

**PROJECT NO. 43871**

**PUC RULEMAKING PROJECT TO § PUBLIC UTILITY COMMISSION  
AMEND CHAPTER 24 FOR THE §  
IMPLEMENTATION OF PHASE II § OF TEXAS  
OF THE ECONOMIC REGULATION §  
OF WATER AND SEWER UTILITIES §**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §§24.3, 24.8, 24.14,  
24.21, 24.23, 24.31, 24.32, 24.34, 24.41, 24.44, 24.72, 24.73,  
24.102, 24.109, 24.111, 24.114, 24.131, 24.150;  
REPEAL OF §§24.11, 24.22, 24.25, 24.26, 24.27, 24.28; AND  
NEW §§24.11, 24.22, 24.26, 24.28, 24.33, 24.36  
AS APPROVED AT THE MARCH 6, 2015 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §§24.3 (relating to Definitions of Terms), 24.8 (relating to Administrative Completeness), 24.14 (relating to Emergency Orders), 24.21 (relating to Form and Filing of Tariffs), 24.23 (relating to Time Between Filings), 24.31 (relating to Cost of Service), 24.32 (relating to Rate Design), 24.34 (relating to Alternative Rate Methods), 24.41 (relating to Appeal of Rate-making Pursuant to the Texas Water Code, §13.043), 24.44 (relating to Seeking Review of Rates for Sales of Water Under the Texas Water Code, §11.041 and §12.013), 24.72 (relating to Financial Records and Reports--Uniform System of Accounts), 24.73 (relating to Water and Sewer Utilities Annual Reports), 24.102 (relating to Criteria for Considering and Granting Certificates or Amendments), 24.109 (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction), 24.111 (relating to Purchase of Voting Stock in Another Utility), 24.114 (relating to Requirement to Provide Continuous and Adequate Service), 24.131 (relating to Commission's Review of Petition or Appeal), and 24.150 (relating to Jurisdiction of Municipality: Surrender of Jurisdiction).

The commission proposes the repeal of §§24.11 (relating to Informal Proceedings), 24.22 (relating to Notice of Intent to Change Rates), 24.25 (relating to Rate Change Applications, Testimony and Exhibits), 24.26 (relating to Suspension of Rates), 24.27 (relating to Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code §13.187(b)), and 24.28 (relating to Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b)).

The commission proposes new §§24.11 (relating to Financial Assurance), 24.22 (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871), 24.26 (relating to Suspension of the Effective Date of Rates), 24.28 (relating to Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 and §13.1871), 24.33 (relating to Rate Case Expenses Pursuant to Texas Water Code §13.187 and §13.1871) and 24.36 (relating to Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872).

The proposed amendments, repeals, and new sections will implement and conform the commission's substantive rules to House Bill 1600 (HB 1600) of the 83rd Legislature, Regular Session, enacted in 2013, which amended the ratemaking and reporting requirements for certain water utilities. In addition to conforming the commission's substantive rules to House Bill 1600, the proposed amendments and new sections will revise the procedures by which a utility can demonstrate financial assurance to the commission. Additional amendments, repeals, and new sections have resulted in the reorganization and/or restructuring of several rule sections to promote clarity. Finally, additional amendments and

new sections revise other limited aspects of ratemaking at the commission including the removal of authorization for standby fees; instructions related to identifying a tariff change; clarification of the applicability of a rule section related to time between filings; modification to the allowable recovery on cost of service established via trending studies; clarification of the applicability of a negative acquisition adjustment; description of availability of intangible asset in rate base; removal of single issue rate change as an alternative rate method; clarification of commission authority in the appeal of ratemaking decisions; extension of the deadline by which a utility is required to file an annual report; and modification of the manner in which the commission provides notice of cities that have surrendered jurisdiction to the commission.

Project Number 43871 is assigned to this proceeding.

Debi Loockerman, Regulatory Accountant, Rate Regulation Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mrs. Loockerman has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be compliance with HB 1600 and the adoption of streamlined requirements for the provision of financial assurance.

Mrs. Loockerman has determined there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. All or nearly all utilities affected by the proposed amendments and new sections are small or micro-businesses. The largest group of utilities affected by the proposed amendments and new sections--Class C utilities--will benefit from the proposed new streamlined ratemaking mechanisms. In addition, although the proposed amendments and new sections, as well as any forms that the commission may adopt in accordance with the proposed amendments and new sections, may increase the complexity of filing certain applications to change rates, this increase of complexity comports with amendments to the Texas Water Code pursuant to HB 1600. It is not expected that these filings will be more costly to prepare for a utility that maintains records according to generally accepted accounting principles and guidelines published by the National Association of Regulatory Utility Commissioners. Further, the effect of the proposed amendments and new sections will be revenue-neutral, as recovery of reasonable costs of preparing applications to change rates may be requested as part of a utility's total recoverable costs. Therefore, there is no anticipated adverse economic effect to utilities that are required to comply with the sections as proposed, and no regulatory flexibility analysis is required.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on May 5, 2015. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed amendments, repeals, and new sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments to the proposed amendments, repeals, and new sections are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 35 days after publication. Comments should be organized in a manner consistent with the organization of the proposed sections. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments, repeals, and new sections. The commission will consider the costs and benefits in considering the adoption or repeal of the identified sections. All comments should refer to Project Number 43871.

These amendments, repeals, and new sections are proposed under Texas Water Code Annotated §13.041(b) (West 2008 and Supp. 2014) (TWC), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which

requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; and HB 1600 §2.96(k), which requires the commission to adopt rules to implement changes in law made by HB 1600 to TWC Chapter 13 not later than September 1, 2015.

Cross Reference to Statutes: TWC §§13.041, 13.136, 13.253, and 13.302 and HB 1600.

### §24.3. Definitions of Terms.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

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

(6) **Allocations**--For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas. A non-municipal allocation is the division of plant, revenues, expenses, taxes and reserves between affiliates, jurisdictions, rate regions, business units, functions, or customer classes defined within a retail public utility's operations for all retail public utilities and affiliates.

(7) **Base rate**--The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service~~[, excluding stand-by fees]~~, which does not vary due to changes in utility service consumption patterns.

(8)-(9) (No change.)

