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 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.8

The Texas State Securities Board adopts the repeal of §133.8, which adopts by reference a form concerning Consent to Service, without changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3451). The repealed rule will not be republished.

The rule and Form 133.8 are repealed because they are no longer needed due to the availability of a uniform form that serves this purpose. The uniform Form U-2, Uniform Consent to Service of Process, has long been recognized by the Board in Rule 133.33 as accepted for filing with the Agency as an alternative to Form 133.8.

A form that is no longer needed will be eliminated.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects: none applicable.

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 December 1, 2023.

TRD-202304432
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: December 21, 2023
Proposal publication date: June 30, 2023
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES
SUBCHAPTER D. NOTICE

16 TAC §22.52

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §22.52, relating to Notice in Licensing Proceedings. The commission adopts the rule with changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4231). The amendments will reduce the timeline for intervention in a new transmission facility certificate of convenience and necessity (CCN) proceeding from 45 days after the date the formal application was filed with the commission to 30 days. This modification will facilitate the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility CCNs to 180 days. The rule will be republished.

The amendments also implement PURA §37.054, as amended by SB 365, enacted by the 88th Texas Legislature (R.S.), by requiring an applicant for a CCN to provide notice of each proposed substation included in the CCN application or amendment to owners of property owners adjacent to the proposed substations.

The commission received comments on the amendments from AEP Texas Inc. (AEP Texas); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); Entergy Texas, Inc., Southwestern Public Service Company, Southwestern Electric Power Company, and El Paso Electric Company (collectively, Joint Utilities); LCRA Transmission Services Corporation (LCRA TSC); Oncor Electric Delivery Company LLC (Oncor); the Office of Public Utility Counsel (OPUC); and Texas-New Mexico Power Company (TNMP).

§22.52(a)(1)(A) - Reduction of electric licensing proceedings intervention time period

Section 22.52(a)(1)(A) reduces the time period for intervention included in the required notice for electric licensing proceedings from 45 to 30 days.

AEP Texas, CenterPoint, Oncor, TNMP, and LCRA supported the new intervention deadline of 30 days. CenterPoint argued that 30 days is a reasonable and sufficient length of time for these proceedings. CenterPoint noted a similar timeline for distribution cost recovery factor proceedings and argued that a CCN case is nearly always preceded by public meetings and notice of those public meetings in the affected communities.

OPUC argued the proposed intervention deadline is unnecessary and would make intervention impracticable for landowners. OPUC further contended that the proposed reduction is a contradiction with recent commission decisions on notice issues because the commission did not similarly reduce the 45-day intervention period for rate cases during its recent review of §22.51, relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

Commission response

SB 1076 (88R) has reduced new transmission facility CCN proceedings to a timeline of 180 days, which is a departure from the previous one-year timeline. Therefore, the commission must abbreviate related timelines.

The commission disagrees with OPUC that the intervention deadline reduction is impracticable for landowners. Late intervention by affected persons can be granted by the commission if necessary. The commission further disagrees that the proposed intervention timeline of 30 days for new transmission facility CCN proceedings presents a contradiction in the commission's established notice process and recent rulemakings on this issue. First, recent amendments to §22.51 were limited to minor and conforming changes, therefore substantive rule changes such as reducing the deadline for intervention were not considered. Second, the scope, subject matter, and number of persons affected by a rate case proceeding are not comparable to a CCN proceeding. Therefore, it is reasonable for the commission to require different procedural provisions for the two types of proceedings.

OPUC recommended applying the reduced intervention period to only new transmission facility CCN cases. OPUC alternatively recommended the commission remove the current exemption under subparagraph §22.52(a)(1)(A) and establish a 45-day intervention deadline for all electric CCN cases.

Commission response

The commission agrees with OPUC that the reduced intervention period should only apply to new transmission facility CCN cases and amends the rule accordingly.

§22.52(a)(3) - Clarify property boundaries

The rule requires notice to be delivered to "directly affected" landowners. Proposed §22.52(a)(3) states that land is "directly affected" by a requested CCN if it is adjacent to a property on which a substation proposed to be authorized by the CCN will be located or is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

LCRA noted that the property on which a substation is located is frequently much larger than the portion of that land on which the substation will be located. For example, a 100-acre parcel of land may be purchased for a new substation but only ten acres of the 100-acre parcel are used for the substation site location. LCRA seeks clarification on whether the ten-acre portion of the 100-acre parcel is considered the "property" for the proposed substation or if the entire 100-acre parcel is considered the property for the proposed substation. Further, LCRA proposed to define "property on which a substation proposed to be authorized by a certificate of convenience and necessity is located" to mean "the boundaries of the property to be acquired or licensed by the applicant for the construction and operation of the substation facilities." LCRA recommends this definition be cited as a new sentence at the conclusion of §22.52(a)(3).

LCRA also provided an attachment to its comments with a labeled map to illustrate the difficulty of determining which properties are adjacent to the property on which the substation is proposed to be located.

Commission response

The commission declines to modify the rule to define "property on which a substation proposed to be authorized by a certificate of convenience and necessity is located" to mean "the boundaries of the property to be acquired or licensed by the applicant for the construction and operation of the substation facilities" as requested by LCRA. Notice of a proposed substation must be delivered to landowners with property adjacent to the entire legally recognized parcel of land on which the substation is proposed to be located. In terms of the example provided by LCRA, the "property on which a substation...is located" refers to the 100-acre parcel of land, not the ten-acre portion. There is no basis in PURA §37.054 for subdividing the larger property for notice purposes. Furthermore, allowing the property to be subdivided based on where the substation may be located introduces ambiguity regarding which landowners must be provided notice, and may result in otherwise interested landowners not receiving said notice.

Furthermore, a TDU should resolve ambiguous cases, such as properties that would be adjacent at the corners but for an intervening roadway, in favor of providing notice. For example, on LCRA's reference map, properties P02, P05, and P14 should each be provided notice of the proposed substation.

AEP Texas, CenterPoint, Oncor, and TNMP recommended clerical and grammatical edits, including the use of future tense instead of past tense. AEP Texas, CenterPoint, and TNMP also recommended refining §22.52(a)(3) to include "for purposes of this paragraph" when referencing directly affected land.

Commission response

The commission agrees with the recommended edits and modifies the rule accordingly.

§22.52(a)(3)(B) - "Public" highway, road, or street

Under proposed §22.52(a)(3)(B), notice of a proposed substation must be provided to owners of land adjacent to a property on which a substation is located, as well as land that is directly across a highway, road, or street that is adjacent to a property on which such a substation is located.

LCRA recommended inserting the word "public" before "highway, road, or street...". LCRA argued that a landowner may maintain a driveway or other private thoroughfare in the vicinity of a proposed substation, and a dispute could arise about whether the private driveway is a road. This could unintentionally restrict the notice boundary and introduce uncertainty as to whether the TDU complied with the notice requirements.

Commission Response

The commission declines to modify the rule to include "public" to describe types of roadways within the rule as recommended by LCRA, because it is unnecessary. If a private roadway does not run along a property boundary, then the roadway is irrelevant, because the property extends across the private roadway, and notice would still be required for the adjacent property owner. Similarly, if the private roadway does run along a property line, notice is required, because the properties on each side of the private roadway are either adjacent to each other or directly across

an adjacent roadway of each other. In either scenario, the analysis is unaffected.

§22.52(a)(3)(B) - Notice to landowners

Section 22.52(a)(3)(B) requires an applicant to mail notice of an electric licensing proceeding to landowners with property adjacent to each proposed substation.

CenterPoint notes proposed §22.52(a)(3)(B) requires the electric licensing applicant to notify itself of any new substations that the applicant may be proposing. CenterPoint argues if the intent of proposed §22.52(a)(3)(B) was to require notice to "the owner of land" rather than "the owner of each proposed substation," the proposed language does not support this.

Commission Response

The commission agrees with CenterPoint and modifies the rule to require notice be provided to the owner of the land rather than the owner of each proposed substation. The commission also reorders subparagraphs (B) and (C) to ensure it is clear maps are not only required to be included in proceedings with proposed substations.

