ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (the finance commission) adopts amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. The amended rules are adopted without changes to the proposed text as published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 4863). The amended rules will not be republished.

The amendment to §9.1 clarifies the authority of the Texas Department of Banking (DOB) to employ a hearings officer by adding a reference to Texas Finance Code, §11.202 which provides the statutory authority for the DOB to employ a hearings officer to serve the finance agencies.

The amendments to §9.12 clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the DOB, the Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The amendments ensure 9.12 conforms to the State Office of Administrative Hearings (SOAH) procedural default rule (1 TAC §155.501), which was updated November 20, 2020.

The finance commission received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL

7 TAC §9.1

The amendment to §9.1 is adopted pursuant to Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.005(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter 712; and Texas Occupations Code, Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403790

Robert K. Nichols
General Counsel
Finance Commission of Texas
Effective date: September 5, 2024
Proposal publication date: July 5, 2024
For further information, please call: (512) 475-1382

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SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.12

The amendments to §9.12 are adopted pursuant to Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.005(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter 712; and Texas Occupations Code, Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403791
Robert K. Nichols
General Counsel
Finance Commission of Texas
Effective date: September 5, 2024
Proposal publication date: July 5, 2024
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CHAPTER 10. CONTRACT PROCEDURES
SUBCHAPTER C. CONTRACT MONITORING

7 TAC §10.40

The Finance Commission of Texas (the finance commission) adopts amendments to §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on commission supervised finance agency websites. The amendments are adopted without changes to the proposed text as published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 4865). The amended rule will not be republished.

The amendments remove a redundant provision of the rule and ensure §10.40 conforms with Texas Government Code, §2261.253 by clarifying the full scope of the rule and implementing minimum risk assessment factors required in each agency's contract management handbook to identify contracts that require enhanced contract or performance monitoring.

The finance commission received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the adoption are contained in Texas Government Code, Chapter 2261.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403792
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Effective date: September 5, 2024
Proposal publication date: July 5, 2024
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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.27

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §33.27 (§33.27), concerning fees to obtain and maintain money transmission and currency exchange licenses. The amended rule is adopted without changes to the proposed text as published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 4866). The amended rule will not be republished.

The proposed rule amendments were changed slightly from the draft approved for publishing by the commission in response to comments received from the Texas Register staff, at the Texas Secretary of State's office, prior to publication in the *Texas Register.* In the preamble, the changes were not substantive and were regarding confirmation that there would be no impact on rural communities. In the rule itself, non-substantive updates were made to the way in which paragraphs were designated.

The adopted amendments to §33.27: (i) update the assessment fee schedules in subsections (e)(1) and (e)(2) to reflect the assessments set forth in the attached Figure: 7 TAC §33.27(e)(1) and Figure: 7 TAC §33.27(e)(2), respectively; (ii) add subsection (e)(4) permitting the department to increase assessments based on the percentage change in an inflation index beginning September 1, 2025; and (iii) increase the hourly examination fees in subsections (d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2), and (h)(4) to $120 per hour.

The department determined that key regulatory functions are not adequately funded by the existing fee structure, primarily due to increase in labor and other costs. The amendments to §33.27 increase the allowable annual assessments paid by money services businesses to offset forecasted funding shortfalls.

The department observed increases in operational costs over the past few fiscal years. The department's costs for money services business programs, such as the required periodic examination of each licensed business, have increased over the years due to a variety of factors including the following: rising inflation impacting items such as travel costs; the necessity to attract, hire, and retain qualified personnel; and the additional time, resources, and attention required by the increasing complexity of money services business operations.

As a result, the staffing plan for full-time money services business financial examiners has increased from six in fiscal year 2021 to 12 in fiscal year 2023. Fiscal year 2024's staffing plan further increases the number of examiners to 15 in order to properly, and timely, examine license holders and anticipated new license holders as projected from current applications.

The department is also incurring new costs related to the passage of Chapter 160 of the Finance Code, which became effective September 1, 2023. Chapter 160 charges the department with ensuring money transmitters that qualify as digital asset service providers comply with certain standards. The build out of an expanded regulatory scheme to administer the new Chapter 160, which includes an expanded examination scope for the eligible digital asset service providers, generate costs to the department which have not been previously incurred.

Based on historical examination data and costs, coupled with the increased complexity of the examinations, the department constructed the adopted fee adjustments, including the inflationary adjustments, to provide the funding required to administer and enforce Finance Code, Chapters 152 and 160 in a manner that is fair and equitable to licensees.

The department received no comments regarding the proposed amendments. Notice of the intent to amend §33.27 was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule has the potential to affect market competition. The Division also received no comments and approved the amendment without further revision.

The amendment is adopted pursuant to Finance Code, §§152.052 and 160.006, which authorize the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 152, and Chapter 160, respectively. The commission may by rule impose and collect proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to recover the cost of maintaining and operating the department, administering, and enforcing Chapter 152 and other applicable law, and achieve the purposes of Chapter 152 and Chapter 160. Chapter 152 was enacted by Senate Bill 895 and Chapter 160 was enacted by House Bill 1666 during the 88th Legislative Session.

Texas Finance Code §§152.107 and 160.005 are affected by the proposed amended sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403788
Robert K. Nichols
General Counsel
Texas Department of Banking
Effective date: September 5, 2024
Proposal publication date: July 5, 2024
For further information, please call: (512) 475-1382

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7 TAC §33.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to 7 TAC §33.51, concerning providing information to customers on how to file a complaint. The amendment is adopted without changes to the proposed text as published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 4870). The amended rule will not be republished.

The amendment updates a citation referencing Chapter 151 to instead reference Chapter 152 of the Finance Code. The amendment arises from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session. Effective September 1, 2023, Senate Bill 895 repealed Chapter 151 of the Texas Finance Code (Finance Code) and added Chapter 152 relating to the regulation of money services businesses.

The department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Finance Code, §152.052, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403789
Robert K. Nichols
General Counsel
Texas Department of Banking
Effective date: September 5, 2024
Proposal publication date: July 5, 2024
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86 RETAIL CREDITORS
SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC Chapter 86, concerning Retail Creditors.

The commission adopts the amendments to §86.201 without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2871). The rule will not be republished.

The commission received no official comments on the proposed amendments.

The rule at §86.201 relates to documentary fees for retail installment transactions under Texas Finance Code, Chapter 345. In general, the purpose of the rule changes to 7 TAC §86.201 is to adjust the maximum documentary fee amount under the rule.

The Office of Consumer Credit Commissioner (OCCC) distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received three written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Texas Finance Code, Chapter 345 governs retail installment transactions to purchase goods other than motor vehicles. Under Texas Finance Code, §345.251(a), a retail seller may charge a documentary fee in a retail installment transaction to purchase a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. Under Texas Finance Code, §345.251(b)(2), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission."

