

The commission proposes a new Chapter 37, Subchapter O, §§37.5001, 37.5002, and 37.5011, relating to financial assurance for public drinking water systems and sewer utilities.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendments is to specify acceptable forms of financial assurance required of public drinking water systems, water and wastewater utilities. The rule is proposed in part to comply with the requirements of the Safe Drinking Water Act Amendments of 1996, which require states to ensure that new community water systems and new nontransient, non community water systems demonstrate financial capacity. Senate Bill 1, Article 6, 75th Leg. (1997) granted the commission the authority to require financial assurance in certain defined circumstances. Financial assurance may be required for systems that were constructed without approval, have a history of non-compliance, for applicants requesting approval for a certificate of convenience and necessity or a certificate amendment, for a person establishing, purchasing, or acquiring a retail public utility, for a person acquiring a controlling interest through a purchase of stock in a utility, or for a utility that is subject to commission enforcement action to ensure continuous and adequate utility service.

Currently with this amendment, the commission is proposing amendments to Chapters 290 and 291 that specify under what conditions financial assurance will be required. Please refer to the preambles for these chapters amendments for additional information. The proposed amendments in this chapter only specify acceptable forms of financial assurance when required by other provisions of these rules.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for each year of the first five years the rules as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the rules. The effect on state government will be an increase in cost as a result of requiring financial assurance from public water systems and sewer utilities. The effect on state government will be a slight increase in the agency workload due to review of the adequacy of required financial assurance. During the first five years the rule is in effect it is anticipated that the rule will require no more than an addition of five FTEs to the agency at an annual cost of \$325,000. These five FTEs will also be reviewing business plans under 30 TAC Chapter 290. During the first five years the rule is in effect, it is not expected that as a result of enforcing or administering the rule, that local governments will have additional costs or cost reductions. While some local governments may have to provide financial assurance, it is not possible to estimate the costs for the average local government to acquire financial assurance because most local governments will not have to provide any financial assurance; for those local governments that will have to provide financial assurance, the costs will vary depending on the size of the principal amount required in an individual case; and the costs of complying the financial assurance provisions are not greater than the costs to local governments of complying the existing regulations. There is no expected loss or increase in revenues to the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcement of, and compliance with, the proposed rules will be an increase in public water systems and sewer utilities that are in compliance with state and federal regulations related to drinking water and wastewater quality. The proposed rule does affect small

businesses that are investor owned utilities (IOUs) that supply public drinking water or sewer services as their business. It is not possible to compare the costs for the smallest IOU to the largest IOU to acquire financial assurance that complies with the rules because the cost will vary depending on the size of the principal amount required in an individual case. However, the cost of providing financial assurance that complies with this section is estimated at between one half and ten percent of the principal amount of the difference between the amount of projected cash needs of the period of time prescribed by the executive director. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule” because the specific intent of the rule is to regulate the form of financial assurance required of certain water and sewer service utilities, not to protect the environment or reduce the risks to human health from environmental exposure. The rule will not materially affect the economy, a sector of the economy, productivity, competition, jobs, or the environment. The effect is not material because it is estimated that the cost to a utility to comply with the financial assurance requirement will range from one half of a percent to ten percent of the principal amount of the financial assurance. Furthermore this rule is proposed under the following specific state laws: Texas Water Code §§13.246, 13.253, 13.301, 13.302, and the Health and Safety Code §341.035, §341.0355. Those statutes do not expressly limit the form and amount of financial assurance that the commission may require of public drinking water systems and utilities, and therefore this rule does not exceed the limitation of those statutes. The financial assurance provision is proposed in part to

comply with the requirements of the Safe Drinking Water Act Amendments of 1996, but there are no specific limitations on the amount or form of financial assurance in those statutes, therefore this rule does not exceed the requirements of that statute.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to specify acceptable forms of financial assurance required of public drinking water systems and utilities. The rules will substantially advance this specific purpose by specifying acceptable forms of financial assurance that may be required by the commission. Promulgation and enforcement of these rules will not burden private real property because these rules only prescribe the form of financial assurance that may be otherwise imposed on a water or sewer service provider by the commission.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING

A public hearing on these proposals will be held on November 2, 1998, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., 30 days from the date of publication in the *Texas Register*. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and to implement Texas Water Code §§13.246, 13.253, 13.301, 13.302, and the Health and Safety Code §341.035, §341.0355.

There are no other rules, statutes or codes that will be affected by this proposal.

**SUBCHAPTER O : FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS
AND UTILITIES**

§§37.5001 - 37.5002 and 37.5011

§37.5001. Applicability.

This subchapter applies to public water systems and retail public utilities required to provide evidence of financial assurance under Chapter 290 of this title (relating to Public Drinking Water), or Chapter 291 of this title (relating to Utility Regulation).

§37.5002. Definitions.

For definitions of words and terms and other definitions not found in Subchapter A of this Chapter, relating to General Financial Assurance Requirements, see §290.38, of this title (relating to Rules and Regulations for Public Water Systems), and §291.3, of this title (relating to Definitions of Terms).

§37.5011. Financial Assurance for a Public Water System or Retail Public Utility.

(a) The prospective owner or operator of a public water system may be ordered to provide adequate financial assurance to operate the system as specified in §291.93(f) of this title (relating to General Provisions.) A public water system that was constructed without approval or has a history of noncompliance or is subject to commission enforcement action as specified in §290.39(k) of this title (relating to General Provisions), may be required to provide financial assurance to operate the system in accordance with applicable laws and rules. Financial assurance may be required of an applicant requesting approval for a certificate or a certificate amendment or a person establishing, purchasing or acquiring a retail public utility as specified in §291.102(f) of this title (relating to Criteria for Considering and Granting Certificates or Amendments), and §291.109(c) of this title (relating to Report of Sale, Merger, Etc: Investigation; Disallowance of Transaction). A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial assurance as specified in §291.111(c) of this title (relating to Purchase of Voting Stock in Another Utility). The commission may order a utility that has failed to provide continuous and adequate service to provide financial assurance to ensure that the system will be operated as required by §291.114 of this title, (relating to Requirements to Provide Continuous and Adequate Service). Such financial assurance will allow for payment of improvements and repairs to the water or sewer system.

(b) A temporary manager will post financial assurance as specified in §291.143(c) of this title, (relating to Operation of a Utility by a Temporary Manager). Financial assurance demonstrations shall comply with the wordings of the mechanisms as described in Subchapter D of this chapter, (relating to

Wording of the Mechanisms for Closure), except operation should be substituted for closure and the appropriate statutory reference to Public Drinking Water or Utility Regulation should be cited in the document.

(c) If rate increases or customer surcharges are determined by the executive director to be an acceptable form for demonstrating financial assurance in accordance with §290.39(o) of this title, (relating to General Provisions), such funds shall be deposited into an escrow account with an escrow agent that has the authority to act as an escrow agent and whose escrow operations are regulated and examined by a Federal or State agency. At least annually a statement of the account shall be submitted to the executive director.

The commission proposes an amendment to §80.3, relating to Judges.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendment is to delegate to Administrative Law Judges the authority to issue interim rate orders under Texas Water Code Chapter 13 as provided by Texas Water Code §5.311, as amended by Senate Bill 1 (1997). This authorization to issue interlocutory orders will save time and unnecessary expense by providing a simplified procedure for setting interim rates prior to final commission action on the rate case.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing and administering the section. The effect on state government will be some net reduction in cost due to delegation to an Administrative Law Judge the consideration of interim water and sewer rates for utility rate cases considered by the commission. However, the cost reductions to state government are not expected to be significant. There will be no effect on local government as a result of this rule.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section is an expedited consideration of interim rates in utility rates cases before the commission pursuant to the Water Code Chapter 13. Generally, the expedited procedure under this rule will result in a more cost effective

process for those persons seeking approval of interim utility rates. The proposed rule will affect investor owned utilities, many of which are small businesses. The effects on these small businesses will be the same potential reductions in cost from an expedited approval process that any affected utility subject to these rules may realize. The costs to a small business seeking an interim utility rate under the new section is not anticipated to be significantly different from the current costs, therefore no adverse effects to any small business are anticipated. Costs to individuals to protest an interim rate are not expected to vary significantly from similar costs under the current rules. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule” because the specific intent of the amendment is to make the rule consistent with statutory authority, by allowing an Administrative Law Judge to issue interim rate orders under Texas Water Code, Chapter 13, not to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to delegate the authority to the State Office of Administrative Hearings (SOAH) to set interim rates under Texas Water Code Chapter 13. The rules will substantially advance this specific purpose by expressly granting SOAH judges the authority to issue interim rate orders under Texas Water

Code Chapter 13. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the rule is a procedural rule that provides a more streamlined administrative process for setting interim rates.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING

A public hearing on these proposals will be held on XXX, 1998, at XX in Building F, Room XXX at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas

78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., 30 days from the date of publication in the *Texas Register*. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

STATUTORY AUTHORITY

The section is proposed under Texas Water Code §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to implement Texas Water Code §5.311, which allows the commission to delegate to SOAH the authority to issue interlocutory orders related to interim rates under Texas Water Code, Chapter 13. There are no other statutes implemented by this rule.

There are no other codes, statutes or rules that will be affected by this proposal.

CHAPTER 80
CONTESTED CASE HEARINGS
SUBCHAPTER A : GENERAL RULES

§80.3

§80.3. Judges.

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

(c) Judges shall have authority to:

(1) - (13) (No change.)

(14) impose appropriate sanctions; [and]

(15) issue interim rate orders under Texas Water Code Chapter 13; and

(16) [(15)] exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

The commission proposes amendments to §§290.38-290.40, 290.42-290.47, 290.102, and 290.116.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendments is to implement sections of Senate Bill 1, Article 6 Regular Session, 75th Leg. 1997, related to ensuring the technical, managerial and financial capacity of public water systems; clarify the delineation of responsibility with the State Board of Plumbing Examiners regarding plumbers, customer service inspections, and backflow prevention devices; update definitions to maintain consistency with the federal Safe Drinking Water Act Amendments of 1996; and make organizational and wording changes to improve the readability of the rules.

In §290.38, relating to Public Drinking Water Supply Systems, several definitions of technical terms have been moved from Subchapter F, §290.102, relating to Definitions. The intent is to place all technical words common to both subchapters in §290.38. Technical terms only used in Subchapter F are now defined in §290.102. Definitions of “connection” and “public water system” have been amended in response to the Safe Drinking Water Act Amendments of 1996. The intent is to expand the definition of those terms as broadly as the federal definitions, but not to regulate any public water system or activity not encompassed in the federal definitions. The term “licensed professional engineer” is defined to be consistent with the terminology contained in recent amendments to Article 3271a, Texas Civil Statutes. Accordingly, in the rules, use of the words “registered engineer” have been changed to “licensed professional engineer.”

Proposed amendments to §290.39, relating to General Provisions, implement new Texas Water Code §13.241 and changes to Texas Water Code §13.253 as enacted by of S.B. 1, Article 6, 75th Legislature,

1997, related to approval of plans and specifications, business plans, and financial assurance required of some public water systems. The section specifies when approvals, business plans, and financial assurance are required and generally describes the contents of the business plan.

Proposed amendments to §290.46, relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems, are to clarify the relationship between the commission's rules regarding customer service inspections, the prevention of cross connections and illegal lead materials in public water systems and the State Board of Plumbing Examiners' rules regulating plumbers. A customer service inspection under these proposed rules is not a plumbing inspection as defined by the State Board of Plumbing Examiners. Similarly §290.47(d), Appendix D, relating to Sample Service Inspection Certification, is proposed to be amended to remove any acts from the customer service inspection that might be construed as a plumbing inspection.

Section 290.102, relating to Definitions, deletes technical terms now defined in §290.38. Definitions contained in Title 40 Code of Federal Regulations §141.2 and a standard industry source are incorporated into this section by reference to maintain consistency between the state and federal safe drinking water programs. Definitions in §290.102 have been expanded to include terms from §290.116, relating to Control of Trihalomethanes in Drinking Water, and subsections of that provision have been renumbered.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the rules as proposed are in effect, there will be fiscal implications as a result of administration and

enforcement of the rules. The effect on state government will be an increase in administrative costs associated with the requirements of the rules, including the requirement for review and approval of business plans and demonstration of financial assurance. These costs are estimated to be \$181,693 in the first year and \$173,483 in each succeeding year of the five-year period. There are no significant fiscal implications anticipated for units of local government, because under the Health and Safety Code §341.035(d) local governments are exempt from the requirements to submit business plans.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the rules will be an increase in water and sewer utilities that have the financial capability to comply with state and federal regulations related to drinking water and wastewater quality, more cost-effective and dependable delivery of water and sewer services to ratepayers, and enhanced protection of public health, safety and convenience related to the provision of adequate water utility services. The anticipated fiscal implications for affected persons are the increased costs associated with the development and filing of a business plan and the provision of financial assurance. The cost of preparation of a business plan for the average affected water utility is estimated to be \$1,500, although for larger systems, or systems with unique operating conditions, this figure could be significantly higher in some cases. It is not possible to estimate the costs of acquiring financial assurance that complies with the rules because the cost will vary with the size of the public water system for which financial assurance is sought and a variety of site specific circumstances. However, the cost of financial assurance is anticipated to be a small percentage of the either the total cost to construct a system or its annual operating costs, with the possible exception of the smallest operations. The cost of acquiring financial assurance is anticipated to be between one half and ten percent of the

principal amount of the financial assurance depending on the individual system and the associated risks. The proposed rule does affect small businesses, particularly investor-owned utilities that supply public drinking water or sewer service as their business. These small businesses will realize the same fiscal effects of the proposed rule as any water or wastewater system operator. Due to the smaller size of the operations, however, the costs of compliance with these rules may be marginally higher as a function of labor costs, costs per employee or costs per unit of revenue. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule” because the specific intent of the proposed amendments is to ensure the technical, managerial and financial capacity of public water systems; clarify the delineation of responsibility between the commission and the State Board of Plumbing Examiners regarding plumbers and customer service inspections; update definitions to maintain consistency with the federal Safe Drinking Water Act; and make organizational and wording changes to improve readability of the rules. The rule does not exceed any requirement of state or federal law. No delegation agreements or contracts between the commission and an agency or representative of the federal government are relevant to these rules. These proposed rules would implement S.B.1, Article 6, 75th Leg. 1997.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to implement sections of S.B.1, Article 6 related to ensuring the technical, managerial and financial capacity of public water systems; clarify the delineation of responsibility between the commission and the State Board of Plumbing Examiners regarding plumbers and customer service inspections; update definitions to maintain consistency with the federal Safe Drinking Water Act; and make organizational and wording changes to update definitions and improve readability of the rules. The rules will substantially advance this specific purpose by requiring public water suppliers, including some mobile home parks and investor owned utilities, to prepare a business plan or provide financial assurance of its ability to provide service. These mobile home parks and investor owned utilities may own private real property. The preparation of a business plan will not burden private real property, because this is a procedural requirement designed to demonstrate the financial capability of the public water system. Preparation of the business plan and requirements for financial assurance are part of the agency's efforts to comply with the Safe Drinking Water Act Amendments of 1996, specifically Section 1420 which would reduce federal funds to the state revolving loan fund unless the agency has the "legal authority or other means to ensure that all new ... water systems ... demonstrate technical, managerial, and financial capacity ..." Other than the public water systems required to prepare business plans, private real property is not subject to these regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in

Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

RULES REVIEW

The commission, concurrently with these proposed amendments to Chapter 290, proposes the review of Chapter 290, Subchapters D through G, concerning Public Drinking Water. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. See the Rules Review section of this issue of the Texas Register for additional information on the rules review of this Chapter.