§22.52(a)(3) and §22.52(a)(3)(B) - Definition of adjacent related to property location

Section 22.52(a)(3) and §22.52(a)(3)(B) each use the phrase "adjacent to a property on which a substation...is located" to indicate which nearby properties are considered directly affected and, therefore, must be provided notice.

TNMP requested the commission define "adjacent" as property "directly bordering" the property of which a proposed substation is located.

Commission Response

The commission agrees with TNMP that "adjacent" should be interpreted as "directly bordering," but declines to modify the rule, because it is unnecessary. This interpretation is consistent with the plain language meaning of this term.

§22.52(a)(4) - Clerical and grammatical recommendations

Section §22.54(a)(4) expands the list of persons who are entitled to direct mail notice of any public meetings held by the utility prior to the filing of its licensing application if certain criteria are met.

AEP Texas, CenterPoint, Oncor, and TNMP recommend clerical and grammatical edits, including the use of future tense instead of past tense. Further, these commenters recommended including "directly" before the term "across" to describe location relative to a highway, road, or street that is adjacent to a substation.

Commission Response

The commission agrees with the grammatical tense suggestion and clarifies the tense of language used to be consistent with SB 365 (88R). The commission also revises the rule to use "directly across" consistent with its use in statute.

Standard Landowner Notice Forms

Oncor requested the commission amend the standard landowner notice forms, for CCN transmission line cases, to reflect §22.52 amendments.

Commission Response

The commission agrees with Oncor that the forms need to be updated. Commission staff will update the standard landowner notice forms and associated brochures to conform with the adopted rule and post the updated forms on the commission's website on the effective date of the new rule.

"New" Substations

The Joint Utilities requested the commission confirm whether a CCN is required for the construction of new substations. Oncor requested the commission clarify whether the new notice requirement applies to either (1) new substations or (2) both new substations and expanded footprints of existing substations.

Commission Response

The amended rule does not require a CCN for the construction of a new substation. It requires notice to be provided to certain landowners of substations proposed to be authorized by a CCN application. The commission also clarifies that the rule applies to new substations.

The amended rule is adopted under the following provisions of PURA: §§14.002 and 14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than 180 days after the date the application is filed.

Cross reference to statutes: Public Utility Regulatory Act §14.002, §14.052, and §37.057.

§22.52. Notice in Licensing Proceedings.

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant must give notice in the following ways:

(1) Applicant must publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice must identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice must include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed under PURA §39.203(e) or an application for a certificate of convenience and necessity for a new transmission facility subject to PURA §37.057) and that a letter requesting intervention should be received by the commission by that date.

(B) The notice must describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description must refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets,

roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice must include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

(C) The notice must state a location where a detailed routing map may be reviewed. The map must clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and must reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) Proof of publication of notice must be in the form of a publisher's affidavit which must specify each newspaper in which the notice was published, the county or counties in which each newspaper is of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.

(E) The applicant must provide a copy of each environmental impact study or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD must be provided in the form of an affidavit to the commission, which must specify the date the information was mailed or otherwise provided to TPWD, and must provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.

(2) Applicant must, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, each county government for all counties in which any portion of the proposed facility or requested territory is located, and the Department of Defense Siting Clearinghouse. In addition, the applicant must, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice must contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, the Department of Defense Siting Clearinghouse, and the Office of Public Utility Counsel must specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification to the applicant's proposed route, applicant must provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification must state such entities will have 20 days to intervene.

(3) Applicant must, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax rolls, who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. For purposes of this paragraph, land is also directly affected if it is adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located or is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

(A) Required contents of notice. The notice must contain all information required in paragraph (1) of this subsection and must include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.

(B) Map of route. The notice must include a map as described in paragraph (1)(C) of this subsection.

(C) Notice of proposed substations. Notice of each substation proposed to be authorized by a certificate of convenience and necessity to each owner of:

(i) property adjacent to the property on which the proposed substation will be located; and

(ii) property located directly across a highway, road, or street that is adjacent to the property on which the proposed substation will be located.

(D) Issuance of notice prior to final approval. Before final approval of any modification in the applicant's proposed route, applicant must provide notice as required under subparagraphs (A) through (C) of this paragraph to all directly affected landowners who have not already received such notice.

(E) Proof of notice. Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax rolls. The proof of notice must include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice must be filed with the commission no later than 20 days after the filing of the application.

(F) Cure of insufficient notice. Upon the filing of proof of notice as described in subparagraph (E) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it must immediately advise the commission by written pleading and must provide notice to such landowners by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) through (C) of this paragraph, except that the notice must state that the person has fifteen days from the date of delivery to intervene. The utility must immediately file a supplemental affidavit of notice with the commission.

(4) The utility must hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting must be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, an owner of land within 500 feet of the centerline of a transmission project greater than 230kV, an owner of land adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located, or an owner of land directly across a highway, road, or street that is adjacent to such a substation. The utility must also provide written notice to the Department of Defense Siting Clearinghouse of the public meeting. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must not describe routes

as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes. In the event that no public meeting is held, the utility must provide written notice to the Department of Defense Siting Clearinghouse of the planned filing of an application prior to completion of the routing study.

(5) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(6) Upon entry of a final, appealable order by the commission approving an application, the utility must provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection must be provided to the commission's staff.

(A) If the owner's land is directly affected by the approved route, the notice must consist of a copy of the final order.

(B) If the owner's land is not directly affected by the approved route, the notice must consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.

(7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail must include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."

(b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant must give notice in the following ways:

(1) Applicants must publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice must identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice must also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice must be in the form of a publisher's affidavit, which must specify the newspaper or newspapers in which the notice was published; the county or counties in which the newspaper or newspapers is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.

(2) Applicant must also mail notice of its application, which must contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant must also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments must be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties must specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention.

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 November 30, 2023.

TRD-202304413
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 20, 2023
Proposal publication date: August 4, 2023
For further information, please call: (512) 936-7322

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

The Public Utility Commission of Texas (commission) repeals 16 Texas Administrative Code (TAC) §25.173, relating to Goal for Renewable Energy, and adopts new 16 TAC §25.173, relating to Goal for Renewable Energy. The commission adopts this rule with changes and the repeal without changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6294). The repeal will not be republished. The rule will be republished. The adopted rule implements Section 53 of House Bill (HB) 1500 enacted by the 88th Texas Legislature (R.S.) by establishing a renewable energy credit (REC) trading program and temporary solar renewable portfolio standard. Additionally, the adopted rule directs the Electric Reliability Council of Texas (ERCOT) to continue to maintain an accreditation and banking system to award and track RECs generated by eligible facilities on a voluntary basis, as required by Public Utility Regulatory Act (PURA) §39.9113.

The commission received comments on the proposed rule from the 3Degrees Group, Inc. (3Degrees), ERCOT, Office of Public Utility Counsel (OPUC), Solar Energy Industries Association (SEIA), Texas Energy Buyers Alliance (TEBA), Texas Solar Power Association (TSPA), and Vistra Corp. (Vistra). Additionally, the Alliance for Retail Markets and Texas Energy Association of Marketers filed joint comments as the REP Coalition.

General Comments

OPUC recommended that the commission undertake a separate rulemaking to adopt a new rule for the voluntary REC program.

Commission Response

The commission declines to address the mandatory solar goal and the voluntary REC program in separate rulemakings, as recommended by OPUC, because it is unnecessary. The REC program depends upon the accreditation, banking, and trading aspects of the voluntary program to function, so the two topics are appropriately addressed together. Moreover, a separate rulemaking would delay the start of the 2024 compliance year for the solar goal beyond the beginning of the 2024 calendar year.

Registration of energy storage resources for the voluntary REC program

TEBA recommended that ADERs, batteries, and other types of energy storage resources be allowed to register for the voluntary REC program.

Commission Response

The commission disagrees with TEBA that it is appropriate in this rulemaking proceeding to expand RPS beyond what is explicitly authorized in statute and declines to implement the proposed change. PURA §39.9113 explicitly directs ERCOT to "maintain" [a] system to award and track voluntary renewable energy credits generated by eligible facilities (emphasis added)." Creating new types of credits, or authorizing ERCOT to do so, is beyond the scope of this proceeding.

