

**PROJECT NO. 42191**

<b>AMENDMENTS TO P.U.C.</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>PROCEDURAL RULES RELATED TO</b>	<b>§</b>	
<b>THE MIGRATION OF WATER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>UTILITIES FROM TCEQ TO THE PUC</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §22.1 AND §22.71,  
NEW §22.248, AND NEW SUBCHAPTER P, §§22.291 - 22.299  
AS APPROVED AT THE MARCH 27, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §22.1 relating to Purpose and Scope, §22.71, relating to Filings of Pleadings, Documents, and Other Materials, new §22.248, relating to Water and Sewer Utilities, and new Subchapter P, §§22.291 - 22.299, relating to Emergency Orders for Water Utilities. The proposed amendments and new rules will address necessary procedures for practice to allow the commission to begin exercising its authority over proceedings related to water and wastewater utilities on September 1, 2014, pursuant to House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session. Project Number 42191 is assigned to this proceeding.

Under §2.96(j) of House Bill 1600 and §96(j) of Senate Bill 567, the rules and procedures of the Texas Commission on Environmental Quality (TCEQ) continue in effect as a rule or procedure of the commission until amended or replaced. New §22.248 continues 30 TAC Chapter 80, the TCEQ's rules, in place as rules of the commission for hearings transferred to the commission on September 1, 2014. The presiding officer in a proceeding is given the discretion to use either 30 TAC Chapter 80 or 16 TAC Chapter 22 for certain activities. All matters filed at the commission

on or after September 1, 2014 will be governed solely by Chapter 22 and new Chapter 24 of the commission's rules.

New Chapter 22, Subchapter P combines in a single location the requirements of Texas Water Code Chapter 5 and Chapter 13 as they relate to emergency orders over which the commission has authority.

Tom Hunter, Special Counsel, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hunter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be the just and efficient disposition of proceedings and public participation in the decision-making process.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Hunter has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments and new sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendments and new sections are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 42191.

These amendments and new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility 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.

Cross Reference to Statutes: Texas Water Code §§5.501 - 5.508 and Chapter 13.

**§22.1. Purpose and Scope.**

(a) (No change.)

(b) **Scope.**

(1) (No change.)

(2) This chapter shall govern proceedings under the Texas Utilities Code, Texas Water Code, Texas Health and Safety Code, Texas Government Code, or any other statute granting the Public Utility Commission of Texas authority to conduct proceedings.

~~(3)(2)~~ This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the commission staff, or the substantive rights of any person.

~~(4)(3)~~ To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

**§22.71. Filing of Pleadings, Documents, and Other Materials.**

(a) - (b) (No change.)

(c) **Number of items to be filed.** Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, are as follows:

(1) - (8) (No change.)

(9) applications for certificates of convenience and necessity, amendments to certificates of convenience and necessity, for transmission lines or boundary changes, certificate of convenience and necessity exemptions, and service area exceptions: seven copies;

(10) - (14) (No change.)

(d) - (j) (No change.)

**§22.248. Water and Sewer Utilities.**

- (a) **Scope.** This section is intended to address proceedings related to water and sewer utilities, including applications related to certificates of convenience and necessity, rate proceedings, or appeals of rate actions.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) 30 TAC Chapter 80--Texas Commission on Environmental Quality (TCEQ) rules relating to Contested Case Hearings, as the rules existed on August 31, 2014.
  - (2) Water or sewer utility -- A water or sewer utility as defined in Texas Water Code §13.002(23).
- (c) **Transfer of proceedings.**
- (1) On September 1, 2014, every proceeding related to a water or sewer utility's CCN or rates shall be transferred to the commission in accordance with law.
  - (2) The procedural rules of the commission shall be used in every water or sewer utility proceeding transferred to the commission as soon as practicable or as established by this section.
  - (3) The presiding officer shall have authority to determine in accordance with this section the cut-over to commission procedural rules in each water or sewer proceeding transferred to the commission.

