

**PROJECT NO. 47303**

<b>AMENDMENTS TO 16 TAC</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SECTION 24.21 FOR A PASS</b>	<b>§</b>	
<b>THROUGH PROVISION FORMULA</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND TO IMPLEMENT HOUSE BILL</b>	<b>§</b>	
<b>1083 ALLOW A UTILITY TO</b>	<b>§</b>	
<b>ESTABLISH REDUCED WATER</b>	<b>§</b>	
<b>UTILITY RATES FUNDED BY</b>	<b>§</b>	
<b>DONATIONS FOR ELDERLY</b>	<b>§</b>	
<b>CUSTOMERS- PURSUANT TO TWC</b>	<b>§</b>	
<b>SECTIONS 13.182 AND 13.189</b>	<b>§</b>	

**ORDER ADOPTING AMENDMENT TO §24.21  
AS APPROVED AT THE DECEMBER 14, 2017 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §24.21, relating to form and filing of tariffs, with changes to the proposed text as published in the September 15, 2017, issue of the *Texas Register* (42 TexReg 4739). The amendments implement House Bill 1083 (HB 1083), which amended Texas Water Code §13.182 and §13.189 (West 2008 & Supp. 2017) (TWC) to allow a utility to establish reduced water utility rates funded by donations for elderly customers. The amendments also revise the minor tariff change portion of the rule to correct an example in the pass-through provision formula and clarify what constitutes an acceptable amount of line loss in the pass-through portion of the rule. The amendments are adopted under Project Number 47303.

The commission received comments on the proposed amendments from the City of Houston (Houston), the Office of Public Utility Counsel (OPUC), and joint comments from Aqua Texas, Inc.; Aqua Utilities, Inc.; Aqua Development, Inc. d/b/a Aqua Texas; SJWTX, Inc. d/b/a Canyon Lake Water Service Company; and SouthWest Water Company (collectively, the Water Companies). The commission also received reply comments from the Water Companies and Houston.

*§24.21(b)(2)(B)*

The Water Companies opined that the proposed rule amendments add certain requirements not included in HB 1083 that may disincentivize utilities from adopting the new program. Specifically, the Water Companies argued that the proposed rule: (1) adds an income-driven limitation even though HB 1083 only contemplates age-based criteria, which could increase administration costs; (2) seems to limit the “cost of providing the reduced rates” that donations may cover to “lost revenues due to the difference in the utility’s tariffed retail water rates and the reduced rates,” which would prohibit use of donations to cover program administrative costs; and (3) does not appear to contemplate how this type of program would work for sewer or flat rate utilities. The Water Companies argued that the rule should specifically allow donations to be used to cover administrative costs of the new program in order to encourage utilities to adopt this type of assistance program. The Water Companies further argued that assistance programs should be encouraged for all types of service providers, and that the commission should consider how best to incentivize utilities to provide an assistance program of the type authorized by HB 1083 while providing maximum flexibility. The Water Companies argued that the proposed rule does not appear to accomplish those goals.

As further discussed and summarized below, Houston supported and OPUC did not oppose the income limitation as a mechanism to ensure that those persons most in need of assistance receive the discount.

*Commission response*

The commission agrees with the Water Companies and makes a change to the rule language to reflect the Water Companies' recommendation relating to the use of donations to cover program costs. As discussed in more detail below, the commission finds that the "cost of providing the reduced rates" includes program administrative costs. However, contrary to the argument of the Water Companies, the commission declines to expand the rule to cover sewer rates; the preamble to HB 1083, section three of HB 1083, and the legislative history of HB 1083 all clearly specify that the assistance program established by HB 1083 applies only to water rates, not to sewer rates. The commission responds to the Water Companies' concern regarding adding an income-driven limitation below.

*§24.21(b)(2)(B)(i)*

Houston commented that the rule does not indicate whether donations are to be collected in advance or prior to calculating and implementing the rates, nor does the rule indicate the proposed timeframe for this initial period. If, on the other hand, donations are not to be collected until after implementation of the rate, Houston was unsure how a utility would determine anticipated donations to be collected in order to create a reasonable rate. Houston indicated that most of the issues it identified could be addressed as part of a proceeding related to the filing of a utility's plan for implementing an assistance program; however, Houston recommended that the commission clarify when the rate would be implemented upon filing of a plan.

