

**PROJECT NO. 45115**

**PROJECT TO AMEND CHAPTERS 22     §     PUBLIC UTILITY COMMISSION  
AND 24 - IMPLEMENTATION OF     §  
SENATE BILL 1148 (VARIOUS WATER §     OF TEXAS  
REGULATIONS MODIFICATIONS)     §**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §22.291, §22.292, §22.293,  
§22.295, §22.296, §22.297, §22.298, AND §22.299 AND REPEAL OF §22.294 AS  
APPROVED AT THE MARCH 3, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §22.291, relating to Purpose and Applicability; §22.292, relating to Definitions; §22.293, relating to Notification of Emergency Order; §22.295, relating to Application for Emergency Order; §22.296, relating to Additional Requirements for Emergency Rate Increases; §22.297, relating to Notice and Opportunity for Hearing; §22.298, relating to Contents of Emergency Order; and §22.299, relating to Hearing Required. The commission proposes repeal of §22.294, relating to Emergency Orders and Emergency Rates. Consistent with 1 Tex. Admin. Code §91.35(d), the commission also proposes amendments to chapter 24 of the commission’s rules in a separate notice preamble as part of this project.

The proposed amendments and repeal will allow the commission’s procedural rules relating to emergency orders to conform to §2, §3, §5, §6, and §§8–10 of Senate Bill 1148 (SB 1148) of the 84<sup>th</sup> Legislature, Regular Session, which amended chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). Project Number 45115 is assigned to this proceeding.

Tammy Benter, Division Director of the commission's Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with SB 1148. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Benter has also determined that for each year of the first five years the proposed section is 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 on May 10, 2016. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments and repeal 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 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 40 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 amendments and repeal. The commission will consider the costs and benefits in deciding whether to amend and repeal the identified sections. All comments should refer to Project Number 45115.

These amendments and repeal are proposed under TWC §13.041(b), 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 specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

**§22.291. Purpose and Applicability.**

(a) (No change.)

(b) This subchapter applies to any ~~request~~application under the Texas Water Code for an emergency order or emergency rates.

**§22.292. Definitions.**

The following words and terms, 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 for one of the reasons provided in §24.14(a) of this title (relating to Emergency Orders and Emergency Rates)~~to appoint a person to temporarily manage and operate a utility under Texas Water Code §5.507 and §13.4132, to authorize an emergency rate increase as authorized by Texas Water Code §5.508 and §13.4133, or to compel a water or sewer service provider to provide service as authorized by Texas Water Code §13.041(d).~~

**TCEQ** – Texas Commission on Environmental Quality.

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

- (a) A ~~retail public water or sewer~~ utility that ~~requests~~applies for, obtains, or is subject to an emergency order issued by the ~~TCEQ Texas Commission on Environmental Quality (TCEQ)~~ shall notify the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies as soon as reasonably possible by:
- (1) filing with the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies a copy of the ~~request~~application or order; or
  - (2) if the ~~request~~application or order is not available to the retail public utility, filing with the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies a letter describing the facts and circumstances relating to the ~~request~~application or order.
- (b) A ~~retail public water or sewer~~ utility ~~may comply~~complies with subsection (a) of this section ~~by providing if the information required by subsection (a) of this section is provided~~ as part of a ~~request~~an application for an emergency order under §22.295 of this title (relating to ~~Request~~Application for Emergency Order) and by providing notice, if applicable, to all other regulatory authorities having original jurisdiction over the retail public utility's rates and service policies.

(c) Upon issuance of an emergency order by the commission, the commission shall provide notice of issuance of the order to the affected retail public utility as soon as practicable. Notice of the commission's action under this subchapter is adequate if the notice or emergency order is delivered by registered or certified mail, return receipt requested, or hand-delivered, to the last known address of the retail public utility's headquarters.

