

PROJECT NO. 47303

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

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO § 24.21
AS APPROVED AT THE AUGUST 31, 2017 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code §24.21 (TAC) for a revision of the minor tariff change portion of the rule to correct an example in the pass-through provision formula and to clarify what constitutes an acceptable amount of line-loss in the pass-through portion of the rule, as well as to implement House Bill 1083 (HB 1083) which amended Texas Water Code §13.182 and §13.189 (TWC) to allow a utility to establish reduced water utility rates funded by donations for elderly customers.

Specifically, this project proposes an amendment to the current pass-through provision in 16 TAC §24.21(b)(2)(D) to correct an error in a formula and to clarify that unless good cause is shown, line loss used in the formula shall be limited to the lesser of actual line loss experiences, or 15%.

Additionally, HB 1083 allows retail water utility companies to offer a reduced water rate for a minimal life-line level of retail water service to elderly customers ages 65 or older to ensure those customers receive that level of service at a more affordable rate of retail water service. In addition, HB 1083 allows a retail water utility to create a separate fund for receiving donations to help

recover the costs of providing reduced rates to the elderly. HB 1083 specifies that a retail water utility may not recover those costs through charges to its other customer classes. HB 1083 added new TWC §13.189(c) to clarify that a reduced rate authorized under new TWC §13.182 (b-1) does not give an unreasonable preference or advantage to any corporation or person; subject a corporation or person to an unreasonable prejudice or disadvantage; or constitute an unreasonable difference as to rates of service between customer classes. The proposed rule implements all of these provisions of HB 1083.

Finally, non-substantive changes were made to renumber the rules based on these edits. Project Number 47303 is assigned to this proceeding.

Debi Loockerman, Financial Manager, 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 governments as a result of enforcing or administering the section.

Debi Loockerman 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 implementation of HB 1083 and clarification of the pass-through rule. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section because the legislation allows for reduced water rates for the elderly, but does not require the reduced rates. 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.

Debi Loockerman 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 October 13, 2017. The request for a public hearing must be received by October 10, 2017.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by October 13, 2017. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to 16 TAC §22.71(c). 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 amendment. The commission will consider the costs and benefits in deciding whether to amend the identified section. All comments should refer to Project Number 47303.

The amendments are proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.21. Form and Filing of Tariffs.

(a) (No change.)

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

(1) (No change.)

(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 ~~under the original rate jurisdiction of the commission;~~

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(i)-(ix) (No change.)

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(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 retail water utility to establish a fund to receive

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donations to recover the costs of providing the reduced rates. A retail water 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.

(III) An effective date of the clause and a sample annual accounting for donations received and 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 should be available to audit by the commission upon request.

(IV) An example bill with the contribution line item, if requesting contributions from customers.

(V) A provision limiting the elderly person applying for the plan to a total annual income (for all household members) of \$100,000 or less and eligible for at least one of the following programs:

(-a-) Medicaid Program;

(-b-) Supplemental Nutrition Assistance Program (SNAP);

(-c-) Children's Health Insurance Program (CHIP);

(-d-) Telephone Lifeline Program;

(-e-) Travis County Compressive Energy Assistance Program (CEAP);

(-f-) Medical Access Program (MAP);

(-g-) Supplemental Security Income (SSI); or

(-h-) Veterans Affairs Supportive Housing (VASH).

(ii) For the purpose of clause (i) of this subparagraph, the costs of providing the reduced rates 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)(B) If a utility has provided proper notice as required in subparagraph (F)(E) of

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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)(6)~~ of this

paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must ~~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)(G)~~ 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

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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)(D)~~ For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs shall be stated separately from

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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, $G = \{G / (1 - L)\}$, where G equals the new gallonage charge by source supplier or conservation district, and L equals the line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Unless good cause is shown, L (line loss) shall be limited to the lesser of the actual line loss experienced or 15%.

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~~(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 submit~~ a written notice ~~with~~ the commission that ~~must shall~~ 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;

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- (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:

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- (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)-(5) (No change.)

(c)-(n) (No change.)

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 31st DAY OF AUGUST 2017 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**