(10) **Certificate of Convenience and Necessity (CCN)**--A permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

(11) (No change.)

(12) **Class A Utility**--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

~~[(12) **Class of service or customer class**--A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.]~~

(13) **Class B Utility**--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(14) **Class C Utility**--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. A Class C utility filing an application pursuant to TWC §13.1871 shall be subject to all requirements applicable to Class B utilities filing an application pursuant to TWC §13.1871. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(15) [(13)] **Code**--The Texas Water Code (TWC). [Any reference to TWC §13.187 is to be construed to reference the substantive requirements of TWC §13.187 as the TWC

~~existed on August 31, 2013, until such time as the commission adopts rules to implement the changes in law made by this Act to TWC Chapter 13 and §12.013, not later than September 1, 2015.]~~

~~(16)~~~~(14)~~ **Commission**--The Public Utility Commission of Texas or a presiding officer, as applicable.

~~(17)~~~~(15)~~ **Corporation**--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the TWC.

~~(18)~~~~(16)~~ **Customer**--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

~~(19)~~ **Customer class**--A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take basic utility service under a single set of rates.

~~(20)~~~~(17)~~ **Customer service line or pipe**--The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

~~(21)~~~~(18)~~ **Facilities**--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used,



controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(22) **Financial assurance**--The owner's or operator's demonstration that sufficient or adequate financial resources exist to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.

(23)~~(19)~~ **Incident of tenancy**--Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(24)~~(20)~~ **Landowner**--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(25)~~(21)~~ **License**--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(26)~~(22)~~ **Licensing**--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the TWC.

(27)~~(23)~~ **Main**--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(28)~~(24)~~ **Mandatory water use reduction**--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water,

or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

~~(29)~~~~(25)~~ **Member**--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

~~(30)~~~~(26)~~ **Membership fee**--A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of TWC[,] §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

~~(31)~~~~(27)~~ **Municipality**--A city, existing, created, or organized under the general, home rule, or special laws of this state.

~~(32)~~~~(28)~~ **Municipally owned utility**--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

~~(33)~~~~(29)~~ **Nonfunctioning system or utility**--A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN or a retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §24.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.143 of this title (relating to Operation of a Utility by a Temporary Manager).

~~(34)~~~~(30)~~ **Person**--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

~~[(31) **Physician** Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.]~~

~~(35)~~~~(32)~~ **Point of use or point of ultimate use**--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

~~(36)~~~~(33)~~ **Potable water**--Water that is used for or intended to be used for human consumption or household use.

~~(37)~~~~(34)~~ **Premises**--A tract of land or real estate including buildings and other appurtenances thereon.

~~(38)~~~~(35)~~ **Public utility**--The definition of public utility is that definition given to water and sewer utility in this subchapter.

~~(39)~~~~(36)~~ **Purchased sewage treatment**--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

~~(40)~~~~(37)~~ **Purchased water**--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

~~(41)~~~~(38)~~ **Rate**--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in TWC[,] §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

~~(42)~~~~(39)~~ **Ratepayer**--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

~~(43)~~~~(40)~~ **Reconnect fee**--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §24.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

~~(44)~~~~(41)~~ **Retail public utility**--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating,

maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

~~(45)~~~~(42)~~ **Retail water or sewer utility service**--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

~~(46)~~~~(43)~~ **Safe drinking water revolving fund**--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in TWC[,] §15.602.

~~(47)~~~~(44)~~ **Service**--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

~~(48)~~~~(45)~~ **Service line or pipe**--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

~~(49)~~~~(46)~~ **Sewage**--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

~~[(47) Standby fee A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.]~~

~~(50)~~~~(48)~~ **Tap fee**--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost

of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

~~(51)~~~~(49)~~ **Tariff**--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

~~(52)~~~~(50)~~ **TCEQ**--Texas Commission on Environmental Quality.

~~(53)~~~~(51)~~ **Temporary water rate provision for mandatory water use reduction**--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

~~(54)~~ **Temporary rate for services provided for a nonfunctioning system**--A temporary rate for a retail public utility that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider.

~~(55)~~~~(52)~~ **Test year**--The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which [representative ]operating data for a retail

public utility are available. [A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.]

~~(56)~~~~(53)~~ **Utility**--The definition of utility is that definition given to water and sewer utility in this subchapter.

~~(57)~~~~(54)~~ **Water and sewer utility**--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

~~(58)~~~~(55)~~ **Water use restrictions**--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

~~(59)~~~~(56)~~ **Water supply or sewer service corporation**--Any nonprofit corporation organized and operating under TWC[,] Chapter 67, that provides potable water or

sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member--owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

- (A) All members of the corporation meet the definition of “member” under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.
- (B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.
- (C) A majority of the directors and officers of the corporation must be members of the corporation.
- (D) The corporation’s bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.



(60)~~(57)~~ **Wholesale water or sewer service**--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

**§24.8. Administrative Completeness.**

- (a) An application to change rates, including a minor rate change, applications for~~[Notice of rate/tariff change; report of]~~ sale, acquisition, lease, rental, merger, or consolidation, assignment of facilities or certificates; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility~~[and sale, assignment of, or lease of a certificate]~~ and applications for certificates of convenience and necessity shall be reviewed for administrative completeness within thirty calendar days of receipt of the application.
- If notice is required, upon determination that the notice or application is administratively complete, the applicant shall be notified of that determination~~[A notice or an application for rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the applicant shall be notified by mail of that determination. If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected].~~

(b) If the commission determines that deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.

~~{(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days after:}~~

~~{(1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed;}~~

~~{(2) the date that the application and notice are determined to be administratively complete for previously rejected applications and notices; or}~~

~~{(3) the date that the notice is delivered to each ratepayer, whichever is later.}~~

(c) (No change.)

(d) A report of sale, acquisition, lease, rental, merger, or consolidation; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility; and applications for certificates of convenience and necessity are not considered filed until the commission makes a determination of administrative completeness.

**§24.11. Informal Proceedings. (REPEAL)****§24.11. Financial Assurance.**

(a) **Purpose.** This section establishes criteria to demonstrate that an owner or operator of a public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current or proposed utility service area.

(b) **Application.** The section applies to a new or existing owner or operator of a retail public utility that is required to provide financial assurance pursuant to this chapter.

(c) Financial Assurance shall be achieved by compliance with either subsection (d) or (e) of this section.

(d) **Irrevocable stand-by letter of credit.** Irrevocable stand-by letters of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The retail public utility must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than five years, payable to the commission, and permit a draw to be made in part or in full.

The irrevocable stand-by letter of credit must permit the commission's executive director or the designee to draw by the commission's executive director or the commission's designee on the irrevocable stand-by letter of credit if the retail public utility has failed to provide continuous and adequate service or the retail public utility cannot demonstrate its ability to provide continuous and adequate service without sufficient financial assurance for the current and/or proposed retail public utility's service area.

**(e) Financial test.**

(1) An owner or operator may satisfy the requirements of financial assurance by satisfying a financial test including the leverage and operations test which conforms to the requirements of this section.

**(2) Leverage test.**

To satisfy this test, the owner or operator must meet the criteria of one of the following:

(A) The owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets;

(B) The owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments;

(C) The owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Restricted cash includes

monetary resources that are committed as a debt service reserve which will not be used for operations, maintenance or other payables;

(D) The owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc.; or

(E) The owner or operator must demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must be found to satisfy the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph.

(3) **Operations test.** The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

(4) To demonstrate that the requirements of the test are being met, the owner or operator shall submit the following items to the commission:

(A) An affidavit signed by the owner or operator attesting to the accuracy of the information provided. The owner or operator may use the affidavit included with an application filed pursuant to §24.105 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) pursuant to the commission's form for the purpose of meeting the requirements of this subparagraph; and

(B) A copy of one of the following:

(i) the owner or operator's independently audited year-end financial statements for the most recent fiscal year including the "unqualified opinion" of the auditor; or

(ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); or

(iii) internally produced financial statements meeting the following requirements:

(I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; or

(II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility shall provide all documents supporting projected lot sales or customer growth.

(C) In lieu of meeting the leverage test and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.

(5) If the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000, the applicant must provide the following:

(A) The owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger; or

(B) The owner must submit loan approval documents or firm capital commitments affirming funds are available to install plant and equipment necessary to serve projected customers in the first two years of projections or a new water system or substantial addition to a currently operating water system if the application includes added CCN area with the intention of serving a new area or subdivision.



(6) If the applicant is a nonfunctioning utility, as defined in §24.3(33) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder has the capability of meeting the leverage test.

**§24.14. Emergency Orders.**

- (a) (No change.)
- (b) The commission may also issue orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities):
- (1) to appoint a temporary manager under TWC~~[+]~~ §5.507 and §13.4132; and/or
  - (2) to approve an emergency rate increase under TWC~~[+]~~ §5.508 and §13.4133 in certain circumstances:
    - (A) for which a temporary manager has been appointed under TWC §13.4132; or
    - (B) for which a receiver has been appointed under TWC §13.412; and
    - (C) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.
- (c) (No change.)

**§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 noted in this subsection. A utility may charge the rates proposed under TWC [§13.187](#) or [§13.1871](#)~~[, §13.187(a)(relating to Statement of Intent to Change Rates)]~~ after the proposed effective date, unless the [proposed effective date of the rates](#) ~~is~~are~~~~ suspended or the commission ~~for a judge~~ sets interim rates. The regulatory assessment required in TWC~~[,]~~ §5.235(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. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service that enters into an agreement in accordance with TWC~~[,]~~ §13.250(b)(2), may collect charges for wastewater 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. 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 certificates of convenience and necessity.**

(A) (No change.)

(B) Every water supply or sewer service corporation shall file with the commission a complete~~[the number of copies of its]~~ tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

(2) **Minor tariff changes.** Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county may change rates for water or wastewater 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 may approve the following minor changes to tariffs :

(i)-(v) (No change.)

(vi) addition of a provision allowing a utility to collect wastewater charges in accordance with TWC~~§~~ §13.250(b)(2) or §13.147(d);

(vii)-(ix) (No change.)

(B) (No change.)

(3) **Tariff revisions and tariffs filed with rate changes.**

(A) The utility shall file its revision with the commission. Each revision must be accompanied by a cover page that contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. 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) Symbols for changes. Each proposed tariff sheet accompanying an application filed pursuant to TWC §13.187 or §13.1871 shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page, which clearly shows the exact number of lines being changed.

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

(c)-(h) (No change.)

(i) **Effective date.** The effective date of a tariff change is the date of approval by the commission~~[unless otherwise stated in the letter transmitting the approval or the date of approval by the commission]~~, unless otherwise specified in a commission order or 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 commission, unless suspended by the commission~~[and must comply with the requirements of §24.8(b) of this title (relating to Administrative Completeness)]~~.

(j) **Tariffs filed by water supply or sewer service corporations.** Every water supply or sewer service corporation shall file, for informational purposes only, three complete copies~~[one copy]~~ of 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 rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the certificate of convenience and necessity number and in which counties or cities it is effective.

(k) (No change.)

(l) **Temporary water rate provision for mandatory water use reduction.**

(1)-(2) (No change.)

(3) A utility may request a temporary water rate provision 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 through a limited rate proceeding. The formula for a temporary water rate provision under this paragraph is:

Figure: 16 TAC §24.21(1)(3) (No change.)

(A) The utility shall file a temporary water rate application ~~prescribed by the commission~~ and provide customer notice as required by the commission~~in the application~~, 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)~~classes of customers~~ affected, the rates affected, information on how to protest the rate change, ~~the required number of protests to ensure a hearing,~~ the address of the commission, the time frame for protests, and any other information that is required by the commission in the temporary water rate application. The utility's existing rates are not subject to review in the proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision 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~~between~~ Filings).

(B) (No change.)

(4) A utility may request a temporary water rate provision using the formula in paragraph (3) of this subsection or any other method acceptable to the commission 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 even if no other rates are proposed to be changed. [The utility shall complete a rate application and provide notice in accordance with the requirements of §24.22 of this title (relating to Notice of Intent to Change Rates). ]The utility's existing rates are subject to review in addition to the temporary water rate provision.

(B) (No change.)

(5) (No change.)

(6) The utility may readjust its rates using the temporary water rate provision as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. ~~[The commission's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding.]~~ Only the commission or the utility may request a hearing on the proposed implementation.



(7) A utility that wishes to place a temporary water rate into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate takes effect:

(A) (No change.)

(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 is implemented. 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)-(9) (No change.)

(m) (No change.)

(n) **Regional rates.** The commission, 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.

(o) (No change.)

(p) **Energy cost adjustment clause.**

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of 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 an application 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](#)~~{mailed}~~ to affected customers and stating the dates of such [delivery](#) ~~{mailing}~~ shall be filed with the commission by the applicant utility as part of the application. Notice must be provided on the notice form included in the

commission's application package and must contain the following information:

(A)-(C) (No change.)

(3)-(4)

(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) (No change.)

(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)-(7) (No change.)

(8) A proceeding under this subsection is not a rate case pursuant to TWC §13.187, §13.1871, or §13.1872~~[, and TWC, does not apply].~~

**§24.22. Notice of Intent and Application to Change Rates. (REPEAL)****§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.**

(a) **Purpose.** This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice pursuant to TWC §13.187 or §13.1871.

(b) **Contents of the application.** An application to change rates pursuant to TWC §13.187 or §13.1871 is initiated by the filing of a rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities pursuant to subsection (c) of this section.

(1) The application shall include the commission's rate filing package form and include all required schedules.

(2) The application shall be based on a test year as defined in §24.3(55) of this title (Definitions of Terms).

(3) For an application filed pursuant to TWC §13.187, the rate filing package, including each schedule, shall be supported by pre-filed direct testimony. The pre-filed direct testimony shall be filed at the same time as the application to change rates.

(4) For an application filed pursuant to TWC §13.1871, the rate filing package, including each schedule, shall be supported by affidavit. The affidavit shall

be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

- (5) **Proof of notice.** Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the date(s) of such delivery, shall be filed with the commission by the applicant utility as part of the rate change application.

(c) **Notice requirements specific to applications filed pursuant to TWC §13.187.**

- (1) **Notice of the application.** In order to change rates pursuant to TWC §13.187, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each affected municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form included in the rate application and shall include a description of the process by which a ratepayer may intervene in the proceeding.

(C) This notice shall state the docket number assigned to the rate application. Prior to the provision of notice, the utility shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed if the customer has agreed to receive communications electronically, or may accompany customer billings.

(2) **Notice of the hearing.** After the rate application is set for a hearing, the commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement.

(d) **Notice requirements specific to applications filed pursuant to TWC §13.1871.**

(1) **Notice of the application.** In order to change rates pursuant to TWC §13.1871, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change and to the appropriate offices of each affected municipality affected by the proposed rate change.

(B) Notice shall be provided using the commission-approved form included in the rate application and shall include a description of the process by which a ratepayer may file a complaint pursuant to TWC §13.1871(i).

(C) For utilities serving more than 1,000 active taps or connections, this notice shall state the docket number assigned to the rate application. Prior to providing notice, the utility shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed if the customer has agreed to receive communications electronically, or may accompany customer billings.

(2) **Notice of the hearing.** After the rate application is set for a hearing, the following notice requirements shall apply.

(A) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement.

(B) The utility shall mail notice of the hearing to each affected ratepayer at least 20 days before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the proceeding.

(e) **Line extension and construction charges.** A request to approve or amend a utility's line extension and construction charges shall be filed in a rate change application under TWC §13.187 or §13.1871. The application filed under TWC §13.187 or §13.1871 must include the proposed tariff and other information

requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

(f) **Capital improvements surcharge.** In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from the customers pursuant to a surcharge to provide funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.

(g) **Debt repayments surcharge.** In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from customers pursuant to a surcharge to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.



§24.23. Time ~~Between~~~~[between]~~ Filings.

(a) Application. The following provisions are applicable to utilities, including those with system-wide or consolidated tariffs, under common control or ownership with any utility that has filed a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871.

(b) Unless the commission requires ~~[it to deliver]~~ a corrected statement of intent, a utility or two or more utilities under common control or ownership may not file a statement ~~[notice]~~ of intent to increase rates pursuant to TWC §13.187 or §13.1871 more than once in a 12-month period except:

(1)-(4) (No change.)

(5) unless the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

(A) cover reasonable and necessary operating expenses; ~~or~~

(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements specific to utility operations; or

(C) support a determination that the utility is able to provide continuous and adequate service to its existing service area.

(c) A Class C utility under common control or ownership with a utility that has filed an application to change rates pursuant to TWC §13.187 or §13.1871 within the preceding 12 months may not file an application to change rates pursuant to TWC §13.187 or §13.1871 unless it is filed pursuant to an exception listed in subsection (b) of this section.

**§24.25. Rate Change Applications, Testimony, and Exhibits. (REPEAL)****§24.26. Suspension of Rates. (REPEAL)****§24.26. Suspension of the Effective Date of Rates.**

(a) Regardless of, and in addition to any period of suspension ordered pursuant to subsection (b) of this section, after written notice to the utility, the commission may suspend the effective date of a rate change for not more than:

(1) 150 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.187; or

(2) 205 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.1871.

(b) Regardless of, and in addition to any period of suspension ordered pursuant to subsection (a) of this section, the commission may suspend the effective date of a change in rates requested pursuant to TWC §13.187 or §13.1871 if:

(1) the utility has failed to properly complete the rate application as required by §24.22 of this title (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871), has included in the cost of service for the noticed rates rate-case expenses other than those necessary to complete and file the application, has failed to comply with the notice requirements and proof of notice requirements, or has for any other reason failed to file a request to change rates that is not deemed

administratively complete until a properly completed request to change rates is accepted by the commission;

- (2) the utility does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission; or
- (3) the utility is delinquent in paying the regulatory assessment fee and any applicable penalties or interest required by TWC §5.701(n) until the delinquency is remedied.

(c) If the commission suspends the effective date of a requested change in rates pursuant to subsection (b) of this section, the utility may not notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(d) A suspension ordered pursuant to subsection (a) of this section shall be extended two days for each day a hearing on the merits exceeds 15 days.

(e) If the commission does not make a final determination on the proposed rate before the expiration of the suspension period described by subsections (a) and (d) of this section, the proposed rate shall be considered approved. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

(f) A suspension of rates may be ordered at any time during the pendency of a proceeding, including after the date on which the proposed rates are otherwise effective, for rate change applications that are not filed pursuant to TWC §13.187 or TWC §13.1871.

(g) For good cause shown, the commission may at any time during the proceeding require the utility to refund money collected, including interest, under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate.

**§24.27. Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code §13.187(b). (REPEAL)**

**§24.28. Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b). (REPEAL)**

**§24.28. Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871.**

**(a) Purpose.** This section describes requirements for the processing of applications to change rates filed pursuant to TWC §13.187 or §13.1871.

**(b) Proceedings pursuant to TWC §13.187.** The following criteria apply to applications to change rates filed by Class A utilities pursuant to TWC §13.187.

**(1)** Not later than the 30th day after the effective date of the change, the commission shall begin a hearing to determine the propriety of the change.

**(2)** The matter may be referred to the State Office of Administrative Hearings and the referral shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

**(c) Proceedings pursuant to TWC §13.1871.** The following criteria apply to applications to change rates filed by a Class B utility or a Class C utility pursuant to TWC §13.1871.

**(1)** The commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(2) The commission shall set the matter for a hearing if it receives a complaint from any affected municipality or from the lesser of 1,000 or 10 percent of the affected ratepayers of the utility over whose rates the commission has original jurisdiction, during the first 90 days after the effective date of the proposed rate change.

(A) Ratepayers may file individual complaints or joint complaints. Each complaint must contain the following information:

(i) a clear and concise statement that the complaint is to protest a specific rate action of the water or sewer service utility in question; and

(ii) the name and service address or other identifying information of each signatory ratepayer. The complaint shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer.

(B) For the purposes of this subsection, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The complaint is properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(3) Referral to SOAH at any time during the pendency of the proceeding is deemed to be setting the matter for hearing as required by paragraphs (1) and (2) of this subsection.

(d) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of the law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility

(e) The utility may begin charging the proposed rates on the proposed effective date, unless the proposed rate change is suspended by the commission pursuant to §24.26 of this title (relating to Suspension of the Effective Date of Rates) or interim rates are set by the presiding officer pursuant to §24.29 of this title (relating to Interim Rates). Rates charged under a proposed rate during the pendency of a proceeding are subject to refund, including interest, to the extent the commission ultimately approves rates that are lower than the proposed rates.



**§24.31. Cost of Service.**

- (a) (No change.)
- (b) **Allowable expenses.** Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's ~~historical~~ test year expenses as adjusted for known and measurable changes may be considered. A change in rates must be based on a test year as defined in §24.3(55) of this title (Definitions of Terms).
- (1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:
- (A) - (D) (No change.)
- ~~{(E) reasonable expenditures for ordinary advertising, contributions, and donations; and}~~
- ~~(E){(F)}~~ funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership; and
- (F) advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of 1.0% (0.3%) of the

gross receipts of the water or wastewater utility for services rendered to the public. The following expenses shall be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving energy;

(ii) funds expended advertising methods by which the consumer can effect a savings in total water or wastewater utility bills;

and

(iii) funds expended advertising water quality protection.

(2) (No change.)

(c) **Return on invested capital.** The return on invested capital is the rate of return times invested capital.

(1) (No change.)

(2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) (No change.)

(B) original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility; and

(i) For original cost under subparagraph (A) of this paragraph or this subparagraph, cost of plant and equipment allowed in the cost of service that has been estimated by trending studies or

other means which has no historical records for verification purposes shall receive a rate of return on equity on the estimated portion of rate base that is lower by 3 percentage points than the utility's actual or presumptive rate of return on equity. If, however, the cost of plant and equipment is estimated using a trending study for a nonfunctioning utility where there are no historical records, the commission may consider other factors when establishing a reasonable rate of return.

~~(ii)(+)~~ original cost under subparagraph (A) of this paragraph or this subparagraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system. On all assets retired from service after June 19, 2009, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation(s) in its net plant

calculation(s) in the first full rate change application (excluding alternative rate method applications as described in §24.34 of this title (relating to Alternative Rate Methods)) it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset shall be combined with over accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount shall be amortized over a reasonable period of time taking into account prudent regulatory principles. The following list shall govern the manner by which depreciation will be accounted for.

- (I) Accelerated depreciation is not allowed.
- (II) For those utilities that elect a group accounting approach, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

- (-a-) investment by homogenous category;

- (-b-) expected level of gross salvage by category;
- (-c-) expected cost of removal by category;
- (-d-) the accumulated provision for depreciation as appropriately reflected on the company's books by category;
- (-e-) the average service life by category;
- (-f-) the remaining life by category;
- (-g-) the Iowa Dispersion Pattern by category; and
- (-h-) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(iii)~~(ii)~~ reserve for depreciation under subparagraph (A) of this paragraph or this subparagraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. If individual accounting is used, a utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation shall include any additional depreciation expense accrued past the estimated useful or remaining life of the asset. If salvage value is zero, depreciation must be computed on a straight line

basis over the expected useful life or remaining life of the item or facility. If salvage value is not zero, depreciation must also be computed on a straight line basis over the expected useful life or the remaining life. For an asset removed from service after June 19, 2009, accumulated depreciation will be calculated on book cost less net salvage of the asset. The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered. Return is allowed for assets removed from service after June 19, 2009, that result in an increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially prudent, unavoidable, necessary because of technological obsolescence, or otherwise reasonable. The utility must also provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered, the useful life of the asset (or remaining life as may be appropriate), the date the asset was taken out of service, and the accumulated depreciation up to the date it was taken out of service. Additionally, the utility must show that it used due

diligence in recovering maximum salvage value of a retired asset. The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets only apply to those utilities using itemized accounting. For those utilities practicing group accounting, the depreciation study will provide similar information by category. TWC~~(b)(4)~~ §13.185(e) relating to dealings with affiliated interests, will apply to business dealings with any entity involved in the retirement, removal, or recovery of assets. Assets retired subsequent to June 19, 2009, will be included in a utility's application for a rate change if the application is the first application for a rate change filed by the utility after the date the asset was retired and specifically identified if the utility uses itemized accounting. Retired assets will be reported for the asset group in depreciation studies for those utilities practicing group accounting, while retired assets will be specifically identified for those utilities practicing itemized accounting;

~~(iv)(iii)~~ the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC~~(b)(4)~~ §13.185(e);

- (v){(iv)} utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and
- (C) working capital allowance to be composed of, but not limited to the following:
- (i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service. This amount excludes inventories found by the commission to be unreasonable, excessive, or not in the public interest;
  - (ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests~~{(prepayments to affiliated interests)}~~ are subject to the standards set forth in TWC~~{}~~ §13.185(e); and
  - (iii) a reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:
    - (I) Cash working capital for water and wastewater utilities shall in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.