Currently, §86.201 describes the maximum documentary fee in a Chapter 345 retail installment transaction. The rule distinguishes between retail installment transactions for covered land vehicles (i.e., motorcycles, mopeds, all-terrain vehicles, boat trailers, and towable recreational vehicles) and covered watercraft (i.e., boats and boat motors). Current §86.201(c) contains a $125 maximum documentary fee for the purchase of one or more covered land vehicles. Current §86.201(d) contains a $125 maximum documentary fee for the purchase of one or more covered watercraft. Current §86.201(e) contains a $175 maximum documentary fee for the purchase of one or more covered land vehicles and one or more covered watercraft.

In 2013, the commission adopted the $125 and $175 amounts in §86.201. The amounts have not been adjusted since then. As the commission explained in its preamble to the 2013 adoption, the rule's fee amounts and terminology are intended to correspond to different sets of titling and registration requirements. Land vehicles are subject to titling and registration requirements administered by the Texas Department of Motor Vehicles (TxDMV) under Texas Transportation Code, Chapters 501 and 502. Watercraft are subject to titling and registration requirements administered by the Texas Parks and Wildlife Department (TPWD) under Texas Parks and Wildlife Code, Chapter 31. As the commission explained, the higher $175 amount for the purchase of both types of vehicles "is intended to compensate the retail creditor for the documents and procedures that are necessary to title items with both TxDMV and TPWD." 38 TexReg 5707 (Aug. 30, 2013).

Adopted amendments throughout §86.201 adjust the maximum documentary fee for a Chapter 345 retail installment transaction. An amendment to §86.201(c) adjusts the documentary fee for a covered land vehicle from $125 to $200. An amendment to §86.201(d) adjusts the documentary fee for covered watercraft from $125 to $200. An amendment to §86.201(e) adjusts the documentary fee for both a covered land vehicle and covered watercraft from $175 to $250.

The commission and the OCCC believe that now is an appropriate time to revisit the maximum documentary fee amounts in §86.201 and to adjust them. The $75 adjustment corresponds to a similar adjustment recently adopted by the commission in amendments to 7 TAC §84.205 (relating to Documentary Fee), concerning documentary fees for motor vehicles. See 49 TexReg 4903 (July 5, 2024). The amendments to §84.205 adjusted the motor vehicle documentary fee amount considered reasonable from $150 to $225. That adoption was based on the OCCC's ongoing review of documentary fee cost analyses, as well as documentary fee amounts found to be reasonable in a recent contested case.

The commission and the OCCC believe that a corresponding $75 adjustment is appropriate for covered land vehicles and watercraft under §86.201. The $200 amount is appropriate because these vehicles are subject to similar document-related requirements that apply to motor vehicles; many, but not all, of the motor vehicle document requirements apply to vehicles under §86.201. For example, vehicles under §86.201 are subject to titling and registration requirements (as described earlier in this preamble) but generally are not subject to the requirements to provide a new car window sticker or a used car buyers guide. See 15 U.S.C. §1232 (requirement to provide new car window sticker applies to automobiles), Federal Trade Commission Used Car Rule, 16 C.F.R. §455.1(d)(2) (requirement to provide used

car buyers guide applies to certain motorized vehicles other than motorcycles).

In informal precomments, stakeholders expressed general support for the proposed amendments. Two boating trade associations filed precomments supporting the proposed amendments. A third informal precomment was filed on behalf of a motorcycle trade association, a recreational vehicle association, and two boating trade associations. This precomment stated that the associations support the proposed amendments and stated: "We can confirm that our dealers conduct the same required administrative work to complete transactions as do automobile dealers: vehicle titling (which sometimes requires in-person visits to county offices), vehicle registration, submitting taxes, obtaining and mailing license plates, ensuring liens are correctly recorded and released, verifying a trade-in's value and whether it has open recalls, etc." The precomment also stated: "Costs have increased since 2013 due to general inflation, specific cost increases and heightened state and federal regulatory requirements. We have seen increased costs across multiple categories, including wages (up over 50% in some labor markets), real property leasing rates, technology (with specific new hardware, software and printers now mandated) and postage."

The rule amendments are adopted under Texas Finance Code, §345.251(b)(2), which authorizes the Finance Commission to adopt a rule establishing a reasonable maximum documentary fee amount, and Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to enforce Texas Finance Code, §345.251. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 345.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403786
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Effective date: September 5, 2024
Proposal publication date: May 3, 2024
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §22.123, relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission; §22.181, relating to Dismissal of a Proceeding; and §22.262, relating to Commission Action After a Proposal for Decision. The commission adopts §22.123 and §22.181 with changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4666) and these rules will be republished. The commission adopts §22.262 with no changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4666) and this rule will not be republished.

Amended §22.123 clarifies that appeals for evidentiary rulings are prohibited and replaces service for an appeal or motion of reconsideration from facsimile transmission to service by electronic mail. Amended §22.123 increases the timeframe before an appeal or motion for reconsideration is denied if not placed on an open meeting agenda from ten days to 20 days. Amended §22.123 also expressly indicates the commission will either rule on an appeal or motion for reconsideration, or extend time to act on it.

Amended §22.181 specifies that the 20-day default timeline to respond to a motion to dismiss may be revised by the presiding officer and adds failure to prosecute or failure to amend an application as grounds for an administrative law judge to dismiss a proceeding without issuing a proposal for decision. Amended §22.181 also clarifies that an order from an administrative law judge dismissing a proceeding under the revised provisions is a final order of the commission and is subject to motions for rehearing under §22.264 of this title, relating to Rehearing, and clarifies the authority of the presiding officer to grant a request to withdraw an application in certain instances.

Amended §22.262 specifies that a request for oral argument must be filed no later than seven days - as opposed to seven working days - before the open meeting at which the commission is scheduled to consider the case, and that two days prior to an open meeting, the Office of Policy and Docket Management will file a notice to the parties regarding whether the request for oral argument has been granted.

The amended rules also revise each instance of "Policy Development Division" to properly refer to the "Office of Policy and Docket Management" and make minor and conforming changes consistent with the commission's current drafting practices.

The commission received comments on the proposed rule from: the Alliance for Retail Markets and the Texas Energy Association for Marketers, filing collectively as REP Coalition, and the Texas Rural Water Association (TRWA).