Definition of "accreditation and banking system"

OPUC stated that the commission should "consider adding definition and scope to the term "accreditation and banking system' under PURA §39.9113."

Commission Response

The commission declines to add a definition for "accreditation and banking system" as requested by OPUC because it is unnecessary. The required system already exists, and ERCOT will maintain its current system with minor modifications.

Updates to additional rules

SEIA noted that with the adoption of this new rule, the commission will also need to update 16 TAC §25.476, relating to Renewable and Green Energy Verification.

Commission Response

SEIA's recommendation is beyond the scope of this rulemaking proceeding. The commission may consider this recommendation in a future proceeding.

Proposed §25.173(a)--Purpose

Proposed §25.173(a) details the purpose of this section as establishing a solar renewable portfolio standard program and directing ERCOT to administer a voluntary REC accreditation program.

SEIA recommended that the commission modify paragraph (2) of subsection (a) to insert the words "continue to" before "administer a voluntary," to clarify that ERCOT is not to initiate a new program following the adoption of this rule.

The REP Coalition suggested clarifying in paragraph (2) that ERCOT does have different administrative duties for both voluntary and mandatory aspects, but two separate programs are not required. Further, the REP Coalition recommended that subsection (a), and the rule in its entirety, refer to both programs as the "trading program" instead of separating them into respective "trading" and "accreditation" programs.

Commission Response

The commission agrees with SEIA and the REP Coalition that PURA §39.9113 only contemplates a single REC program for ERCOT to administer and modifies §25.173(a) accordingly.

Adopted §25.173(b)--Application

Adopted §25.173(b) specifies that this section applies to power generation companies and retail entities.

The REP Coalition stated that, given the HB 1500, Section 53 directive to adopt rules to implement RPS as it existed immediately before the repeal of PURA §39.904, the commission should add an "Application" provision to specify that the rule applies to power generation companies and retail entities.

Commission Response

The commission agrees with the REP Coalition and adds an application provision as adopted subsection (b). Subsequent subsections are renumbered accordingly.

Proposed §25.173(b)--Definitions

ERCOT and TSPA both noted an "error in [paragraph] (18), which cross-references subsection (h) instead of subsection (e)." TSPA also noted that it is "appropriate to continue referencing PURA §39.904 in the proposed [Renewable Portfolio Standard] definition" because HB 1500 directed the commission to apply the section "as it existed immediately before the effective date of this Act."

OPUC requested the deletion or modification of multiple definitions. First, OPUC requested that the definitions for opt-out notice and REC offset, in paragraphs (9) and (12) respectively, be deleted because they are "irrelevant and unnecessary" under PURA §39.9113. Second, OPUC requested that the commission "clarify whether REC accounts ([as defined in paragraph (14)]) and solar REC accounts are distinguished, and how different account holders will be identified." Third, OPUC requested the deletion of references to subsection (h) and PURA §39.904 from the Renewable Portfolio Standard (RPS) definition in paragraph (18), as it is "unnecessary" following the repeal of PURA §39.904.

Commission Response

The commission agrees with ERCOT and TSPA and amends the proposed rule accordingly. The commission disagrees with OPUC's recommendations to alter or delete the cited provisions. Section 53 of HB 1500 effectively requires the commission to continue the REC trading program and RPS obligation until September 1, 2025.

To address multiple commenters' concerns regarding paragraph (18) and the definition of "renewable portfolio standard," the commission modifies the proposed rule by deleting paragraph (18) and replacing it with a "solar renewable portfolio standard" definition in paragraph (23), as discussed in further detail below.

Proposed subsection (b)(1); "Compliance period"

Proposed subsection (b)(1) defines "compliance period" to be January 1, 2024, to December 31, 2024 (2024 compliance period), and January 1, 2025 to August 31, 2025 (2025 compliance period).

The REP Coalition recommended simplifying the compliance period definition in paragraph (1) by defining a compliance period as a calendar year and provided recommended language.

Commission Response

The commission agrees with the REP Coalition's recommendation and modifies the proposed rule accordingly.

Proposed subsection (b)(2); "Compliance premium"

Proposed subsection (b)(2) defines "compliance premium" as "[a] premium awarded" in conjunction with a solar renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (d) of this section."

The REP Coalition recommended revising the compliance premium definition in paragraph (2) by clarifying that "a compliance premium is awarded for a MWh of renewable energy that meets the eligibility for the mandatory solar RPS program in subsection (e)(2)(A)."

Commission Response

The commission agrees with the REP Coalition and modifies the proposed rule accordingly. This modification clarifies and aligns with the applicability timelines established by Section 53 of HB 1500 for the solar RPS.

Proposed subsection (b)(9); "Opt-out notice"

Proposed subsection (b)(9) defines "opt-out notice" as a "written notice submitted" by a transmission-level voltage customer under PURA §39.904(m-1)."

The REP Coalition recommended removing the reference to PURA §39.904 in paragraph (9). Additionally, the REP Coalition recommended removing all references to PURA §39.904 in the proposed rule to be consistent with the intent of HB 1500 in repealing the statutory provision.

Commission Response

The commission agrees with the REP Coalition that references to PURA §39.904 should be removed and modifies the proposed rule accordingly.

Proposed subsection (b)(10); "Program administrator"

The proposed rule's definition of "program administrator" included references to the statutory responsibility of the independent organization for the ERCOT region to maintain the accreditation and banking program and also the commission's authority to appoint a "program administrator" for the retired RPS program under repealed PURA §39.904. The proposed language further designated the independent organization certified under PURA §39.151 for the ERCOT region as the program administrator under both statutes.

The REP Coalition recommended that the "program administrator" simplify the definition of program administrator to clarify that ERCOT will be responsible for both the RPS obligation that is applicable to retail entities and the REC trading program.

Commission Response

The commission agrees with the REP Coalition that the program administrator definition should clarify that the program administrator is responsible for both the solar RPS obligation and the REC trading program and modifies the proposed rule accordingly.

Proposed subsection (b)(18); "Renewable portfolio standard (RPS)"

Proposed subsection (b)(18) defines the "renewable portfolio standard" as "the amount of capacity required to meet the requirements of PURA §39.904 under subsection (h) of this section."

The REP Coalition recommended replacing the "RPS" definition in paragraph (18) with a "solar renewable portfolio standard (solar RPS)" definition that equates the RPS requirement to "the amount of solar capacity required in subsection (e)(2) to implement Section 53 of House Bill 1500."

Commission Response

The commission agrees with the REP Coalition and replaces the definition of RPS with a definition of solar renewable portfolio standard. This modification will clearly delineate between the retired and new portfolio standards and also help clarify the distinction between the mandatory and voluntary aspects of this rule. The commission makes other conforming changes throughout the rule.

Proposed §25.173(c)--Certification of Renewable Energy Facilities

Proposed §25.173(c) establishes the requirements and process for the commission to certify all renewable facilities that will produce REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading and accreditation programs.

Clarification on REC program requirements for re-registration of generators

Multiple commenters requested clarifications to the rule as proposed on whether previously registered generators will have to re-register to participate in REC trading.

TSPA stated that it isn't clear whether generators will be required to re-register for the program in the rule as proposed and that requiring current participants to re-register would be "inefficient and disruptive." TSPA proposed language clarifying that re-registration is not required for generators already participating in the program.

SEIA stated there "[was] no indication that the legislature intended that the [c]ommission should require solar facilities that were already registered and certified" to re-register and be re-certified to continue in the generation, trading, and accreditation of solar RECs." SEIA provided a new suggested paragraph to subsection (c) to make this clarification.

TEBA recommended that the commission modify subsection (c) to be clear that "generators with existing Renewable Energy Credit Certification [will] be grandfathered into the new rule" and do not have to reregister for participation in the voluntary REC market. TEBA provided a new suggested paragraph to make this clarification.

The REP Coalition provided language that clarifies in subsection (c) that generators already certified by the commission to participate in the REC trading program are not required to obtain a new certification as a result of the repeal and replacement of this section.