The Water Companies replied that leaving the types of details discussed by Houston to consideration on a case-by-case basis for each specific plan would permit more flexibility and

therefore be preferable to addressing all the details by rule. The Water Companies did request guidance as to how the commission anticipates the implementation of proposed plans and the approval process working in practice.

*Commission response*

**The commission anticipates that a utility will propose its own plan with respect to when donations will be collected in relation to the implementation date of the rate and that this plan will address any other necessary implementation details.**

**§24.21(b)(2)(B)(i)(I)**

OPUC recommended changing the new §24.21(b)(2)(B)(i)(I) to reflect that the collection of donations is permissive, not mandatory. The Water Companies concurred with OPUC's recommendation.

*Commission response*

**The commission agrees with OPUC that donations are permissive. The commission acknowledges that donations may be received from the utility, customers, or outside persons. There is no need to adopt any changes to the language contained in the proposed rule.**

**§24.21(b)(2)(B)(i)(II)**

Houston stated that the rule is unclear as to whether interest should be applied to the donations collected and held by the utility.

*Commission response*

**The commission determines that any interest earned on donated funds will be considered a donation to the fund. The commission modifies §24.21(b)(2)(B)(i)(II) accordingly.**

*§24.21(b)(2)(B)(i)(III)*

OPUC recommended changing the new §24.21(b)(2)(B)(i)(III) to replace the word “clause” with “program” to clarify that the subsection is referring to the reduced water rate program and not a particular clause. The Water Companies replied that the commission’s proposed “clause” language presumably referred to the proposed minor tariff change language an applicant may propose in a plan to implement a reduced rate program. The Water Companies stated that the proposed effective date in a plan under the rule would likely apply to both the tariff language, including the proposed reduced rate, and the contemplated program. The Water Companies also stated that there could potentially be two different dates to allow more time for program implementation. As a result, the Water Companies recommended that the issue be addressed by adding language covering both items instead of using OPUC’s proposed language replacement.

OPUC also suggested replacing the word “sample” with “example” to clarify that there may not be any donations at the time of the application. In addition, OPUC recommended inserting additional language to clarify that an accounting of lost revenues is only required if the utility is receiving donations. The Water Companies agreed with these proposed revisions, but argued that the clarification regarding the need for an accounting should be incorporated into the Water Companies’ proposed modifications to the proposed rule language.

Houston opposed the Water Companies' proposed modifications to the rule language, specifically the removal of language requiring that "...utilities provide a calculation of all lost revenues and journal entries that transfer the funds from the account in this subparagraph of this clause to the utility's account." Houston argued that requiring the calculation of lost revenues is an important part of determining whether a utility has properly complied with §24.21, and stated that the Water Companies offered no explanation for the change.

*Commission response*

**The commission agrees with OPUC's first two recommendations and changes the word "clause" to "program" and the word "sample" to "example." The commission disagrees with the assertion of OPUC and the Water Companies that an accounting for lost revenues is only necessary when funding is from donations received from other sources. The commission finds that an accounting for lost revenues is appropriate regardless of the source of the donations, and therefore, does not revise §24.21(b)(2)(B)(i)(III) based on those comments.**

**§24.21(b)(2)(B)(i)(IV)**

OPUC recommended replacing the word "requesting" with "receiving" to maintain consistency between proposed §24.21(b)(2)(B)(i)(IV) and the statutory language. The Water Companies did not oppose OPUC's proposed revision.

*Commission response*

**The commission agrees with OPUC's recommendation and changes the language in the rule accordingly.**

**§24.21(b)(2)(B)(i)(V)**

Houston agreed that the rule should establish eligibility requirements for the elderly rate; however, Houston argued that the eligibility criteria should be consistent with other programs, citing the System Benefit Fund rules in 16 Texas Administrative Code §25.451 *et seq.* as an example. Houston recommended that the eligibility criteria for the elderly rate should consist of (1) a limitation of household income of not more than 125% of the federal poverty guidelines, and (2) eligibility for the assistance programs identified in proposed §24.21(b)(2)(B)(i)(V).

