

PROJECT NO. 45112

**PUC RULEMAKING PROCEEDING § PUBLIC UTILITY COMMISSION
TO AMEND CHAPTER 24 FOR §
WATER/SEWER PASS THROUGH § OF TEXAS
CLAUSES AND SURCHARGE RULES §**

**ORDER ADOPTING AMENDMENT TO §24.21
AS APPROVED AT THE NOVEMBER 10, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §24.21, relating to Form and Filing of Tariffs with changes to the proposed text as published in the June 24, 2016 issue of the *Texas Register* (41 TexReg 4570). The amendment will update, clarify, and streamline provisions regarding minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. This amendment is adopted under Project Number 45112.

A public hearing on the amendment was held at commission offices on Tuesday, August 2, 2016 at 1:00 p.m. Representatives from the Water IOUs (Investor Owned Utilities) (comprised of Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc. d/b/a Aqua Texas, SJWTX, Inc. d/b/a Canyon Lake Water Service Company, and SouthWest Water Company) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment from Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas (collectively, Aqua); the City of Houston (Houston); the Texas Rural Water Association (TRWA); and the Water IOUs. The commission received oral comments from MSEC Enterprises, Inc. (MSEC). The commission received written reply comments from Houston and the Water IOUs.

In addition, in this project the commission adopts language in §24.21(b)(1)(B) that was originally proposed as §24.105(b) in Project No. 45111. Houston, the Water IOUs, and the Office of Public Utility Counsel (OPUC) filed comments on proposed §24.105(b) in Project No. 45111. Houston and the Water IOUs filed reply comments on proposed §24.105(b) in Project No. 45111. As the proposed language is being adopted in this project, the commission summarizes and responds below to the comments and reply comments received on proposed §24.105(b).

Comments on specific sections of the rule

Section 24.21(b)(1)

Houston and the Water IOUs requested clarification as to whether §24.21(b)(1)(C) applies only to utilities that are new utilities or includes utilities that are functioning utilities that are adding a subdivision to their service territory. The Water IOUs indicated that they are concerned that §24.21(b)(1)(B), which requires compliance with proposed §24.105(b) (being revised in Project No. 45111), would trigger an 18-month window to file a rate case where new areas or subdivisions are added to an existing certificate of convenience and necessity (CCN). The Water IOUs asserted that this did not appear to be Staff's intent, and at any rate, would be a significant and costly undertaking given the new Class A Utility rate case requirements. The Water IOUs argued that this would hamper utility growth and development in Texas and put utilities at a disadvantage to competitors that do not require commission-approved rates or CCNs to serve. The Water IOUs requested that an acquiring utility be permitted to identify the approved tariff it seeks to use for an added or transferred CCN system or area in its CCN application without prompting a rate case. The Water IOUs also commented that moving the language contained in proposed §24.105(b)

(currently being revised in Project No. 45111) over to §24.21 would result in a more logical set of rules, as the language in question and §24.21 both address tariffs, while §24.105 addresses CCNs.

Houston argued that §24.21(b)(1)(A) appears to be missing the phrase *a utility shall file before every tariff*.

The Water IOUs objected to a requirement that utilities take the seller's or transferor's rate/tariff provisions as their own in CCN or utility system sale, transfer, or merger applications when a rate case is not simultaneously filed. The Water IOUs argued that this approach (1) has resulted in fractured rate structures for the Water IOUs where consolidation would otherwise be appropriate; (2) has created a situation where customers pay rates based on cost of service considerations not applicable to their provider; and (3) is contrary to the filed rate doctrine as applied in *Entex v. Railroad Commission of Texas*, 18 S.W.3d 858 (Tex. App.-Austin 2000, pet. denied). The Water IOUs argued that *Entex* requires that a utility charge the rates that have been approved for that utility, not the rates of an acquired utility. The Water IOUs supported allowing a CCN applicant to simply identify the approved tariff that should apply to an area where service would be extended under a CCN amendment or acquisition followed by commission acceptance if that application is approved. The Water IOUs argued that this approach would further the policy objective of promoting regionalized rates and services. The Water IOUs indicated that they would not object to providing evidence of compliance with Texas Water Code §13.145 (TWC) in terms of substantial similarity for consolidation within a tariff.