(d) After a retail public utility receives notice of the issuance of an emergency order by the commission under this subchapter, the retail public utility shall provide notice of issuance of the emergency order to all affected ratepayers, the TCEQ, and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies. If the emergency order is for a rate change pursuant to §24.14(a)(4) of this title (relating to Emergency Orders and Emergency Rates), the retail public utility will provide the notice within ten days of the issuance of the emergency order or before the next billing cycle in which the new rate will be imposed, whichever is first. Otherwise, the retail public utility will provide the notice within ten days of the issuance of the emergency order. A copy of the notice shall also be filed with the commission along with a signed affidavit as proof that the notice was provided. The notice shall include:

(1) The name of the retail public utility for which the emergency order was issued, its corresponding certificate of public convenience and necessity number(s), and all relevant TCEQ-issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;

(2) The address of the office for the retail public utility identified in paragraph (1) of this subsection;

- (3) An emergency contact name and phone number(s) for the retail public utility identified in paragraph (1) of this subsection;
  - (4) The start and end date of the emergency order; and
  - (5) A brief statement explaining how the customers of the retail public utility identified in paragraph (1) of this subsection will be affected by the issuance of the emergency order.
- (e) If a retail public utility required to provide notice pursuant to subsection (d) of this section has abandoned operation of its facilities or the owner of such a retail public utility has abandoned the system, as described in Texas Water Code §13.412(a)(1)-(2) and (f), then the retail public utility's receiver appointed pursuant to Texas Water Code §13.412 or temporary manager authorized pursuant to Texas Water Code §13.4132 shall provide notice as required by subsection (d) of this section. If no receiver or temporary manager has been appointed or authorized, commission staff shall take reasonable efforts to ensure that customers are provided the notice required by subsection (d) of this section or other reasonable notice.

**§22.294. Emergency Orders and Emergency Rates. – REPEALED****§22.295. Request~~Application~~ for Emergency Order.**

- (a) A person seeking an emergency order under this subchapter shall submit a written request~~application~~ to the commission.
- (b) For a requesting person~~applicant~~ other than commission staff, the request~~application~~ must:
- (1) (No change.)
  - (2) state whether the requesting person~~applicant~~ is also seeking or has obtained an emergency order from the TCEQ~~Texas Commission on Environmental Quality~~;
  - (3) state the name, address, and telephone number of the requesting person~~applicant~~, the person submitting the request~~application~~ on the requesting person~~applicant~~'s behalf, and the person signing the request~~application~~ on the requesting person~~applicant~~'s behalf;
  - (4) state the name of the retail public utility, its corresponding certificate of public convenience and necessity number(s), and its corresponding TCEQ-issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;
  - ~~(5)~~(4) contain information sufficient to identify the facility(ies)~~facility~~ and location(s)~~location~~ to be affected by the order;

~~(6)(5)~~ describe the ~~condition(s)condition~~ of emergency or other ~~condition(s)condition~~ justifying the issuance of the order;

~~(7)(6)~~ allege facts to support any findings required under this subchapter;

~~(8)(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;

~~(9)(8)~~ describe the action sought and the activity proposed to be allowed, mandated, or prohibited;

~~(10)(9)~~ include any other statement or information required by this subchapter; and

~~(11)(10)~~ shall be signed as follows:-

- (A) For a corporation, the ~~requestapplication~~ shall be signed by an executive officer or by a responsible corporate official who has been delegated appropriate authority by an executive officer.
- (B) For a partnership or sole proprietorship, the ~~requestapplication~~ shall be signed by a general partner or the proprietor, respectively.
- (C) For a municipality, state, federal, or other public agency, the ~~requestapplication~~ shall be signed by a person authorized to make the representation(s) contained in the request on behalf of the municipality or agency~~either a principal executive officer or a ranking elected official.~~
- (D) A person signing a ~~requestan 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

~~gathered~~~~gather~~ and ~~evaluated~~~~evaluate~~ the information submitted. Based on my inquiry of the person or persons who manage the retail water or sewer system(s) or the retail public utility 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 a ~~request~~~~an application~~ by commission staff, the ~~request~~~~application~~ must:
- (1) contain the items specified in subsection (b)(2)-~~(10)~~~~(9)~~ of this section; and
  - (2) be signed by commission staff.

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

- (a) If an emergency rate increase is granted pursuant to §24.14(a)(4) of this title (relating to Emergency Orders and Emergency Rates), the commission shall schedule a hearing and establish a final rate prior to the expiration of the emergency rate order. The final rate must be established and implemented no more than 15 months after the emergency rate increase takes effect.~~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) A utility is required to provide notice of the hearing to establish a final rate set pursuant to subsection (a) of this section to all customers at least ten days before the date of the hearing. A copy of the notice shall also be filed with the commission along with a signed affidavit as proof that the notice was provided.~~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 Request~~Application~~ for Emergency Order) and must also contain the following:
- (1)-(3) (No change.)