Proposed §22.123(a)(7)(A) and (b)(6)(A)

REP Coalition recommended revising proposed §22.123(a)(7)(A) and (b)(6)(A) by extending the proposed 20-day timeline for placing an appeal or motion for reconsideration of an interim order on the agenda of an open meeting to 30 days or more if the additional time would be helpful for the commission. REP Coalition also recommended the commission provide more specific information regarding when the commission will review an appeal that has not been denied. REP Coalition explained that 30 days would provide the commission with one or two additional open meetings if a decision is not ready. Moreover, REP Coalition argued that a longer deadline would appropriately balance administrative efficiency without causing undue delay. REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to further increase the deadline for a commissioner to place an appeal or motion for reconsideration on the agenda of an open meeting because the commission already handles appeals and motions for reconsideration expedi-

tiously. Extending the initial ballot timeline from 10 days to 20 days, as proposed, is therefore sufficient and will enable a more thorough and efficient analysis of such filings.

Proposed §22.123(a)(7)(B) and (b)(6)(B)

REP Coalition recommended revising proposed §22.123(a)(7)(B) and (b)(6)(B) such that an appeal and motion for reconsideration be placed on the open meeting agenda ballot unless that open meeting is less than seven days away from the date of the agenda ballot, in which case it will be placed on the agenda for the next scheduled open meeting. REP Coalition commented that its proposed language clarifies that the applicable open meeting timing does not conflict with the seven-day posting requirement for open meetings prescribed by Texas Government Code §551.044. REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to implement REP Coalition's proposed change because it is unnecessary. The statutory requirements related to the posting of items on open meetings are binding on the commission and taken into account during the balloting and scheduling of open meeting items.

REP Coalition and TRWA recommended preserving the three-day default timeline for the commission to issue an order on an interim appeal or motion for reconsideration and the general authorization for the commission to extend that timeline. REP Coalition also recommended language limiting the commission from extending agency action beyond 30 days from the date the interim order was initially considered. REP Coalition noted that the proposed language removes "all reference to expiration of the time for ruling on the appeal or motion for reconsideration or extensions." REP Coalition commented that it would be beneficial to have a streamlined and uniform process for the processing of such appeals and motions. REP Coalition provided draft language consistent with its recommendation. TRWA opposed the changes to proposed §22.123(a)(7)(B) and (b)(6)(B) and recommended the commission preserve the three-day deadline for the commission to rule on an appeal or motion for rehearing on an interim order for efficiency and timely resolution of commission proceedings. TRWA contended that the revisions "indefinitely extends the time" the commission can consider such an appeal or motion for rehearing and, therefore, significantly prolong the hearing process. TRWA commented that such a change could significantly extend costly legal proceedings and create regulatory uncertainty among PUC regulated utilities, particularly small water and wastewater utilities. TRWA explained that the small water and wastewater utilities it represents typically have an average of 1,500 connections and, therefore, the high cost of legal fees for proceedings before the commission are burdensome and disproportional to any benefit received and negatively impact customers by requiring increased rates to cover such costs. TRWA concluded that the proposed change would exacerbate this issue. TRWA also recommended that the commission streamline processes for small utilities to ensure that funds that would be spent on legal fees could instead be invested in infrastructure and compliance.

Commission Response

The commission declines to preserve the three-day deadline for the commission to rule on an appeal of, or motion for reconsideration of, an interim order as recommended by commenters. The commission also declines to add further constraints on commission extensions of such deadlines as proposed by REP Coalition because the existing rule contains no such limitations. However, to address both commenters' concerns, the commission adds to both §22.123(a)(7)(B) and (b)(6)(B) language that states the commission will either rule on the appeal or motion for reconsideration at the scheduled open meeting or extend time to act on the appeal or motion.

Proposed §22.181(e)

REP Coalition recommended that the standards for dismissal under the Texas Rules of Civil Procedure be incorporated by reference in proposed §22.181(e) to establish "a reasonable, uniform, and easily accessible standard for proceedings" before the commission.

Commission Response

The commission declines to implement REP Coalition's proposed change because it is unnecessary, overly broad, and likely to create, not eliminate, confusion. The grounds for dismissal under §22.181 are different in many respects from the grounds for dismissal contemplated in the Texas Rules of Civil Procedure (TRCP). For example, TRCP Rule 162 is far less specific than §22.181. Accordingly, the change sought by the REP Coalition--a statement in §22.181 that dismissal will be governed by the same standards for dismissal of a proceeding as are applied by Texas courts under the Texas Rules of Civil Procedure--will create more confusion and uncertainty than it eliminates.

SUBCHAPTER G. PREHEARING PROCEEDINGS

16 TAC §22.123

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under the following provisions of the Texas Water Code: §13.004, which prescribes the jurisdiction of the commission over certain water supply or sewer service corporations; §13.041(a) which generally authorizes the commission to regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation; §13.041(b) which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §13.042 which prescribes the cope of the commission's jurisdiction over municipalities, and §13.043 which provides for the commission's general appellate authority.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

§22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.

(a) Appeal of an interim order.

(1) Availability of appeal. Appeals are available for any interim order of the presiding officer that immediately prejudices a sub-

stantial or material right of a party or materially affects the course of the hearing. Appeals are not available for evidentiary rulings. Interim orders are not subject to exceptions or motions for rehearing.

(2) Procedure for appeal. If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer must so indicate on the record at the time of the oral ruling and must promptly issue the written order. Any appeal to the commission from an interim order must be filed within ten days of the issuance of the written order or the appealable oral ruling when no written order is to be issued. The appeal must be served on all parties by hand delivery, electronic mail, or by overnight courier delivery.

(3) Contents. An appeal must specify the reasons why the interim order is unjustified or improper and how it immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.

(4) Responses. Any response to an appeal must be filed within five working days of the filing of the appeal.

(5) Motion for stay. Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay must specify the basis for a stay. Good cause must be shown for granting a stay. The mere filing of an appeal does not stay the interim order or any applicable procedural schedule.

(6) Agenda ballot. Upon the filing of an appeal, the Office of Policy and Docket Management must send a separate ballot to each commissioner to determine whether the commission will consider the appeal at an open meeting. Untimely motions will not be balloted. The Office of Policy and Docket Management must notify the parties whether a commissioner by individual ballot has added the appeal to an open meeting agenda but will not identify the requesting commissioner or commissioners.

(7) Denial or granting of appeal.

(A) If no commissioner has placed an appeal on the agenda of an open meeting by agenda ballot within 20 days after the filing of an appeal, the appeal is deemed denied.

(B) If any commissioner has voted by agenda ballot in favor of considering the appeal, the appeal will be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. If two or more commissioners vote to consider the appeal, but differ as to the date the appeal will be heard, the appeal must be placed on the latest of the dates specified by the ballots. At the open meeting, the commission will either rule on the appeal or extend time to act on it.

(8) Reconsideration of appeal by presiding officer. The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal before a commission decision on the appeal. The presiding officer must notify the commission of its decision to treat the appeal as a motion for reconsideration.

(b) Motion for reconsideration of interim order issued by the commission.