In reply, Houston argued that an existing approved tariff may not reasonably reflect the cost of service for the newly acquired or constructed service area. Houston also argued that the Water IOUs' suggested revisions to the subsection would usurp municipal authority. Therefore, Houston recommended rejecting the Water IOUs' revisions.

In addition, the Water IOUs recommended moving away from identifying systems and areas with specificity within each tariff, or at a minimum, making that the exception rather than the rule. Instead, the Water IOUs argued that the utility's CCN number, along with the county and any applicable city, could reasonably remain as potential identifiers. The Water IOUs also provided additional clarifying revisions.

Commission response

The commission notes Houston's and the Water IOUs' concerns that §24.21(b)(1)(C) is unclear. As stated in the 45112 workshop, §24.21(b)(1)(C) applies only to utilities that are new utilities. The commission previously revised this language from its strawman, and the Water IOUs' comments appear to largely focus on Project No. 45111, which amends §24.105(b). The commission agrees with the Water IOUs that moving the language currently proposed for §24.105(b) in Project No. 45111 into §24.21 is logical given the subject matter of §24.21. The commission therefore inserts the language in question in §24.21(b)(1)(B). The commission responds below to the comments received in Project No. 45111 on the language proposed as §24.105(b).

The commission agrees with Houston that the words *the utility shall file* should appear before *every tariff* and adopts the suggested language.

The commission declines to adopt the Water IOUs' suggestion that a CCN applicant simply identify the tariff to be applied to a system added to its certificated service area under a CCN amendment or acquisition. Such a change would be beyond the scope of the changes that were originally noticed in this project, which proposed changes to address minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. The issues raised by the Water IOUs' suggestion also implicate §24.109, which is currently being amended in project no. 45111. These issues are better addressed in a separate project after this project and project no. 45111 have been completed.

The commission declines to adopt the Water IOUs' suggestion that a system's CCN number, along with the county and any applicable city, are sufficient identifiers for a system. The system and subdivision names provide needed clarity to interested parties regarding the location of the system affected. The additional information also allows commission staff to better communicate with customers about which system is being affected. Furthermore, the Texas Commission on Environmental Quality (TCEQ) typically tracks systems by public water system name, not necessarily by CCN number. Not providing the system name would hamper interagency cooperation.

Section 24.21(b)(1)(B) (Originally proposed as §24.105(b) in Project No. 45111)

OPUC supported the inclusion of proposed subsection (b) in §24.105. OPUC commented that the proposed language appeared to allow a utility to start charging customers for water service without the benefit of test year data. As a result, OPUC proposed that the 18-month true-up provide that any rates collected in excess of the projected revenue requirement be reflected as customer contributed capital as an offset to rate base. In response to OPUC's comments, the Water IOUs reiterated their opposition to the proposed language as published, particularly the inclusion of a ratemaking cost of service treatment clause. The Water IOUs stated that it would be inappropriate to place such a provision in CCN rules like §24.105. The Water IOUs also indicated that they would not object to the application of the *Entex* standard in §24.105 as doing so would not result in a rate change.

The Water IOUs commented that the proposed language would require a rate application within 18 months of a utility filing a CCN application and would impose a number of other requirements every time a utility filed a CCN application. The Water IOUs reiterated their opposition to such requirements and indicated that their understanding was that the language was intended to apply only to new utilities entering the market for the first time. The Water IOUs requested that the language be removed or revised accordingly. In its reply, Houston agreed that the application of the provision was unclear and stated that, to the extent the commission would be making a rate determination upon approving a CCN, it would usurp the original jurisdiction of municipalities over the rates and services of certain water and sewer utilities.

Houston noted that the language proposed for §24.105(b) appeared to delve into rate related issues, despite Project No. 45111's stated purpose of addressing non-rate related matters. Houston further indicated that it was unclear whether the provision would apply to existing utilities or only to new utilities entering the market. Houston also stated that it was unclear whether the commission would make a rate determination upon initial approval of the CCN or whether the rate determination would be made and tried up in the rate proceeding. Houston cautioned that to the extent the commission would be making rate determinations upon approving CCNs, it would be usurping the original jurisdiction of municipalities over the rates and service of certain water and sewer utilities.