ANNOUNCEMENT OF HEARING

A public hearing on these proposals will be held on XXX, 1998, at XX in Building F, Room XXX at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., 30 days from the date of

publication in the *Texas Register*. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Health and Safety Code §341.031 which gives the commission the power to establish standards for public drinking water and to adopt rules to implement the federal Safe Drinking Water Act. Section 290.39 implements Health and Safety Code §§341.035, 341.0355, and 341.0356.

There are no other codes, statutes, and rules that will be affected this proposal.

CHAPTER 290

[WATER HYGIENE]

PUBLIC DRINKING WATER

SUBCHAPTER D : RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

§§290.38, 290.39, 290.40, 290.42, 290.43, 290.44, 290.45, 290.46, 290.47

STATUTORY AUTHORITY

The proposed amended sections are proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Health and Safety Code §341.031 which gives the commission the power to establish standards for public drinking water and to adopt rules to implement the federal Safe Drinking Water Act. Section 290.39 implements Health and Safety Code §§341.035, 341.0355, 341.0356.

§290.38. Public Drinking Water Supply Systems [Definitions]

Definitions. The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this title is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing

the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

(1) **ABPA** - The American Backflow Prevention Association, P.O. Box 1563, Akron, Ohio 44309-1563.

(2) **ANSI standards** - The standards of the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(3) **Approved laboratory** - A laboratory certified and approved by the Texas Department of Health to analyze water samples to determine their compliance with maximum allowable constituent levels.

(4) **ASME standards** - The standards of the American Society of Mechanical Engineers, 346 East 47th Street, New York, New York 10017.

(5) **ASSE** - The American Society of Sanitary Engineering, P.O. Box 40362, Bay Village, Ohio 44140.

(6) **ASTM standards** - The standards of the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19102.

(7) **Auxiliary power** - Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure.

With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(8) **AWWA standards** - The latest edition of the applicable standards as approved and published by the American Water Works Association, 6666 W. Quincy Avenue, Denver, Colorado 80235.

[**Commission** - The Texas Natural Resource Conservation Commission.]

(9) **Community water system** - A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(10) **Connection** - A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this

definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if (a) the water is used exclusively for purposes other than those defined as human consumption (see human consumption definition); (b) the commission determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or (c) the commission determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(11) **Contamination** - The presence of any foreign substance (organic, inorganic, radiological or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water.

(12) **Cross-connection** - A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(13) **Disinfectant** - Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(14) **Disinfection** - A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(15) **Drinking water** - All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(16) **Drinking water standards** - The commission rules covering drinking water standards in §§290.101 - 290.121 of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(17) **Elevated storage capacity** - That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(18) **Emergency power** - Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

[**Executive director** - The executive director of the Texas Water Commission.]

(19) **Ground water under the influence of surface water** - Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia Lambia or Cryptosporidium, or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(20) **Health hazard** - Any conditions, devices or practices in the water supply system and/or its operation which create, or may create, a danger to the public health and well-being of the water consumer. An example of a health hazard is a structural defect in the water supply system, whether of location, design, or construction, which may regularly or occasionally prevent satisfactory purification of the water supply or cause it to be contaminated from extraneous sources.

(21) **High health hazard** - A cross-connection, potential cross-connection, or other situation involving any substance that could cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(22) Human consumption - Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(23) Interconnection - A physical connection between two public water supply systems.

(24) Intruder-resistant fence - A fence six feet or more in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle and have the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(25) Licensed Professional Engineer - An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(26) Maximum daily demand - In the absence of verified historical data, maximum daily demand means 2.4 times the average daily demand of the system.

(27) MCL - Maximum Contaminant Level.

(28) **mg/l** - Milligrams per liter, a measure of concentration, equivalent to and replacing parts per million (ppm) in the case of dilute solutions.

(29) **Monthly Reports of Water Works Operations** - The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(30) **NFPA standards** - The standards of the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts, 02269-9101.

(31) **NSF** - The National Sanitation Foundation and refers to the listings developed by the Foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

(32) **Noncommunity water system** - Any public water system which is not a community system.

(33) **Nontransient noncommunity water system** - A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(34) **psi** - Pounds per square inch.

(35) **Peak hourly demand** - In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(36) **Plumbing inspector** - Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(37) **Plumbing ordinance** - A set of rules governing plumbing practices which are at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) Southern Standard Plumbing Code.

(B) Uniform Plumbing Code.

(C) National Standard Plumbing Code.

(38) **Public health engineering practices** - Requirements in these sections or guidelines promulgated by the commission.

(39) Public water system - A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, [piped water for human consumption,] which includes all uses described under the definition for drinking water. Such a system must have [a potential for] at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

[Registered Professional Engineer - An engineer who maintains a current license through the Texas State Board of Registration for Professional Engineers in accordance with its requirements for professional practice.]

(40) Sanitary control easement - A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully

describe the location of the well and surrounding lands and must be filed in the County records to be legally binding.

(41) **Sanitary survey** - An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(42) **Service pump** - Any pump that takes treated water from storage and discharges to the distribution system.

(43) **Transfer pump** - Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(44) **Transient noncommunity water system** - A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient noncommunity water system.

(45) **Uniform Fire Code** - The standards of the International Conference of Building Officials, 5360 Workman Mill Rd., Wittier, California, 90601-2298.

(46) **Water Supply Protection Specialist** - Any person who holds a license endorsement issued by the Texas State Board of Plumbing Examiners to engage in the inspection, in

connection with health and safety laws and ordinances, of the plumbing work or installation of a public water system distribution facility or of customer owned plumbing connected to that system's water distribution lines.

§290.39. General Provisions.

(a) Authority for requirements. The Texas Health and Safety Code, Chapter 341, Subchapter C prescribes the duties of the commission [Texas Natural Resource Conservation Commission] relating to the regulation and control of public drinking water systems in the State. These statutes require that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems. [,] The statutes also require [and that] the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. In order to properly discharge these duties, the commission [Texas Natural Resource Conservation Commission] is authorized to develop rules requiring the thorough investigation of service from existing systems, governing the design of system facilities, as well as minimum acceptable financial, managerial, technical and operating practices necessary to protect the public health.

(b) Reason for these sections and minimum criteria. These sections have been adopted to insure regionalization and area-wide options are fully considered, the inclusion of all data essential for

comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical and operating practices must be specified to insure that facilities are properly operated to produce and distribute a safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality, or within one-half mile of the corporate boundaries of a district, other political subdivision providing the same service, or a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) Written application for service was made to that provider; and

(B) All application requirements of the service provider were satisfied, including the payment of related fees.

(2) If a person is not required to complete the steps in §290.39(c)(1) or if a person completes the steps in §290.39(c)(1), and is denied service or determines the existing provider's costestimate is not feasible for the development to be served, the person shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(d) Submission [Authorization for examination] of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed [registered] professional engineer. All engineering documents must have engineering seals, signatures and dates affixed in accordance with the rules of the Texas State Board of Registration for Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows:

(A) The commission's Water Utilities Division furnishes consultation services as a reviewing body only, and its licensed professional [registered] engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's Water Utilities Division does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by these sections will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the commission's Water Utilities Division in writing upon completion of all work.

(e) [(d)] Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and,

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) the relative location of all facilities which are pertinent to the specific project shall be shown.

(B) the location of all abandoned or inactive wells within 1/4 mile of a proposed wellsite shall be shown or reported.

(C) if staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) a general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the commission, at its discretion, may give limited approval. In such case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided the owner and shall also specify those conditions under which the bond will be forfeited. Such bond will be transferrable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) Copies of each fully executed sanitary control easement shall be provided to the commission prior to placing the well into service. Each original easement document must be recorded in the deed records at the county courthouse. See §290.47(c) of this title (relating to Appendices) for a suggested form.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules.

The executive director may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) Description of areas and population to be served by the potential system;

(2) Description of drinking water supply systems within a two mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking watersupply systems, and copies of the responses to the written requests;

(3) Time line for construction of the system and commencement of operations;

(4) Identification of and costs of alternative sources of supply;

(5) Selection of the alternative to be used and the basis for that selection;

(6) Identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) Identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) An operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) Assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) For retail public utilities as defined by Texas Water Code §13.002:

(A) projected rate revenue for residential, commercial, and industrial customers;

(B) pro forma income, expense, and cash flow statements;

(11) Identification of any appropriate financial assurance, including those being offered to capital providers; and

(12) A notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information.

(13) Other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) A person is not required to file a business plan if the person:

(1) Is a county;

(2) Is a retail public utility as defined by Texas Water Code, §13.002, unless that person is a utility as defined by that section;

(3) Has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or

(4) Is a noncommunity nontransient water system and the person has demonstrated financial assurance under Texas Health & Safety Code, Chapter 361 or 382 or Texas Water Code, Chapter 26.

(h) [(e)] Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan, from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) [(1)] The commission's Water Utilities Division, shall be notified in writing by the design engineer or the owner when construction is started.

(3) [(2)] Upon completion of the water works project, the engineer or owner will notify the commission's Water Utilities Division, in writing, as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) [(f)] Changes in plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units and storage tanks, shall be submitted to the executive director for review and approval.

(j) [(g)] Changes in existing systems or supplies. Changes or additions to existing systems which result in an increase in production, treatment, or storage capacity shall require written notification to the executive director. Changes or additions in existing distribution systems shall require written notification to the executive director when the change or addition is greater than 10% of the existing distribution capacity or 250 connections, whichever is smaller. The executive director shall determine whether engineering plans and specifications will be required after initial notification of the extent of the modifications. The owner shall submit plans and specifications as determined by the executive director in accordance with subsection (c) of this section. The commission will not require planning material on distribution line extensions from a political entity (county, municipality, district or water authority) when the entity has its own internal engineering review staff or is required, by local ordinance, to submit the material to another political entity for review and approval. The review staff must be separate and apart from the engineering staff or firm charged with the design of the distribution extension under review. The planning material must be reviewed

and certified to be in compliance with §290.44 of this title (relating to Water Distribution) by a licensed [registered] professional engineer in the employ of the review entity. The effect of the distribution system improvements on compliance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) must be evaluated. Should the proposed distribution system improvements result in an exceedance of the capacity requirements, written notice of the extent of the proposed improvements must be submitted to the executive director.

(k) [(h)] Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of these regulations will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) [(i)] Exceptions. Requests for exceptions to one or more of these sections shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception should precede the submission of engineering plans and specifications for a proposed project.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(m) [(j)] Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title (relating to Definitions).

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Texas Health & Safety Code §341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

(1) Provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section; and

(2) Provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after

the business plan has been reviewed and approved by the executive director. The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director. The form of the financial assurance will be as specified in §37.5011 of this title, (relating to Financial Assurance for Public Drinking Water Systems and Utilities), and will be a bond or as specified by the executive director.

(o) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in §37.5011, of this title, (relating to Financial Assurance for Public Drinking Water Systems and Utilities), and released only with the approval of the executive director.

§290.40. Cessation of Construction and Operations [Prohibitions].

(a) A public water supply system shall stop operations on receipt of a written notification of the executive director or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

(1) The system was constructed without approved plans and specifications and a business plan as required under §290.39, (relating to General Provisions); or

(2) The executive director determines that the system presents an imminent health hazard.

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

(f) [(a) Construction and operation prohibition.] No person or entity may construct or operate a public drinking water system in violation of these sections or the drinking water standards.

(g) [(b) Distribution prohibition.] No person or entity may distribute drinking water to the public in violation of these sections or the drinking water standards.

§290.42. Water Treatment.

(a) - (e) (No change.)

(f) Other treatment processes. The adjustment of fluoride ion content, special treatment for iron and manganese reduction, special methods for taste and odor control, demineralization, and other proposals covering other treatment processes will be considered on an individual basis, pursuant to §290.39(g) of this title (relating to General Provisions). Package-type treatment systems and their components shall be subject to all applicable design criteria in this section. Where innovative/alternate treatment systems are proposed, the licensed [registered] professional engineer must provide pilot test data, data collected at similar full-scale operations, and proof of a one year manufacturers performance warrantee/guarantee assuring that the plant will produce an effluent of 0.5 NTU or less in at least 95% of the measurements taken each month. Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year.

(g) - (j) (No change.)

§290.43. Water Storage.

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

(c) Design and construction of clear wells, standpipes, ground storage tanks, and elevated tanks. All facilities for potable water storage shall be covered and designed, fabricated, erected, tested and disinfected in strict accordance with current American Water Works Association (AWWA) standards and shall be provided with the minimum number, size and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators and other appurtenances as specified in these rules. Bolted

tanks shall be designed, fabricated, erected and tested in strict accordance with current AWWA Standard D103. The roof of all tanks shall be designed and erected so that no water ponds at any point on the roof and, in addition, no area of the roof shall have a slope of less than 0.75 inch per foot.

(1) (No change.)

(2) All roof openings shall be designed in accordance with current AWWA standards. If an alternate 30 inch diameter access opening is not provided in a storage tank, the primary roof access opening shall not be less than 30 inches in diameter. Other roof openings required only for ventilating purposes during cleaning, repairing or painting operations shall be not less than 24 inches in diameter or as specified by the licensed [registered] professional engineer. An existing tank without a 30-inch in diameter access opening must be modified to meet this requirement when major repair or maintenance is performed on the tank. Each access opening shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(3) - (7) (No change.)

(8) All clear wells, ground storage tanks, standpipes, and elevated tanks shall be painted, disinfected, and maintained in strict accordance with current AWWA standards. However, no temporary coatings, wax grease coatings, or coating materials containing lead will be allowed. No other coatings will be allowed which are not approved for use (as a contact surface with potable water) by [the United States

Public Health Service (USPHS),] the United States Environmental Protection Agency (EPA), National Sanitation Foundation (NSF), or the United States Food and Drug Administration (FDA). All newly installed coatings must conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(9) - (10) (No change.)

(d) - (f) (No change.)

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial and other recognized standards utilized by licensed [registered] professional engineers.

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

(b) (No change.)