- (d) **Specific procedures in transferred case.** Every water or sewer utility proceeding transferred to the commission on September 1, 2014 shall be subject to this chapter as follows:
- (1) If a preliminary hearing has not been held and a scheduling order has not been issued in a proceeding transferred to the commission, then this chapter shall govern all aspects of the proceeding that have not been completed.
  - (2) If a preliminary hearing has been held and a scheduling order has issued, but a hearing on the merits has not been held, then the presiding officer shall convene a prehearing conference to address and establish the following matters:
    - (A) whether 30 TAC Chapter 80 or this chapter shall govern discovery;
    - (B) whether the procedural schedule should be modified or the proceeding abated, or both, to allow a reasonable time for the staff of the commission to prepare and file testimony or to modify or adopt the testimony previously filed by the TCEQ;
    - (C) to discuss the filing requirements of the commission under this chapter;  
and
    - (D) to reconcile any other matters that may arise as a result of the transfer of the proceeding to the commission.
  - (3) If a hearing on the merits has been completed, but a proposal for decision has not been delivered, the proposal for decision shall be delivered to the commission and this chapter shall govern the remainder of the proceeding.
  - (4) If a proposal for decision has been issued, but the matter has not been decided, then:

- (A) the administrative and hearing record shall be transferred to the commission as expeditiously as possible;
  - (B) if dates have not been set for exceptions and replies to exception to the proposal for decision, those dates shall be set and the parties notified of the dates; and
  - (C) the matter shall be scheduled for an open meeting before the commission.
- (e) **Motions for rehearing.** Motions for rehearing for every proceeding transferred to the commission shall be governed by this chapter.
- (f) **Proceedings initiated after September 1, 2014.** Every water or sewer utility proceeding initiated at the commission after September 1, 2014 shall be governed by this chapter and by Chapter 24 of this title (relating to Substantive Rules Applicable to Water and Sewer Service Providers).
- (g) **Continuation of TCEQ rules.** The rules of the TCEQ related to the duties transferred to the commission regarding water and sewer utilities continue as rules of the commission until amended or replaced by this commission. This section is a replacement of those procedural rules, provided however, that the procedural rules of the TCEQ are continued for proceedings transferred to the commission to the extent not inconsistent with this section.

**SUBCHAPTER P. Emergency Orders for Water Utilities****§22.291. Purpose and Applicability.**

- (a) The purpose of this subchapter is to prescribe procedures to implement the commission's authority under the Texas Water Code to issue emergency orders or to authorize emergency rates.
  
- (b) This subchapter applies to any application under the Texas Water Code for an emergency order or emergency rates.

**§22.292. Definitions.**

The following words and term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

Emergency order -- An order which must be issued immediately to appoint a person to temporarily manage and operate a utility under Texas Water Code §13.4132, to authorize an emergency rate increase as authorized by Texas Water Code §5.508, or to compel a water or sewer service provider to provide service as authorized by Texas Water Code §13.041(d).

**§22.293. Notification of Emergency Order.**

- (a) A water or sewer utility that applies for, obtains, or is subject to an emergency order issued by the Texas Commission on Environmental Quality (TCEQ) shall notify the commission as soon as reasonably possible by:
- (1) filing with the commission a copy of the application or order; or
  - (2) if the application or order is not available to the utility, filing with the commission a letter describing the facts and circumstances relating to the application or order.
- (b) A water or sewer utility complies with this section if the information is provided as part of an application for an emergency order under §22.295 of this title (relating to Application for Emergency Order).

**§22.294. Emergency Orders and Emergency Rates.**

- (a) The commission may issue an emergency order, with or without a hearing, to
- (1) appoint a person under §24.142 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.143 of this title (relating to Operation of a Utility by a Temporary Manager), and Texas Water Code §5.507 and §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the attorney general for the appointment of a receiver under Texas Water Code §13.412.
  - (2) to compel a water or sewer provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or inactions;  
or
  - (3) to compel a retail public utility to provide an emergency connection 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.
- (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) The commission may issue an emergency order, with or without a hearing, to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate services to the utility's customers pursuant to Texas Water Code §5.508 and §13.4133:
- (1) for a utility for which a person has been appointed under Texas Water Code §5.507 or §13.4132 to temporarily manage and operate the utility that has discontinued or abandoned operations; or
  - (2) for a utility for which a receiver has been appointed under Texas Water Code §13.412.
- (d) The commission may issue an emergency order under Texas Water Code §13.253(b) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission:
- (1) to make specified improvements and repairs to the water or sewer system;
  - (2) to require the utility to obligate additional money to replace the financial assurance used for the improvements;
  - (3) if the commission has reason to believe that improvements and repairs to the water or sewer system are necessary to provide continuous and adequate service in any portion of the utility's service area; and
  - (4) if the utility has provided financial assurance under Texas Health and Safety Code §341.0355 or Texas Water Code Chapter 5.
- (e) If an emergency order is issued without a hearing, the order shall fix a time for a hearing that is as soon after issuance of the emergency order as practicable and a place for a

hearing to be held before the commission or the State Office of Administrative Hearings (SOAH).

(f) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.