Commission response

The commission agrees with the Water IOUs and Houston that the subject matter of proposed §24.105(b) is more appropriately addressed in §24.21. The commission therefore moves the language into §24.21(b)(1)(B) and responds to comments received on proposed §24.105(b) in Project No. 45111 in this Project No. 45112.

The commission agrees with OPUC that excess collections during the test year for a new utility should be reflected as customer contributed capital. However, the commission declines to adopt OPUC's proposed language, as the commission has determined that over-collections should be calculated by comparing rates collected during the test year as determined in a rate case, not with a projected revenue requirement, as suggested by OPUC. Therefore, any customer contributed capital would be addressed in a rate case proceeding where the revenue requirement is determined, and after the CCN application is processed.

In response to the concerns raised by the Water IOUs and Houston, the commission revises the provision to clarify that §24.21(b)(1)(B) applies only to new utilities entering the market and is not intended to infringe on the original rate jurisdiction of municipalities.

Section 24.21(b)(2)

Houston recommended adding the sentence *nothing in this Section 24.21 is intended to usurp the original jurisdiction of municipalities pursuant to Texas Water Code Section 13.042(a)* to the end of the subsection. Houston argued that this sentence is necessary to make clear that the municipality exercising original jurisdiction over the utility's rates should approve such charges, not the commission.

The Water IOUs were generally supportive of the revisions to this subsection and recommended only minor edits to enhance usability. In particular, the Water IOUs suggested adding an exception to the requirement to use specific rule language for pass-through notices if alternative language is already required in a utility's approved tariff or, alternatively, eliminating specific language requirements from the rule. The Water IOUs requested clarification as to whether the proposed rule is intended to allow utilities discretion whether to implement changes to pass-through charges in any particular year after a pass-through provision is adopted, while the requirement to file a true-up report is intended to be mandatory. The Water IOUs suggested allowing extension policy adoptions or revisions as a minor tariff change. They argued that a major rate case should not be required to implement such a change given that it will not typically impact existing customers. Finally, the Water IOUs recommended permitting pass-through of water use or water rights

reservation fee costs in §24.21(b)(2)(B)(ii) as these types of pass-through costs have been approved before.

Houston opposed two of the Water IOUs' recommendations. First, Houston argued that the Water IOUs provided no showing that addressing extension policy adoptions or revisions in a rate case is inefficient or unduly burdensome. Houston argued that a base rate proceeding provides the opportunity to more thoroughly examine the reasonableness and impact of such proposals on existing and new customers. Second, Houston argued that the Water IOUs provided no justification to treat pass-through of water use or water rights reservation fees as minor tariff changes.

Commission response

The commission agrees with Houston that a municipality exercising original jurisdiction over the utility's rates should approve such charges. Because §24.21(b)(2) begins with language that excludes utilities under the original rate jurisdiction of a municipality, the commission declines to adopt the suggested language. Instead, the commission modifies §24.21(b)(2)(A) to further clarify that the rule does not usurp the original rate jurisdiction of municipalities.

The commission declines to adopt the Water IOUs' suggestion that an exception be added to the requirement to use specific language for pass-through notices if alternative language is already required in a utility's approved tariff. If the tariff to which a pass-through is being added already requires specific language for customer notice of a change to a pass-through

provision, that language can be included in the customer notice along with the language required by the rule. The commission also declines to eliminate specific language requirements from the rule, as it is necessary to ensure that customers receive a clear communication from the utility stating that any pass-through fees are directly passed through to the customer. Moreover, the language required upholds the purpose of the pass-through, which is to allow the utility to pass-through any increases or decreases, but limit the total amount charged by the utility to what is actually paid to the provider.

The commission agrees with the Water IOUs that the utility has the discretion to change the pass-through rate, but only as long as the mandatory true-up report indicates that no over-collection has occurred. The commission has changed the language of §24.21(b)(2)(C) to clarify this point.