Commission Response

The commission agrees with comments from TSPA, SEIA, TEBA, and the REP Coalition. Renewable energy facilities will not have to re-register or re-certify for the REC trading program. The commission amends the rule accordingly.

Recommended revision to allow energy storage devices to register for REC program

TEBA recommended that the commission add another paragraph to subsection (c) that will permit ERCOT to expand registration for the REC program to other resource types, such

as batteries, ADERs, and other types of energy storage devices, but did not recommend specific language. Additionally, TEBA recommended the creation of "energy storage certificates" and additional attributes for use by energy storage devices.

Commission Response

The commission declines to expand the registration requirements to permit additional resource types to register for the program because it is beyond the scope of this rulemaking. HB 1500 directed ERCOT to maintain an accreditation and banking system for renewable energy technologies. Whether additional technologies should be permitted to participate, or whether ERCOT should create additional types of credits or attributes for these technologies, would require further investigation.

Proposed §25.173(d)--Renewable energy credits, solar renewable energy credits, and compliance premiums

Proposed §25.173(d) establishes the eligibility criteria for renewable facilities to produce RECs, solar RECs, and compliance premiums.

Statutory authorization for a REC "trading" program

OPUC requested that any language regarding a REC "trading" program be removed from the proposed rule. OPUC argued that the commission does not have statutory authority to continue a trading program for RECs following the repeal of PURA §39.904 and passage of HB 1500 as the legislature "intentionally and purposefully" omitted the word "trading" from the new authorizing statute, PURA §39.9113. Further, OPUC argued that the trading program for RECs becomes "unnecessary" without the need to meet an RPS obligation through the purchase and retirement of RECs.

The commission disagrees with OPUC. A trading program is necessary to comply with HB 1500, Section 53, which requires the commission to, by rule, "adopt a program to apply that section as it existed immediately before the effective date of this Act, and to apply other statutes that referred to that section immediately before the effective date of this Act, as if that section had not been repealed by this Act and the other statutes that referred to that section had not been repealed or amended by this Act." A trading program existed as a part of the repealed PURA §39.904, so it is implicitly authorized by HB 1500. Further, under §311.021(4) of the Texas Code Construction Act, statutes must be construed such that the result is "feasible of execution." If ERCOT does not maintain a trading program, it would be impossible for a retail entity that does not also own solar generation facilities to meet its obligations under the new solar renewable portfolio standard, making the statute infeasible to execute.

Additionally, the trading program must apply to all renewable energy credits and persist after the expiration of the solar-only program. Under §311.021(3) of the Texas Code Construction Act, statutes must be construed such that "a just and reasonable result is intended." HB 1500 directs ERCOT to maintain a REC accreditation and banking system to award and track voluntary energy credits. In practical terms, the maintenance of the accreditation and banking system is required for activities such as the validation of green energy retail electric products. Without a trading mechanism, only the entity that generated the renewable energy credit would be capable of retiring these credits and validating green energy products. This would result in the inability of any entity that does not own generation to offer green energy products, which is neither a just nor reasonable outcome in a competitive retail market.

Subsection (d)(1)(A)--Facilities eligible for producing RECs for the accreditation program

Clauses (ii), (iii), (v), and (vi) of subparagraph (A) pertain to renewable technologies that use fossil fuels in the production of electricity. These clauses limit the eligibility of a dual-source facility and specify that a dual-source facility may only generate RECs based on the production of electricity from a renewable source. Clause (vi) of subparagraph (A) addresses statewide renewable capacity MW goals. Clause (vii) of subparagraph (A) limits RECs that can be generated from repowered resources up to 150 MWs.

OPUC requested the deletion of clauses (ii), (iii), (v), and (vi) from subparagraph (A) because they are "not relevant to the new [REC] program." OPUC argued that these clauses conflict with HB 1500's solar-only intent by permitting gas-powered technologies to register for the REC accreditation program. Further, OPUC argued that because clause (vi) addresses statewide renewable capacity megawatt goals, which are no longer applicable after the repeal of PURA §39.904, it should be deleted.

The REP Coalition recommended the deletion of the statewide renewable capacity megawatt goals provision from clause (vi) and the entirety of clause (vii) from subparagraph (A) because they are inapplicable to the REC accreditation program.

Commission Response

The commission declines to remove clauses (ii), (iii), and (v) under subparagraph (A) from the proposed rule. Subsection (d)(1) outlines the eligibility of all renewable facilities participating in the voluntary element of the REC program to produce RECs, and clauses (ii), (iii), and (v) are needed to apply the section as it was before its repeal. A renewable facility that uses both fossil fuels and renewable resources may still generate RECs in accordance with these requirements.

The commission agrees with OPUC and the REP Coalition that the renewable capacity language of clause (vi) from subparagraph (A) is not relevant to the voluntary element of the REC program. The commission also agrees with the REP Coalition's recommendation to delete clause (vii) from subparagraph (A) because this clause is no longer relevant to the REC program. The rule is modified accordingly.

Subsection (d)(3)--Compliance premiums

Subsection (d)(3) describes how compliance premiums are created and awarded. Paragraph (A) of this subsection states that one compliance premium will be awarded in conjunction with each solar REC generated between January 1, 2024, and December 31, 2024. The proposed rule does not allow for the creation or award of any compliance premiums after December 31, 2024, nor does it allow for the use of compliance premiums after the 2024 compliance period.

3Degrees requested that compliance premiums continue to be earned through the remainder of the RPS to September 1, 2025. 3Degrees reasoned that maintaining compliance premiums would reduce the additional compliance burdens on REPs and help to sustain the level of demand for solar RECs until the RPS is phased out.

OPUC stated that subsection (d)(3) is "wholly inapplicable to the new program under PURA §39.9113."

The REP Coalition stated that compliance premiums awarded before January 1, 2024, should be eligible for use through the settlement period for the 2024 compliance period, and that com-

pliance premiums should be awarded for each solar REC generated through December 31, 2024.

Commission Response

The commission disagrees with 3Degrees that compliance premiums should be earned after December 31, 2024, and declines to modify the proposed rule. Compliance premiums were originally intended to incentivize non-wind renewable generation to meet the non-wind target in repealed PURA §39.904. Following the repeal of PURA §39.904, it is no longer necessary to provide the additional incentive of compliance premiums for non-wind renewable generation. Further, compliance premiums are intended to be used by entities for compliance with the solar RPS. However, when an entity uses compliance premiums to meet its solar RPS obligation, the total solar RPS obligation for the next compliance year increases proportionally. Therefore, it is not appropriate for compliance premiums to be created or used for the 2025 compliance year's RPS obligation because no subsequent compliance year exists to shift the obligation forward to. This would serve to undermine the eventual retirement of sufficient solar RECs to achieve the mandatory solar RPS goal.

The commission agrees with OPUC that compliance premiums should not be created or awarded following the end of the mandatory solar RPS. However, Section 53 of HB 1500 directed the commission to "phase out the program." As detailed above, limiting the creation and award of compliance premiums to December 31, 2024, allows the solar RPS to be phased out as well as permits compliance premiums to expire naturally at the end of their three-year compliance life.

The commission agrees with the REP Coalition that compliance premiums awarded for solar RECs generated before December 31, 2023, and through December 31, 2024, should be available for use in the solar RPS through the settlement period for the 2024 compliance period and modifies the proposed rule accordingly.

Subsection (d)(4)--Production, transfer, and expiration of RECs and solar RECs

Subsection (d)(4) contains the regulations and process for the production, transfer and expiration of RECs and solar RECs.

Vistra opposed voluntary RECs having a compliance life of three years and provided redlines removing "RECs or" from subparagraphs (E), (G), and (H). Vistra argued that the initial rationale for RECs having a defined compliance life does not apply to non-solar or voluntary RECs and that instituting compliance lives onto RECs will "impair the property rights of REC owners."

OPUC restated that the use of "trading program" language is neither authorized by statute nor necessary in a voluntary program setting.

OPUC stated that it is unclear if solar RECs and RECs are interchangeable, how RECs will be retired when there is no longer an RPS requirement, or if RECs and solar RECs will have the same value.