(1) Availability of motion for reconsideration. Motions for reconsideration are available for any interim order of the commission that immediately prejudices a substantial or material right of a party or materially affects the course of the hearing. Motions for reconsideration may only be filed by a party to the proceeding and are not available for evidentiary rulings. Interim orders are not subject to exceptions or motions for rehearing.

(2) Procedure for motion for reconsideration. If the commission does not intend to reduce an oral ruling to a written order, the commission will so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission must be filed within five workings days of the issuance of the written interim order or the oral interim ruling. The motion for reconsideration must be served on all parties by delivery, electronic mail, or by overnight courier delivery.

(3) Content. A motion for reconsideration must specify the reasons why the interim order is unjustified or improper.

(4) Responses. Any response to a motion for reconsideration must be filed within five working days of the filing of the motion.

(5) Agenda ballot. Upon the filing of a motion for reconsideration, the Office of Policy and Docket Management must send a separate ballot to each commissioner to determine whether the commission will consider the motion at an open meeting. The Office of Policy and Docket Management must notify the parties whether a commissioner by individual ballot has added the motion to an open meeting agenda but will not identify the requesting commissioner or commissioners.

(6) Denial or granting of motion.

(A) If no commissioner has placed a motion for reconsideration on the agenda for an open meeting by agenda ballot within 20 days after the filing of the motion, the motion is deemed denied.

(B) If any commissioner has voted by agenda ballot in favor of considering the motion, the motion will be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. If two or more commissioners vote to consider the motion, but differ as to the date the motion will be heard, the motion must be placed on the latest of the dates specified by the ballots. At the open meeting, the commission will either rule on the motion or extend time to act on it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403772
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 5, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §22.181

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission to adopt and enforce rules governing practice and procedure

before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under the following provisions of the Texas Water Code: §13.004, which prescribes the jurisdiction of the commission over certain water supply or sewer service corporations; §13.041(a) which generally authorizes the commission to regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation; §13.041(b) which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §13.042 which prescribes the cope of the commission's jurisdiction over municipalities, and §13.043 which provides for the commission's general appellate authority.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

§22.181. Dismissal of a Proceeding.

(a) Dismissal of a proceeding. Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section.

(b) Dismissal of issues within a proceeding. Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss or may recommend that the commission dismiss, with or without prejudice, one or more issues within a proceeding for any reason specified in this section.

(c) Dismissal without hearing. A dismissal under this section requires a hearing unless the facts necessary to support the dismissal are uncontested or are established as a matter of law.

(d) Reasons for dismissal. Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons:

(1) lack of jurisdiction;

(2) moot questions or obsolete petitions;

(3) res judicata;

(4) collateral estoppel;

(5) unnecessary duplication of proceedings;

(6) failure to prosecute;

(7) failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient;

(8) failure to state a claim for which relief can be granted;

(9) gross abuse of discovery consistent with §22.161(b)(2) of this title (relating to Sanctions);

(10) withdrawal of an application consistent with subsection (g) of this section; or

(11) other good cause shown.

(e) Motion for dismissal, responses, and replies. Dismissal of a proceeding or one or more issues within a proceeding may be made upon the motion of the presiding officer or the motion of any party.

(1) A party's motion for dismissal must specify at least one of the grounds for dismissal identified in subsection (d) of this section. The motion must include a statement that explains the basis for the dismissal and if necessary:

(A) A statement that sets forth the material facts that support the motion; and

(B) An affidavit that supports the motion and that includes evidence that is not found in the then-existing record.

(2) A presiding officer's motion must be provided by written order or stated in the record and must specify one or more grounds for dismissal identified in subsection (d) of this section and a clear and concise statement of the material facts supporting the dismissal.

(3) The party that initiated the proceeding and any other party has 20 days from the date of receipt to respond to a motion to dismiss unless the presiding officer specifies otherwise. The response must contain a statement of reasons the party contends the motion to dismiss should not be granted, and if necessary

(A) A statement that refers to each material fact identified in the motion to dismiss as uncontested that the responding party contends is contested; and

(B) An affidavit that supports the response to the motion to dismiss and that includes evidence the party relies upon to establish contested issues of fact. The affidavit may include evidence that is not found in the then-existing record.

(4) Replies to a response to a motion to dismiss may be made only by leave of and as directed by the presiding officer.

(f) Action on a motion to dismiss. Action on a motion to dismiss must conform to this subsection.

(1) If a hearing on the motion to dismiss is held, that hearing must be confined to the issues raised by the motion to dismiss.

(2) If the administrative law judge determines that all issues within a proceeding should be dismissed, the administrative law judge must prepare a proposal for decision in accordance with §22.261 of this title (relating to Proposals for Decision) to that effect, unless the reason for dismissal is solely one of the following:

(A) the withdrawal of an application under subsection (g)(1), (2), or (3) of this section; or

(B) either failure to prosecute under subsection (d)(6) of this section or failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient under subsection (d)(7) of this section, or both, and the dismissal is without prejudice.

(3) For dismissal under paragraphs (2)(A) and (2)(B) of this subsection, the administrative law judge may issue an order dismissing the proceeding. An order issued under this paragraph is a final order of the commission and is subject to motions for rehearing under §22.264 of this title (relating to Rehearing).

(4) The commission will consider a proposal for decision recommending dismissal as soon as is practicable.

(5) If the commission determines that all issues within a proceeding should be dismissed, the commission will issue an order subject to motions for rehearing under §22.264 of this title.

(6) If the administrative law judge determines that one or more, but not all, issues within a proceeding should be dismissed, the administrative law judge may issue a proposal for interim decision or an interim order dismissing such issues. An interim order issued by the administrative law judge resulting in partial dismissal is subject to appeal or reconsideration under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission). If the commission determines that one or more, but not all, issues within a proceeding should be dismissed, the commission may issue an interim order dismissing such issues. An

interim order issued by the commission resulting in partial dismissal is subject to appeal or reconsideration under §22.123 of this title.

(g) Withdrawal of application. An application may be withdrawn only in accordance with this subsection.

(1) A party that initiated a proceeding may withdraw its application without prejudice to refiling of same, at any time before that party has presented its direct case. A party may agree to withdraw its application with prejudice.

(2) After the presentation of its direct case, but prior to the issuance of a proposed order or proposal for decision, a party may request to withdraw its application with or without prejudice, and withdrawal may be granted only upon a finding of good cause by the presiding officer.

(3) The presiding officer may grant a request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued if the request to withdraw is filed by the applicant and the applicant's application would be granted by the proposed order or proposal for decision.