Likewise, OPUC recommended that proposed §24.21(b)(2)(B)(i)(V) be modified to use a limitation on household income of not more than 125% of the federal poverty guidelines. OPUC argued that this change would be consistent with other customer assistance programs, such as the commission's rate reduction program as proposed for amendment in Docket No. 47343. OPUC also proposed that, in the event the commission retains the approach originally proposed, that proposed §24.21(b)(2)(B)(i)(V)(-e-) be modified to specify any comprehensive energy assistance program instead of just Travis County's program.

The Water Companies replied that they were not opposed to Houston's and OPUC's recommendations regarding the use of income-based eligibility criteria that are consistent with criteria used in other programs outlined in the commission rules for electric utilities. However,

the Water Companies recommended that the requirement be optional under this particular rule, while acknowledging that including low-income eligibility criteria language in the rule as a guide would be helpful. The Water Companies urged the commission to specifically permit low-income assistance programs by rule and extend the language from proposed §24.21(b)(2)(B)(iv) to other low-income assistance programs, rates, and tariff provisions. In its reply comments, Houston reiterated its position regarding eligibility criteria for the assistance program and stated its opposition to the Water Companies' proposed changes related to the eligibility requirements.

#### *Commission response*

**The commission agrees with the Water Companies that the rule should not mandate an income-based eligibility requirement and removes the requirement from the rule. The commission declines to extend proposed §24.21(b)(2)(B)(iv) to other programs, as proposed §24.21(b)(2)(B)(iv) is designed to implement section two of HB 1083.**

#### *Community Outreach*

Houston suggested plans submitted by utilities should include outreach programs to ensure that the people in need of the discount are aware of its existence and have the resources needed to apply for it. The Water Companies were not opposed to the idea of requesting applicants to address community outreach within their plans. The Water Companies stated that community outreach will likely be needed regardless of whether it is addressed in the plan, and argued that costs for community outreach and education efforts should be considered "costs of providing the reduced rates" eligible to be recovered from donated program funds along with other program-related administrative costs.

*Commission response*

**Due to the potential cost of the community outreach programs, the commission declines to adopt Houston’s suggestion to require community outreach programs regarding the discount program. The commission agrees with Houston that cost for community outreach and education efforts should be considered administrative costs. The commission leaves the decision to the utility to determine outreach activities.**

*§24.21(b)(2)(B)(ii)*

Houston recommended that the costs of providing the reduced rates should not include administrative costs and other costs that might fall under the proposed rule language. Houston proposed that this concern be addressed by removing the term “lost revenue” from the rule language. Houston argued that, to the extent the commission intends to allow utilities to recover administrative and other costs, the rule should expressly address limitations on the type and amount of administrative and other costs to be recovered and that parties should have an opportunity to comment on any such limitations.

The Water Companies opposed Houston’s suggested revision related to the “cost of providing the reduced rates.” The Water Companies argued that the rule should specifically permit administrative costs to be recovered by donated program funds as part of the “cost of providing the reduced rates.” The Water Companies did not agree that the rule should expressly address limitations on the recovery of administrative costs, arguing that placing arbitrary limitations on these costs when they would likely vary on a case-by-case basis didn’t appear to incentivize the

adoption of rate-assistance plans. Instead, the Water Companies recommended that the proposed plan required by the rule should address the anticipated types and amounts of these costs.

In its reply comments, Houston reiterated its position that the rule should place express limitations on the type and amount of administrative costs eligible to be recovered as part of the assistance program. Houston further reiterated its position that parties should have the opportunity to comment on these limitations. Houston argued that under the Water Companies' approach, unlimited administrative costs could be eligible for recovery, which would be contrary to the spirit of the assistance program. Houston commented with respect to electric energy efficiency programs, which apply to many more customers and are more complex in terms of research and development requirements particularly, utilities are allowed to recover up to 20% of their total program cost (cumulative cost of administration and research and development).