~~(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.~~

~~(d)(f)~~ Consistent with the notice requirements set forth in §22.293(d) of this title (relating to Notification of Emergency Order), a utility receiving authorization for an emergency rate increase shall provide notice of the increase to each ratepayer within ten days of issuance of the order, or before the next billing cycle in which the rate will be in effect, whichever is first ~~as soon as possible, but no later than the effective date for the emergency rate.~~ The notice shall contain the following:

- (1) (No change.)
- (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 ~~ten~~ 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) (No change.)
- (b) A law under which the commission acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an emergency order issued pursuant to the Texas Water Code, Chapter 13, Subchapter K-1 unless the law specifically requires notice for an emergency order. The commission shall give notice of the hearing as it determines is practicable under the circumstances.~~An emergency order issued under this subchapter without a hearing is not subject to the requirements of the Texas Administrative Procedure Act.~~
- (c) If notice and opportunity for a hearing is practicable, the commission shall provide the notice not later than the tenth day before the date set for the hearing.~~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) If notice and opportunity for a hearing is not practicable and the emergency order is issued without a hearing:
- (1) issuance of the emergency order is not subject to the requirements of the APA, and
  - (2) the commission shall provide notice of a hearing to affirm, modify, or set aside an emergency order pursuant to §22.299 of this title (relating to Hearing Required to

Affirm, Modify, or Set Aside) not later than the tenth day before the date set for the hearing, except as otherwise provided by this subchapter. The notice shall provide that an affected person may, consistent with the APA:

(A) request an evidentiary hearing to affirm, modify, or set aside the emergency order; and

(B) waive their right to a hearing, if applicable. The notice shall explain how such waiver may occur.

~~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) The notice required under both subsections (c) and (d) of this section shall also include the notice requirements provided in §22.183(b)(1) and (2) of this title (relating to Disposition by Default).~~A hearing to affirm, modify, or set aside an emergency order under this subchapter is subject to the Texas Administrative Procedure 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 requesting person~~applicant~~, if any, and information sufficient to identify the facility(ies)~~facility~~ or location(s)~~location~~ affected by the order;
- (2) a description of the condition(s)~~condition~~ justifying the issuance of the order;
- (3) (No change.)
- (4) a statement of the term of the order, including the dates on which it shall begin and end, in accordance with §24.14 of this title (relating to Emergency Orders and Emergency Rates);
- (5) (No change.)
- (6) if the order was issued without a hearing, a statement to that effect, and if the emergency order was issued pursuant to §24.14(a)(2)-(3) of this title, a provision setting a time and place for a hearing before the commission or SOAH; and
- (7) the procedure by which a person waives a right to a hearing; and
- ~~(8)~~(7) any other statement or information required by this subchapter.

**§22.299. Hearing Required to Affirm, Modify, or Set Aside.**

- (a) A hearing shall be held either before or after the issuance of each emergency order, unless all persons affected by the order waive the right to a hearing. Notice of a hearing to affirm, modify, or set aside an emergency order shall be given in accordance with §22.297(d) of this title (relating to Notice and Opportunity for Hearing). 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.
- (b) A hearing to affirm, modify, or set aside an emergency order under this subchapter is subject to the APA.
- (c) In a hearing to affirm, modify, or set aside an emergency order under this subchapter, the applicant shall be given the opportunity to:
- (1) present evidence under oath;
  - (2) present rebuttal evidence under oath; and
  - (3) cross-examine witnesses under oath.
- (d) If no hearing is held before the issuance of an emergency order, the commission or the executive director shall set a time and place for a hearing to be held before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued. For emergency orders issued pursuant to §24.14(a)(2) or §24.14(a)(3) of this title (relating to Emergency Orders and Emergency Rates) without a hearing, the order shall set

a time and place for a hearing before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued.

(e) At a hearing required under this section, or within a reasonable time after the hearing, the commission shall affirm, modify, or set aside the emergency order.

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 4<sup>TH</sup> DAY OF MARCH 2016 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**