(4) A request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued that is filed by an applicant to whom the result of the proposed order or proposal for decision is adverse may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

(5) A request to withdraw an application with or without prejudice after the application has been placed on an open meeting agenda for consideration of an appeal of an interim order, a request for certified issues, or a preliminary order with threshold legal or policy issues may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

(6) If a request to withdraw an application is granted, the presiding officer must issue an order of dismissal stating whether the dismissal is with or without prejudice. If the presiding officer finds good cause, the order of dismissal under this paragraph must not be with prejudice, unless the applicant requests dismissal with prejudice. Such order must, if applicable, specify the facts on which good cause is based and the basis of the dismissal and is the final order of the commission subject to motions for rehearing under §22.264 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403773
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 5, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER N. DECISION AND ORDERS

16 TAC §22.262

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under the following provisions of the Texas Water Code: §13.004, which prescribes the jurisdiction of the commission over certain water supply or sewer service corporations; §13.041(a) which generally authorizes the commission to regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation; §13.041(b) which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §13.042 which prescribes the cope of the commission's jurisdiction over municipalities, and §13.043 which provides for the commission's general appellate authority.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403774
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 5, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 936-7322

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CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.25, relating to Form and Filing of Tariffs, and §24.238, relating to Fair Market Valuation with changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4670). The rules will be republished.

The amendment to §24.25 implements House Bill (HB) 2373, passed during the Texas 88th Regular Legislative Session. HB 2373 repealed Texas Water Code (TWC) §13.145. The amendment allows water and sewage utilities to consolidate its tariff and rate design for more than one system without the need to meet the "substantially similar" systems requirement and regardless of whether the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

The amendment to §24.238 removes language referencing §24.25(k), which related to "multiple system consolidation."

No comments nor requests for hearing were received.

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.25

Statutory Authority

The amendment is adopted under Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.136(b), which provides the commission with the authority to specify the form in which utility reports are filed to properly monitor state utilities; Texas Water Code §13.301, which governs the reporting of sales, acquisitions, leases, rentals, mergers, or consolidations of a utility, water supply corporation, or sewer service corporation; Texas Water Code §13.305, which establishes the requirements for voluntarily determining the fair market value associated with a utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b), 13.136(b), 13.301, and 13.305.

§24.25. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows:

(1) A utility may charge the rates proposed under Texas Water Code (TWC) §§13.187, 13.1871, 13.18715, or 13.1872(c)(2) on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.

(2) The regulatory assessment fee required in TWC §5.701(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.

(3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water or sewer charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

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

(1) Tariffs filed with applications for CCNs.

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

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

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

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

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

(ii) provide all calculations supporting the proposed rates;

(iii) provide all assumptions for any projections included in the rate study;

(iv) provide an estimated completion date for the construction of the physical plant;

(v) provide an estimate of the date service will begin for all phases of construction; and

(vi) provide notice to the commission once billing for service begins.

(C) A person under the original rate jurisdiction of the commission who has obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year. Any dollar amount collected under the rates initially approved by the commission that exceeds the revenue requirement established by the commission during the rate change proceeding must be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. A Class D utility must file a rate change application under TWC §13.1872(c)(2) to satisfy the requirements of this subparagraph.

(D) A water supply or sewer service corporation must file with the commission a complete tariff containing schedules of all its rates, rules, and regulations pertaining to all its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.

(2) Minor tariff changes. Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or amended without commission approval. Changes to any fees charged by affiliates, the addition of a new extension policy to a tariff, or modification of an existing extension policy are not minor tariff changes. An affected county may change rates for retail water or sewer 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.

(A) The commission, or regulatory authority, as appropriate, may approve the following minor changes to utility tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules;

(iii) addition of the regulatory assessment fee payable to the Texas Commission on Environmental Quality (TCEQ) as a separate item or to be included in the currently authorized rate;

(iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(v) rate adjustments to implement commission-authorized phased or multistep rates or downward rate adjustments to reconcile rates with actual costs;

(vi) implementation of an energy cost adjustment clause under subsection (n) of this section;

(vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(F) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;

(viii) some surcharges as provided in subparagraph (G) of this paragraph;

(ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:

(I) the list of the cities, counties, and subdivisions in which service is provided;

(II) the public water system name and corresponding identification number issued by the TCEQ; and

(III) the sewer system names and corresponding discharge permit number issued by the TCEQ.

(B) The commission, or other regulatory authority, as appropriate, may approve a minor tariff change for a utility to establish reduced rates for a minimal level of retail water service to be provided solely to a class of customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The utility may establish a fund to receive donations to cover the cost of providing the reduced rates. A utility may not recover the cost of the reduced rates through charges to other customer classes.

(i) To request approval of a rate as defined in this subparagraph, the utility must file a proposed plan for consideration by the commission. The plan must include:

(I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.

(II) The account or subaccount name and number, as included in the system of accounts described in §24.127(1) of this title (relating to Financial Records and Reports--Uniform System of Accounts), in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program will be accounted for and removed from the cost of service for rate making purposes. Any interest earned on donated funds will be considered a donation to the fund.

(III) The proposed effective date of the program and an example of an annual accounting for donations received and a calculation of all lost revenues and the journal entries that transfer the funds from the account described in this subparagraph of this clause to the utility's revenue account. The annual accounting must be available for audit by the commission upon request.

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

(ii) For the purpose of clause (i) of this subparagraph, recovery of lost revenues from donations is limited to the lost revenues due to the difference in the utility's tariffed retail water rates and the reduced rates established by this subparagraph.

(iii) The minimal level of retail water service requested by the utility must not exceed 3,000 gallons per month per connection. Additional gallons used must be billed at the utility's tariffed rates.

(iv) For purposes of the provision in this subparagraph, a reduced rate authorized under this section does not:

(I) Make or grant an unreasonable preference or advantage to any corporation or person;

(II) Subject a corporation or person to an unreasonable prejudice or disadvantage; or

(III) Constitute an unreasonable difference as to retail water rates between classes of service.

(C) If a utility has provided notice as required in subparagraph (F) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §§13.187, 13.1871, 13.18715, or 13.1872. A pass-through provision may only include passing through of the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved as follows:

(i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.

(ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.

(iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered in to by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

(iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

(v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (D) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must remain constant, e.g., January through December.

(vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a

true-up report and all overcollections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.

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

(i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;

(ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;

(iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

(iv) all calculations and supporting documentation;

(v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility's booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(E) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs must be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: R=G /(1-L), where R is the utility's new proposed pass-through rate, G equals the new gallonage charge by source supplier or conservation district, and L equals the actual line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Line loss will be considered on a case-by-case basis.