*Commission response*

**The commission agrees with the Water Companies that administrative costs may be recovered through donated program funds as part of the “cost of providing the reduced rates.” The commission disagrees with Houston and declines to adopt a limit on what portion of donated funds may be used for administrative costs. HB 1083 did not provide for a disallowance of administrative costs for the program; therefore, the commission retains the proposed language.**

**The commission disagrees with Houston that the term “lost revenues” is broad and should not be included. The commission determines that the donations to the program should cover**

**the difference in rate revenue due to the reduced rate (lost revenue) and also administrative costs; therefore the commission retains the language. HB 1083 anticipates a reduced rate rather than a credit to customer bills and the calculation of lost revenues accounts for the difference in rates.**

**The commission also adds language to clarify that all expenses (administrative and any other expense) related to the program must be identified in the annual accounting and excluded from the utility's cost of service in order to comply with HB 1083, which states that "A utility may not recover those costs through charges to the utility's other customer classes."**

***§24.21(b)(2)(E)***

The Water Companies agreed with the commission's correction to the example pass-through formula included in 16 TAC §24.21(b)(2)(E). However, the Water Companies are opposed to the additional language proposed to that subsection of "*Unless good cause is shown, L (line loss) shall be limited to the lesser of the actual line loss experienced or 15%.*" The Water Companies believe there is no basis for presuming that a reasonable amount of line loss should be capped at 15%.

***Commission response***

**The commission agrees with the Water Companies. The commission retains the right to analyze water loss on a case-by-case issue and makes a change to the rule language to reflect the Water Companies' recommendation and the case-by-case analysis of line loss.**

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment 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. Additionally, the amendment is adopted under HB 1083, which amended TWC §13.182 and §13.189 to allow a utility to establish reduced water utility rates funded by donations for elderly customers and established a deadline of December 31, 2017 for the commission to adopt rules to implement HB 1083

Cross reference to statutes: TWC §§13.041, 13.182, and 13.189.

**§24.21. Form and Filing of Tariffs.**

- (a) **Approved tariff.** A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows:
- (1) A utility may charge the rates proposed under the Texas Water Code (TWC) §13.187 or §13.1871 on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.
  - (2) The regulatory assessment fee required in TWC §5.701(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.
  - (3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.
  - (4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) **Requirements as to size, form, identification, minor changes, and filing of tariffs.**

(1) **Tariffs filed with applications for CCNs.**

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to its certificated service area, every utility shall file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility.

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff shall contain schedules of all the utility's rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) when it applies for a CCN to operate as a utility. The tariff must be on the form prescribed by the commission or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) If a person applying for a CCN is not a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person shall file a proposed tariff with the commission.

The person filing the proposed tariff shall also:

(i) provide a rate study supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(ii) provide all calculations supporting the proposed rates;

- (iii) provide all assumptions for any projections included in the rate study;
  - (iv) provide an estimated completion date(s) for the physical plant(s);
  - (v) provide an estimate of the date(s) service will begin for all phases of construction; and
  - (vi) provide notice to the commission once billing for service begins.
- (C) A person who has obtained an approved tariff for the first time and is under the original rate jurisdiction of the commission shall file a rate change application within 18 months from the date service begins in order to revise its tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. An application for a price index rate adjustment under TWC §13.1872 does not satisfy the requirements of this subparagraph.
- (D) Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.
- (2) **Minor tariff changes.** Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or

amended without commission approval. Minor tariff changes shall not be allowed for any fees charged by affiliates. The addition of a new extension policy to a tariff or modification of an existing extension policy is not a minor tariff change. An affected county may change rates for retail water or sewer service without commission approval, but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

- (A) The commission, or regulatory authority, as appropriate, may approve the following minor changes to utility tariffs:
- (i) service rules and policies;
  - (ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules;
  - (iii) addition of the regulatory assessment fee payable to the TCEQ as a separate item or to be included in the currently authorized rate;
  - (iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);
  - (v) rate adjustments to implement commission-authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs;
  - (vi) implementation of an energy cost adjustment clause under subsection (n) of this section;

- (vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(E) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;
  - (viii) some surcharges as provided in subparagraph (F) of this paragraph;
  - (ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:
    - (I) the list of the cities, counties, and subdivisions in which service is provided;
    - (II) the public water system name(s) and corresponding identification number(s) issued by the TCEQ; and
    - (III) the sewer system names and corresponding discharge permit number(s) issued by the TCEQ.
- (B) The commission, or other regulatory authority, as appropriate, may approve a minor tariff change for a utility to establish reduced rates for a minimal level of retail water service to be provided solely to a class of elderly customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The regulatory authority shall allow a utility to establish a fund to receive donations to recover the costs of providing the reduced rates. A utility may not recover those costs through charges to its other customer classes.

