

PROJECT NO. 50089

RULEMAKING RELATING TO § PUBLIC UTILITY COMMISSION
REPORTING REQUIREMENT FOR §
WATER AND SEWER UTILITIES § OF TEXAS

**ORDER ADOPTING NEW 16 TAC §24.134
FOR CONSIDERATION AT THE MAY 29, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §24.134, relating to financial, managerial and technical reports required for water and sewer utilities, without changes to the proposed text as published in the March 13, 2020 issue of the *Texas Register* (45 TexReg 11). The rule implements section 1 of House Bill 3542, passed in the 86th Regular Legislative Session and effective September 1, 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). This new rule is adopted under Project Number 50089.

The commission did not receive comments on the proposed new rule.

The new rule is adopted 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 subsection (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) of this section.

(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 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 new 16 TAC §24.134 relating to financial, managerial and technical reports required for water and sewer utilities, is hereby adopted with no changes to the text as proposed.

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

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER