

PROJECT NO. 48937

RULEMAKING TO AMEND § 24.44	§	PUBLIC UTILITY COMMISSION
RATE-CASE EXPENSES PURSUANT	§	
TO TEXAS WATER CODE § 13.187	§	OF TEXAS
AND §13.1871	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO 16 TAC § 24.44
APPROVED AT THE JUNE 27, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.44, relating to rate-case expenses under Texas Water Code (TWC) §§13.187 and 13.1871. The proposed amendments are based on the provisions applicable to electric utilities in 16 TAC §25.245 and propose adding titles to 16 TAC §§24.44 (a)-(d) and new proposed §24.44(e) to mirror the structure of the electric rules. The proposed amendment to 16 TAC §24.44(b) removes the provision that currently prohibits a utility from recovering rate-case expenses when the commission-approved rate following a contested case hearing generates less than 51% of the utility's requested revenue requirement and replaces it with the requirements for recovery of rate-case expenses. The proposed amendment to 16 TAC §24.44(c) removes the provision that limits the recovery of rate-case expenses following a written settlement offer and replaces it with criteria for the review and determination of the reasonableness of rate-case expenses. Furthermore, the proposed amendments add new 16 TAC §24.44(e), which directs the presiding officer to order or recommend allowances or disallowances of rate-case expenses.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Ms. Elisabeth English, Engineering Specialist, Water Utility Regulation, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Elisabeth English, Engineering Specialist, Water Utility Regulation Division, has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be clarity through restructured regulatory language that aligns with the commission's electric utility regulations for rate-case expense recovery. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 19, 2019. The request for a public hearing must be received within 30 days after publication of the proposal.

Public Comments

Comments on the proposed amendment may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 30 days after publication of the proposal. Sixteen copies of comments to the proposed amendment are required to be filed by 16 TAC §22.71(c). Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to project number 48937.

Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (Supp.) (PURA), and TWC §13.041(b), which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and TWC §13.041(b).

§24.44. Rate-case Expenses Pursuant to ~~Texas Water Code §13.187 and §13.1871.~~

(a) **Recovery of rate-case expenses.** A utility may recover rate-case expenses, including attorney fees, incurred as a result of filing a rate-change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are ~~just,~~ reasonable, and necessary, ~~and~~ ~~in the public interest.~~

(b) **Requirements for claiming recovery of or reimbursement for rate-case expenses.** A utility requesting recovery of its rate-case expenses has the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. A utility seeking recovery of rate-case expenses must submit information that sufficiently details and itemizes all rate-case expenses, including, but not limited to, evidence verified by testimony or affidavit, showing:

(1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;

(2) the time and labor expended by the attorney or other professional;

(3) the fees or other consideration paid to the attorney or other professional for the services rendered;

(4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;

(5) the nature and scope of the rate case, including:

(A) the size of the utility and number and type of consumers served;

(B) the amount of money or value of property or interest at stake;

(C) the novelty or complexity of the issues addressed;

(D) the amount and complexity of discovery;

(E) the occurrence and length of a hearing; and

(6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.

~~(b) — A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.~~

(c) **Criteria for review and determination of reasonableness.** In determining the reasonableness of the rate-case expenses, the commission must consider the relevant factors listed in subsection (b) of this section and any other factor shown to be relevant to the specific case. The commission must decide whether and the extent to which the evidence shows that:

(1) the fees paid, tasks performed, or time spent on a task were extreme or excessive;

(2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;

(3) there was duplication of services or testimony;

(4) the utility's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;

(5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or

(6) the utility failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

~~(e) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.~~

(d) **Unamortized rate-case expenses.** Unamortized rate-case expenses may not be a component of invested capital for calculation of rate-of-return purposes.

(e) Calculation of allowed or disallowed rate-case expenses.

(1) Based on the factors and criteria in subsections (b) and (c) of this section, the commission must allow recovery of rate-case expenses equal to the amount shown in the evidentiary record to have been actually and reasonably incurred by the requesting utility. The commission must disallow recovery of rate-case expenses equal to the amount shown to have been not reasonably incurred under the criteria in subsection (c) of this section. A disallowance may be based on cost estimates in lieu of actual costs if reasonably accurate and supported by the evidence.

(2) A disallowance pursuant to subsection (c)(5) of this section may be calculated as a proportion of a utility's requested rate-case expenses using the following ratio or an appropriate methodology:

(A) the amount of the increase in revenue requirement requested by the utility that was denied, to

(B) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(3) If the evidence presented pursuant to subsection (b)(6) of this section does not enable the commission to determine the appropriate disallowance of rate-case expenses reasonably associated with an issue with certainty and specificity, then the commission may disallow or deny recovery of a proportion of a utility's requested rate-case expenses using the following ratio or an appropriate methodology:

(A) the amount of the increase in revenue requirement requested by the utility in the rate case related to the issues not reasonably supported by evidence of certainty and specificity, to

(B) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

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

**ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF JUNE 2019 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**

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