

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 18, 2008
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Dan Eden, Deputy Director
Office of Permitting, Remediation, and Registration
Docket No.: 2008-0515-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 291, Utility Regulations
HB 149: Temporary Rates
Rule Project No. 2008-014-291-PR

Reasons for the rule package:

In 2007, the 80th Legislature passed House Bill (HB) 149 which amended Texas Water Code (TWC), §13.046. This proposed rulemaking will implement this change by amending Chapter 291, Utility Regulations.

- **Under what authority are we proposing these changes?**
The amendments are proposed under TWC, §5.102, which provides the commission the general powers to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Additionally, TWC, §13.046 requires the commission to adopt rules that allow a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system.
- **Is this rulemaking required by federal rule or state statute? Which ones?**
The proposed rulemaking is required to implement TWC, §13.046.
- **Are there any legal deadlines by which these rules must be proposed, adopted, or effective?**
No.
- **What issue(s) or problem(s) are we trying to solve?**
This rulemaking will implement an amendment to the TWC made during the 80th Legislative Session, 2007.
- **Why is it important that we do this rule package?**
To implement TWC, §13.046 as amended by HB 149.
- **Other important background or historical information.**
Representative Larry Phillips sponsored HB 149.

Scope of the rulemaking:

This rulemaking proposes to implement HB 149, 80th Legislative Session, 2007, regarding certain capabilities of retail public water utilities to provide water and sewer service in the state by amending various sections of Chapter 291.

- **Changes required by federal rule:**
None.
- **Changes required by state statute:**
TWC, §13.046, as added by HB 149, allows a utility that takes over a nonfunctioning utility to charge reasonable temporary rates and give the utility a reasonable period of time to bring the nonfunctioning system into compliance with commission rules before the commission assesses penalties.
- **Staff recommendations that are not expressly required by federal rule or state statute:**
None.

Impact on the regulated community:

- **Who will be affected?**
HB 149 affects a retail public utility taking over a nonfunctioning retail water or sewer utility to apply for a ruling by the commission on the reasonableness of newly implemented rates to recover service costs. The commission would be required to consult with the utility to establish a reasonable timeframe to bring the water or wastewater system into compliance with commission rules. The proposed rules would also prohibit the commission from imposing penalties during this period for violations existing at the time the nonfunctioning system was taken over by the functioning retail public utility.
- **Does it create a group of affected persons who were not affected previously? How?**
No.
- **Will there be a fiscal impact? If so, estimate.**
Since the proposed rules would allow a retail public utility to recoup reasonable costs and avoid the payment of penalties for certain violations, no significant fiscal impacts are expected to affect local governments providing retail water and sewer services to an area previously serviced by a nonfunctioning water or sewer utility. Staff expects at least one municipality will take over a nonfunctioning system.

Impact on the public:

- **Who will be affected?**
Retail water or sewer service customers.
- **Does it create a group of affected persons who were not affected previously? How?**
No.
- **Will there be a fiscal impact? If so, estimate.**
Although some individual consumers may see an increase in the costs of retail water or sewer service, the proposed rules will help ensure that this service remains safely available and

interruptions in this service are minimized as much as possible. By giving retail water and wastewater providers the ability to charge reasonable rates to cover increased costs and thus provide incentives to take over nonfunctioning water and sewer systems, consumers should experience continued confidence or greater convenience concerning retail public utilities providing safe drinking water and adequate sewer services.

The proposed rules are not anticipated to have a significant fiscal impact for the individuals or large businesses providing retail water or sewer services to the general public. The proposed rules are optional in many cases. Any rate increases are expected to cover costs, and the commission must ensure the costs are reasonable.

Impact on agency programs:

Enforcement Division and Field Operations Division: Based on the specific language "must consult" in the bill, the proposed rules will include compliance discussions between the Regional Offices, the Enforcement Division, and the acquiring utility. Since the legislation gives the TCEQ discretion for the timeframe the acquiring system has to bring the system into compliance, the discussions will most likely focus on a compliance plan under reasonable timeframes.

Stakeholder meetings:

- **Have any stakeholder meetings been held?**
Yes, on April 22, 2008 in Austin, Texas.
- **With whom?**
The Drinking Water Advisory Work Group (DWAAG), a group of participants that meets on a quarterly basis to discuss issues related to drinking water with emphasis on compliance with state and federal regulations and improving customer service to the public. The DWAAG currently has representation from the American Water Works Association, Texas Rural Water Association, Texas Water Utilities Association, Independent Water & Sewer Companies of Texas, Texas Municipal League, Clean Water Action, Consumers Union, League of Women Voters, Sierra Club, Texas Water Conservation Association, Association of Water Board Directors, Community Resource Group, Dow Chemical, attorneys, engineers, and individual citizens.
- **What were the general sentiments?**
One commenter stated that HB 149 was not limited to receivership situations; that HB 149 also applied to nonfunctioning systems, system acquisitions, as well as related compliance issues and rate stream issues.
- **Were any changes made in response to stakeholder concerns?**
Staff expanded the definition of "nonfunctioning system." This definition is in line with the legislation and includes all municipalities, water supply corporations, districts, river authorities, investor owned utilities, and other local governments. Additionally, staff added proposed new §291.147 to reflect those entities affected by the legislation.

Policy issues:

- **What policy issues are affected?**
No policy issues are affected.
- **Are any policies that are not currently based on rule being made into a rule?**
No.
- **What are the consequences if this rulemaking is not approved to go forward?**
Without approval, Chapter 291 will be inconsistent with the state statutes.
- **Are there alternatives?**
No.

Potentially controversial matters:

None.

Key points in proposed rulemaking schedule:

- **Anticipated proposal date:** August 6, 2008
- **Anticipated *Texas Register* publication date:** August 22, 2008
- **Public hearing date :** September 18, 2008
- **Public comment period:** August 22, 2008 through September 22, 2008
- **Anticipated adoption date:** January 7, 2009

Agency contacts:

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Attachments

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