The commission declines to adopt the Water IOUs' suggestion that extension policy adoptions or revisions be considered minor tariff changes and agrees with Houston that the Water IOUs' suggestion should not be implemented. A regular rate proceeding is necessary to ensure thorough review of these policy changes and ensure ratepayers have adequate opportunity to participate in the implementation and revision of extension policies.

The commission declines to adopt the Water IOUs' suggestion that water use or water reservation fees be included as pass-through provisions as a matter of rule because of the wide variety of charges for reservation fees as well as the complexity and controversy that

this may bring to the process. The commission agrees with Houston that the Water IOUs' suggestion should not be implemented.

Section 24.21(b)(2)(B)(v) and (C)

Houston had several concerns about the combined pass-through provision. First, Houston stated that the provision does not specify how the combined pass-through charges should be structured. Second, Houston asserted that the provision does not make clear that the true-up should extend to both expenses and revenues. Finally, Houston argued that the provision should include an adjustment in the event that one or more of the underlying pass-through charges have ended within the twelve-month true-up period. To remedy these issues, Houston recommended adding language to §24.21(b)(2)(B)(v) and §24.21(b)(2)(C).

MSEC commented that a utility with a combined pass-through provision could easily encounter a situation in which the entities that impose the charges being passed through raise their charges at different times during the year or multiple times during a single year. MSEC stated that in this scenario, the requirement in the proposed language that changes in a combined pass-through provision be implemented only once per year would prevent the utility from passing through the increases as they occur, which could cause financial hardship for the utility. MSEC also requested that the true-up requirement be clarified.

The Water IOUs objected to Houston's recommendation that there be an adjustment in the event that an underlying pass-through charge ends within a twelve-month true-up period. The Water IOUs asserted that requiring an adjustment in the current year would be inappropriate, since any

change in a pass-through charge will result in a reduced pass-through charge for the entirety of the subsequent year.

Commission response

While the commission is cognizant of Houston's concerns about pass-through structure, the commission determines that the structure of pass-through charges is better addressed on a case-by-case basis because situations vary greatly. In response to Houston's concerns regarding the inclusion of both expenses and revenues in true-ups, the commission modifies §24.21(b)(2)(C) to clarify that the true-up does extend to both expenses and revenues. Regarding the issue of a pass-through charge that ends during a 12-month true-up period, the commission declines to adopt Houston's proposed modifications, as the commission agrees with the Water IOUs that requiring an adjustment mid-year has the potential to unnecessarily increase the number of pass-through cases a utility must file in a given year.

In response to MSEC's concerns, the commission does not intend to require a utility that passes through costs from multiple entities to have a combined pass-through provision. Rather, the intent is to allow utilities the option of requesting a combined pass-through provision. The commission also adds §24.21(b)(2)(B)(vi) to allow a utility with a combined pass-through provision to replace the provision with individual pass-through provisions as long as the utility's pass-through charges are properly trued up. However, the commission declines to remove the requirement that a combined pass-through provision be adjusted no more than once per year, as this requirement promotes efficiency by regulating the number of pass-through applications filed and also promotes consistency between filings.

Section 24.21(b)(2)(E)(i), (b)(4), and (c)

Consistent with their comments on §24.21(b)(1) above, the Water IOUs recommended that the commission move away from requiring specific subdivision and system names in each tariff. Instead, they argued that the CCN number, county, and city, if any, should be all that is required. The Water IOUs argued that keeping track of specific subdivision and system names in a tariff is unwieldy and unnecessary. The Water IOUs provided specific revisions to accomplish this.

In response, Houston argued that it relies on CCN numbers, system names, and subdivision names to monitor rate applications that may impact customers served within Houston's jurisdiction. Houston argued that removing this information may make monitoring more difficult. For example, Houston stated that sometimes an area annexed by Houston may have service addresses that indicate a city other than Houston. Therefore, Houston recommended that the commission retain the requirement that tariffs include subdivision and system names.