(F) A utility that requests to revise or implement an approved pass-through provision must take the following actions prior to the beginning of the billing period in which the revision takes effect:

(i) file a written notice with the commission that must include:

(I) each affected CCN number;

(II) a list of each affected subdivision public water system (including name and corresponding number issued by the TCEQ), and water quality system (including name and corresponding number issued by the TCEQ), if applicable;

(III) a copy of the notice to the customers;

(IV) documentation supporting the stated amounts of any new or modified pass-through costs;

(V) historical documentation of line loss for one year;

(VI) all calculations and assumptions for any true-up of pass-through costs;

(VII) the calculations and assumptions used to determine the new rates; and

(VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved; and

(ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:

(I) the effective date of the change;

(II) the present calculation of customer billings;

(III) the new calculation of customer billings;

(IV) an explanation of any corrections to the pass-through formula, if applicable;

(V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and

(VI) the following language: "This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.25. The cost to you as a result of this change will not exceed the costs charged to your utility."

(G) The following provisions apply to surcharges:

(i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(I) sampling fees not already recovered by rates;

(II) inspection fees not already recovered by rates;

(III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or

(IV) other governmental requirements beyond the control of the utility.

(iii) A utility must use the revenues collected through a surcharge approved by the commission to cover the costs listed in subparagraph (G)(ii) of this section or for any purpose noted in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

(iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

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

(A) If the commission is the regulatory authority, the utility must file its revisions with the commission. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.

(4) Rate schedule. Each rate schedule must clearly state:

(A) the name of each public water system and corresponding identification number issued by the TCEQ, or the name of each sewer system and corresponding identification number issued by the TCEQ for each discharge permit, to which the schedule is applicable; and

(B) the name of each subdivision, city, and county in which the schedule is applicable.

(5) Tariff pages. Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.

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

(1) a table of contents;

(2) a list of the cities, counties, and subdivisions in which service is provided, along with each public water system name and corresponding identification number issued by the TCEQ and each sewer system name and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;

(3) each CCN number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms to be completed as required by the TCEQ;

(6) the extension policy;

(7) an approved drought contingency plan as required by the TCEQ; and

(8) the forms of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's tariff form or any modifications of a rule in the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

(e) Availability of tariffs. Each utility must make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees must lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility must also provide copies of any portion of the tariffs at a reasonable cost to a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Each utility operating within the corporate limits of a municipality exercising original jurisdiction must file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for one or more service areas under the jurisdiction of the municipality, the utility must file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

(h) Effective date. The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §§13.187, 13.1871, 13.18715, or 13.1872 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

(i) Tariffs filed by water supply or sewer service corporations. A water supply or sewer service corporation must file with the commission, for informational purposes only, its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to utility service or extension of service, each CCN number under which service is provided, and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation must file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection must be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(j) Temporary water rate provision for mandatory water use reduction.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover revenues that the utility would otherwise have lost due to mandatory water use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

(2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is
Figure: 16 TAC §24.25(j)(3)

(A) The utility must file a request for a temporary water rate provision for mandatory water use reduction and provide customer notice as required by the regulatory authority, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, a list of all customer classes affected, the rates affected, information on how to protest or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.29 of this title (relating to Time Between Filings).

(B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, the utility must submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate provision into effect only after:

(A) it has been approved by the regulatory authority and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its temporary water rate provision to respond to modifications or changes to the original required water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.

(7) A utility implementing a temporary water rate for mandatory water use reduction must take the following actions prior to the beginning of the billing period in which the temporary water rate provision takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility must stop charging a temporary water rate provision as soon as is practicable after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility must notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision must be filed with the commission.

(9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.

(k) Regional rates. The regulatory authority, where practicable, will consolidate the rates by region for applications submitted by a Class A, B, or C utility, or a Class D utility filing under TWC §13.1872(c)(2), with a consolidated tariff and rate design for more than one system.

(l) Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff must file a request with the commission. The utility must also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, by e-mail, or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date of such delivery must be filed with the commission by the utility as part of the request. Notice must be pro-

vided on a form prescribed by the commission and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission.

(3) The commission's review of the utility's request is not subject to a contested case hearing. However, the commission will hold a public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, must be implemented on at least an annual basis, unless the commission determines otherwise. Before making a change to the energy cost adjustment clause, notice must be provided as required by paragraph (5) of this subsection. Copies of notices to customers must be filed with the commission.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility must take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403770
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 5, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.238

Statutory Authority

The amendment is adopted under Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.136(b), which provides the commission with the authority to specify the form in which utility reports are filed to properly monitor state utilities; Texas Water Code §13.301, which governs the reporting of sales, acquisitions, leases, rentals, mergers, or consolidations of a utility, water supply corporation, or sewer service corporation; Texas Water Code §13.305, which establishes the requirements for voluntarily determining the fair market value associated with a utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b), 13.136(b), 13.301, and 13.305.

§24.238. Fair Market Valuation.

(a) Applicability. This section applies to a voluntary arm's length transaction between an acquiring utility and a retail public utility under TWC §13.305 for which approval is required under TWC §13.301. This section does not apply to a transaction between a utility and its affiliate.

(b) Definitions. In this section, the following words and terms have the following meanings, unless the context indicates otherwise.

(1) Acquiring utility--A Class A or Class B utility that is acquiring a selling utility, or the facilities of a selling utility.

(2) Allowance for funds used during construction (AFUDC)--An accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance a transferee's construction costs of an improvement to a purchased asset.

(3) Fair market value--The average of the three appraisals conducted under subsection (f) of this section.

(4) Ratemaking rate base--The dollar value of the selling utility or the sold facilities of a selling utility that is incorporated into

the rate base of the acquiring utility for post-acquisition purposes. The ratemaking rate base is the lesser of the purchase price negotiated by an acquiring utility and a selling utility or the fair market value. The ratemaking rate base does not include transaction and closing costs.

(5) Selling utility--A retail public utility that is being purchased by an acquiring utility or is selling facilities to an acquiring utility.

(c) List of qualified utility valuation experts. The commission will maintain a list of qualified utility valuation experts to perform appraisals to determine a fair market value of a selling utility or facilities of a selling utility.

(1) A utility valuation expert may request to be included on the commission's list by submitting, under the control number designated for that purpose, the required information.

(2) The request filed by the utility valuation expert must include:

(A) The expert's name, mailing address, telephone number, and email address;

(B) The name of the company with which the expert is employed or associated, or the name under which the expert conducts business;

(C) The names of the principal officers of the company with which the expert is employed or associated, if applicable;

(D) The name and mailing addresses of any affiliates of the company with which the expert is employed or associated, if applicable; and

(E) A detailed description of the utility valuation expert's qualifications, such as professional licensing, certifications, training or past experience conducting economic evaluations of water and sewer utilities.

(3) The utility valuation expert must update the information in its request on file with the commission within ten business days of a material change to the information.

(4) A utility valuation expert who wishes to be removed from the list maintained by the commission under this subsection must file a letter with the commission requesting to be removed from the list. This letter must be filed under the control number designated for that purpose. The commission will acknowledge the removal request in writing.