(c) Minimum water line sizes. These are minimum requirements for domestic flows only and do not consider fire flows. These requirements should be exceeded when the licensed [registered] professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new water line under two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.

Figure §290.44 (c)

Maximum Number of Connections	Minimum Line Size (inches)
10	2
25	2.5
50	3
100	4
150	5
250	6
>250	8 and larger

(d) (No change.)

(e) Location of water lines.

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

(5) Where the nine foot separation distance cannot be achieved, the following criteria shall apply:

(A) New Waterline Installation - Parallel Lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater line/force main and the licensed [registered] professional engineer is able to determine that the existing line is not leaking, the new potable waterline shall be located at least two feet above the existing line, measured vertically, and at least four feet away, measured horizontally, from the existing line. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater line.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater line and it cannot be determined by the licensed [registered] professional engineer if the existing line is leaking, the existing wastewater line shall be replaced with a 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater line.

(iii) (No change.)

(B) (No change.)

(6) - (9) (No change.)

(f) - (h) (No change.)

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner:

(1) (No change.)

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows:

(A) (No change.)

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, [the United States Public Health Service] or the National Sanitation Foundation. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) - (L) (No change.)

§290.45. Minimum Water System Capacity Requirements.

(a) - (f) (No change.)

(g) Exceptions. Requests for exceptions to one or more of these Minimum Water System Capacity Requirements shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality as specified in §290.39(i) of this title (relating to General Provisions).

(1) (No change.)

(2) Although elevated storage is the preferred method of pressure maintenance for systems of over 2500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Exceptions to the elevated storage requirements may be obtained based on application to and approval of the executive director. Special conditions apply to systems qualifying for an elevated storage exception.

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

(i) A signed and sealed statement by a licensed [registered] professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while

maintaining distribution pressures of at least 35 psi, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

(ii) The system's licensed [registered] professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the commission for review.

(iii) For existing systems, the system's licensed [registered] professional engineer must provide continuous 24 hour pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed should not be less than three years.

(B) - (D) (No change.)

(3) (No change.)

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) - (i) (No change.)

(j) Customer Service Inspections. Effective January 1, 1996, a customer service inspection certification shall be completed prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards [unacceptable plumbing practices] exist, or after any material improvement, correction, or addition to the private water distribution [plumbing] facilities. See §290.47(d) of this title (relating to Appendices).

(1) (No change.)

(2) As potential contaminant hazards [unacceptable plumbing practices] are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a serious threat to the integrity of the public water supply shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the source of potential contamination no longer exists, or until sufficient additional safeguards have been taken.

(3) Copies of properly completed inspection certifications must be kept on file by the water purveyor and made available, upon request, for commission review. These certifications shall be retained for a minimum of ten years. If the suggested certification form (see Appendix D) is not used, the Inspection Certifications must minimally include the name and registration number of the inspector, the type of registration (Plumbing Inspectors, Water Supply Protection Specialists, Certified Operator, etc.), and be dated and signed. It must also certify that:

(A) No direct connection between the public drinking water supply and a potential source of contamination exists. Potential sources of contamination are isolated from the public water system by an air-gap or an appropriate backflow prevention assembly in accordance with commission regulations. See §290.44(h) of this title (relating to Backflow, siphonage).[state plumbing regulation. Additionally, all pressure relief valves and thermal expansion devices are in compliance with state plumbing codes.]

(B) - (C) (No change.)

(D) No pipe or pipe fitting which contains more than 8.0% percent lead exists in private water distribution [plumbing] facilities installed on or after July 1, 1988.

(E) No solder or flux which contains more than 0.2% percent lead exists in private water distribution [plumbing] facilities installed on or after July 1, 1988.

[(F) No plumbing fixture is installed which is not in compliance with a state-approved plumbing code.]

(4) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.115(5) of this title.

(5) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross connections, potential contaminant hazards and illegal lead materials. The customer

service inspector has no authority, and no obligation, beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the Texas State Board of Plumbing Examiners (TSBPE). A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns and villages with 5000 or more inhabitants or within smaller, like entities which have adopted the Plumbing License Law by ordinance. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector should report any violations immediately to the local entity's plumbing inspection department.

(k) - (q) (No change.)

(r) Data on water system ownership and management. The commission shall be provided with information regarding water system ownership and management.

(1) When a water system changes ownership, a written notice of the transaction must be provided to the commission. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Utility Regulation [Water Rates and Services]). Those systems not subject to Chapter 291 of this title shall notify the commission of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed above and the system's public

drinking water supply identification number, and any other information necessary to properly identify the transaction shall be provided to the commission 120 days before the date of the transaction.

(2) (No change.)

(s) - (y) (No change.)

§290.47. Appendices.

(a) Appendix A. Recognition as a Superior or Approved Public Water System. **Figure §290.47(a)**

APPENDIX A

Requirements. Public water supply systems which achieve and maintain recognition must exceed the minimum acceptable standards of the commission in these sections.

(1) To attain recognition as a "Superior Public Water System", the following additional requirements must be met:

(A) Physical facilities shall comply with the requirements in these sections.

(B) There shall be a minimum of two certified operators with additional operators required for larger systems.

(C) The system's microbiological record for the previous 24 months period shall indicate no violations (frequency, number or MCL) of the drinking water standards.

(D) The quality of the water shall comply with all primary water quality parameters listed in the drinking water standards.

(E) The chemical quality of the water shall comply with all secondary constituent levels listed in the drinking water standards.

(F) The system's operation shall comply with applicable state statutes and minimum acceptable operating practices set forth in §290.46 of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Supplies).

(G) The system's capacities shall meet or exceed minimum water system capacity requirements set forth in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(H) The system shall have at least two wells, two raw water pumps or a combination of these with enough capacity to provide average daily consumption with the largest well or pump out of service. This requirement shall also apply to treatment plant pumps necessary for operation in accordance with §290.42 of this title (relating to Water Treatment).

(I) The water system shall be well maintained and the facilities shall present a pleasing appearance to the public.

(2) To attain recognition as an "Approved Public Water System," all additional requirements listed under subsection (a)(1) of this section with exception of secondary constituents, subsection (a)(1)(E) of this section must be met. Public water systems which provide water quality that exceeds the secondary chemical standards may be excluded from this recognition program at the discretion of the executive director ~~Executive Director~~.

Signs. Systems which have met the requirements for recognition as a superior or approved system may erect signs denoting this honor.

Inspections. To receive or maintain recognition as a superior or approved water system, the system must be inspected and evaluated by commission personnel as to physical facilities, appearance and operation. Systems which fail to meet the above requirements in this section will be denied recognition or will have their recognition revoked. The signs shall be immediately removed on notice from the executive director ~~Executive Director~~.

(b) Appendix B. Sample Service Agreement. **Figure §290.47(b)**

SERVICE AGREEMENT

- I. **PURPOSE.** The NAME OF WATER SYSTEM is responsible for protecting the drinking water supply from contamination or pollution which could result from improper private water distribution system construction or configuration ~~plumbing practices~~. The purpose of this service agreement is to notify each customer of the ~~plumbing~~ restrictions which are in place to provide this protection. The utility enforces these restrictions to ensure the public health and welfare. Each customer must sign this agreement before the NAME OF WATER SYSTEM will begin service. In addition, when service to an existing connection has been suspended or terminated, the water system will not re-establish service unless it has a signed copy of this agreement.
- II. **PLUMBING RESTRICTIONS.** The following unacceptable ~~plumbing~~ practices are prohibited by State regulations.
- A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.
 - B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.
 - C. No connection which allows water to be returned to the public drinking water supply is permitted.
 - D. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.
 - E. No solder or flux which contains more than 0.2 percent lead can be used for the installation or repair of plumbing at any connection which provides water for human use.
- III. **SERVICE AGREEMENT.** The following are the terms of the service agreement between the NAME OF WATER SYSTEM (the Water System) and NAME OF CUSTOMER (the Customer).
- A. The Water System will maintain a copy of this agreement as long as the Customer and/or the premises is connected to the Water System.
 - B. The Customer shall allow his property to be inspected for possible cross-connections and other potential contamination hazards ~~unacceptable plumbing practices~~. These inspections shall be conducted by the Water System or its designated agent prior to initiating new water

service; when there is reason to believe that cross-connections or other potential contamination hazards ~~unacceptable plumbing practices~~ exist; or after any major changes to the private water distribution plumbing facilities. The inspections shall be conducted during the Water System's normal business hours.

- C. The Water System shall notify the Customer in writing of any cross-connection or other potential contamination hazard ~~unacceptable plumbing practice~~ which has been identified during the initial inspection or the periodic reinspection.
- D. The Customer shall immediately remove or adequately isolate ~~correct~~ any potential cross-connections or other potential contamination hazards ~~unacceptable plumbing practice~~ on his premises.
- E. The Customer shall, at his expense, properly install, test, and maintain any backflow prevention device required by the Water System. Copies of all testing and maintenance records shall be provided to the Water System.

IV. ENFORCEMENT. If the Customer fails to comply with the terms of the Service Agreement, the Water System shall, at its option, either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

CUSTOMER'S SIGNATURE: _____

DATE: _____

(c) Appendix C. Sample Sanitary Control Easement Document for a Public Water Well.
Figure 290.47 (c)

SANITARY CONTROL EASEMENT

DATE: _____, 19 _____

GRANTOR(S):

GRANTOR'S ADDRESS:

GRANTEE:

GRANTEE'S ADDRESS:

SANITARY CONTROL EASEMENT:

Purpose, Restrictions, and Uses of Easement:

1. The purpose of this easement is to protect the water supply of the well described and located below by means of sanitary control.
2. The construction and operation of underground petroleum and chemical storage tanks and liquid transmission pipelines, stock pens, feedlots, dump grounds, privies, cesspools, septic tank or sewage treatment drainfields, improperly constructed water wells of any depth, and all other construction or operation that could create an insanitary condition within, upon, or across the property subject to this easement are prohibited within this easement. For the purpose of the easement, improperly constructed water wells are those wells which do not meet the surface and subsurface construction standards for a public water supply well.
3. The construction of tile or concrete sanitary sewers, sewer appurtenances, septic tanks, storm sewers, and cemeteries is specifically prohibited within a 50-foot radius of the water well described and located below.
4. This easement permits the construction of homes or buildings upon the Grantor's property as long as all items in Restrictions Nos. 2 and 3 are recognized and followed.
5. This easement permits normal farming and ranching operations, except that livestock shall not be allowed within 50 feet of the water well.

The Grantor's property subject to this Easement is described in the documents recorded at:

Volume _____, Pages _____ of the Real Property Records of _____ County,
Texas.

Property Subject to Easement: _____

All of that area within a 150 foot radius of the water well located _____ feet at a radial of _____ degrees from the _____ corner of Lot _____, of _____ a Subdivision of Record in Book _____, Page _____ of the _____ County Plat Records, _____ County, Texas.

TERM:

This easement shall run with the land and shall be binding on all parties and persons claiming under the Grantor(s) for a period of two years from the date that this easement is recorded; after which time, this easement shall be automatically extended until the use of the subject water well as a source of water for public water systems ceases.

ENFORCEMENT:

Enforcement of this easement shall be proceedings at law or in equity against any person or persons violating or attempting to violate the restrictions in this easement, either to restrain the violation or to recover damages.

INVALIDATION:

Invalidation of any one of these restrictions or uses (covenants) by a judgement or court order shall not affect any of the other provisions of this easement, which shall remain in full force and effect.

FOR AND IN CONSIDERATION, of the sum of One Dollar (\$1.00) and for other good and valuable consideration paid by the Grantee to the Grantor(s), the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to Grantee and to its successors and assigns the sanitary control easement described in this easement.

GRANTOR(S)

By: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on the ____ day of _____, 19__, personally appeared _____ known to me to be the person(s) whose name(s) is(are) subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Notary Public in and for
THE STATE OF TEXAS
My Commission Expires: _____

Typed or Printed Name of Notary

HUSBAND AND WIFE ACKNOWLEDGEMENT

STATE OF TEXAS _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on the ____ day of _____, 19 ____, personally appeared _____
_____, husband and wife, known to me to be the persons whose names are
subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes
and consideration therein expressed.

Notary Public in and for
The State of Texas
My Commission Expires: _____

Typed or Printed Name of Notary

Recorded in _____ Courthouse, _____, Texas on _____, 19__.

(d) Appendix D. Sample Service Inspection Certification. **Figure 290.47(d)**

Service Inspection Certification

Name of PWS _____
 PWS I.D.# _____
 Location of Service _____

I _____, upon inspection of the private ~~plumbing~~ water distribution facilities connected to the aforementioned public water supply do hereby certify that, to the best of my knowledge:

- | | Compliance | Non-Compliance |
|--|--------------------------|--------------------------|
| (1) No direct connection between the public drinking water supply and a potential source of contamination exists. Potential sources of contamination are isolated from the public water system by an air gap or an appropriate backflow prevention assembly in accordance with state plumbing regulation <u>Commission regulations</u> . Additionally, all pressure relief valves and thermal expansion devices are in compliance with state plumbing codes. | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) No cross-connection between the public drinking water supply and a private water system exists. Where an actual air gap is not maintained between the public water supply and a private water supply, an approved reduced pressure-zone backflow prevention assembly is properly installed and a service agreement exists for annual inspection and testing by a certified backflow prevention device tester. | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) No connection exists which would allow the return of water used for condensing, cooling or industrial processes back to the public water supply. | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) No pipe or pipe fitting which contains more than 8.0% lead exists in private plumbing <u>water distribution</u> facilities installed on or after July 1, 1988. | <input type="checkbox"/> | <input type="checkbox"/> |
| (5) No solder or flux which contains more than 0.2% lead exists in private plumbing <u>water distribution</u> facilities installed on or after July 1, 1988. | <input type="checkbox"/> | <input type="checkbox"/> |
| (6) No plumbing fixture is installed which is not in compliance with a state approved plumbing code. | <input type="checkbox"/> | <input type="checkbox"/> |

Water service shall not be provided or restored to the private ~~plumbing~~ water distribution facilities until the above conditions are determined to be in compliance.

I further certify that the following materials were used in the installation of the ~~plumbing~~ private water distribution facilities:

Service lines Lead Copper PVC Other
 Solder Lead Lead Free Solvent Weld Other

I recognize that this document shall become a permanent record of the aforementioned Public Water System and that I am legally responsible for the validity of the information I have provided.

 Signature of Inspector

 Registration Number

 Title

 Type of Registration

 Date

(e) Appendix E. Boil Water Notification. **Figure 290.47(e)**

BOIL WATER NOTIFICATION
[INSERT NAME OF SYSTEM]

Due to conditions which have occurred recently in the water system, the Texas Natural Resource Conservation Commission has required the system to notify all customers to boil their water prior to consumption.

To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making should be boiled and cooled prior to consumption. The water should be brought to a vigorous rolling boil and then boiled for two minutes. In lieu of boiling, you may purchase bottled water or obtain water from some other suitable source. When it is no longer necessary to boil the water, water system officials will notify you.

If you have questions regarding this matter you may contact (a)_____ at (b)_____.

(a) Utility Official(s) (b) Phone Number(s)

INSTRUCTIONS:

List more than one utility official and phone number. Do not list the commission as the primary contact. If a customer wishes to call the commission, please have them call 512/239-6020.

(f) Appendix F. Sample Backflow Prevention Assembly Test and Maintenance Report. **Figure §290.47 (f)**

The following form must be completed for each assembly tested. A signed and dated original must be submitted to the public water supplier for recordkeeping purposes:

BACKFLOW PREVENTION ASSEMBLY TEST AND MAINTENANCE REPORT

NAME OF PWS: _____

PWS I.D. # _____

LOCATION OF SERVICE: _____

The backflow prevention assembly detailed below has been tested and maintained as required by TNRCC regulations and is certified to be operating within acceptable parameters.

TYPE OF ASSEMBLY

- | | |
|---|--|
| <input type="checkbox"/> Reduced Pressure Principle | <input type="checkbox"/> Pressure Vacuum Breaker |
| <input type="checkbox"/> Double Check Valve | <input type="checkbox"/> Atmosphere Vacuum Breaker |

Manufacturer _____

Size _____

Model Number _____

Located At _____

Serial Number _____

	Reduced Pressure Principle Assembly			Pressure Vacuum Breaker	
	Double Check Valve Assembly		Relief Valve	Air Inlet	Check Valve
	1st Check	2nd Check		Opened at _____psid	_____psid
Initial Test	DC-Closed Tight <input type="checkbox"/> RP-_____psid Leaked <input type="checkbox"/>	Closed Tight <input type="checkbox"/> Leaked <input type="checkbox"/>	Opened at _____psid	Did not Open <input type="checkbox"/>	Leaked <input type="checkbox"/>
Repairs and Materials Used					
Test After Repair	DC-Closed Tight <input type="checkbox"/> RP _____psid	Closed Tight <input type="checkbox"/>	Opened at _____psid	Opened at _____psid	_____psid

The above is certified to be true.

Firm Name _____

Certified Tester _____

Firm Address _____

Cert. Tester No. _____ Date _____

(g) Appendix G. Operator and/or Employment Notice. Figure 290.47 (g)

Section 290.46(e), Operation by Certified Personnel, paragraph 4, requires certified operators to provide a written, dated, and signed notice listing the public water systems which they operate or are employed. This is required when applying for, renewing, or upgrading a certificate of competency. This notice must be amended in writing within 10 days of any change in responsibility.

SYSTEM NAME	I.D. #	COUNTY
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

 Signature of Operator

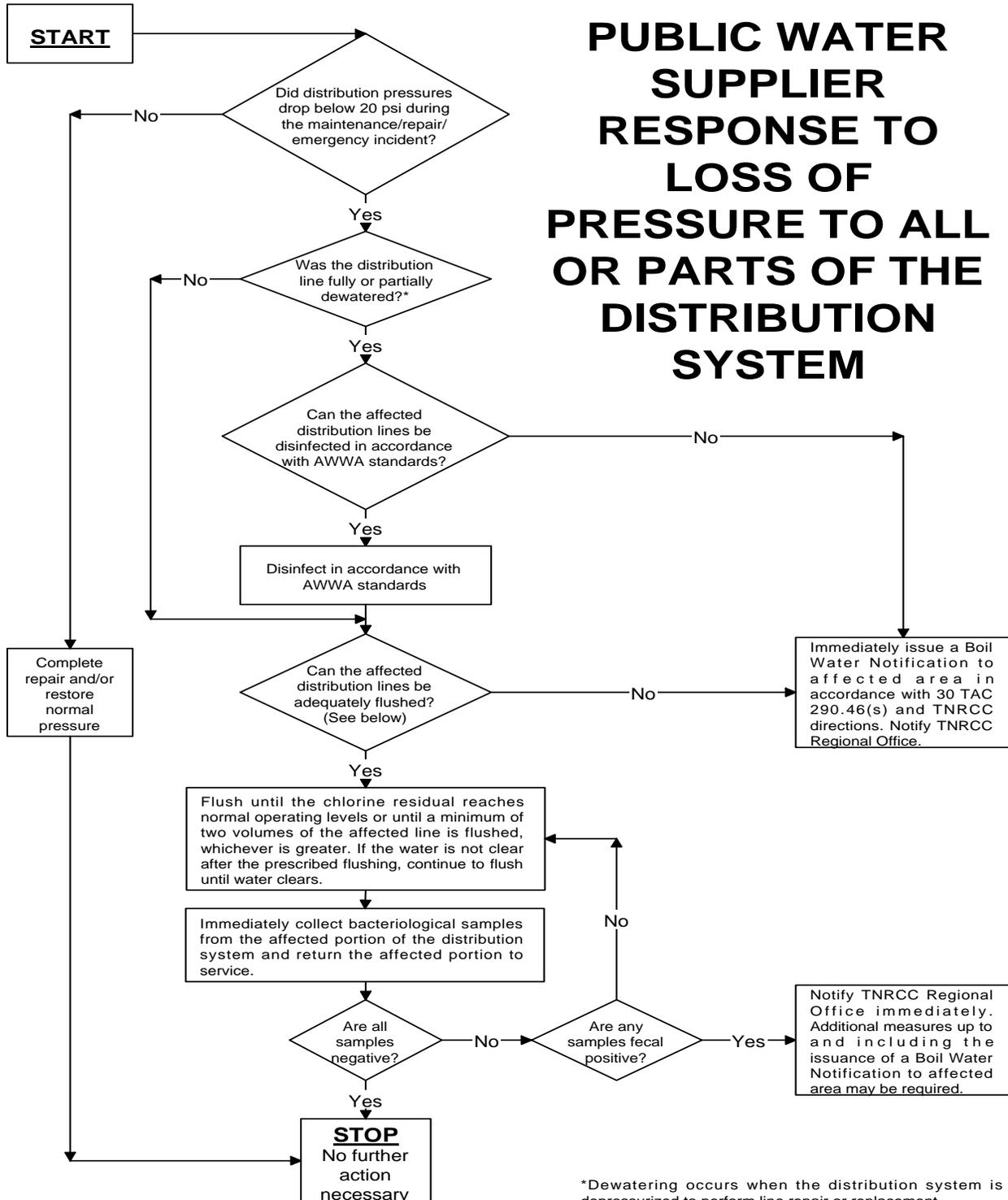
 Social Security Number

 Grade of Certificate

 Expiration Date

This notice should be submitted to the Operator Occupational Certification Section, Compliance Support Environmental Training Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

(h) Appendix H. Special Precautions Flowchart. Figure 290.47 (h)



**SUBCHAPTER F : DRINKING WATER STANDARDS GOVERNING
DRINKING WATER QUALITY AND REPORTING REQUIREMENTS
FOR PUBLIC WATER SUPPLY SYSTEMS**

§290.102, §290.116

The amendments are proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Health and Safety Code §341.031 which gives the commission the power to establish standards for public drinking water and to adopt rules to implement the federal Safe Drinking Water Act.

There are no other rules, statutes or codes that will be affected by this proposal.

§290.102. Definitions.

The following definitions shall apply in the interpretation and enforcement of these standards. If a word or term used in this subchapter is not contained in the following list, its definition shall be as shown in 30 TAC §290.38 or in Title 40 Code of Federal Regulations §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

[**Approved laboratory** - A laboratory certified and approved by the Texas Department of Health to analyze water samples to determine their compliance with maximum allowable constituent levels.]

[**Commission** - the Texas Natural Resource Conservation Commission.]

[**Community water system** - A public water system which has a potential to serve at least 15 service connections on a year-round basis or serves at least 25 individuals on a year-round basis. Service connections shall be counted as one for each single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system.]

[**Drinking water** - All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.]

[**Executive Director** - The executive director of the Commission.]

(1) **Halogen** - means one of the chemical elements chlorine, bromine, or iodine.

[Human consumption - Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes and preparing foods.]

[MCL - An acronym for Maximum Contaminant Level.]

[Monthly Reports of Water Works Operations - The daily record of data relating to the operation of the system facilities compiled in a monthly report.]

[Non-community water system - Any public water system which is not a community water system.]

[Non-transient non-community water system or "NTNCWS" - A public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.]

[Public water system - A system for the provision to the public of piped water for human consumption. Such a system must have a potential to serve at least 15 service connections or 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more water systems with each having a potential to

serve less than 15 connections or less than 25 individuals but owned by the same person, firm or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he resides in, uses as his place of employment, or works in, a place to which drinking water is supplied from the system. A public water system is either a "community water system" or a "noncommunity water system" as defined in this section.]

[**Sanitary survey** - An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.]

(2) Total Trihalomethanes (TTHM) - means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, i.e., chloroform; dibromochloromethane; bromodichloromethane; tribromomethane, i.e., bromoform) rounded to two significant figures.

(3) Trihalomethane (THM) - means one of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

§290.116. Control of Trihalomethanes in Drinking Water.

[(a) For the purpose of this section the following definitions will apply:]

[(1) "Halogen" means one of the chemical elements chlorine, bromine, or iodine.]

[(2) "Trihalomethane" (THM) means one of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.]

[(3) "Total Trihalomethanes" (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, i.e., chloroform; dibromochloromethane; bromodichloromethane; tribromomethane, i.e., bromoform) rounded to two significant figures.]

[(4) "Maximum Total Trihalomethane Potential" (MTP) means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25° C or above.]

[(5) "Disinfectant" means any oxidant added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.]

(a) [(b)] The maximum contaminant level (MCL) for total trihalomethanes shall be 0.10 milligrams/liter. The MCL shall apply only to those systems which serve a population of 10,000 or more individuals.

(b) [(c)] Sampling and analytical requirements for total trihalomethanes:

(1) For the purpose of this section, the minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples. All samples taken within one sampling period shall be collected within a 24-hour period.

(2) For all community water systems utilizing surface water sources in whole or in part, and for all water systems utilizing only groundwater sources that have not been determined to qualify for the reduced monitoring requirements of paragraph (4) of this subsection, analyses for total trihalomethanes shall be performed on at least four samples of water per quarter from each treatment plant used by the system. At least 25 percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75 percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the commission within 30 days of the system's receipt of such results. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons.

(3) Upon the written request of a community water system, the monitoring frequency required by paragraph (2) of this subsection may be reduced by the commission to a minimum of one sample analyzed for TTHM's per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the commission that the data from at least one year of monitoring in accordance with paragraph (2) of this subsection and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection applies, the results from any analysis exceed 0.10 milligrams/liter of TTHM's and such results are confirmed by at least one check sample taken promptly after such results are obtained, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (2) of this subsection.

(B) If a system is required to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(4) Upon the written request to the commission, a community water system utilizing only groundwater sources may seek to have the monitoring frequency reduced to a minimum of one sample for maximum TTHM potential per year taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the commission the results of at least one sample analyzed for maximum TTHM potential taken at a point in the distribution

system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the commission that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 milligrams/liter and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHM's. The results of all analyses shall be reported to the commission within 30 days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (2) of this subsection, unless the analytical results are invalidated for technical reasons.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection is in effect, the result from any analysis taken by the system for the maximum TTHM potential is equal to or greater than 0.10 milligrams/liter, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall begin immediately to monitor in accordance with the requirements of paragraph (2) of this subsection.

(B) If it becomes necessary to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before the monitoring frequency may be reduced.

(C) In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirement of paragraph (2) of this subsection.

(5) Compliance with the MCL of 0.10 milligrams/liter for total trihalomethanes shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (2) of this subsection. If the average of samples covering any 12-month period exceeds the maximum contaminant level, the supplier of water shall report to the commission within 30 days and notify the public as required under §290.103(8) of this title (relating to Standards of Chemical Quality). Monitoring after public notification shall be at a frequency designated by the commission and shall continue until a monitoring schedule as a condition of a variance, exemption, or enforcement action shall become effective.

(6) Before a community water system makes any significant modification to its existing treatment process for the purpose of achieving compliance with this subsection, the system must submit and obtain commission approval of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modifications.

(7) All analyses for determining compliance with the provisions of this subsection shall be conducted in accordance with the procedures required by the U.S. Environmental Protection Agency.

The commission proposes amendments to §§291.1, 291.3, 291.21, 291.25, 291.29, 291.31, 291.32, 291.41, 291.76, 291.87, 291.93, 291.101, 291.102, 291.103, 291.106, 291.107, 291.109, 291.111, 291.113, 291.114, 291.121-291.127, 291.138, the repeal of §§291.15, 291.16, and a new §§291.15, 291.34, 291.140, 291.144, 291.150-291.153.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendments is to implement sections of Senate Bill 1, Article 6, 75th Legislature 1997, related to ensuring the technical, managerial and financial capacity of public water and sewer utility service providers and rate flexibility; streamline or clarify existing rules, and update references and definitions.

The provisions of the current §291.15, relating to Jurisdiction of Municipality: Surrender of Jurisdiction, are proposed to be moved to a new §291.150, relating to Jurisdiction of Municipality: Surrender of Jurisdiction. A new provision is proposed for §291.15, Notice of Wholesale Water Supply Contract. This section is proposed to implement new Texas Water Code §13.143 enacted by S.B. 1 (1997). The provisions of the current §291.16, relating to Applicability of Commission Service Rules Within the Corporate Limits of a Municipality, are proposed to be moved to a new §291.151, relating to the same subject matter.

Section 291.21, relating to Form and Filing of Tariffs, adds provisions regarding rate adjustments to implement phased rates under §291.34, relating to Alternative Rate Methods, and downward rate adjustments to the list of minor changes the executive director may make to tariffs. Subsection (c)(8) is

added to add the requirement that the tariff must address the form of payments that will be accepted for utility services.

Section 291.29, relating to Interim Rates, is proposed to be reworded to clarify that certain actions taken by the commission may also be taken by an administrative law judge as provided by Texas Water Code §5.311, as amended by Senate Bill 1 (1997). The section also updates references to the State Office of Administrative Hearings. Both the word Judge and SOAH are defined in Chapter 3 of this Title, relating to Definitions. This section also makes other minor amendments designed to clarify meaning.

Section 291.31, relating to Cost of Service, is proposed to be amended to provide that a utility that has paid fines or penalties into a Water Utility Improvement Account under §291.144(b), related to Water Utility Improvement Account, cannot consider those funds as invested capital in a rate case. Subsection (e) provides for, over and above what is allotted under traditional cost of service in a rate case, a positive acquisition adjustment for utility plant, property and equipment acquired from another retail public utility in a sale and transfer of utility service areas. A positive acquisition adjustment is proposed to remove a disincentive for utilities to combine to provide regional service. The subsection provides eligibility criteria for when an acquisition adjustment is allowed, a methodology for calculating the amount of the adjustment, and procedural requirements. The proposed rule would only allow an acquisition adjustment for a sale and transfer of a utility that occurs after the effective date of the adopted rule. The commission invites comments on whether positive acquisition adjustments should be allowed for a sale and transfer of a utility that occurred after the effective date of S.B.1, 75th Legislature (1997) but before the effective

date of the adopted rules and also invites comments on the commission's legal authority to grant such a positive acquisition adjustment for transfers prior to the effective date of the final rule.