(II) For Class C utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or through charges other than base rate and gallonage charges, prepayments will be considered a reasonable allowance for cash working capital.

(III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(V) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

- (-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long-term debt and dividends on preferred stock), will not be considered.
- (-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.
- (-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the water or wastewater utility.
- (-d-) All funds received by the water or wastewater utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the water or wastewater utility (e.g., lockbox, post office box, branch office). All funds received by electronic

transfer will be considered available the day of receipt.

(-e-) For water and wastewater utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all noninterest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the mid-point of the annual service period and the actual payment date of the water or wastewater utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.

(VI) If cash working capital is required to be determined by the use of a lead-lag study under subclause (IV) of this clause and either the water or wastewater utility does not file a lead lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of

cash working capital, zero will be presumed to be the reasonable level of cash working capital.

(VII) A lead lag study completed within five years of the application for rate/tariff change shall be deemed adequate for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

~~[(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).]~~

(3) Deduction of certain items from rate base, which include, but are not limited to, the following.~~[Terms not included in rate base.]~~ Unless otherwise determined by the commission, for good cause shown, the following items will be deducted from~~[not be included in determining ]~~the overall rate base in the consideration of applications filed pursuant to TWC §13.187 or §13.1871.

~~[(A) Miscellaneous items. Certain items that include, but are not limited to, the following:]~~

~~(A)(i)~~ accumulated reserve for deferred federal income taxes;

~~(B)(ii)~~ unamortized investment tax credit to the extent allowed by the

Internal Revenue Code;

- (C)(iii) contingency and/or property insurance reserves;
- (D)(iv) contributions in aid of construction; and
- (E)(v) other sources of cost-free capital, as determined by the commission.

(F) Subparagraphs (A) - (E) of this paragraph shall not be deducted from a Class C utility's rate base if the utility has no other utility affiliates such that the combined number of customers served by all affiliates would meet the number of connection requirements for a Class B or Class A utility.

(4)(B) **Construction work in progress (CWIP).** The inclusion of construction work in progress is an exceptional form of relief. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

- (A)(i) the inclusion is necessary to the financial integrity of the utility; and
- (B)(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.

(5) Requirements for post-test year adjustments.

(A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:

(i) the addition represents plant which would appropriately be recorded for investor-owned water or wastewater utilities in NARUC account 101 or 102;

(ii) the addition comprises at least 10% of the water or wastewater utility's requested rate base, exclusive of post-test year adjustments and CWIP;

(iii) the addition is in service before the rate year begins; and

(iv) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility or the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

(I) plant which was appropriately recorded in the accounts set forth in subparagraph (A) of this paragraph;

(II) plant held for future use;

(III) CWIP (mirror CWIP is not considered CWIP); or

(IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents plant that has been removed from service, sold, or removed from the water or wastewater utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) (No change.)

(e) **Negative acquisition adjustment.** Except for the instance of an acquisition of a non-functioning utility by another utility through a sale, transfer, or merger application, receivership assignment, or temporary manager assignment, a utility's plant, property, or equipment acquired from another retail public utility in accordance with an application filed on or after September 1, 1997 pursuant to §24.109 of this

chapter (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction), shall be adjusted for a negative acquisition adjustment to the extent that,

- (1) the original cost less depreciation exceeds the actual purchase price; or
- (2) other good cause is shown.

(f) Intangible assets shall not be allowed in rate base unless:

- (1) The amount requested has been verified by documentation as to amount and exact nature;
- (2) Testimony has been submitted as to reasonableness and necessity and benefit of the expense to the customers;
- (3) The testimony must further show how the amount is properly considered as part of an actual asset purchased or installed, or a source of supply, such as water rights; or
- (4) If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount shall be amortized over a reasonable period and the amortization shall be allowed in the cost of service. The amount shall be considered a non-recurring expense. Unamortized amounts shall not be included in rate base for purposes of calculating return on equity.



**§24.32. Rate Design.**

(a) (No change.)

(b) **Conservation.**

(1) (No change.).

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the ~~TCEQ's~~[Texas Commission on Environmental Quality's (TCEQ's)] minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A)-(B) (No change.)

(3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:

(A) must be accounted for separately and reported to the commission, as requested; and

(B) are considered customer contributed capital unless otherwise specified in a commission order. ~~;~~ and

~~(C) may only be used in a manner approved by the commission for applications not subject to hearing under TWC, §13.187(b).]~~

(c) (No change.)

~~[(d) — Surecharges.]~~

~~[(1) — Capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service, and for the preparation of design and planning documents.]~~

~~[(2) — Debt repayments. In a rate proceeding, the commission may authorize collection of additional revenues from customers to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.]~~

§24.33. Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871.

- (a) A utility may recover rate case expenses, including attorney fees, incurred as a result of filing a rate change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are just, reasonable, necessary, and in the public interest.
- (b) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.
- (c) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.
- (d) Unamortized rate case expense may not be a component of invested capital for calculation of rate of return purposes.

**§24.34. Alternative Rate Methods.**

(a) (No change.)