(d) Notice of intent to determine fair market value.

(1) A selling utility and an acquiring utility that agree to use the fair market valuation process described in subsection (f) of this section must file a notice of intent to determine fair market value in the control number designated for that purpose.

(2) The notice of intent must include the following:

(A) The name and certificate of convenience and necessity (CCN) number of the acquiring utility. If the acquiring utility holds multiple CCN numbers, the acquiring utility must provide all the CCN numbers.

(B) The name and contact information of the acquiring utility's representative.

(C) The number of connections served by the acquiring utility.

(D) The name and CCN number of the selling utility.

(E) The name and contact information of the selling utility's representative.

(F) The number of connections served by the selling utility.

(G) The estimated closing date of the planned acquisition.

(H) A list of the utility valuation experts on the commission's list of qualified experts who, as of the date of the notice of intent, are precluded under subsection (e)(2)(B) of this section from performing an appraisal of the transaction.

(3) The notice of intent must not include the purchase price agreed upon by the acquiring utility and the selling utility.

(e) Selection of utility valuation experts.

(1) The commission's executive director or the executive director's designee will select three utility valuation experts from the list maintained under subsection (c) of this section no later than 30 days after the filing of a notice of intent to determine fair market value that meets the requirements of subsection (d) of this section.

(2) The utility valuation experts selected under paragraph (1) of this subsection may not:

(A) derive material or financial benefit from the sale other than fees for services rendered;

(B) be or have been within the year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility; or

(C) have received compensation under a contract for consulting or other services with the acquiring or selling utility, or executed a contract for consulting or other services with the acquiring or selling utility, within the year preceding the date the utility valuation expert is selected.

(3) The commission's executive director or the executive director's designee will base the selection of utility valuation experts on the following:

(A) Qualifications of the utility valuation expert.

(B) Availability of the utility valuation expert during the required time frame.

(C) Absence of conflicts of interest described in paragraph (2) of this subsection.

(D) Other factors relevant to a utility valuation expert's ability to perform an appraisal under this section.

(4) The acquiring utility must contract directly with the selected utility valuation experts and the commission will not be a party to the contract. Subsection (k)(2) of this section, which limits the amount of transaction and closing costs that may be recovered in rates, does not apply to the fees for service agreed to in the contract. If the acquiring utility and any of the utility valuation experts selected under subsection (e)(1) of this section are unable to reach agreement on the terms and conditions for performing the appraisal, including the amount of the service fee, the acquiring utility or utility valuation expert may submit a request for selection of a different utility valuation expert under the control number designated for that purpose. If the commission's executive director or the executive director's designee selects a different utility valuation expert, the time period for all utility valuation experts

to submit a report under subsection (f)(5) of this section begins when the different utility valuation expert is selected.

(f) Determination of fair market value.

(1) The three utility valuation experts selected under subsection (e) of this section jointly must retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or the facilities to be sold to the acquiring utility.

(A) The engineer may not be or have been within one year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(B) The engineer must provide the following information to the valuation experts:

(i) Qualifications that demonstrate the engineer's ability to provide the requested assessment;

(ii) The engineer's fees for other similar assessments; and

(iii) Other relevant information requested by the utility valuation experts.

(C) The engineer's assessment must include a separate assessment for each type of facility based on the applicable National Association of Regulatory Utility Commissioners (NARUC) account for the facility.

(D) The fee charged by the engineer must be shared and paid equally by the three utility valuation experts and may be included as part of the utility valuation expert compensation under subsection (k) of this section.

(2) Each utility valuation expert must perform an independent appraisal of the selling utility, including the valuation of intangible assets as appropriate, in compliance with Uniform Standards of Professional Appraisal Practice, using the cost, market, and income approaches in accordance with subsections (g) through (i) of this section.

(3) The appraisal must not take into account the original sources of funding, including developer contributions or customer contributions in aid of construction, for any of the utility plant that is assessed by the engineer or the utility valuation experts.

(4) The appraisal must not take into account the purchase price negotiated by the acquiring utility and the selling utility or methodologies or process used to arrive at the purchase price.

(5) Each utility valuation expert must submit a completed report to the acquiring utility and the selling utility no later than 120 days after the date the commission's executive director or the executive director's designee selects the utility valuation expert under subsection (e) of this section. Before the submission of the report, the acquiring and selling utilities must review the report for mathematical and factual errors, and notify the utility valuation expert of any mathematical any factual errors they identify. The utility valuation expert may promptly revise the report in response to the utilities' notification.

(6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction.

(g) Cost approach.

(1) A cost approach appraisal performed under this section must be based on one of the following:

(A) the investment required to replace or reproduce future service capability; or

(B) the original cost of the facilities as adjusted for depreciation.

(2) A cost approach appraisal performed under this section must:

(A) incorporate the results of the assessment performed by the engineer selected under subsection (f)(1) of this section;

(B) exclude from consideration overhead costs, future improvements, and going concern value; and

(C) use a consistent rate of inflation for all classes of assets unless use of different rates is reasonably justified.

(h) Income approach.

(1) An income approach appraisal performed under this section must be based on one of the following:

(A) capitalization of earnings or cash flow; or

(B) the discounted cash flow method.

(2) An income approach appraisal performed under this section must exclude consideration of the following:

(A) going concern value;

(B) future capital improvements; and

(C) erosion of cash flow or erosion on return.

(3) An income approach appraisal performed under this section must be supported by the following:

(A) an explanation of how the capitalization rate was calculated, if a capitalization rate was used;

(B) an explanation of the basis for the discount rates used; and

(C) an explanation of the capital structure, cost of equity and cost of debt used.

(i) Market approach.

(1) A market approach appraisal performed under this section must be based on the following:

(A) the current connection count of the selling utility at the time of the appraisal;

(B) use of a proxy group that includes companies that have made acquisitions that were not based on a fair market valuation methodology; or

(C) comparable sales that did not include the value of future capital improvement projects in the selling price.

(2) A market approach appraisal performed under this section must not consider the following:

(A) a net book financials multiplier or speculative growth adjustments;

(B) the value of future capital improvement projects; or

(C) a value or adjustment for the goodwill of the selling utility.

(j) Contents of utility valuation expert report. A report submitted under paragraph (f)(5) of this section must include:

(1) a copy of the service contract executed by the utility valuation expert and the acquiring and selling utilities;

(2) the fee charged by the utility valuation expert along with documentation supporting the amount of the fee;

(3) a copy of the engineer's report, including a detailed list of the utility plant assessed by the engineer;

(4) an explanation of how the cost, market, and income approaches were incorporated into the calculation of the fair market value of the selling utility or the selling utility's facilities; and

(5) a notarized affidavit stating that:

(A) the appraisals described in the report were conducted in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice;

(B) the utility valuation expert will not derive material or financial benefit from the sale other than the fee for services rendered;

(C) the utility valuation expert is not currently and was not within the year preceding the date of the contract for service executed between the utility valuation expert and the acquiring and selling utilities, a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility; and

(D) the utility valuation expert did not receive compensation under a contract for consulting or other services with the acquiring utility or selling utility, or execute a contract for consulting or other services with the acquiring or selling utility, within the year preceding the date the utility valuation expert was selected to perform the appraisal that is the subject of the report.