The commission also invites comments on whether positive acquisition adjustments should also be allowed where the purchase of a utility is accomplished only by a sale of stock. The proposed rule, 291.31(d), relating to Recovery of positive acquisition adjustment, would allow a positive acquisition adjustment for transfers where the utility is acquired through a stock purchase with a concurrent asset transfer. However, the commission invites comment on how, under those circumstances, the commission would evaluate the corporate debt, receivables, deposits, corporate good will and assets other than property, plant, and equipment.

Amendments to §291.32, relating to Rate Design, authorize a utility to seek and obtain, in a rate change proceeding, a water conservation surcharge. The water conservation surcharge would allow a utility to generate revenue above the utility's usual cost of service as authorized by Texas Water Code §13.183, as amended by Senate Bill 1 (1997). The subsection sets out criteria for when a water conservation surcharge would be permissible, and establishes restrictions on the disposition of funds collected by the surcharge. Subsection (d) provides that the commission may, in a rate proceeding, authorize collection of an additional surcharge to provide funds for debt repayments and reserve funds.

The proposed new §291.34, relating to Alternative Rate Methods, implements Texas Water Code §13.183 and §13.184, as amended by S.B. 1 (1997), which authorize the commission to set utility rates on factors other than rate of return and those specified in Texas Water Code §13.185. The proposed new section implements three non-traditional rate methods: single issue rate changes, phased and multi-step rate

changes, and the cash needs method. The single issue rate change allows a utility to file a simplified rate case limited to only one issue. A utility may wish to consider a single issue rate change when faced with unanticipated cost increases in a single cost category. Phased and multi-step rate changes allow a utility to phase in a rate increase in one rate case rather than filing several separate rate cases. The cash needs method of rate setting allows the recovery of reasonable and prudently incurred debt service cost, including principal, interest, and reasonable cash reserves and other expenses not allowed under standard methods of establishing rates. The proposed new section sets out criteria and conditions for the use of each of these alternative rate methods.

The commission intends that the alternative rate method of §291.34, if finally adopted by the commission, would be available only for rate applications filed after the effective date of the final rule. Rate applications filed before the effective date of the final rule must use the traditional rate methods specified in the current rules.

Amendments to §291.41, relating to Appeal of Ratemaking Pursuant to the Texas Water Code §13.043, update statutory references, add a notice requirement, and are intended to relate to actions for which the commission has express statutory authority. The notice requirement expressly provides for the existing practice of the commission to require the retail public utility to provide written notice of a hearing to all customers, rather than having notice provided by the Chief Clerk.

Amendments to §291.76, relating to Regulatory Assessment, are intended to require the utility to remit the regulatory assessment fee to the commission on an annual basis rather than allowing the utility the

option of paying on a quarterly basis and to remove the allowance for retaining ten percent when payments are made quarterly, in order to be consistent with statutory authority.

Proposed amendments to §291.87, relating to Billing, set out procedures for a utility to implement a voluntary program to collect voluntary contributions to a volunteer fire department or emergency medical service as part of the utility's regular customer bill.

Proposed amendments to §291.93, relating to Adequacy of Water Utility Service, change the time for filing a report from 120 days to 90 days from the time the retail public utility receives a copy of the commission field inspection report indicating that the system capacity has reached 85 percent, in order to be consistent with statutory authority.

Amendments to Subchapter G, relating to Certificates of Convenience and Necessity, implement provisions of S.B.1, Article 6, 75th, Legislature, 1997. Section 291.101, relating to Certificate Required, would add a condition that a water district may not provide service within an area where a retail public utility holds a certificate of convenience and necessity, or within the boundaries of another water district, without the district's consent unless the water district proposing to provide service has obtained a certificate of convenience and necessity for that area from the commission. Amendments to §291.102, relating to Criteria for Considering and Granting Certificates or Amendments, update the section to conform to amendments to Texas Water Code §13.241 and §13.246 made by Senate Bill 1 (1997) and to add requirements to demonstrate that regionalization or consolidation is not economically feasible. Amendments to §291.103, relating to Certificates Not Required, update the section to conform to amendments to Texas Water Code §49.352. The proposed amendments to §291.109, relating to Report of

Sale, Merger, Etc; Investigation; Disallowance of Transaction, add requirements for the applicant in a sale or merger of a water or sewer system to demonstrate the financial, managerial, and technical capability to provide continuous and adequate service. If the entity acquiring the system cannot demonstrate adequate financial capability, the commission may require the provision of a bond or other financial assurance in an amount determined by the commission. The form of the bond or financial assurance will be as provided in the proposed new Subchapter M to Chapter 37 of this Title, related to Financial Assurance for a Public Drinking Water Systems and Utilities. The proposed amendments to §291.111, relating to Purchase of Voting Stock in Another Utility, are similar to the provisions of §291.109, except those provisions relate to purchase of a water system by transferring of voting stock in a utility. Proposed amendments to §291.113, relating to Revocation or Amendment of Certificate, implement Texas Water Code §13.254 as amended by Senate Bill 1 (1997), and generally track that statute. Other amendments in this subchapter update references to current statutes.

Section 291.106(b)(1), relating to Notice for Application for Certificates of Convenience and Necessity, provides that cities and other retail public utilities within a specified distance from the proposed service area must receive notice of an application for issuance or amendment of a certificate of public convenience and necessity. The proposed rule increases the specified distance from a two mile radius to a five mile radius for applications for a new Certificate of Convenience and Necessity. By this proposed amendment, the commission intends in applications for Certificates of Convenience and Necessity to solicit comment from a wider audience on the appropriateness of the proposed system versus regional service from an existing

system. The commission believes that a more rigorous inquiry on regionalization than is the current practice is legislatively mandated by Health and Safety Code 341.0315(b) and Water Code §26.003. The commission invites comments on the appropriateness of the proposed five mile radius versus some other distance limitation and invites comments on other options to encourage regionalization of water or wastewater service.

The proposed Subchapter H, relating to Utility Submetering, would revise the rules related to water and wastewater charges passed through to tenants by an apartment house, condominium, mobile home park, or other multiple use facility. The rules cover situations where utility service is master metered to the owner, who in turn allocates the utility bill to individual units based on submetering or an approved allocation method. Revisions are proposed to streamline the rules, incorporate allocation methods which more accurately reflect water usage, and to reword sections to clarify the intent of the rules. Under the proposed rules, utility service may be allocated on: a submetered basis, an occupancy basis, a proportional submetered hot water basis, or other method approved by the executive director. Where service is not submetered and outside water use is not separately metered, an owner may only pass through 85 percent of the utility bill to tenants.

Section 291.138, relating to Filing of Rate Data, is proposed for amendment to remove a requirement that providers of water or sewer service for resale must file an annual report. In place of the mandatory report, the proposed rule would allow the commission the option to require that a report be filed. Providers of water or sewer service for resale would only have to file a report within 30 days of receiving a written request for the report from the executive director.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in cost of approximately \$242,258 per year in the first year, and \$231,310 in years two through five, associated with additional requirements of the rules, including an anticipated increase in rate cases filed with the agency as water and sewer utilities seek to avail themselves of the provisions allowing alternative methods of setting rates. In addition, the proposed change related to the timing of fee payments will result in a one-time deferral of revenue to the commission of approximately \$1.67 million in utility regulatory assessments. The proposed repeal of the provision for the retainage of fees by utilities will increase revenues to the commission by approximately \$200,000 per year. There are no significant effects anticipated for local governments, except those local governments, such as districts, that are water utilities subject to the sections as proposed. Any local government or district subject to the payment of a utility regulatory assessment will realize an increase in cost of 10% of the assessment if the utility has been making quarterly payments and taking the allowable retainage under the current rules.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with these sections will be an increase in water and sewer utilities that have the financial capability to comply with state and federal regulations related to drinking water and wastewater quality, more cost effective delivery of water and sewer services to ratepayers, and enhanced protection of public health, safety and convenience related to the provision of adequate water utility services. The proposed rule will have cost implications for affected persons. Utilities will generally benefit financially from the opportunity to procure approval for alternative rate structures

which ensure the financial stability and viability of the system. Although the number of utilities that will be required to have financial assurance under these rules is small, those entities which are required to obtain such assurance are anticipated to face increased costs equivalent to between one-half and ten percent of the principal amount of the assured amount annually, depending on the individual system and the associated risks. The estimated costs for an average system operator to prepare a rate application is not anticipated to increase from the present cost to prepare a rate application under the existing rules. The proposed rule does affect small businesses, particularly investor-owned utilities (IOUs) that supply public drinking water or sewer service as their business. These small businesses will realize the same fiscal effects of the proposed rule as any water or wastewater system operator. Due to the smaller size of the operations, however, the costs of compliance with these rules may be marginally higher as a function of labor costs, costs per employee or costs per unit of revenue. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule” because the specific intent of the amendment is to regulate water and sewer service utilities and not to protect the environment or reduce risks to human health from environmental exposure. The provisions in the proposed rules related to demonstrating the technical, managerial, and financial capacity of utilities are in partial response to the federal Safe Drinking Water Act Amendments of 1996, and are also specifically required by S.B.1, Article 6, 75th Leg. 1997. The proposed rules do not exceed an express requirement of state or federal law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to implement sections of S.B.1, Article 6 related to ensuring the technical, managerial and financial capacity of utilities; to allow the commission to set water and sewer utility rates based on factors other than rate of return and those specified in Texas Water Code §13.185; streamline existing rules and to make the rules consistent with recent statutory changes. The rules will substantially advance this specific purpose by requiring applicants for certificates of convenience and necessity to demonstrate or provide financial assurance of its ability to provide service; specifying alternative rate methodologies for water and sewer utilities; eliminating certain required reports to the agency; clarifying existing rules; and amending rules to reflect recent legislative changes. Promulgation and enforcement of these rules will not burden private real property because the requirement to demonstrate its ability to provide service is a procedural requirement designed to demonstrate the financial capability of the utility; and because existing methodologies for setting water or sewer rates are retained in effect. The proposed rules only provide additional methodologies that a water or sewer utility may choose to use in a rate case.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal

Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

RULES REVIEW

The commission, concurrently with these proposed amendments to Chapter 291, proposes the review of Chapter 291, concerning Water Rates. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. See the Rules Review section of this issue of the Texas Register for additional information on the rules review of this Chapter.

ANNOUNCEMENT OF HEARING

A public hearing on these proposals will be held on XXX, 1998, at XX in Building F, Room XXX at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT.

Written comments must be received by 5:00 p.m., _____. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

STATUTORY AUTHORITY

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Subchapter H §§291.121- 291.127 are also proposed under Texas Water Code §13.503 and §13.5031 which require the commission to adopt rules and standards governing allocating utility service costs from a master meter. Section 291.15 implements Texas Water Code §13.143. Section 291.31 implements Texas Water Code §13.183. Section 291.34 implements Texas Water Code §13.183 and §13.184. Section 291.87 implements Texas Water Code §13.143. Section 291.101 implements Texas Water Code §49.215(d). Section 291.102 implements Texas Water Code §13.241 and §13.246. Section 291.103 implements Texas Water Code §49.352. Section 291.109 implements Texas Water Code §13.301. Section 291.111 implements Texas Water Code §13.302. Section 291.113 implements Texas Water Code §13.254. Section 291.114 implements Texas Water Code §13.252. Section 291.125(c) implements Texas Water Code §13.504. Section 291.140 implements Texas Water Code §13.411. Section 291.144 implements Texas Water Code §13.418 and Texas Health and Safety Code §341.0485. Section 291.152 implements Texas Water Code §13.045. Section 291.153 implements Texas Water Code §13.086.

CHAPTER 291

[WATER RATES]

UTILITY REGULATION

SUBCHAPTER A : GENERAL PROVISIONS

§§291.1, 291.3, 291.15, 291.16

These sections are proposed under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and under Texas Water Code, §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.15 implements Texas Water Code §13.143.

There are no other statutes, codes or rules that will be affected by this rule.

§291.1. Purpose and Scope of this Chapter.

This chapter is intended to establish a comprehensive regulatory system under Texas Water Code Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern

the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the [Water] commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

§291.3. Definitions of Terms.

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

(1) **Acquisition adjustment** - The difference between:

(A) The lesser of the purchase price paid by an acquiring utility, or amount determined by the regulatory authority to be reasonable, and

(B) The original cost of the plant, property and equipment being acquired, less accumulated depreciation.

(2) **Affected County** - A county:

(A) That has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; and,

(B) Any part of which is within 50 miles of an international border.

(3) **Affected person** - Any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(4) **Affiliated interest or affiliate** -

(A) Any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) Any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) Any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) Any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) Any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) Any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(5) **Agency** - Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

(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.

(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) **Billing period** - The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(9) **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.

(10) **Code** - The Texas Water Code.

[**Commission** - The Texas Natural Resource Conservation Commission.]

(11) **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 Texas Water Code.

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

(13) **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.

[**Executive director** - The executive director of the commission, or any authorized individual designated to act for the executive director.]

(14) **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.

(15) **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.

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

(17) **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 [Texas Water Commission] pursuant to its authority under the Texas Water Code.

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

(19) **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 which 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.

(20) **Member** - A person who holds a membership in a water supply or sewer service corporation and who [either receives water or sewer utility service from the corporation or] 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.

(21) **Membership fee** - A fee assessed each water supply or sewer service corporation service applicant which 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 pursuant to said bylaws. For purposes of Texas Water Code §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.

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

(23) **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.

[Permanent installation - Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.]

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

(25) **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.

(26) **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.

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

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

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

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

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

(32) **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 the Texas Water Code §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(33) **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.

(34) **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 [291.87] 291.88

of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(35) 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.

(36) 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.

(37) 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 pursuant to the provisions of the Safe Drinking Water Act and as defined in Water Code §15.602.

(38) Service - Any [and all] acts[done, rendered, or] performed, anything [and any and all things] furnished or supplied, and any [and all] facilities used[, furnished, or supplied] by a retail public utility [utilities or water or sewer service suppliers] in the performance of its [their] duties under the Texas Water Code to its patrons[their customers], employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities [of the utilities or water or sewer service suppliers.]

(39) **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.

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

(41) **Standby fee** - A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(42) **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.

(43) **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.

(44) **Temporary Water Rate Provision** - A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(45) **Test year** - The most recent 12 month period 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.

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

(47) **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.