Commission response

The commission agrees with Houston that specific subdivision and system names should continue to be included in each tariff. The commission finds Houston's concerns persuasive; in addition, commission staff routinely relies on subdivision and system names contained in tariffs in the course of working with applications filed by water and sewer utilities. The commission recognizes that removing subdivision and system names from tariffs would simplify and streamline tariffs, but concludes that the benefits of requiring subdivision and system names in tariffs outweigh the drawbacks. To facilitate the maintenance of current,

correct tariffs, the commission modifies §24.21(b)(2)(A) to allow system and subdivision names in tariffs to be updated as a minor tariff change. This modification is designed to allow utilities to use the minor tariff change process to update tariffs to reflect changes or correct errors in subdivision or system names.

Section 24.21(b)(2) and 24.21(j)

The Water IOUs recommended including the addition and modification of temporary water rate provisions on the list of items eligible for minor tariff changes in §24.21(b)(2). They argued that temporary water rate provisions should be afforded the same type of administrative treatment as pass-through provisions. Accordingly, the Water IOUs provided specific edits to §24.21(b)(2) and §24.21(j) to accomplish this.

Commission response

The commission declines to include the addition and modification of temporary water rate provisions on the list of items eligible for minor tariff changes in §24.21(b)(2). The minor tariff change procedures would not provide customers with adequate notice and opportunity to protest the addition and modification of temporary water rate provisions.

Section 24.21(i)

While TRWA supported removal of language requiring water supply corporations (WSCs) to file three complete copies of their tariffs, it asserted that it is unclear whether the subsection requires WSCs to file one or six copies. TRWA asserted that the reference to 16 TAC §§22.71-.72 would

require WSCs to file six copies. TRWA also noted that in one place the subsection references *a copy* and in another place *the copies*.

TRWA recommended that the commission revise the subsection to require WSCs to file only one complete copy of their tariffs. TRWA stated that the tariff filing is only informational as the commission does not have jurisdiction to review, approve, or take any other action in regards to a WSC's tariff filing. TRWA argued that it is an unnecessary burden on WSCs to file more than one copy. TRWA further argued that §22.71 is not designed to apply to an informational tariff filing as such a filing is not a pleading, rulemaking document, application, letter, memoranda, report, or discovery response. TRWA also stated that §22.33 does not apply to informational filing of WSC tariffs.

Commission response

The commission clarifies the language in this subsection to eliminate inconsistency regarding whether one copy or more than one copy of a tariff is to be filed. The commission declines to remove the reference to §22.71, as §22.71(c)(5) already addresses the number of copies that are to be included when tariffs are filed with the commission, and centralizing copy requirements in §22.71 will result in clearer, more logical rules than placing a separate requirement for WSCs in §24.21.

Comments on other recommendations

Aqua recommended that the commission add a system improvement charge to either §24.21 or a new rule section. Aqua stated that a system improvement charge, such as the one approved by the

Pennsylvania Commission, is designed to provide ratepayers with improved service quality, greater rate stability, fewer main breaks, fewer service interruptions, and increased safety.

Aqua argued that a system improvement charge would be beneficial in Texas because Texas will require significant investment in upgrading, replacing, and maintaining existing water and wastewater infrastructure over the next 20 years. Aqua stated that a significant portion of the needed infrastructure will consist of smaller projects of short duration, and argued that a base rate case proceeding does not work well for recovering the costs of these projects. Instead, Aqua recommended that the commission add a system improvement charge to chapter 24 to allow utilities to recover the costs of certain capital additions outside of a base rate case. Even though the Texas Water Code does not contain a provision authorizing this type of charge, Aqua argued that the Public Utility Regulatory Act, Texas Utilities Code Annotated §36.210 does authorize this type of charge.

Houston strongly disagreed with Aqua's recommendation to add a system improvement charge. Houston argued that this rulemaking is not the appropriate venue to consider an alternative ratemaking mechanism because a system improvement charge is not a minor tariff change. Houston also argued that the commission should seek approval from the Texas legislature before implementing a system improvement charge or similar alternative ratemaking mechanism.

Commission response

The commission agrees with Houston that this rulemaking is not the appropriate venue to implement a system improvement charge, which is outside the scope of this project. At this

time, the commission takes no position on the merits of a system improvement charge or similar alternative ratemaking mechanism for water and sewer utilities.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent and using defined terms more consistently.