(k) Transaction and closing costs.

(1) A fee paid to a utility valuation expert to perform an appraisal under subsection (f) of this section may be included in the transaction and closing costs associated with a transaction approved under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental.

(2) The commission will review the transaction and closing costs, including fees paid to utility valuation experts, in the rate case in which the acquiring utility requests rate recovery of those costs. The fee amounts included in transaction and closing costs that are recoverable in the acquiring utility's rates may not exceed the lesser of:

(A) five percent of the fair market value; or

(B) the fee amounts approved by the commission in the rate case in which the acquiring utility requests rate recovery of the transaction and closing costs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2024.

TRD-202403771
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 5, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 936-7322

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.69

The Texas State Board of Pharmacy adopts amendments to §281.69, concerning Automatic Denial or Revocation. These amendments are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4147). The rule will not be republished.

The amendments correct subparagraph lettering and grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2024.

TRD-202403693
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: September 1, 2024
Proposal publication date: June 14, 2024
For further information, please call: (512) 305-8084

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9921

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §385.9921 (concerning legal sufficiency review for administrative findings of abuse, neglect, or exploitation) without

changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1442). The new rule will not be republished.

SUMMARY OF CHANGES

The new §385.9921 establishes that all findings in abuse, neglect, and exploitation investigations shall be reviewed for legal sufficiency before the appropriate parties are notified of the findings.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

Section 385.9921 is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also adopted under §242.102, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires administrative investigative findings of the Office of the Inspector General to undergo a legal sufficiency review before being made public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 13, 2024.

TRD-202403700
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 2, 2024
Proposal publication date: March 8, 2024
For further information, please call: (512) 490-7278

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 455. TAPS PROGRAM

40 TAC §§455.1 - 455.5

The Texas Veterans Commission (Commission) adopts the repeal of Chapter 455, concerning the TAPS Program, as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1246) and will not be republished.

The repeal removes the existing rules that outline the general provisions regarding the TAPS Program as the TAPS Program was terminated by the passage of Senate Bill 1859 during the 88th Legislative session, which repealed Texas Education Code Section 54.344 (Participation in Military Funerals), and Texas Government Code Section 434.0072 ("TAPS" Tuition Voucher Program) and was effective September 1, 2023.

No comments were received regarding the proposed rule repeal.

The repeal is adopted under Texas Government Code §434.010, which authorizes the Commission to establish rules that it considers necessary for its administration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2024.

TRD-202403741
Kathleen Cordova
General Counsel
Texas Veterans Commission
Effective date: September 4, 2024
Proposal publication date: March 1, 2024
For further information, please call: (737) 320-4167

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CHAPTER 456. CONTRACT NEGOTIATION AND MEDIATION

40 TAC §456.8, §456.13

The Texas Veterans Commission (commission) adopts amendments to §456.8 and §456.13 of Title 40, Part 15, Chapter 456 of the Texas Administrative Code concerning Contract Negotiation and Mediation without changes to the proposed text as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1247) and will not be republished.

The amended rules are adopted to reflect the change of the title of this position from "Chief Administrative Officer" to "Director of Resource Management."

No comments were received regarding the proposed rule amendments.

The amended rules are adopted under Texas Government Code §434.010, which authorizes the commission to establish rules it considers necessary for its administration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2024.

TRD-202403744
Kathleen Cordova
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Texas Veterans Commission
Effective date: September 4, 2024
Proposal publication date: March 1, 2024
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE RULES AND PROCEDURES

The Texas Workforce Commission (TWC) adopts the repeal of the following section of Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

TWC adopts the following new section to Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

Repealed and new §850.11 are adopted *without changes* to the proposal, as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4025), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 850 rule change is to clarify TWC's Vocational Rehabilitation Division's (VRD) Comprehensive System of Personnel Development (CSPD) standards for Qualified Vocational Rehabilitation Counselors (QVRCs) in accordance with 34 Code of Federal Regulations (CFR) §361.18, relating to vocational rehabilitation personnel development.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

TWC adopts the following amendments to Subchapter A:

§850.11. Qualified Vocational Rehabilitation Counselor

Section 850.11 is repealed and added as new to clarify requirements for QVRCs.

The current rule language in §850.11(a) - (f) is repealed and adopted as new in new §850.11 with the updated QVRC requirements. The current rule language is added throughout new §850.11(e) - (j), except for current §850.11(d) because the rule language is no longer applicable.

The repealed rule language in §850.11(e) is added into two subsections in new §850.11 as follows:

--The rule language regarding the time period for completing the graduate education requirements is added into new §850.11(e).

--The rule language regarding transcript reviews and confirming certifications is moved from repealed §850.11(e) to new §850.11(f).

Additionally, the repealed rule language in current §850.11(a) and (f) is moved, with modifications, to new §850.11(g) and (j), respectively, to align with and clarify the updated QVRC requirements. New §850.11(a) clarifies that VRD develops and maintains the CSPD standards.

New §850.11(b) specifies what is needed for staff to be classified as a QVRC.

New §850.11(c) specifies what staff must do to be qualified to perform non-delegable duties.

New §850.11(d) specifies the minimum education and experience standards required to be hired as a VR counselor.

New §850.11(e) specifies the graduate education requirements that must be completed within seven years from completion of the initial training year.

New §850.11(f) specifies that VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards, coursework, and graduate education requirements.

New §850.11(g) is the rule language that was repealed from current §850.11(a), with modifications, to align with and clarify the updated QVRC requirements.

New §850.11(h) relating to QVRC financial assistance is the rule language that was repealed from current §850.11(b).

New §850.11(i) relating to the requirements for applying for QVRC program assistance is the rule language that was repealed from current §850.11(c).

New §850.11(j) is the rule language that was repealed from current §850.11(f), with modifications, to align with and clarify the updated QVRC requirements.

PART III. PUBLIC COMMENTS

The public comment period closed on July 8, 2024. No comments were received.

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

40 TAC §850.11

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services;

--Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 13, 2024.

TRD-202403702
Les Trobman
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Effective date: September 2, 2024
Proposal publication date: June 7, 2024
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40 TAC §850.11

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services;

--Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 13, 2024.

TRD-202403703
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Effective date: September 2, 2024
Proposal publication date: June 7, 2024
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