~~{(b) **Single issue rate change.** Unless a utility is using the cash needs method, it may request approval to increase rates to reflect a change in any one specific cost component. The following conditions apply to this type of request.}~~

~~{(1) The proposed effective date of the single issue rate change request must be within 24 months of the effective date of the last rate change request in which a complete rate change application was filed.}~~

~~{(2) The change in rates is limited to those amounts necessary to recover the increase in the specific cost component and the increase will be allocated to the rate structure in the same manner as in the previous rate change.}~~

~~{(3) The scope of a single issue rate proceeding is limited to the single issue prompting a change in rates. For capital items this includes depreciation and return determined using the rate of return established in the prior rate change proceeding.}~~

~~{(4) The utility shall provide notice as described in §24.22(a) – (e) of this title (relating to Notice of Intent to Change Rates), and the notice must describe the cost component and reason for the increased cost.}~~

~~{(5) A utility exercising this option shall submit a complete rate change application within three years following the effective date of the single issue rate change request.}~~

~~(b)(6)~~ **Phased and multi-step rate changes.** In a rate proceeding [under TWC §13.187 or §13.1871](#), the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.

- (1) A utility may request to use the phased or multi-step rate method:
  - (A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with [TCEQ or](#) commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;
  - (B) to provide additional construction funds after major milestones are met;
  - (C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;
  - (D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;
  - (E) to phase in increased rates when a utility has been acquired by another utility with higher rates;
  - (F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or
  - (G) when requested by the utility.

- (2) Construction schedules and cost estimates for new facilities that are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.
- (3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.
- (4) At the time each rate step is implemented, the utility shall review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the commission prior to implementing the next phase or step. Unless otherwise specified in a commission order, the utility may:
  - (A) refund or credit the overage to the customers in a lump sum; or
  - (B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.
- (5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the commission 30 days prior to the implementation of each step.
- (6) A utility that requests and receives a phased or multi-step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:

- (A) the utility can prove financial hardship; or
- (B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.

~~(c)(4)~~ **Cash needs method.** The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.

- (1) A utility may request to use the cash needs method of setting rates if:
  - (A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or
  - (B) the utility can demonstrate that use of the cash needs basis:
    - (i) is necessary to preserve the financial integrity of the utility;
    - (ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and
    - (iii) will result in higher quality and more reliable utility service for customers.
- (2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements, and extensions that are not debt-financed; and a reasonable cash reserve account.

- (A) **Allowable operating and maintenance expenses.** Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's ~~historical~~ test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.
- (B) **Depreciation expense.** Depreciation expense may be included on any used and useful depreciable plant, property, or equipment that was paid for by the utility and that has a positive net book value on the effective date of the rate change in the same manner as described in §24.31(b)(1)(B) of this title (relating to Cost of Service).
- (C) **Debt service costs.** Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:
- (i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the



asset using the prime interest rate at the time the application is filed; and

- (ii) prospective loans to be executed after the new rates are effective. Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

(D) **Recurring capital improvements, replacements, and extensions that are not debt-financed.** Capital assets, repairs, or extensions that are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses that are specifically debt-financed.

(E) **Cash reserve account.** A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the commission. The utility shall account for these funds separately and report to the commission. Unless the utility requests an exception in writing and the exception is explicitly allowed by the commission in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written

explanation that explains the method used to calculate the amounts to be refunded. Each customer must receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the commission.

- (3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)~~(E)(D)~~ of this subsection and are subject to the same restrictions.
- (4) If the utility demonstrates to the commission that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the commission may allow the utility to retain 50% of the savings that result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.
- (5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may,

however, include in rate base, and recover through rates, the depreciation expense for capital assets that were not paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.

§24.36. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.

(a) **Purpose.** This section establishes procedures for a Class C utility to apply for an adjustment to its water or wastewater rates pursuant to TWC §13.1872.

(b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) **Application--**An application for a rate adjustment filed pursuant to the this section and TWC §13.1872.

(2) **Price index--**a price index established annually by the commission for the purposes of this section.

(c) **Requirements for filing of the application.** Subject to the limitations set out in subsection (f) of this section, a Class C utility may file an application with the commission.

(1) The utility may request to increase its tariffed monthly fixed customer or meter charges and monthly gallonage charges by the lesser of:

(A) five percent; or

(B) the percentage increase in the price index between the year preceding the year in which the utility requests the adjustment and the year in which the utility requests the adjustment.

(2) The application shall be on the commission's form and shall include:

(A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and

(B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.

(3) The application shall contain a proposed notice of approved rates as described by subsection (e) of this section.

(d) **Processing of the application.** The following criteria apply to the processing of an application.

(1) **Determining whether the application is administratively complete.**

(A) If commission staff requires additional information in order to process the application, commission staff shall file a notification to the utility within 10 days of the filing of the application requesting any necessary information.

(B) An application may not be deemed administratively complete pursuant to §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under subparagraph (A) of this paragraph.

(2) Within 30 days of the filing of the application, Staff shall file a recommendation stating whether the application should be deemed administratively complete pursuant to §24.8 of this title. If Staff recommends that the application should be deemed to be administratively complete, Staff

shall also file a recommendation on final disposition, including, if necessary, proposed tariff sheets reflecting the requested rate change.

(e) **Notice of Approved Rates.** After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility shall send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:

- (1) a statement that the utility requested a rate adjustment based on the commission's approved price index and must state the percentage change in the price index during the previous year;
- (2) the existing rate;
- (3) the approved rate; and
- (4) a statement that the rate adjustment was requested pursuant to TWC §13.1872 and that a hearing will not be held for the request.

(f) **Time between filings.** The following criteria apply to the timing of the filing of an application.

- (1) A Class C utility may adjust its rates pursuant to this section not more than once each calendar year and not more than four times between rate proceedings described by TWC §13.1781.

(2) The filing of applications pursuant to this section is limited to a specific month based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below unless good cause is shown for filing in a different month. For a utility holding multiple CCNs, the utility may file an application in any month for which any of its CCN numbers is eligible.

(A) January: CCNs ending in 00 through 09;

(B) February: CCNs ending in 10 through 18;

(C) March: CCNs ending in 19 through 27;

(D) April: CCNs ending in 28 through 36;

(E) May: CCNs ending in 37 through 45.

(F) June: CCNs ending in 46 through 54;

(G) July: CCNs ending in 55 through 63;

(H) August: CCNs ending in 64 through 72;

(I) September: CCNs ending in 73 through 81;

(J) October: CCNs ending in 82 through 90; and

(K) November: CCNs ending in 91 through 99.

(g) **Establishing the price index.** The commission shall, on or before December 1 of each year, establish a price index as required by TWC §13.1872(b) based on the following criteria. The price index will be established in an informal project to be initiated by commission staff.

- (1) The price index shall be equal to Gross Domestic Product Implicit Price Deflator index published by the Bureau of Economic Analysis of the United States Department of Commerce for the prior 12 months ending on September 30 unless the commission finds that good cause exists to establish a different price index for that year.
- (2) Until the commission adopts its first order establishing an index pursuant to this subsection, applications filed pursuant to this subsection shall be processed using the initial indices established in this subsection. The percentage difference between the initial indices is equal to 1.57%. The initial indices are equal to:

  - (A) 106.923 for 2013; and
  - (B) 108.603 for 2014.



**§24.41. Appeal of Rate-making Decision, Pursuant to the Texas Water Code~~§~~****§13.043.**

- (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative~~§~~ and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving copies on all parties to the original rate proceeding.

- (b)-(j) (No change.)

**§24.44. Seeking Review of Rates for Sales of Water Under the Texas Water Code, ~~§11.041 and~~ §12.013.**

(a) Ratepayers seeking commission ~~[participation under the TWC, §11.041 or ]~~action under TWC~~[,]~~ §12.013 should include in a written petition to the commission, the following information:

(1)-(6) (No change.)

(b) Water suppliers seeking commission ~~[participation under the TWC, §11.041, or]~~action under TWC~~[,]~~ §12.013 should include in a written petition for relief to the commission, the following information:

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

**§24.72. Financial Records and Reports--Uniform System of Accounts.**

Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

~~{(1) **Classification.** For the purposes of accounting and reporting to the commission, each public water and/or sewer utility shall be classified with respect to its annual operating revenues as follows:}~~

~~{(A) **Class A annual operating revenues exceeding \$750,000;}**}~~

~~{(B) **Class B annual operating revenues exceeding \$150,000 but not more than \$750,000;}**}~~

~~{(C) **Class C annual operating revenues not exceeding \$150,000;}**}~~

(1){(2)} **System of accounts.** For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A Utility, as defined by §24.3(12) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the (NARUC) for a utility classified as a NARUC Class A utility.

(B) Class B Utility, as defined by §24.3(13) of this title; -the uniform system of accounts as adopted and amended by NARUC for a utility classified as a NARUC Class B utility.

(C) Class C Utility, as defined by §24.3(14) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.

~~[(A) Class A system of accounts approved by the commission which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for A utilities;]~~

~~[(B) Class B system of accounts approved by the commission which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities;]~~

~~[(C) Class C system of accounts approved by the commission which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities;]~~

(2)~~(3)~~ **Accounting period.** Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

**§24.73. Water and Sewer Utilities Annual Reports.**

(a) Each utility, except a utility operated by an affected county, shall file a service, ~~and~~ financial, and normalized earnings report by May 15~~April 1~~ of each year unless otherwise specified in a form prescribed by the commission.

(b) Contents of report. The annual report shall disclose the information required on the forms approved by the commission and may include any additional information required by the commission.

~~[(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;]~~

~~[(2) rules and regulations relating to or affecting the rates, utility service, product or commodity furnished by the utility;]~~

~~[(3) all ownership and management relationships among the utility and other entities, including individuals, with which the utility has had financial transactions during the reporting period;]~~

~~[(4) all transactions with affiliates, including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing;~~

~~[(5) information on receipts and disbursements of revenues;]~~

~~[(6) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and]~~

~~[(7) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.]~~

(c) A Class C utility's normalized earnings shall be equal to its actual earnings during the reporting period for the purposes of compliance with TWC §13.136.

**§24.102. Criteria for Considering and Granting Certificates or Amendments.**

(a)-(d) (No change.)

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in [§24.11 of this title \(relating to Financial Assurance\)](#)~~[ 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)]~~. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(f)-(i) (No change.)

**§24.109. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.**

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

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in [§24.11 of this title \(relating to Financial Assurance\)](#)~~[30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)]~~. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d)-(1) (No change.)



**§24.111. Purchase of Voting Stock in Another Utility.**

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

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in [§24.11 of this title \(relating to Financial Assurance\)](#)~~[30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)]~~. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d)-(g) (No change.)

**§24.114. Requirement to Provide Continuous and Adequate Service.**

- (a) (No change.)
- (b) After notice and hearing, the commission may:
- (1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in TWC~~[,]~~ §16.341, to:
    - (A) (No change.)
    - (B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules as specified in [§24.11 of this title \(relating to Financial Assurance\)](#)~~[30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities)]~~, or as specified by the commission. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any

requirements to obtain financial assurance in satisfaction of another  
state agency's rules;

(2)-(4) (No change.)

(c) (No change.)

**§24.131. Commission's Review of Petition or Appeal Concerning Wholesale Rate.**

- (a) When a petition or appeal is filed, the commission shall determine within ~~30~~<sup>ten</sup> days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements §24.130 of this title (relating to Petition or Appeal). If the commission determines that the petition or appeal does not meet the requirements of §24.130 of this title, the commission shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the commission determines that the petition or appeal does meet the requirements of §24.130 of this title, the commission shall forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.

(b)-(d) (No change.)

**§24.150. Jurisdiction of Municipality: Surrender of Jurisdiction.**

(a) (No change.)

(b) The commission shall post on its website a list of municipalities that surrendered original jurisdiction to the commission.

~~{(b) The City of Coffee City, a municipality, surrendered its jurisdiction to the commission effective December 4, 1993.}~~

~~{(c) The City of Nolanville, a municipality, surrendered its jurisdiction to the commission effective April 18, 1996.}~~

~~{(d) The City of Aurora, a municipality, surrendered its jurisdiction to the commission effective April 14, 1997.}~~

~~{(e) The City of Arcola, a municipality, surrendered its jurisdiction to the commission effective May 5, 1998.}~~

~~{(f) The City of San Antonio, a municipality, surrendered its jurisdiction over investor owned utilities within its corporate limits, to the commission, effective January 30, 2014.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 6<sup>TH</sup> DAY OF MARCH 2015 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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