Commission Response

The commission declines to modify the proposed rule to remove REC compliance lives as requested by Vistra. Section 53 of HB 1500 directs the commission to "adopt a program to apply [PURA §39.904] as it existed immediately before the effective date of [HB 1500], as if that section had not been repealed." Accordingly, the commission maintains the established practice of assigning RECs a three-year compliance life.

The commission also declines to remove the compliance lives of non-solar RECs or of all RECs after the expiration of the solar RPS mandate as this time. Currently, retail electric providers (REPs) are able to certify their energy products as "˜green' by voluntarily retiring RECs with ERCOT. These voluntary retirements and "˜green' product certifications benefit both REPs and consumers by allowing REPs to provide transparent renewable energy options to consumers and allowing consumers to make informed choices when choosing energy plans. Based on the current program structure, consumers have an expectation that the green energy product they are purchasing is supporting renewable energy that was generated within the last three years.

Without compliance lives, REPs would still be able to voluntarily retire RECs for product certifications, but there would not be any certainty for consumers surrounding when that REC was generated. The commission declines to remove the compliance lives of RECs without a more focused investigation of the effects such a change would have on the market and consumers.

Further, the commission disagrees with Vistra that retaining compliance lives on RECs constitutes a property rights violation. The compliance life of a REC exists when a REC is created, and it is known by all parties during any transactions involving the REC that the REC will eventually expire. On the other hand, without compliance lives, all RECs could exist on the voluntary market in perpetuity. This would eventually over-inflate the voluntary market, decrease the market value of each REC and disincentivize participation in the market for generators or retail entities looking to sell these RECs.

The commission disagrees with OPUC that a REC "trading" program is not authorized by statute. Section 53 of HB 1500 directs the commission to "adopt a program to apply [PURA §39.904] as it existed immediately before the effective date of [HB 1500], as if that section had not been repealed." This statutory directive implicitly directs the commission to implement a REC trading program in the amended §25.173.

Further, the commission disagrees with OPUC's argument that a REC trading program is unnecessary in a voluntary capacity. The REC trading program is the vehicle for renewable energy facilities and retail entities to purchase and sell RECs, including solar RECs. This trading program is necessary not only for the mandatory solar RPS, but for retail entities to trade and retire RECs voluntarily to meet green product requirements under §25.476.

Proposed §25.173(e)--Solar Renewable Energy Credits Trading Program

Proposed §25.173(e) establishes the requirements and process for administering and participating in the solar renewable energy credits program.

TSPA stated that "the proposed solar capacity requirements of 1,310 MW and 655 MW of new resources for the 2024 and 2025 compliance periods, respectively, are reasonable." Additionally, TSPA expressed support for the creation of the solar REC trading program and the solar RPS calculation.

OPUC argued that PURA §39.9113 "does not authorize a trading program." Further, OPUC commented that "[commission] staff should consider a rulemaking option that doesn't create a new market based on authority that no longer exists."

The REP Coalition recommended revisions to paragraphs (1) and (2) of this subsection to clarify that the solar-only RPS obligation for retail entities will end on September 1, 2025, and fur-

ther revisions to paragraph (2) to delete language that is "obsolete." The REP Coalition also provided language that revises subparagraph (A)(i) and (A)(ii) of paragraph (2) "consistent with the definition of "˜New facilities' in subsection (c)."

Commission Response

The commission disagrees with OPUC's argument that a trading program is not authorized. The trading program is the mechanism by which ERCOT maintains both the mandatory and voluntary elements of this section. A new market is not being created; the rule is being modified to encapsulate the mandatory and voluntary requirements from HB 1500 while using ERCOT's existing framework.

The commission agrees with the REP Coalition's recommendations to remove language from paragraph (2) and to change subparagraphs (A)(i) and (A)(ii) to use the definition of "new facilities" and modifies the proposed rule accordingly.

Subsection (e)(3); Calculation of capacity conversion factor (CCF)

The capacity conversion factor is used by the program administrator to allocate the solar RPS obligation to retail entities.

3Degrees requested that the commission revise the calculation of the capacity conversion factor (CCF) through the remainder of the RPS to September 1, 2025, to reflect historic generator performance data for solar facilities only. 3Degrees stated that if the CCF included all renewable resources, then the CCF would be overinflated and result in an inaccurate RPS obligation. 3Degrees provided language on how to specify this change in paragraph (3) of this subsection. Additionally, 3Degrees requested that the PUC direct ERCOT to update Section 14 of the nodal protocols, State of Texas Renewable Energy Credit Trading Program, to apply a solar-based CCF to the RPS requirement calculation.

The REP Coalition suggested revising the timing of the CCF calculation from the third quarter of each odd numbered year to the first quarter of the 2024 compliance year. The REP Coalition also recommended adding language to clarify this CCF will be used through the end of solar RPS and provided language consistent with its recommendations.

Commission Response

The commission agrees with 3Degrees that CCF language should be updated to specify its applicability only to solar resources and modifies the rule language accordingly.

The commission agrees with the REP Coalition's suggestion to adjust the timing of the CCF calculation and modifies the rule accordingly.

Subsection (e)(5); Nomination and award of REC offsets

Subsection (e)(5) establishes how an entity can use REC offsets to meet its obligations under the mandatory RPS.

OPUC argued that "offsets in [paragraph] (5) are unnecessary in the new, voluntary REC program."

Commission Response

The commission agrees with OPUC that offsets are not relevant to the voluntary portion of the REC trading program. However, the commission declines to modify the proposed rule due to statutory requirements and relevance to the mandatory solar RPS.

Proposed §25.173(f)--Renewable Energy Credits Accreditation Program

Proposed §25.173(f) establishes the requirements and process for administering and participating in the renewable energy credits accreditation program.

TSPA and 3Degrees supported the REC accreditation program as proposed. Further, 3Degrees commented on the importance of Texas RECs in national voluntary REC markets.

SEIA suggested, for consistency with other provisions of this rule, that the commission replace "ERCOT" with "program administrator."

The REP Coalition proposed revisions to subsection (f) to clarify that the program administrator will continue to maintain the records, accounts, RECs, and CPs from the REC trading program "as it existed prior to August 31, 2023, and December 31, 2023," and as under repealed PURA §39.904.

Commission Response

The commission agrees with SEIA and modifies the rule to reference "program administrator" instead of "ERCOT" to maintain consistency with the rest of this section.

The commission agrees with the REP Coalition that ERCOT must continue to maintain the records of the trading program as it previously existed, and the rule has been modified accordingly.

Subsection (f)(2)

Under subsection (f)(2), "ERCOT may assign additional attributes to RECs, such as more precise REC-generation timestamps, to allow buyers to distinguish between RECs."

TEBA and SEIA commented in support of paragraph (2). 3Degrees recommended modifying the rule to explicitly allow ERCOT to implement time stamps on RECs to allow for more granular REC tracking capabilities.

Commission Response

The commission declines to modify the proposed rule as requested by 3Degrees, because REC characteristics and attributes should be determined by the program administrator after considering the value provided by and potential consequences of adding each new attribute.

Proposed §25.173(g)--Responsibilities of the Program Administrator

Proposed §25.173(g) establishes the requirements and responsibilities the program administrator must follow in administering both the REC trading and accreditation programs.

OPUC argued that the responsibilities of the program administrator should be limited to managing an accreditation and banking system to award and track voluntary RECs "as envisioned in PURA §39.9113."

The REP Coalition did not comment on this section but provided various non-substantive redline revisions to subsection (g) consistent with its comments on other provisions of the rule.

Commission Response

The commission declines to limit the program administrator's responsibilities to managing voluntary RECs as requested by OPUC, because the program administrator is also responsible for managing the mandatory solar RPS requirements.

The commission agrees with the REP Coalition's non-substantive revisions and modifies the rule accordingly.

Subsection (g)(5)

Subsection (g)(5) requires the program administrator to "[r]etire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premiums' compliance life".

Vistra proposed removing the requirement that the program administrator retire RECs, consistent with its prior recommendation that the commission eliminate REC expiration dates.