(48) Water rationing - Restrictions implemented to reduce the amount of water which may be consumed by customers of the system due to emergency conditions or drought.

(49) Water supply or sewer service corporation - Any nonprofit, ~~member-owned,~~ member-controlled] corporation organized and operating under [Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a)] Chapter 67 of the Texas Water Code that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws 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 and Texas Water Code, Chapter 13, 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; and

(D) The corporation's by-laws include language indicating the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(50) 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.

§291.15. Notice of Wholesale Water Supply Contract.

(a) Notification. A district or authority created under Texas Constitution, §52, Article III, or §59, Article XVI, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract.

(b) Information. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, and any other condition or agreement relating to the contract. The certified copy of the contract should be submitted to the Water Utilities Division of the commission.

SUBCHAPTER A : GENERAL PROVISIONS

§291.15, §291.16

The repeals are proposed under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and under Texas Water Code, §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.15 implements Texas Water Code §13.143.

There are no other statutes, codes or rules that will be affected by this rule.

§291.15. Jurisdiction of Municipality: Surrender of Jurisdiction.

§291.16. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

SUBCHAPTER B : RATES, RATE MAKING AND RATE/TARIFF CHANGES

§§291.21, 291.25, 291.29, 291.31, 291.32, 291.34

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.31 implements Texas Water Code §13.183. Section 291.34 implements Texas Water Code §13.183 and §13.184.

There are no other statutes, codes or rules that will be affected by this rule.

§291.21. Form and Filing of Tariffs.

(a) Approved tariff. No utility shall 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 the Texas Water Code, §13.187(a) (relating to Statement of Intent to Change Rates) [(concerning to notice of intent)] after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in Texas Water Code §5.235(n) [of the code] does not have to be listed on the utility's approved tariff to be charged and collected but shall 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 which enters into an agreement pursuant to Texas Water Code §13.250(b)(2) [of the code], 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.

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

(1) (No change.)

(2) Minor Tariff Changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county can change rates for water or wastewater service without commission approval but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change. [The executive director may approve the following minor changes to tariffs:]

(A) The executive director may approve the following minor changes to tariffs:

(i) [(A)] service rules and policies;

(ii) [(B)] changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(iii) [(C)] implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(iv) [(D)] surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;

(v) [(E)] addition of the regulatory assessment as a separate item or to be included in the currently authorized rate; [or]

(vi) [(F)] addition of a provision allowing a utility to collect wastewater charges pursuant to an agreement under the Texas Water Code, §13.250(b)(2), or [;]

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs.

(B) [(G)] The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) Tariff Revisions and Tariffs Filed With Rate Changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision shall be accompanied by a cover page which 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.

(4) Each rate schedule must clearly state the territory, subdivision, city, or county wherein said schedule is applicable.

(5) Tariff sheets are to be numbered consecutively. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, shall contain sections setting forth:

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

(6) the extension policy; [and]

(7) An approved water rationing plan; and

(8) The form of payment to be accepted for utility services.

(d) - (l) (No change.)

§291.25. Rate Change Applications, Testimony and Exhibits.

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

(c) An original [and four copies] of the completed rate filing package and the number of copies specified in the application form shall be submitted and filed with the commission. In the event that the proposed rate change becomes the subject of a hearing, the commission may require or allow, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.

(d) (No change.)

(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the judge [hearings examiner] assigned to the application.

(f) - (g) (No change.)

§291.29. Interim Rates.

(a) The commission or judge may on a motion by the executive director or by the appellant under the Texas Water Code, §13.043 (a), (b) or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under the Texas Water Code, §13.187, as amended, the executive director may petition the commission or judge to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.

(c) Interim rates may be established by the commission or judge in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(d) In making a determination under subsection (c) of this section; [, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:]

(1) The commission or judge may limit its consideration of the matter to oral arguments of the affected parties and may:

(A) [(1)] Set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(B) [(2)] Deny interim rate relief;

(C) [(3)] Require that all or part of the requested rate increase be deposited in an escrow account in accordance with rules set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase); or

(2) [(4)] The commission may remand the request for interim rates to the SOAH [Office of Hearings Examiners] for an evidentiary hearing on interim rates. [If so authorized by the commission's remand order,] The [the] presiding judge will [hearings examiner may] issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(e) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(f) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission.

(g) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(h) The retail public utility must provide a notice to its customers including the interim rates set by the commission or judge with the first billing at the interim rates with the following wording: "The Texas Natural Resource Conservation Commission (or judge) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established".

(i) If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code §13.187, the commission must make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility in its application.

[(j) This subsection applies to a rate application proceeding under §291.22(h) (concerning Notice of Intent to Change Rates) if the application concerns only a proposed adoption or change in an extension policy. It also applies to a rate complaint proceeding concerning a utility's extension policy under Texas Water Code, §13.186 or §13.041. In such cases if the case has been referred to the State Office of Administrative Hearings, the assigned judge may in accordance with the requirements of this section order interim rates concerning the utility's extension policy.]

§291.31. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the ratepayers shall 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 will be considered.

(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) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Texas Water Code, §13.185 [§113.185](e));

(B) - (F) (No change.)

(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. [The rate base, sometimes referred to as invested capital, includes the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public.] Components to be included in determining the [overall] rate base are as follows:

(A) Original cost, less accumulated depreciation, of utility plant, property and equipment used by and useful to the utility in providing service:

(i) - (iv) (No change.)

(B) (No change.)

(3) Items Not Included in Rate Base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

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

(C) Capital Improvements. The following capital improvements may not be considered invested capital of the utility for any purpose:

(i) Capital improvements that have been funded by the Water Utility Improvement Account (see §291.144(b) of this title (relating to Fines and Penalties), Water Utility

Improvement Account) for the water or sewer system of a utility that has paid fines or penalties under Health and Safety Code, Chapter 341, Subchapter C, or under Texas Water Code Chapter 13; or

(ii) Capital improvements which have been funded from the Water Utility Improvement Account (see §291.144(b) of this title, Water Utility Improvement Account). for a utility placed in receivership or under a temporary manager under Texas Water Code §13.4132.

(d) Recovery of positive acquisition adjustments.

(1) For utility plant, property and equipment acquired by a utility from another retail public utility as part of a sale and transfer of utility service area after the effective date of these rules, at a cost which exceeds the original cost of plant, property and equipment which is used and useful in rendering service to the public, less accumulated depreciation, a positive acquisition adjustment may be allowed to the extent that the acquiring utility proves that:

(A) At the time of the acquisition, the property is used and useful in providing water or sewer service;

(B) Reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;

(C) As a result of the sale or transfer:

(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the utility's other systems could receive higher quality or more reliable water or sewer service.

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial or technical resources which achieve economies of scale or efficiencies of service) was achieved;
or

(iii) the system being acquired is able to maintain a financially stable and technically sound utility.

(D) The negotiations which led to the acquisitions were conducted at arm's length;

(E) The actual purchase price is reasonable in consideration of the condition of the plant, property and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and, the amount of contributions in aid of construction in the system being acquired;

(F) In a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is a sale where two or more transfers of assets and/or stock occur concurrently in what is essentially a single sales transaction.

(G) The rates charged by the acquiring utility to its preacquisition customers will not increase unreasonably because of the acquisition.

(2) The amount of the acquisition adjustment approved by the regulatory authority, shall be amortized using a straight line method over a period of at least ten years but not longer than the average remaining useful life of the acquired plant, property and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.

(4) The acquisition adjustment can only be included in rates as a part of a rate change application.

§291.32. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses

(unless an alternative rate method is used as set forth in §291.34 of this title, (relating to Alternative Rate Methods), and preserve the financial integrity of the utility.

(b) Conservation. [In order to promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage by residential customers.]

(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage by residential customers.

(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 commission'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) To reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's tariff in order to:

(i) Comply with mandatory reductions directed by a wholesale supplier or underground water district; or,

(ii) Maintain acceptable pressure or storage during drought periods, or other water rationing conditions authorized by an approved water rationing plan.

(B) To generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production or distribution capacity.

(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 executive director, as requested;

(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 executive director for applications not subject to hearing under Texas Water Code §13.187(b).

(c) Volume Charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1000 gallons or 100 cubic feet, or the fractional portion of the usage.

(d) Surcharges, [for 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]

(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.

§291.34. Alternative Rate Methods.

(a) To ensure that retail customers receive a higher quality or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates.

(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 shall 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;

(4) The utility shall provide notice as described in §291.22(a) - (e) of this title, (relating to Notice of Intent to Change Rates), and the notice shall describe the cost component and reason for the increased cost; and

(5) A utility exercising this option is required to submit a complete rate change application within three years following the effective date of the single issue rate change request.

(c) Phased and Multi-Step Rate Changes. In a rate proceeding, 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 elect to use the phased or multi-step rate method in order:

(A) To include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with 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 which 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 must 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 executive director prior to implementing the next phase or step. Unless otherwise specified in a commission order or directed by the executive director, 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 executive director thirty (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.

(d) 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 elect 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 which are not debt-financed; and a reasonable cash reserve account.

(A) Allowable operating and maintenance expenses: Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable operations and maintenance expenses and shall 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 which was paid for by the utility and which has a positive net book value on the effective date of the rate change.

(C) Debt service costs. 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 10 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.

(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 which are not debt-financed. Capital assets, repairs or extensions which are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses which are specifically debt-financed.

(E) Cash reserve account: A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, shall 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 executive director. The utility shall account for these funds separately and report to the commission as required by the executive director. Unless the utility requests an exception in writing and the exception is explicitly allowed by the executive director 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. Each customer shall 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 executive director.

(3) If the revenues collected exceed the actual cost of service, defined in subsection (d)(2) of this section, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in subsection (d)(2)(D) of this section and become subject to the same restrictions.

(4) If the utility demonstrates to the executive director that it has reduced expenses through its efforts, the executive director may allow the utility to retain 50% of the savings which result 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 which 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.

SUBCHAPTER C : RATEMAKING APPEALS

§291.41

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other codes, statutes or rules that will be affected by this proposal.

§291.41. Appeal of Ratemaking 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 accompanied by the filing fee as required by the Texas Water Code, §5.235 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.

(b) An appeal under the Texas Water Code, §13.043(b) must be initiated within 90 days after the effective date [day] of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing an original and four copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) A nonprofit water supply or sewer service corporation created and operating under Texas Water Code, Chapter 67 [Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes)];

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

(d) - (f) (No change.)

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service

corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under Texas Water Code, §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a \$100 filing fee as required by the Texas Water Code, §5.235.

[(1) The executive director may, if requested by the applicant, establish an interim charge for connecting service. If the applicant pays the charges determined by the executive director, the corporation or affected county shall provide service to the applicant pending final disposition of the appeal.]

(1) [(2)] If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant which exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(2) [(3)] In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer

service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) [(4)] A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the executive director or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility.

(j) In an appeal under this section, the retail public utility shall provide written notice of hearing to all customers in a form prescribed by the executive director.

SUBCHAPTER D : RECORDS AND REPORTS

§291.76

The rule is proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other codes, statutes or rules that will be affected by this rule.

§291.76. Regulatory Assessment.

(a) - (h) (No change.)

(i) The full amount payable for the 12 calendar months of each year must [may] be remitted to the commission [on a quarterly basis or on an annual basis. If payments are made on a quarterly basis and submitted to the commission not later than January 30th, April 30th, July 30th, and October 30th, the utility service provider may retain 10% of the total amount collected to cover administrative costs incurred in collecting and remitting the assessment. If payments are remitted annually, the full amount collected is due] by January 30th of the following year.

(j) The utility service provider shall pursue collection of the assessment from the customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) If assessments collected in the 12 months prior to January 1 of each year [remitted on an annual basis] are not received by the commission by January 30th of that year [following the year in which they are collected], the utility service provider shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(l) - (n) (No change.)

SUBCHAPTER E : CUSTOMER SERVICE AND PROTECTION

§291.87

The rule is proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.87 implements Texas Water Code §13.143.

There are no other rules, codes, or statutes that will be affected by this proposal.

§291.87. Billing.

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

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$3.00 [\$2.00] or 5.0 percent may be made on delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment

received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments which were not delinquent.

(d) - (p) (No change.)

(q) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) Describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) Designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) Informing the customer that a contribution is voluntary;

(D) If applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) Describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) The utility's expenses in administering the contribution program; or

(B) Five percent of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service

SUBCHAPTER F : QUALITY OF SERVICE

§291.93

The rule is proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other rules, statutes or codes that will be affected by this proposal.

§291.93. Adequacy of Water Utility Service.

[(a)] Sufficiency of service. Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) The water system quantity and quality requirements of the commission shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage. Additional

capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

(2) In cases of extreme drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, or to comply with a state agency or court order on conservation temporary restrictions may be instituted to limit water usage. For utilities, these temporary restrictions must be in accordance with an approved water rationing plan. Unless specifically authorized by the executive director, retail public utilities may not use water rationing in lieu of providing facilities which meet the minimum capacity requirements of the commission's rules in 30 Texas Administrative Code, Chapter 290 of this title, (relating to Rules and Regulations for Public Water Systems), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(A) An approved water rationing plan must be on file with the utility's approved tariff prior to implementing water rationing unless authorized by the executive director.

(B) Temporary restrictions must be in accordance with the utility's approved water rationing plan on file or specifically authorized by the executive director. The utility shall file a status report every 30 days that rationing continues or as required by the executive director. The executive director may suspend implementation of the restrictions at any time with written notice to the utility.

(C) The utility must provide written notice to each customer prior to implementing the provisions of the rationing plan. Mailed notice is acceptable and rationing may be enforced by the utility

if notice is mailed 72 hours prior to the start of rationing. If notice is hand delivered, the utility cannot enforce the provisions of the plan for 24 hours after notice is provided unless authorized by the executive director. Notice shall be provided to the commission prior to implementing the program and may be by telephone if written notice is provided by mail within 10 days. Customer notice must contain:

(i) The date rationing is to begin.

(ii) The expected duration of the rationing program.

(iii) The restrictions or stage of rationing being implemented and the specific restrictions which apply; and

(iv) The penalties for violations of the rationing program.

(3) A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commission's minimum capacity requirements in Chapter 290 of this title (relating to Rules and Regulations for Public Water Systems) shall submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area. A report is not required if the source of supply available to the utility service provider is reduced to below the 85% level due to a court or agency conservation order unless that order is expected to extend for more than 18 months from the date it is entered in which case a report shall be required.

(A) This report is due no later than the 90 [120]th day after the retail public utility receives a copy of the commission field inspection report indicating that the system has reached 85 percent of its capacity. Capacity is considered to be the overall rated capacity in number of residential connection equivalents based on the most restrictive criteria for production, treatment, storage or pumping.

[i] Capacity is considered to be the overall rated capacity in number of residential connection equivalents based on the most restrictive criteria for production, treatment, storage or pumping.]