- (i) To request a rate as defined in this subparagraph, the utility must file a proposed plan for review by the commission. The plan shall include:
- (I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.
  - (II) The National Association of Regulatory Utility Commissioners (NARUC) account or subaccount name and number in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program are accounted for and removed from the cost of service for rate making purposes. Any interest earned on donated funds will be considered a donation to the fund.
  - (III) An effective date of the program and an example of an annual accounting for donations received and a calculation of all lost revenues and the journal entries that transfer the funds from the account in this subparagraph of this clause to the utility's revenue account. The annual accounting shall be available to audit by the commission upon request.

- (IV) An example bill with the contribution line item, if receiving contributions from customers.
  - (ii) For the purpose of clause (i) of this subparagraph, recovery of lost revenues from donations shall only include the lost revenues due to the difference in the utility's tariffed retail water rates and the reduced rates established by this subparagraph.
  - (iii) The minimal level of retail water service requested by the utility shall be no more than 3,000 gallons per month per connection. Additional gallons used shall be billed at the utility's tariffed rates.
  - (iv) For purposes of the provision in this subparagraph, a reduced rate authorized under this section does not:
    - (I) Make or grant an unreasonable preference or advantage to any corporation or person;
    - (II) Subject a corporation or person to an unreasonable prejudice or disadvantage; or
    - (III) Constitute an unreasonable difference as to retail water rates between classes of service.
- (C) If a utility has provided proper notice as required in subparagraph (F) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be

approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §13.187 or TWC §13.1871. A pass-through provision may only include passing through of the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved in the following situation(s):

- (i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.
- (ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.
- (iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered in to by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

- (iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.
  - (v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (D) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must remain constant, *e.g.*, January through December.
  - (vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a true-up report and all over-collections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.
- (D) A change in the combined pass-through provision may only be implemented once per year. The utility must file a true-up report within one month after

the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period. If the true-up report reflects an over-collection from customers, the utility must change its combined pass-through rate using the confirmed rate changes to charges being passed through and the over-collection from customers reflected in the true-up report. If the true-up report does not reflect an over-collection from the customers, the implementation of a change to the pass-through rate is optional. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider(s) shall be included in the provision. The true-up report shall include:

- (i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;
- (ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;
- (iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

- (iv) all calculations and supporting documentation;
  - (v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility's booked numbers, if there is a difference in any year; and
  - (vi) any other documentation or information requested by the commission.
- (E) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs shall be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example:  $R = G / (1 - L)$ , where R is the utility's new proposed pass-through rate, G equals the new gallonage charge by source supplier or conservation district, and L equals the actual line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Line loss will be considered on a case-by-case basis.
- (F) A utility that wishes to revise or implement an approved pass-through provision shall take the following actions prior to the beginning of the billing period in which the revision takes effect:
- (i) file a written notice with the commission that must include:
    - (I) the affected CCN number(s);

- (II) a list of the affected subdivision(s), public water system name(s) and corresponding number(s) issued by the TCEQ, and the water quality system name(s) and corresponding number(s) issued by the TCEQ, if applicable;
  - (III) a copy of the notice to the customers;
  - (IV) documentation supporting the stated amounts of any new or modified pass-through costs;
  - (V) historical documentation of line loss for one year;
  - (VI) all calculations and assumptions for any true-up of pass-through costs;
  - (VII) the calculations and assumptions used to determine the new rates; and
  - (VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved; and
- (ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:
- (I) the effective date of the change;
  - (II) the present calculation of customer billings;
  - (III) the new calculation of customer billings;
  - (IV) an explanation of any corrections to the pass-through formula, if applicable;

- (V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and
  - (VI) the following language: “This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.21. The cost to you as a result of this change will not exceed the costs charged to your utility.”
- (G) The following provisions apply to surcharges:
- (i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.
  - (ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:
    - (I) sampling fees not already recovered by rates;
    - (II) inspection fees not already recovered by rates;
    - (III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or
    - (IV) other governmental requirements beyond the control of the utility.

- (iii) A utility shall use the revenues collected through a surcharge approved by the commission only for the purposes noted in the order approving the surcharge. A utility shall handle the funds in the manner specified in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.
  - (iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.
- (3) **Tariff revisions and tariffs filed with rate changes.**
  - (A) If the commission is the regulatory authority, the utility shall file its revisions with the commission. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.
  - (B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.
- (4) **Rate schedule.** Each rate schedule must clearly state the public water system name(s) and the corresponding identification number(s) issued by the TCEQ or the sewer system name(s) and the corresponding identification number(s) issued by the TCEQ for each discharge permit, subdivision, city, and county in which the schedule is applicable.