Commission Response

While the creation and retirement of RECs is voluntary under the adopted rule, the commission declines to modify the rule to remove compliance lives from RECs as requested by Vistra for reasons previously discussed.

Proposed §25.173(h)--Penalties and Enforcement

Proposed §25.173(h) allows the program administrator to determine whether a retail entity has retired sufficient solar RECs or compliance premiums to satisfy its RPS allocation. If the program administrator determines that a retail entity has not satisfied its RPS obligation, the retail entity may be subject to an administrative penalty, under PURA §15.023, of $50 per MWh that is deficient.

OPUC argued that subsection (h) is "not applicable to the REC program under PURA §39.9113" and should be removed entirely. Further, OPUC argued that the REC program is meant to function as "a voluntary program" focused on accrediting generation and banking credits to enable voluntary contractual obligations," and that it is unnecessary to penalize the failure to retire RECs or compliance premiums.

The REP Coalition suggested moving subsection (h) to immediately after the settlement process provision in subsection (i). The REP Coalition argued that the settlement process must be completed before the program administrator can determine whether a retail entity is out of compliance with its RPS obligation and is subject to an administrative penalty.

Commission Response

The commission declines to remove the enforcement provisions of this rule as recommended by OPUC, because they are pertinent to the mandatory solar RPS program. The commission may remove these provisions in a future rulemaking proceeding following the expiration of the solar RPS program requirements.

The commission agrees with the REP Coalition's recommendation to relocate this provision within the rule for clarity and modifies the rule accordingly.

Proposed §25.173(i)--Settlement Process

Proposed §25.173(i) establishes the settlement process for a retail entity to comply with its RPS obligation for the previous compliance period.

OPUC argued that it may not be necessary to define a settlement process because "there is no longer a RPS requirement." Further, OPUC suggested allowing the program administrator to dictate the settlement period or "leave [it] to market forces to determine in voluntary contractual transactions."

Commission Response

The commission declines to remove the settlement process from the rule as requested by OPUC, because it is necessary for the mandatory solar RPS requirements.

The REP Coalition suggested removing the following language from this subsection: "The compliance period is the settlement period in which the following must occur." The REP Coalition stated that the quoted language is inconsistent with the description of settlement period and the concept of a compliance period. The REP Coalition offered replacement language to note that the settlement period is the 90 days following the compliance period.

Commission Response

The commission agrees with the REP Coalition's suggested language and modifies the rule accordingly.

Proposed §25.173(j)--Microgenerators and REC Aggregators

Proposed §25.173(j) allows for a REC aggregator to manage the participation of multiple microgenerators in the REC trading and accreditation programs and establishes how ERCOT assigns RECs within this arrangement.

OPUC stated that it is unclear if subsection (j) is necessary for the REC program under PURA §39.9113. OPUC suggested the commission remove this language or update it for microgenerators and REC aggregators and address other technologies like demand response.

The REP Coalition suggested edits to subsection (j), provided in redlines, consistent with its general comments.

TEBA suggested that an additional paragraph be added to subsection (j) to clarify that an existing REC aggregator does not need to re-register.

Commission Response

The commission disagrees with OPUC and declines to remove subsection (j) from the rule. This language must remain in the rule to maintain RPS as it was prior to the repeal of PURA §39.904 by HB 1500. Additionally, it is beyond the scope of this rulemaking to consider demand response at this time.

The commission agrees with TEBA that microgenerators and REC aggregators do not have to re-register, and modifies the rule accordingly.

Adopted §25.173(l)--Effective date

3Degrees and the REP Coalition requested that the commission provide additional clarification on the RPS requirements for the compliance period gap from August 24, 2023, to January 1, 2024, and on the settlement of the 2023 compliance year. The REP Coalition requested a new subsection addressing how the 2023 compliance year should be addressed by ERCOT.

Commission Response

The commission directed ERCOT to discontinue the current program at the August 24, 2023, open meeting. The solar-only program is a new program with a solar-only RPS obligation. There are no compliance requirements from September 1, 2023, through January 1, 2024; however, any solar RECs generated during this period may be used to fulfill retail entity solar RPS obligations for the 2024 and 2025 compliance periods. The commission adds new subsection (l) to memorialize these previously issued directives.

16 TAC §25.173

The repeal is adopted under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The repeal is also adopted under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

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 November 30, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 1, 2024
Proposal publication date: October 27, 2023
For further information, please call: (512) 936-7322

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16 TAC §25.173

The new rule is adopted under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The new rule is also adopted under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R. S.)

§25.173. Renewable Energy Credit Program.

(a) Purpose. The purposes of this section are to:

(1) Establish a solar renewable portfolio standard pursuant to Section 53 of House Bill 1500, enacted by the 88th Texas Legislature, Regular Session, to be phased out by September 1, 2025; and

(2) Direct the independent organization certified under PURA §39.151 for the ERCOT region to continue to administer a renewable energy credit (REC) trading program on a voluntary basis.

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to Definitions), and retail entities as defined in subsection (c) of this section.

(c) Definitions.

(1) Compliance period--A calendar year beginning January 1 and ending December 31 in which renewable energy credits are generated.

(2) Compliance premium--A premium awarded by the program administrator in conjunction with a solar renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (e)(2)(A) of this section. For the purpose of the solar renewable energy portfolio standard requirements, one compliance premium is equal to one solar renewable energy credit.

(3) Designated representative--A person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credit trading program.

(4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(5) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of less than one megawatt (1 MW) operating on the customer's side of the utility meter.

(7) New facilities--Solar renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Opt-out notice--Written notice submitted to the commission by a transmission-level voltage customer.

(10) Program administrator--The entity responsible for carrying out the administrative responsibilities related to the REC trading program and the solar renewable portfolio standard as set forth in this section. In accordance with PURA §39.9113, the program administrator is the independent organization certified under PURA §39.151 for the ERCOT region.

(11) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(12) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums.

(13) Renewable energy credit (REC)--A REC represents one MWh of renewable energy that is physically metered and verified

in Texas and meets the requirements set forth in subsection (e)(1)(A) of this section.

(14) Renewable energy credit account (REC account)--An account maintained by the program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs, solar RECs, or compliance premiums by a program participant.

(15) Renewable energy credit trading program (trading program)--The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (g) of this section.

(16) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(17) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(18) Repowered facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

(19) Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice, retail electric providers (REPs), and investor-owned utilities that have not unbundled under PURA Chapter 39.

(20) Settlement period--The period following a compliance period in which the settlement process for that compliance period takes place as set forth in subsection (i) of this subsection.

(21) Small producer--A renewable resource that is less than ten megawatts (10 MW) in size.

(22) Solar renewable energy credit (solar REC)--A REC representing one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e)()(2) of this section.

(23) Solar renewable portfolio standard (solar RPS) - The amount of solar capacity required in subsection (e)(2) of this section to implement Section 53 of House Bill 1500 enacted by the 88th Texas Legislature, Regular Session.

(24) Transmission-level voltage customer--A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

(d) Certification of renewable energy facilities. The commission will certify all renewable facilities that will produce either REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading program. To be awarded REC offsets, RECs, solar RECs, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator must not award REC offsets, RECs, solar RECs, or compliance premiums for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility must file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application must include the location, owner, technology, and rated capacity of the facility, and must demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application must be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission will inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission will either certify the renewable facility as eligible to receive REC offsets, RECs, solar RECs, or compliance premiums or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.

(3) Upon receiving notice of certification of new facilities, the program administrator will create a REC account for the designated representative of the renewable resource.

(4) The commission or program administrator may make on-site visits to any certified facility, and the commission will decertify any facility if it is not in compliance with the provisions of this subsection.

(5) A decertified renewable generator may not be awarded RECs, solar RECs, or compliance premiums. However, any RECs, solar RECs, REC offsets, or compliance premiums awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

(6) Participants that were registered and certified to participate in the trading program prior to the effective date of this rule continue to be registered and certified under this subsection and are not required to re-register or be recertified to participate in the trading program.

(e) Renewable energy credits, solar renewable energy credits, and compliance premiums.

(1) Renewable energy credits (RECs).