[ii] For retail public utilities currently at or exceeding 85% of capacity, this report is due no later than the 180th day after the effective date of these rules.]

(B) The report should be submitted in writing and should contain the following:

- (i) A brief description of the overall utility system and service area.
- (ii) An analysis of the plant capacity as defined in §291.93(a)(3)(A)[i].
- (iii) Details on how the retail public utility will provide service to the remaining areas within the boundaries of its certificated area. This includes projections of cost and expected design and installation dates for additional facilities.

(C) The executive director may waive or limit the reporting requirements if the retail public utility demonstrates that the projected growth of the area will not require the retail public utility to exceed 100% of its current capacity for the next five years.

(D) Any retail public utility required to file reports under this section of the rules, including those requesting waivers, shall file updated reports within 90 days after the retail public utility receives a copy of each subsequent commission field inspection report [annually] until the system demand is below 85% capacity.

(E) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §291.92 of this title (relating to Requirements by Others).

[(b) Quality of product.]

(4) [(1)] Each retail public utility which possesses or is required to possess a certificate of convenience and necessity shall furnish safe water which meets the minimum quality criteria for drinking water prescribed by the commission. The supply must meet the requirements of Health and Safety Code §341.031 and commission rules. A utility or water supply corporation which is authorized to operate without a certificate of convenience and necessity pursuant to Health and Safety Code §13.242(c) of the code may be required by the executive director to meet the minimum criteria prescribed by the commission if so instructed in writing.

(5) [(2)] Each retail public utility must promptly take all reasonable actions necessary to protect the health of its customers at all times.

(6) [(c) Maintenance of Facilities.] Every retail public utility shall maintain its facilities to protect them from contamination, ensure efficient operation and promptly repair leaks.

SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY

§§291.101, 291.102, 291.103, 291.106, 291.107, 291.109, 291.111, 291.113, 291.114

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.101 implements Texas Water Code §49.215(d). Section 291.102 implements Texas Water Code §§13.241 and 13.246. Section 291.103 implements Texas Water Code §49.352. Section 291.109 implements Texas Water Code §13.301. Section 291.111 implements Texas Water Code §13.302. Section 291.113 implements Texas Water Code §13.254. Section 291.114 implements Texas Water Code §13.253.

There are no other codes, rules, or statutes that will be affected by this proposal.

§291.101. Certificate Required.

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

(c) A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

§291.102. Criteria for Considering and Granting Certificates or Amendments.

(a) The commission may approve [grant] applications and grant [issue] or amend a certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service and may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided. [In considering whether to grant on amend a certificate the commission shall consider.]

[(1) the adequacy of service currently provided to the requested area;]

[(2) the need for additional service in the requested area;]

[(3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;]

[(4) the ability of the applicant to provide adequate service;]

[(5) the feasibility of obtaining service from an adjacent retail public utility;]

[(6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;]

[(7) environmental integrity; and]

[(8) the probable improvement in service or lowering of cost to consumers in that area.]

(b) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Health and Safety Code Chapter 341 and commission rules and has access to an adequate supply of water.

(c) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules and the Texas Water Code.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) The adequacy of service currently provided to the requested area;

(2) The need for additional service in the requested area;

(3) The effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;

(4) The ability of the applicant to provide adequate service;

(5) The feasibility of obtaining service from an adjacent retail public utility;

(6) The financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) Environmental integrity; and,

(8) The probable improvement in service or lowering of cost to consumers in that area.

(e) Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) A list of all drinking water supply systems or sewer systems within a two mile radius of the proposed system;

(2) Copies of written requests seeking to obtain service from each of the drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring drinking water supply system or sewer system;

(3) Copies of written responses from each of the systems or evidence that they failed to respond;

(4) A description of the type of service that a neighboring drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) An analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance; and

(6) An analysis of all necessary costs for acquiring and continuing to receive service from the neighboring drinking water supply system or sewer system for at least the first 5 years.

(f) The commission may require an applicant utility 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 §37.5011 of this title (relating to Financial Assurance for a Public Drinking Water Systems and Utilities).

(g) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, “economically distressed area” has the meaning assigned in Texas Water Code §15.001.

§291.103. Certificates Not Required.

(a) - (c) (No change.)

(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) (No change.)

(2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.

(3) - (8) (No change.)

(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under Texas Water Code, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner

provided by Texas Water Code, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by Texas Water Code, §13.255(b).

§291.106. Notice for Applications for Certificates of Convenience and Necessity.

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) All information outlined in the Administrative Procedure Act, Government Code Chapter 2001; [Texas, Article 6252-13a, §13;]

(2) - (3) (No change.)

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) For applications for issuance of a certificate of public convenience and necessity, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service

within five miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(2) [(1)] For applications for an amendment of a certificate of public convenience and necessity, the [The] applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(3) [(2)] Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.

(4) [(3)] Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted and any other information required in the application.

(5) [(4)] Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

(c) - (d) (No change.)

§291.107. Action on Applications.

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

(c) The executive director may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn in accordance with Chapter 50 [263] of this title (relating to Action on Applications [Final Approval By executive director, Evaluation of Request for Contested Case Hearing]).

(d) If a hearing is requested, the application will be processed in accordance with Chapter 55 Subchapter B [263] of this title (relating to Hearing Requests, Public Comment [Action on Applications Final Approval By executive director, Evaluation of Request for Contested Case Hearing]).

§291.109. Report of Sale, Merger, Etc; Investigation; Disallowance of Transaction. [or Consolidation,]

(a) On or before the 120th day [At least 120 days] before the [proposed] effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission [notify the commission] and give public notice of the action [proposed transaction]. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the executive director for good cause shown.

(b) A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(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 a bond or other 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 §37.5011 of this title, (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(d) [(b)] The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.

(e) [(c)] Prior to the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) The application filed with [notification to] the commission or the public notice was improper;

(2) The person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to that person [is inexperienced as a utility service provider];

(3) The person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:[noncompliance with the requirements of the commission or the Texas Department of Health or of continuing mismanagement or misuse of revenues as a utility service provider;]

(A) Noncompliance with the requirements of the commission or the Texas Department of Health; or

(B) Continuing mismanagement or misuse of revenues as a utility service provider;

(4) The person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;

(5) It is in the public interest to investigate the following factors:

(A) Whether the seller has failed to comply with a commission order;

(B) The adequacy of service currently provided to the area;

(C) The need for additional service in the requested area;

(D) The effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) The ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

(F) The feasibility of obtaining service from an adjacent retail public utility;

(G) The financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) The environmental integrity; and,

(I) The probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

~~(f)~~ [(d)] Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed; [at the end of the 120-day period or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.]

(1) At the end of the 120-day period;

(2) Or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

~~(g)~~ [(e)] Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(h) [(f)] If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as [provide the] required [notification] or to provide public notice, the sale, acquisition, lease, merger, consolidation or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(i) [(g)] A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the Texas Water Code, §13.301 is void.

(j) [(h)] The requirements of the Texas Water Code, §13.301 do not apply to: [the purchase of replacement property, to a transaction under the Texas Water Code, §13.255 or to foreclosure on the physical assets of a utility.]

(1) The purchase of replacement property;

(2) A transaction under the Texas Water Code, §13.255;

(3) Or to foreclosure on the physical assets of a utility.

(k) [(i)] If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or controlling

interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(l) [(j)] A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

§291.111. Purchase of Voting Stock in Another Utility.

(a) A [At least 60 days before a] utility may not purchases voting stock in and [or] a person may not acquires a controlling interest in a utility doing business in this state[,] unless the utility or person files a written application with [shall notify] the commission not later than the 61st day before the date on which the transaction is to occur [of the proposed purchase or acquisition.] A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide a bond or other 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 §37.5011 of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(d) [(b)] The executive director may request that the commission hold a public hearing on the transaction if the executive director believes that a criterion [criteria] prescribed by §291.110 [291.109 (c)] of this title (relating to Foreclosure and Bankruptcy) applies.

(e) [(c)] Unless the executive director requests that a public hearing be held, the purchase or acquisition may be completed as proposed; [at the end of the 60 day period or may be completed at any time after the executive director notifies the person or utility that a hearing will not be requested.]

(1) At the end of the 60 day period; or

(2) At any time after the executive director notifies the person or utility that a hearing will not be requested.

(f) [(d)] The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(g) [(e)] If a hearing is requested by the executive director or if the person or utility fails to make the application to the commission as [provide the] required [notification to the commission 60 days prior to the transaction], the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

§291.113. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity if it finds that: [the certificate holder has never provided, is no longer providing service or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate.]

(1) The certificate holder has never provided, is no longer providing service or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate;

(2) In an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) The certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) The certificate holder has failed to file a cease and desist action pursuant to Water Code §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(b) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Texas Water Code §13.242(c).

(c) [(b)] If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property shall be determined according to the standards set forth in Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility for the taking, damaging, or loss of personal property, including the retail public utility's business, is just and adequate shall at a minimum include: the impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues and expenses of the retail public utility; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.

(h) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time. If there were no current customers in the area decertified and no immediate loss of revenues or if there are other valid reasons determined by the commission, installment payments as new customers are added in the decertified area may be an acceptable method of payment.

§291.114. Requirement to Provide Continuous and Adequate Service.

(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

(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 Texas Water Code §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in Sections 291.93 and 291.94 of this chapter; or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(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 utility's ability

to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the commission;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under §291.14 of this title.

(c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Health and Safety Code §341.0355., or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:

(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance the order requiring the improvements

may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and

(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SUBCHAPTER H : UTILITY SUBMETERING

§§291.121, 291.122, 291.123, 291.124, 291.125, 291.126, 291.127

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

These sections are also proposed under Texas Water Code §13.503 and §13.5031 which require the commission to adopt rules and standards governing allocating utility service costs from a master meter. §291.125(c) implements Texas Water Code §13.504.

§291.121. General Rules.

(a) Purpose and scope.

(1) The provisions of this subchapter [section] are intended to establish a comprehensive regulatory system to assure that the practices involving, submetered and [submetering] nonsubmetered master metered [utility services, and] billing of dwelling units are just and reasonable to the tenant and the owner and to establish the rights and responsibilities of both the owner and tenant. The provisions of this subchapter [section] shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status.

(2) For purposes of enforcement, [both utilities and] owners are subject to enforcement pursuant to the Texas Water Code, which may involve civil penalties of up to \$5,000 for each offense and criminal penalties for willful and knowing violations.

(b) Application. The provisions [provision] of this subchapter [section] shall apply to existing apartment houses, condominiums, multiple use facilities or mobile home parks [utilizing water], providing submetered or nonsubmetered, master metered utility service, also known as allocated utility service, as of September 2, 1987; or which propose providing submetered or nonsubmetered, master metered utility service [wastewater submetering or existing apartment houses engaged in nonsubmetered master metered service as of the effective date of this section as well as those apartment houses, multiple use facilities and mobile home parks which engage in utility submetering or apartment houses which engage in nonsubmetered master metered services as defined by this section] at any subsequent date.

[(c) Severability clause. The adoption of this section will in no way preclude the Texas Natural Resource Conservation Commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. If any provision of this section is held invalid, such invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable. The provisions of this section shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.]

§291.122. Definitions.

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

(1) **Allocated utility service** - See nonsubmetered, master metered (allocated) utility service.

(2) **Apartment house** - A building or buildings containing five or more dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer; and a [Apartment house shall include] residential condominiums, whether rented or owner occupied.

(3) **Billing unit** - For submetered service, the billing unit shall be that used by the utility in its billing to the owner.[Gallon for water or wastewater service.]

[**Commission** - The Texas Natural Resource Conservation Commission.]

(4) **Customer** - The individual, firm, or corporation in whose name a master meter has been connected by the utility.

(5) Dwelling unit - A [room or rooms in an apartment house or condominium suitable for occupancy as a residence containing kitchen and bathroom facilities, or a] mobile home in a mobile home park; a room or rooms including kitchen and bathroom facilities suitable for occupancy as a residence in an apartment house or condominium; and a rental unit in a multiple use facility.

[**Hearing** - Any proceeding based on an application, petition, complaint, or motion.]

(6) Master meter - A meter used to measure, for billing purposes, all water usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units therein.

(7) Mobile home park - A property on which parking spaces are rented to mobile dwelling units primarily for nontransient use and for which rental is paid at intervals of one month or longer.

(8) Month or monthly - The period between any two consecutive meter readings by the utility, either actual or estimated, at approximately 30-day intervals.

(9) Multiple use facility - A commercial or industrial park, office complex or marina with five or more dwelling units which are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(10) **Nonsubmetered, master metered (allocated) utility service** - Water utility service that is master metered for the apartment house, condominium or multiple use facility but not submetered, and wastewater utility service based on master metered water utility service.

(11) **Owner** - For purposes of this subchapter, any owner, operator, or manager of any apartment house, condominium, mobile home park or multiple use facility who bills tenants for submetered or allocated [engaged in] water or wastewater utility service [submetering].

(12) **Submetered utility service** - Water utility service that is master metered for the owner by the utility and individually metered by the owner at each dwelling unit; and wastewater utility service based on submetered water utility service.

(13) **Tenant** - A person who is entitled to occupy a dwelling unit to the exclusion of others and, if the dwelling unit is rented, who is obligated to pay for the occupancy under a written or oral rental agreement.

(14) **Utility metering** - Individual [apartment] dwelling unit metering of water or wastewater utility service performed by a utility company.

(15) **Utility service** - For purposes of this subchapter, utility service shall include water and wastewater service only.

[**Utility submetering** - Individual dwelling unit metering of water or wastewater utility service performed by the owner.]

§291.123. Records and Reports.

(a) Either the owner or the owner's management company engaging or proposing to engage in utility submetering or billing for nonsubmetered master metered service must register with the commission [30 days prior to commencing utility submetering] and provide the following information

(1) Business address and business telephones of the owner or owner's management company;

(2) Date the billing is to begin;

(3) Person to be contacted with regard to questions or complaints about service; and

(4) Name and location of each nonsubmetered apartment, condominium or multiple-use facility or of each submetered apartment, [unit or] mobile home park, condominium or multiple-use facility. [being submetered or nonsubmetered apartment unit.]

(b) The owner shall [maintain and] make the following records available for inspection by the tenant [the following records] during normal business hours:

(1) A current and complete copy of this subchapter;

(2) [(1)] The billing from the utility to the owner for the current month and the 12 preceding months;

[(2) The calculation of the average cost per billing unit, i.e., gallons for the current month and the 12 preceding months. For nonsubmetered master metered service the average cost per billing unit shall be equal to the charges for the utility service plus applicable tax, less any penalties charged by the utility plus applicable tax, less any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges, divided by the total number of billing units;]

(3) The calculation of the average cost per gallon or cubic foot for submetered billings or the percentage(s) used to calculate allocated billings for the current month and the 12 preceding months;

(4) [(3)] All submeter readings and tenant billings for the current month and the 12 preceding months; and

(5) [(4)] All submeter test results for the current month and the 12 preceding months. [; and]

[(5) Separate accounts for rental and utility billing, including date of transaction.]