This amendment is adopted under the Texas Water Code Annotated §13.041(b) (West 2008 and Supp. 2016) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b).

§24.21. 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 the Texas Water Code (TWC) §13.187 or §13.1871 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 shall 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 charges and shall 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, every utility shall 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 shall contain schedules of all the utility's rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) 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 a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person shall file a proposed tariff with the commission. The person filing the proposed tariff shall 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(s) for the physical plant(s);
 - (v) provide an estimate of the date(s) service will begin for all phases of construction; and
 - (vi) provide notice to the commission once billing for service begins.
- (C) A person who has obtained an approved tariff for the first time and is under the original rate jurisdiction of the commission shall file a rate change application within 18 months from the date service begins in order to revise its tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. An application for a price index rate adjustment under TWC §13.1872 does not satisfy the requirements of this subparagraph.
- (D) Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of 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. Minor tariff changes shall not be allowed for any fees charged by affiliates. The addition of a new extension policy to a tariff or modification of an existing extension policy is not a minor tariff change. An affected county may change rates for retail water or sewer service without commission approval, but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.
- (A) The commission may approve the following minor changes to utility tariffs under the original rate jurisdiction of the commission:
- (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 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 multi-step 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)-(E) 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 (F) 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(s) and corresponding identification number(s) issued by the TCEQ; and
 - (III) the sewer system names and corresponding discharge permit number(s) issued by the TCEQ.
- (B) If a utility has provided proper notice as required in subparagraph (E) 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 or TWC §13.1871. 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 in the following situation(s):

- (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 (C) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up report 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 trued up in a true-up report and all over-collections 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.
- (C) A change in the combined pass-through provision may only be implemented 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(s) shall be included in the provision. The true-up report shall 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.
- (D) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs shall 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: $G + \{G/(1-L)\}$, where G equals the new gallonage charge by source supplier and L equals the line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085).
- (E) A utility that wishes to revise or implement an approved pass-through provision shall take the following actions prior to the beginning of the billing period in which the revision takes effect:
- (i) submit a written notice to the commission that shall include:
 - (I) the affected CCN number(s);
 - (II) a list of the affected subdivision(s), public water system name(s) and corresponding number(s) issued by the TCEQ, and the water quality system name(s) and corresponding number(s) 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 §24.21. The cost

to you as a result of this change will not exceed the costs charged to your utility.”

(F) 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 shall use the revenues collected through a surcharge approved by the commission only for the purposes noted in the order approving the surcharge. A utility shall handle the funds in the manner specified 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 shall 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 the public water system name(s) and the corresponding identification number(s) issued by the TCEQ or the sewer system name(s) and the corresponding identification number(s) issued by the TCEQ for each discharge permit, 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 subdivision(s) in which service is provided, along with the public water system name(s) and corresponding identification number(s) issued by the TCEQ and sewer system names and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;
 - (3) the CCN number(s) 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 shall 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 shall lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility also shall 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 shall 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 shall 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 shall 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 or §13.1871 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.** Every water supply or sewer service corporation shall file, 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, the CCN number(s), 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 shall file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection shall 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 = Temporary gallonage charge

cgc = current gallonage charge

r = water use reduction expressed as a decimal fraction (the pumping restriction)

prr = percentage of revenues to be recovered expressed as a decimal fraction (i.e., 50% = 0.5)

$$TGC = cgc + [(prr)(cgc)(r)/(1.0-r)]$$

- (A) The utility shall file a temporary water rate provision for mandatory water use reduction request 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, the customer class(es) affected, the rates affected, information on how to protest and/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 §24.23 of this title (relating to Time Between Filings).
- (B) The utility shall 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, it shall 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 shall 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 shall 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 shall 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 shall 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 shall 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, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 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 shall file a request with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, 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(s) of such delivery shall be filed with the commission by the utility as part of the request. Notice must be provided on the form prescribed by the commission for a rate application package filed under TWC §13.187 or §13.1871 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 class(es) 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 an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested 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, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection. Copies of notices to customers shall 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 shall 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, or 13.1872.

This agency hereby 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 §24.21, relating to Form and Filing of Tariffs is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of November 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER