustment and specifying the percent amount requested;
- (2) the existing rate;
- (3) the approved rate; and

- (4) a statement that the rate adjustment was requested under 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 D utility may adjust its rates under this section not more than once each calendar year and not more than four times between rate proceedings filed under TWC §13.1872(c)(2).
- (2) The filing of applications as allowed by this section is limited to a specific quarter of the calendar year, and is 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 quarter. For a utility holding multiple CCNs, the utility may file an application in any quarter for which any of its CCN numbers is eligible.
- (A) Quarter 1 (January-March): CCNs ending in 00 through 27;
- (B) Quarter 2 (April-June): CCNs ending in 28 through 54;
- (C) Quarter 3 (July-September): CCNs ending in 55 through 81; and
- (D) Quarter 4 (October-December): CCNs ending in 82 through 99.

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

Each public utility, except a utility operated by an affected county, must 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, must 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 utility must maintain its books and records in accordance with the commission's approved system of accounts, or if the commission has not approved a system of accounts, the following prescribed uniform system of accounts:
 - (A) Class A Utility, as defined by §24.3(5) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners (NARUC) for a utility classified as a NARUC Class A utility.
 - (B) Class B Utility, as defined by §24.3(6) 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(7) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.

- (D) Class D Utility, as defined by §24.3(8) of this title; the uniform system of accounts as adopted and amended by a utility classified as a NARUC Class C utility.
- (2) **Accounting period.** Each utility must keep its books on a monthly basis so that for each month all transactions applicable thereto are 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, must file a service, financial, and normalized earnings report by June 1 of each year.
- (b) **Contents of report.** The annual report must disclose the information required on the forms approved by the commission and may include any additional information required by the commission.
- (c) A Class D utility's normalized earnings must be equal to its actual earnings during the reporting period for the purposes of compliance with Texas Water Code §13.136.
- (d) For reporting year 2019 due on June 1, 2020, each utility, except a utility operated by an affected county, must file the report that corresponds to the Class A, B, or C classification that applied to the utility on August 31, 2019.

§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 will 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 will ensure that the applicant has:
- (A) a public water system approved by the Texas Commission on Environmental Quality (TCEQ) 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 will 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) Notwithstanding any other provision of this chapter, a Class A utility may apply to the commission for an amendment of a water or sewer CCN held by a municipal utility district, other than a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more, to allow the Class A utility to have the same rights and powers under the CCN as the municipal utility district.
- (1) An application filed under this subsection must include:
 - (A) information identifying the applicant;
 - (B) the identifying number of the CCN to be amended;
 - (C) the written consent of the municipal utility district that holds the certificate of convenience and necessity;
 - (D) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the certificated area and inside the boundaries of the municipal utility district; and
 - (E) a description of the proposed service area by:
 - (i) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
 - (ii) the Texas State Plane Coordinate System;
 - (iii) verifiable landmarks, including roads, creeks, or railroad lines; or

- (iv) if a recorded plat of the area exists, lot and block number.
 - (2) No later than the 60th day after the Class A utility files the application, the commission will review an application filed under this subsection and determine whether the application is sufficient.
 - (3) Once the application is found sufficient, the commission will:
 - (A) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and
 - (B) grant the application and amend the certificate.
 - (4) Chapter 2001 of the Texas Government Code does not apply to a petition filed under this subsection. The applicant, municipal utility district, or commission staff may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the application may not be appealed.
 - (5) The commission may approve an application filed under this subsection that requests to amend a CCN with area that is in the extraterritorial jurisdiction of a municipality without the consent of the municipality.
 - (6) TWC §13.241(d) and §13.245 and subsections (e), (f), and (g) of this section do not apply to an application filed under this subsection.
- (d) 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.

- (e) In considering whether to grant or amend a CCN, the commission will 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.
- (f) 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 will 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.
- (g) Where applicable, in addition to the other factors in this chapter the commission will consider the efforts of the applicant to extend retail 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
- (h) For two or more retail public utilities that apply for a CCN to provide retail water utility service to an unserved area located in an economically distressed area as defined in TWC §15.001, the commission will 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 will be conducted after the preliminary hearing and only if the parties cannot agree among themselves regarding who will provide service. The assessment will be conducted considering the following information:

- (1) all criteria from subsections (a)-(g) 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.
- (i) Except as provided by subsection (j) 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

must 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 must be filed with the commission and must 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 must 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 must 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 must identify the tract of land and the requested area in reference to verifiable man-made and 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 must 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.

- (j) 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 (i) 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.

§24.363. 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.
- (d) At the time the commission approves an acquisition of a nonfunctioning retail water or sewer utility service provider under Texas Water Code (TWC) §13.301, the commission must:
 - (1) determine the duration of the temporary rates to the retail public utility, which must be for a reasonable period; and

- (2) rule on the reasonableness of the temporary rates under subsection (a) of this section if the commission did not make a ruling before the application was filed under TWC §13.301.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority. It is therefore ordered by the Public Utility Commission of Texas that the amendments to §§24.3, 24.11, 24.14, 24.25, 24.27, 24.29, 24.33, 24.35, 24.49, 24.127, 24.129, 24.227, and 24.363, relating to classifications for water and sewer utilities are hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of April 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR D’ANDREA COMMISSIONER

SHELLY BOTKIN, COMMISSIONER