- (5) **Tariff pages.** Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.
- (c) **Composition of tariffs.** A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:
- (1) a table of contents;
  - (2) a list of the cities, counties, and subdivision(s) in which service is provided, along with the public water system name(s) and corresponding identification number(s) issued by the TCEQ and sewer system names and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;
  - (3) the CCN number(s) under which service is provided;
  - (4) the rate schedules;
  - (5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms to be completed as required by the TCEQ;
  - (6) the extension policy;
  - (7) an approved drought contingency plan as required by the TCEQ; and
  - (8) the forms of payment to be accepted for utility services.
- (d) **Tariff filings in response to commission orders.** Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's tariff form or any modifications of a rule in

the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

- (e) **Availability of tariffs.** Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to a requesting party.
- (f) **Rejection.** Any tariff filed with the commission and found not to be in compliance with this section shall be returned to the utility with a brief explanation of the reasons for rejection.
- (g) **Change by other regulatory authorities.** Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for one or more service areas under the jurisdiction of the municipality, the utility shall file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

- (h) **Effective date.** The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §13.187 or §13.1871 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.
- (i) **Tariffs filed by water supply or sewer service corporations.** Every water supply or sewer service corporation shall file, for informational purposes only, its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to utility service or extension of service, the CCN number(s), and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation shall file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection shall be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).
- (j) **Temporary water rate provision for mandatory water use reduction.**
- (1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that

affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover revenues that the utility would otherwise have lost due to mandatory water use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

- (2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.
- (3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is:

TGC = Temporary gallonage charge

cgc = current gallonage charge

r = water use reduction expressed as a decimal fraction (the pumping restriction)

pr = percentage of revenues to be recovered expressed as a decimal fraction (*i.e.*, 50% = 0.5)

$$TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$$

- (A) The utility shall file a temporary water rate provision for mandatory water use reduction request and provide customer notice as required by the regulatory authority, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the customer class(es) affected, the rates affected, information on how to protest and/or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.23 of this title (relating to Time Between Filings).
- (B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.
- (4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method

acceptable to the regulatory authority to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

- (A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.
  - (B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.
- (5) The utility may place the temporary water rate provision into effect only after:
- (A) it has been approved by the regulatory authority and included in the utility's approved tariff in a prior rate proceeding;
  - (B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

- (C) issuing notice as required by paragraph (7) of this subsection.
- (6) The utility may readjust its temporary water rate provision to respond to modifications or changes to the original required water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.
- (7) A utility implementing a temporary water rate for mandatory water use reduction shall take the following actions prior to the beginning of the billing period in which the temporary water rate provision takes effect:
  - (A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority; and
  - (B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or

expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from (\$ per 1,000 gallons to \$ per 1,000 gallons).”

- (8) A utility shall stop charging a temporary water rate provision as soon as is practicable after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision shall be filed with the commission.
- (9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.
- (k) **Multiple system consolidation.** Except as otherwise provided in subsection (m) of this section, a utility may consolidate its tariff and rate design for more than one system if:
- (1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and
  - (2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

- (l) **Regional rates.** The regulatory authority, where practicable, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 with a consolidated tariff and rate design for more than one system.
- (m) **Exemption.** Subsection (k) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.
- (n) **Energy cost adjustment clause.**
  - (1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.
  - (2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file a request with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, e-mail or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date(s) of such delivery shall be filed with the commission by the utility as part of the request. Notice must be provided on the form prescribed by the commission for a rate application package filed under TWC §13.187 or §13.1871 and must contain the following information:

- (A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the class(es) of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;
  - (B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and
  - (C) any other information that is required by the commission.
- (3) The commission's review of the utility's request is an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.
- (4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection. Copies of notices to customers shall be filed with the commission,

- (5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:
- (A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and
  - (B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."
- (6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the

increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

- (7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.
- (8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, or 13.1872.

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 §24.21 relating to form and filing of tariffs is hereby adopted with changes to the text as proposed.

**Signed at Austin, Texas the \_\_\_\_\_ day of December 2017.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**

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**ARTHUR C. D'ANDREA, COMMISSIONER**