(A) Facilities eligible for producing RECs in the trading program. For a renewable facility to be eligible to produce RECs for the trading program it must be either a new facility, a small producer, or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this subsection.

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must be certified under subsection (d) of this section.

(ii) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.

(iii) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this clause must comply with the following requirements:

(I) A meter must be installed and periodic tests of the heat content of the fuel must be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

(II) The renewable energy resource must calculate the electricity generated by the unit in MWh, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWh generated with fossil fuel input from the total MWh of generation and report the renewable energy generated to the program administrator;

(III) The renewable energy resource must report the generation to the program administrator in the measurements, format, and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the non-renewable energy produced by the resource; and

(IV) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party as requested by the program administrator. If the program administrator requires a third party audit, the audit must be performed at the expense of the renewable energy resource.

(iv) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered cannot be verified as delivered to Texas customers. A facility is not ineligible if the facility is a generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.

(v) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(vi) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production.

(B) Facilities not eligible for producing RECs in the trading program. A renewable facility is not eligible to produce RECs if it is:

(i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subparagraph (A) of this paragraph.

(2) Solar renewable energy credits (solar RECs) for solar RPS.

(A) Facilities eligible for producing solar RECs and compliance premiums for the solar RPS. For a renewable facility to be eligible to produce solar RECs and compliance premiums for the solar RPS, it must be either a new facility, a small producer, or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this paragraph:

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (d) of this section.

(ii) A facility must only use renewable energy technologies that exclusively rely on an energy source that is naturally regenerated, over a short time and derived directly from the sun.

(iii) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a solar renewable facility that is delivered into a transmission system where it is commingled with electricity from non-solar renewable resources before being metered cannot be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed solar renewable facility if it otherwise meets the requirements of this subparagraph.

(iv) For repowered facilities, a facility is eligible to earn solar RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn solar RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(B) Facilities not eligible for producing solar RECs and compliance premiums for use in the solar RPS. A renewable facility is not eligible to produce solar RECs and compliance premiums for use in the solar RPS if it is:

(i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under this subsection.

(3) Compliance premiums. The program administrator will award compliance premiums to solar REC generators certified by the commission under subsection (d) of this section.

(A) For eligible solar technologies as set forth in paragraph (2)(A)(ii) of this subsection, one compliance premium will be created and awarded in conjunction with each solar REC generated January 1, 2008 through December 31, 2024. Compliance premiums will not be created or awarded after December 31, 2024.

(B) Except as provided in this paragraph, the award, retirement, trade, and registration of compliance premiums must follow the requirements of paragraph (4) of this subsection and subsections (f) and (i) of this section.

(C) A compliance premium may be used by any retail entity toward its solar RPS requirement under subsection (f)(2) of this section.

(D) A compliance premium may not be used by any retail entity toward the RPS requirement after the settlement period for 2024 compliance period.

(E) The program administrator must increase the statewide RPS requirement calculated under subsection (f)(2)(A) of this section by the number of compliance premiums retired during the previous compliance period.

(4) Production, transfer, and expiration of RECs and solar RECs. The production, transfer, and expiration of RECs and solar RECs must follow the requirements of this paragraph. RECs and solar RECs issued through December 31, 2023, continue to exist and retire consistent with their issuance.

(A) The owner of a renewable resource will earn one REC or solar REC when a MWh is metered at that renewable resource. The program administrator will record the energy in metered MWh and

credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production must be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(B) The transfer of RECs or solar RECs between parties is effective only when the transfer is recorded by the program administrator.

(C) The program administrator will require that RECs or solar RECs be adequately identified prior to recording a transfer and must issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information must be provided:

(i) identification of the parties;

(ii) REC or solar REC serial number, REC or solar REC issue date, and the renewable resource that produced the REC or solar REC;

(iii) the number of RECs or solar RECs to be transferred; and

(iv) the transaction date.

(D) A retail entity must surrender RECs or solar RECs to the program administrator for retirement from the market for a compliance period. The program administrator will document all REC and solar REC retirements annually.

(E) On or after each April 1, the program administrator will retire RECs and solar RECs that have not been retired by retail entities and have reached the end of their compliance life.

(F) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of RECs and solar RECs are accurately recorded.

(G) The issue date of RECs or solar RECs generated by renewable energy resources will coincide with the compliance period in which the credits are created. All RECs and solar RECs will have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program.

(H) Each REC or solar REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods. For purposes of this subparagraph, calendar year 2023 counts as a single compliance period.

(f) Solar renewable portfolio standard (solar RPS).

(1) Solar RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (d) of this section, retail entities, and other market participants as set forth in subsection (e)(4) of this section. Solar RECs generated by renewable energy resources in the calendar year 2025 may be used by any retail entity toward the solar RPS requirement for the compliance period beginning January 1, 2025, or on a voluntary basis in the subsequent years.

(A) The program administrator will allocate a solar RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in paragraph (2) of this subsection. Each retail entity is responsible for retiring sufficient solar RECs as set forth in paragraph (2) of this subsection and subsection (e)(4) of this section for the 2024 and 2025 compliance periods. The requirement to retire solar RECs to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(B) Solar RECs will be credited on an energy basis as set forth in subsection (e)(4) of this section.

(C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e)(2)(A) of this section may sell solar RECs generated by such a resource to retail entities as set forth in subsection (e)(4) of this section.

(D) Except where specifically stated, the provisions of this section apply uniformly to all participants in the trading program.

(E) The solar RPS end on September 1, 2025.

(2) Allocation of solar RPS requirement to retail entities. The program administrator must allocate solar RPS requirements among retail entities. The solar RPS terminates September 1, 2025, but is subject to the settlement period following that termination date. The program administrator must use the following methodology to determine the total annual solar RPS requirement for a given year and the final solar RPS allocation for individual retail entities:

(A) The total statewide solar RPS requirement for each applicable compliance period must be calculated in terms of MWh and must be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours for the 2024 compliance period and 5,840 hours for the 2025 compliance period, multiplied by the appropriate capacity conversion factor set forth in paragraph (3) of this subsection. The solar renewable energy capacity requirements for the compliance periods beginning January 1, 2024, and January 1, 2025, respectively are:

(i) 1,310 MW of resources from New Facilities in the 2024 compliance period; and

(ii) 655 MW of resources from New Facilities in the 2025 compliance period.

(B) The final solar RPS allocation for an individual retail entity for a compliance period must be calculated as follows:

(i) Prior to the preliminary solar RPS allocation, each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt out in accordance with paragraph (4) of this subsection. Each retail entity's preliminary solar RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities and multiplying that percentage by the total statewide solar RPS requirement for that compliance period.

(ii) The adjusted solar RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary solar RPS allocation by the offsets to which it qualifies, as determined under paragraph (5) of this subsection, with the maximum reduction equal to the retail entity's preliminary solar RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.

(iii) Each retail entity's final solar RPS allocation for a compliance period must be increased to recapture the total usable offsets calculated under clause (ii) of this subparagraph. The additional solar RPS allocation must be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary solar RPS allocation of all retail entities. This fraction must be multiplied by the total usable offsets for that compliance period and this amount must be added to the retail entity's adjusted solar RPS allocation to produce the retail entity's final solar RPS allocation for the compliance period.

(C) Concurrent with determining final individual solar RPS allocations for the current compliance period in accordance with

this subsection, the program administrator must recalculate the final solar RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final solar RPS allocation and its original final solar RPS allocation for the previous compliance periods must be added to or subtracted from the retail entity's final solar RPS allocation for the current compliance period.

(3) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate solar RECs to retail entities must be calculated during the first quarter of the 2024 compliance period and will be utilized through the end of the solar RPS. The capacity conversion factor must:

(A) Be based on actual generator performance data for the previous two years for solar renewable resources in the trading program during that period for which at least 12 months of performance data are available;

(B) Represent a weighted average of generator performance; and

(C) Use all actual generator performance data that is available for each solar renewable resource, excluding data for testing periods.

(4) Opt-out notice.

(A) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period must have its load excluded from the solar RPS calculation. Any opt-out notice submitted under the RPS as it existed prior to the effective date of this section continues to apply to the solar RPS for the compliance period as specified in this subsection.

