

PROJECT NO. 50089

**RULEMAKING RELATING TO
REPORTING REQUIREMENT FOR
WATER AND SEWER UTILITIES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF NEW 16 TAC §24.134
AS APPROVED AT THE FEBRUARY 27, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §24.134, relating to financial, managerial and technical reports required for water and sewer utilities. The proposed new rule will implement section 1 of House Bill 3542 (86th Regular Legislative Session, 2019), which enacted Texas Water Code (TWC) §13.150 establishing reporting requirements for water and sewer utilities that are in violation of certain orders issued by the Texas Commission on Environmental Quality (TCEQ).

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 create a new regulation;

(6) the proposed rule will not expand 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 chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Tammy Benter, Director of Utility Outreach, has determined that for the first five-year period the proposed rule is 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 rule.

Public Benefits

Ms. Benter has also determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be implementation of TWC §13.150. 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 rule 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 commission is expressly excluded from that provision under §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 May 11, 2020 at 9:00 a.m. Requests for a public hearing must be received by April 27, 2020. If no hearing is requested, a filing will be made in Project No. 50089 to inform interested persons that no hearing will be held.

Public Comments

Comments on the proposed rule 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. Sixteen copies of comments on the proposed rule are required to be filed by 16 TAC §22.71(c). Initial comments must be filed by April 13, 2020, and reply comments must be filed by April 27, 2020. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project No. 50089.

Statutory Authority

This new rule is proposed under TWC §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and TWC §13.150 which establishes reporting requirements for water and sewer utilities.

Cross reference to statutes: Texas Water Code §§13.041 and 13.150.

§24.134. Financial, Managerial, and Technical Reports Required for Water and Sewer Utilities.

- (a) **Applicability.** This section applies to Class B, C, and D utilities.
- (b) **Notification of violation.** The Texas Commission on Environmental Quality (TCEQ) will notify the commission when a utility has violated a TCEQ final order by failing to:
- (1) provide system capacity greater than the state and federal required raw water or groundwater production rate or the anticipated daily demand of the system;
 - (2) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or
 - (3) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.
- (c) **Notification to utility.** Upon receiving notification from TCEQ under subsection (b) of this section, the commission will provide written notice to the utility of the requirement to file the report required under subsection (d) of this section.
- (d) **Report required.** Except as provided by subsection (e) of this section, a utility must file a report with the commission about the utility's financial, managerial, and technical ability to provide continuous and adequate service not later than three years after the date that the utility violated a final order of the TCEQ by failing to meet the requirements described in paragraphs (b)(1) – (3) of this section.

- (1) The report must include the following information:
 - (A) a detailed description of the managerial and technical experience and qualifications of the utility in providing continuous and adequate service, including improvements to the experience and qualifications of its personnel since the date of the violation; and
 - (B) financial assurance information required under §24.11 of this title (relating to Financial Assurance) demonstrating that the utility has the financial resources to operate and manage the utility and to provide continuous and adequate service.
- (2) For violations that occurred after September 1, 2019, the report must be filed not later than the third anniversary of the date of the violation, as reported by TCEQ, under subsection (b) of this section. For violations that occurred between September 1, 2016, and August 31, 2019, the report must be filed not later than the fifth anniversary of the date of the violation reported by TCEQ under subsection (b) of this section.
- (3) The report must be filed with the commission's central records under the commission-designated project number.
- (4) The commission will deliver a copy of a report received under this subsection to:
 - (A) each state senator representing a legislative district that contains a portion of the service area of the utility that filed the report; and
 - (B) each state representative representing a legislative district that contains a portion of the service area of the utility that filed the report.

- (e) **No additional report required.** A utility that has an existing obligation to file a report required by this section is not required to file a second report as a result of the occurrence of an additional violation for which notice to the commission was provided under subsection (b) of this section if the additional violation occurs before the date that the utility files the report required by subsection (d).
- (f) **Failure to report.** If a utility fails to file a report in accordance with this section, the commission will report such failure to:
- (1) the TCEQ;
 - (2) each state senator representing a legislative district that contains a portion of the utility 's service area; and
 - (3) each state representative representing a legislative district that contains a portion of the utility's service area.

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 FEBRUARY 2020 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**