(g) Notice of the commission's action under this subchapter is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters.

**§22.295. Application for Emergency Order.**

- (a) A person seeking an emergency order under this subchapter shall submit a written application to the commission.
  
- (b) For an applicant other than commission staff, the application must:
  - (1) be sworn;
  - (2) state whether the applicant is also seeking or has obtained an emergency order from the Texas Commission on Environmental Quality;
  - (3) state the name, address, and telephone number of the applicant, the person submitting the application on the applicant's behalf, and the person signing the application on the applicant's behalf;
  - (4) contain information sufficient to identify the facility and location to be affected by the order;
  - (5) describe the condition of emergency or other condition justifying the issuance of the order;
  - (6) allege facts to support any findings required under this subchapter;
  - (7) estimate the dates on which the proposed order should begin and end and the dates on which the activity proposed to be allowed, mandated, or prohibited should begin and end;
  - (8) describe the action sought and the activity proposed to be allowed, mandated, or prohibited;
  - (9) include any other statement or information required by this subchapter; and
  - (10) shall be signed as follows.

- (A) For a corporation, the application shall be signed by a responsible corporate officer.
  - (B) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.
  - (C) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- (c) For an application by commission staff, the application must:
- (1) contain the items specified in subsection (b)(2) - (9) of this section; and
  - (2) be signed by commission staff.

**§22.296. Additional Requirements for Emergency Rate Increases.**

- (a) An emergency rate increase may be granted under this subchapter for a period not to exceed 15 calendar months from the date on which the increase takes effect. The commission shall schedule a hearing to establish a final rate within that period and require the utility to provide notice of the hearing to each customer.
- (b) 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.
- (c) A request for an emergency rate increase must be filed by the utility in accordance with, and must contain the information required by §22.295 of this title (relating to Application for Emergency Order) and the following:
  - (1) the effective date of the rate increase;
  - (2) sufficient information to support the computation of the proposed rates; and
  - (3) any other information requested by the commission.
- (d) The effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission.
- (e) 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.

- (f) A utility receiving authorization for an emergency rate increase shall provide notice of the increase to each ratepayer as soon as possible, but no later than the effective date for the emergency rate. The notice shall contain the following:
- (1) the utility's name and address, the previous rates, the emergency rates, the effective date of the rate increase, and the classes of utility customers affected; and
  - (2) this statement: "This emergency rate increase has been approved by the Public Utility Commission of Texas under authority granted by the Texas Water Code §5.508 and §13.4133 to ensure the provision of continuous and adequate service to the utility's customers. The commission is also required to schedule a hearing to establish a final rate within 15 months after the date on which the emergency rates take effect. The utility is required to provide notice of the hearing to all customers at least 10 days before the date of the hearing. The additional revenues collected under this 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."
- (g) The utility shall 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 §24.31 of this title (relating to Cost of Service).

- (h) 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 §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

**§22.297. Notice and Opportunity for Hearing.**

- (a) An emergency order under this subchapter may be issued with or without notice and an opportunity for hearing in accordance with this subchapter.
- (b) An emergency order issued under this subchapter without a hearing is not subject to the requirements of the Texas Administrative Procedures Act.
- (c) If an emergency order is issued under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the order to be held before the commission or SOAH as soon as practicable after the order is issued.
- (d) Except as otherwise provided by this subchapter, notice of a hearing to affirm, modify, or set aside an emergency order under this subchapter shall be given not later than the tenth day before the date set for the hearing. This notice shall provide that an affected person may request an evidentiary hearing on issuance of the emergency order.
- (e) A hearing to affirm, modify, or set aside an emergency order under this subchapter is subject to the Texas Administrative Procedures Act.

**§22.298. Contents of Emergency Order.**

An emergency order issued under this subchapter shall contain at least the following:

- (1) the name and address of the applicant, if any, and information sufficient to identify the facility or location affected by the order;
- (2) a description of the condition justifying the issuance of the order;
- (3) any findings of facts required under this subchapter;
- (4) a statement of the term of the order, including the dates on which it shall begin and end;
- (5) a description of the action sought;
- (6) if the order was issued without a hearing, a statement to that effect and a provision setting a time and place for a hearing before the commission or SOAH; and
- (7) any other statement or information required by this subchapter.

**§22.299. Hearing Required.**

A hearing shall be held either before or after the issuance of each emergency order. If no hearing is held before the issuance of an emergency order, a hearing to affirm, modify, or set aside the order shall be held before the commission or SOAH as soon as practicable after the order is issued.

This agency hereby 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 MARCH 2014 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**