(c) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at a time agreed upon by the owner and tenant.

(d) All records shall be made available to the commission upon request.

§291.124. Charges and Fees. [Calculation of Costs.]

(a) The charge for submetered or allocated [Nonsubmetered master metered] utility service [costs] shall be calculated; each month and may include: the total amount charged the owner by the utility for water and wastewater service, including any surcharges the utility assessed for those services; less charges for utility services provided to common areas [based on metered billing units during the same billing period as that of the utility]. [The nonsubmetered master metered billing units shall be multiplied by the average cost per billing calculated according to §291.125(d) of this title (relating to Billing).]

(b) If water used in common areas is not separately metered, the owner shall charge tenants for no more than 85% of the utility's total charges for water and wastewater service. Allocation of central systems for air conditioning, heating, wastewater and hot water are not prohibited by this section.

(c) [(b)] The bill for submetered or allocated utility service may not include [cost of nonsubmetered master metered utilities shall be the total charges for utility service to the apartment house less] any fees [penalties] charged by the utility [to the apartment owner] for disconnect, reconnect, late payment, stormwater, drainage, solid waste or other similar service charges.

(d) The owner shall not impose any other charge on the tenant for submetered or allocated utility service except as provided in §291.125(k) and (l) of this title (relating to Rental Agreement and Billing).

(e) Unless approved by the executive director, an owner who provides submetered utility service shall not change his or her billing method to provide allocated utility service.

§291.125. Rental Agreement and Billing.

(a) Rental agreement for submetered utility service [submetering]. The [All] rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued on that basis, that water consumption or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. [Each owner shall provide the tenant, at the time of the lease is signed, a copy of this section or narrative summary approved by the executive director to inform the tenant of his rights and the owner's responsibilities under this section.]

(b) Rental agreement for allocated [nonsubmetered master metered] utility service. The [All] rental agreements between the [apartment] owner and [the] tenants shall clearly state the method used to allocate [provide a clear written description of the method of allocation of] nonsubmetered, master metered utilities, [for the apartment house. The method of allocation may be changed only after 90 days notice of such change to the tenants. The rental agreement for each apartment unit shall contain a statement of] the average monthly bill for the previous calendar year for the dwelling unit, and that any disputes relating to the computation of the tenant's bill will be between the tenant and the owner [for that apartment unit]. The method of allocation may be changed only after 90 days notice of such change to the tenants. [Each owner shall provide a tenant, at the time a lease is signed, a copy of this section or a narrative summary approved by the executive director to inform the tenant of his rights and the owner's responsibilities under this section.]

(c) Bill adjustment due to conversion. If, during the 90 day period preceding the installation of submeters or the implementation of allocated billing, an owner increases rental rates and such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90 day period. [Rendering and form of submetered bill.]

[(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the schedule reading date of the utility's master meter.]

[(2) The billing unit shall be that used by the utility in its billing to the owner such as thousand gallons or hundred cubic feet for water or wastewater submetering.]

[(3) The owner shall be responsible for determining that water consumption or sewer usage billed to any dwelling unit shall be only for that submetered and consumed within that unit.]

[(4) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in paragraph (7) of this subsection. The submetered bill must clearly state "submetered water" or "submetered wastewater" as applicable.]

[(5) The bill shall reflect only submetered usage. Utility consumption for all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating, wastewater and hot water are not prohibited by these sections as set forth in paragraph (d) of this section concerning non-submetered master meter utilities.]

[(6) The tenant's submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall divide the net total charges for water or sewer consumption, plus applicable tax, by the total number of billing units to obtain an average cost per billing unit. This average billing unit cost shall then be multiplied by each tenant's consumption to obtain the charge to the tenant. The average cost per billing unit shall not include any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges.]

[(7) The tenant's water or wastewater submeter bill shall show all of the following information:]

[(A) The date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered ;]

[(B) The number of billing units metered;]

[(C) The computed rate per billing unit;]

[(D) The total amount due for water and/or wastewater used;]

[(E) A clear and unambiguous statement that the bill is not from the utility, which shall be named in the statement;]

[(F) The name and address of the tenant to whom the bill is applicable;]

[(G) The name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute;]

[(H) The date by which the tenant must pay the bill; and]

[(I) The name, address, and telephone number of the party to whom payment is to be made.]

(d) Each owner shall provide the tenant, at the time a lease is signed, a copy of this subchapter, or a narrative summary approved by the executive director, to inform the tenant of his rights and the owner's responsibilities under this subchapter. If a narrative summary is provided, a full and complete copy of this subchapter must be provided by the owner to the tenant upon the tenant's request. [Rendering and form of nonsubmetered master metered bill.]

[(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period.]

[(2) The allocation of nonsubmetered master metered utilities costs to tenants shall be based on one or a combination of the following methods:]

[(A) The total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house and all heated and/or air conditioned common areas. This percentage shall be stated in the rental agreement for each dwelling unit; or]

[(B) The individually metered or submetered utility usage of the dwelling unit as a percentage of the sum of the individually metered or submetered usage of all dwelling units.]

[(3) Methods to allocate nonsubmetered master metered utilities to tenants, other than the method outlined in this section, must be approved by the executive director.]

[(4) Billings to the tenant shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, utility billing information must be separate and distinct from any other charges on the bill.]

(e) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(f) Disputed bills. In the event of a dispute between the tenant and the owner regarding any bill, the owner shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.

(g) Tenant access to submeter [submetering] records. The tenants of any dwelling unit whose water consumption or wastewater based on water consumption is submetered shall be allowed by the owner to review and copy the utility bill [master billing] for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house [or], condominium, mobile home park or multiple use facility for the current month and for the 12 preceding months.

(h) Estimated submeter [submetering] bills. Estimated bills shall not be rendered unless the submeter [meter] has been tampered with or is out of order, and in such case the bill shall be distinctly marked as an estimate. [such]

(i) Overbilling and underbilling. If billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled for a period not to exceed six months. If the underbilling is \$25.00 or more, the owner shall offer the [to such] tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(j) Payments. Unless clearly designated by the tenant, payments shall be applied first to rent and then to utilities. The owner shall not ask the tenant to waive the option of designating how each of the tenant's payments is applied.

(k) Late fee. A one time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease or condominium document which states the [exact dollar or] percentage amount of such late penalty.

(l) A reconnect fee may be applied if submetered or allocated utility service [to the tenant] is disconnected for non-payment of bills in accordance with §291.126 of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the

owner for the expenses associated with reconnecting service, [the reconnection] but under no circumstance shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease or condominium document which states the exact dollar amount of such reconnect charge.

(m) Billing form. Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. If issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill. Submetered or allocated charges shall not be included as part of the rental fee or as part of charges for any other service to the tenant. The bill must clearly state the water or wastewater is "submetered" or "allocated" as applicable and shall include all of the following: [The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges except as provided in paragraphs (k) and (l) of this section.]

(1) The total amount due for water and/or wastewater used;

(2) A clear and unambiguous statement that the bill is not from the utility which shall be named in the statement;

(3) The name and address of the tenant to whom the bill is applicable;

(4) The name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute;

(5) The date by which the tenant must pay the bill;

(6) The name, address, and telephone number of the party to whom payment is to be made; and

(7) The amount due if a late payment penalty is incurred.

(n) Calculating submetered bill.

(1) Bills shall be rendered as promptly as possible following the reading of submeters.

Submeters shall be read within three days of the scheduled reading date of the utility's master meter.

(2) The billing unit shall be that used by the utility in its billing to the owner such as gallons or cubic feet.

(3) The tenant's submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall divide the total net charges for water and/or wastewater utilities, plus applicable tax and surcharges, by the total number of billing units to obtain an average cost per billing unit. This average cost shall then be multiplied by the tenant's consumption to calculate the tenant's bill.

(4) In addition to the information required in subsection (m) of this section, the tenant's bill for submetered service shall include all of the following:

(A) The date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(B) The number of billing units metered;

(C) The cost per billing unit.

(o) Calculating allocated bill. The calculation of allocated utility service costs to tenants shall be based on one of the following methods. Any method other than the methods outlined in this section must be approved by the executive director before it is implemented. Within 275 days after the effective date of the subchapter, an owner using any method other than those outlined in this section must obtain written authorization from the executive director approving an alternate method or adopt one of the following allocation methods and provide notice to tenants of this change as required by §291.125(b) of this title (relating to Rental Agreement and Billing).

(1) The number of occupants in the dwelling unit as a percentage of the total number of occupants in all dwelling units;

(2) The individually submetered hot water usage of the dwelling unit as a percentage of all individually submetered hot water usage of all dwelling units;

(3) The individually metered or submetered electricity consumption of the dwelling unit as a percentage of all individually metered or submetered electricity consumption.

§291.126. Discontinuance of Service.

(a) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A condominium tenant's submetered or allocated utility service shall not be disconnected for nonpayment of any charges or assessments owed by a condominium member when those charges or assessments are unrelated to the service being disconnected. A tenant's utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnecting [reconnection of] service.

(b) Disconnection on holidays and weekends. Unless a dangerous condition exists which is related to the type of service provided, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when the owner or his representative is [personnel of the apartment house or mobile home park are] not available to collect payments [for the purpose of making collections] and reconnect [reconnecting] service.

§291.127. Submeters.

(a) Submeter requirements.

(1) Use of submeter. Unless otherwise provided by the executive director, no dwelling unit may be submetered unless all dwelling units are submetered. [All water sold by an owner shall be charged for by meter measurements.]

(2) Installation by owner. Unless otherwise authorized by the executive director, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water or wastewater to its tenants.

(b) Submeter records. Each owner shall keep the following records.

(1) Submeter equipment record. Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(2) Records of submeter tests. All submeter tests shall be properly referenced in the submeter record required by this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.

(c) Submeter readings. In general, each meter shall indicate clearly the gallons for which charge is made to the tenant.

(d) Submeter tests on request of tenant. Upon the request of a tenant, each owner shall either: [Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's presence or in that of the tenant's authorized representative, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters, a charge of up to \$25 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.]

(1) Provide evidence the meter was calibrated or tested within the preceding 12 month period and found to be within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters and provide the evidence to the tenant at no charge; or

(2) Make a test of the accuracy of the tenant's submeter in the tenant's presence if the tenant so desires. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If evidence of the submeter's accuracy as described in paragraph (1) of this subsection was provided and the submeter is found to be accurate, a fee of up to \$25 may be charged the tenant for the test. No fee may be charged the tenant for the test if the submeter's accuracy is not within the appropriate accuracy standards. Following completion of any requested test, the owner shall promptly advise the tenant of the test results.

(e) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (d) of this section, proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with §291.125(i) of this title (relating to Rental Agreement and Billing). If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

[(f) Bill adjustment due to conversion. If, during the 90 day period preceding the installation of meters, an owner increases rental rates, such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase shall refund all of such increase that has previously been collected within said 90 day period.]

(f) [(g)] Location of submeters. Submeters or cut-off valves in conjunction with the submeters, shall be installed in accordance with applicable plumbing codes and standards set by the AWWA unless otherwise approved by the executive director, and will be readily accessible for reading, testing, and inspection where such activities will cause minimum interference and inconvenience to the tenant.

(g) [(h)] Submeter testing facilities and equipment. Unless other reference standards and procedures are approved by the executive director the following standards and procedures must be followed.

(1) Reference standards. Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing [billing] submeters.

(2) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the executive director to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(3) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least once each year during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

(h) [(i)] Accuracy requirements for submeters. Submeters shall be adjusted as close as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.

(i) [(j)] Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.

[(k) Restriction Unless otherwise provided by the executive director, no dwelling unit may be submetered unless all dwelling units are submetered.]

(j) [(l)] Same type meters required. All submeters which are served by the same master meter shall be of the same type.

SUBCHAPTER I : WHOLESALE WATER OR SEWER SERVICE

§291.138

STATUTORY AUTHORITY

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other rules, codes or statutes that will be affected by this proposal.

§291.138. Filing of Rate Data.

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission may require [requires] each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.

(b) Within 30 days after receiving a written request from the executive director, a [By January 31st of each odd-numbered year each] provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.

SUBCHAPTER J : ENFORCEMENT, SUPERVISION AND RECEIVERSHIP

§291.140, §291.144

STATUTORY AUTHORITY

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.140 implements Texas Water Code §13.411. Section 291.144 implements Texas Water Code §13.418 and Texas Health and Safety Code §341.0485.

There are no other rules, codes or statutes that are affected by this proposal.

§291.140. Enforcement Action

If the executive director has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director shall immediately:

(1) Notify the utility's representative; and

(2) Initiate enforcement action consistent with:

(A) This subchapter; and

(B) Procedural rules adopted by the commission.

§291.144. Fines and Penalties.

(a) Disposition.

(1) Fines and penalties collected under Water Code Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(2) Fines and penalties collected from a public utility under Water Code, Chapter 13, in other than criminal proceedings shall be paid to the commission and deposited in the water utility improvement account (see subsection (b) of this section).

(3) A civil or administrative penalty payable to the state that is collected from a utility for a violation of Health and Safety Code, Subchapter C, Chapter 341, shall be deposited in the water utility improvement account (see subsection (b) of this section).

(b) Water Utility Improvement Account [General Revenue Fund].

(1) Money in the account may be used only for:

(A) Capital improvements to the water or sewer system of a utility that has paid fines or penalties under Health and Safety Code, Subchapter C, Chapter 341, or under Water Code, Chapter 13, that have been deposited in the account; or

(B) Capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Water Code, §13.4132.

(2) Money used under subsection (b)(1)(A) of this section for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of the sales price equivalent to the percentage of the used and useful facilities that were constructed with money under subsection (b)(1)(A) of this section shall be immediately distributed equally to the current customers of the utility.

(3) Money used under subsection (b)(1)(B) of this section may not be considered as invested capital of the utility for any purpose.

SUBCHAPTER K : PROVISIONS REGARDING MUNICIPALITIES

§§291.150, 291.151, 291.152, 291.153

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.152 implements Texas Water Code §13.045. Section 291.153 implements Texas Water Code §13.086.

There are no other codes, rules or statutes that will be affected by this proposal.

§291.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(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.

§291.151. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters E and F of this chapter.

§291.152. Notification Regarding Use of Revenue.

At least annually and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure not water or sewer related funded in whole or in part by customer revenue.

§291.153. Fair Wholesale Rates for Wholesale Water Sales to a District.

(a) A municipality that makes a wholesale sale of water to a special district created under §52, Article III, or §59, Article XVI, Texas Constitution, and that operates under Title 4 (General Law Districts), or under Chapter 36 (Groundwater Conservation Districts) shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before September 1, 1997.