(B) An investor-owned utility that is subject to the solar RPS requirement under this section must not collect costs attributable to the solar RPS from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates include the cost of solar RECs must file a tariff to implement this paragraph, not later than 30 days after the effective date of this section.

(C) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. A customer may revoke a notice under this paragraph at any time prior to the end of a compliance period by filing a letter in the designated project number and providing notice to ERCOT.

(5) Nomination and award of REC offsets.

(A) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its solar RPS requirement, as calculated in paragraph (2) of this subsection, only if those offsets were nominated in a filing with the commission by June 1, 2001.

(B) The program administrator must award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

(C) REC offsets must be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(D) REC offsets qualify for use in a compliance period under paragraph (2) of this subsection only to the extent that:

(i) The resource producing the REC offset has continuously since September 1, 1999, been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under subparagraph (A) of this paragraph or, if the resource has been committed under a contract that expired after September 1, 1999, and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(ii) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(E) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in subparagraph (D)(i) of this paragraph has lapsed or is no longer in effect, the retail entity must no longer be awarded REC offsets related to the facility.

(F) REC offsets must not be traded.

(g) Renewable energy credits trading program. The program administrator must maintain a voluntary banking and accreditation system to facilitate a voluntary renewable energy credit trading program. The program administrator must maintain the records, accounts, RECs, and compliance premiums from the trading program as it existed prior to August 31, 2023, and prior to the effective date of this section, as applicable.

(1) RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (d) of this section, retail entities, and other market participants as set forth in this section. For purposes of this subsection, there is no distinction between RECs and solar RECs.

(A) A power generating company may participate in the trading program and may generate RECs and buy or sell RECs as set forth in subsection (e)(4) of this section.

(B) RECs must be credited on an energy basis as set forth in subsection (e)(4) of this section.

(C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e)(1)(A) and (e)(2)(A) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (e)(4) of this section.

(2) The program administrator may assign additional attributes to RECs, such as more precise REC generation timestamps, to allow buyers to distinguish between RECs.

(h) Responsibilities of the program administrator. At a minimum, the program administrator must perform the following functions:

(1) Create and maintain accounts that track RECs, solar RECs, and compliance premiums for each participant in the trading program;

(2) Award RECs, solar RECs, or compliance premiums to certified renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity under subsection (f)(5) of this section;

(4) Annually record the retirement of RECs, solar RECs, and compliance premiums that each retail entity submits;

(5) Retire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premium's compliance life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs, solar RECs, or compliance premiums;

(7) Create an exchange procedure where persons may purchase and sell RECs, solar RECs, or compliance premiums. The exchange must ensure the anonymity of persons purchasing or selling RECs, solar RECs, or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;

(8) Make public each month the total energy sales of retail entities in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the RPS requirement to each retail entity in accordance with subsection (f)(2) of this section; and

(11) Submit an annual report to the commission. The program administrator must submit a report to the commission on or before May 15 of each calendar year. The report must contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report must contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all retail entities participating in the trading program, each retail entity's solar RPS requirement, the number of offsets used by each retail entity, the number of solar RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the solar RPS requirement, a listing of all retail entities that failed to comply with the solar RPS requirement, and the deficiency of each retail entity that failed to retire sufficient solar RECs or compliance premiums to meet its solar RPS requirement.

(i) Settlement process. The 90 days following the compliance period is the settlement period during which the following actions will occur:

(1) 30 days after the end of the compliance period, the program administrator will notify each retail entity of its total solar RPS requirement for the previous compliance period as determined under subsection (f)(2) of this section.

(2) 90 days after the end of the compliance period, each retail entity must submit solar RECs or compliance premiums to the program administrator from its account equivalent to its solar RPS requirement for the previous compliance period. If the retail entity does not submit sufficient solar RECs or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (j) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(j) Penalties and enforcement. If by April 1 of the year following a compliance period in which the solar RPS was in effect the program administrator determines that a retail entity has not retired sufficient solar RECs or compliance premiums to satisfy its allocation of the solar RPS, the retail entity is subject to an administrative penalty, under PURA §15.023, of $50 per MWh that is deficient.

(k) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the trading program. The program administrator will assign to the REC aggregator all RECs or solar RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units must be installed and connected to the grid in compliance with commission Substantive Rules, applicable interconnection standards adopted under the commission Substantive Rules, and federal rules.

(2) Notwithstanding subsection (e)(1)(A)(iii) of this section, a REC aggregator may use any of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose any of the methods listed below for each aggregation unit.

(A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be separate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data must be collected and transmitted within a reasonable time and is subject to verification by the program administrator. REC aggregators using this method will be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method will be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician must provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator under this paragraph.

(C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. Such protocols and procedures must require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method will be awarded one REC for every MWh generated.

(3) REC aggregators must register with the commission and the program administrator and must also register to participate in the trading program.

(4) A microgenerator participating in the trading program individually without the assistance of a REC aggregator must comply with the requirements of this subsection.

(5) REC aggregators and microgenerators that were registered and certified to participate in the trading program prior to the effective date of this section continue to be registered and certified under

this subsection and are not required to re-register or be recertified to participate in the trading program.

(l) Effective date. This section is effective January 1, 2024. The version of this rule that existed prior to January 1, 2024 applies through December 31, 2023, including the settlement of the 2023 compliance period, except that the 2023 compliance period ended on August 31, 2023, and RPS calculation must use 5,832 hours rather than 8,760 hours.

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 November 30, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.509

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5606). The adopted rule implements Section 18 of Senate Bill (SB) 3, passed in the 87th Texas Legislative Session (R.S.), by establishing an emergency pricing program (EPP) for the wholesale electric market as required by Public Utility Regulatory Act (PURA) §39.160. The rule will be republished.

The commission received comments on the proposed rule from East Texas Electric Cooperative, Inc. (ETEC), Electric Reliability Council of Texas (ERCOT), Lower Colorado River Authority (LCRA), NRG Energy, Inc. (NRG), Office of Public Utility Counsel (OPUC), Potomac Economics (IMM), Steering Committee of Cities Served by Oncor (OCSC), Texas Coalition for Affordable Power (TCAP), Texas Competitive Power Advocates (TCPA), Texas Energy Association for Marketers (TEAM), Texas Electric Cooperatives, Inc. (TEC), Texas Industrial Energy Consumers (TIEC), and Texas Public Power Association (TPPA).

General Comments

Ancillary services cap

The adopted rule language sets the emergency offer cap (ECAP) equal to the value of the low system-wide offer cap (LCAP). The value of the LCAP is set to $2,000 per MWh for energy offers and $2,000 per MW per hour for ancillary service offers.

ETEC stated that the rule should apply the ECAP to all market clearing prices, including ancillary service prices, during an EPP event to conform with the requirements of SB 3.

TEC noted that the proposed rule does not set or otherwise address an ancillary services cap in order to conform with PURA §39.160(d). However, TEC did not recommend a value for the ancillary services cap. As an alternative, TEC asserted that implementation of ERCOT nodal protocol revision request (NPRR) 1080, Limiting Ancillary Service Price to System-Wide Offer Cap, could be used to meet this statutory requirement.

Commission Response

The commission does not agree that the proposed rule fails to address a cap on ancillary services. By definition, a system-wide offer cap is applied system wide, meaning it applies to both energy and ancillary services in all markets, including the day-ahead market (DAM) and the real-time market (RTM). Much like the LCAP and high system-wide offer cap (HCAP), ECAP applies an offer cap to both energy and ancillary services in the DAM and RTM.

However, to provide clarity and regulatory certainty for market participants, the commission modifies the proposed rule to explicitly state that the LCAP, HCAP, and ECAP apply to both energy and ancillary service offers.

Applicability of the Performance Credit Mechanism (PCM) during EPP

TPPA requested clarification in the rule preamble on whether the commission anticipates or intends PCM, once implemented, to be applicable when the EPP is activated.

Commission Response

The impact of the activation of the EPP on the PCM is beyond the scope of this rulemaking.

Cap on marginal cost recovery

At the September 14, 2023 open meeting, the commission discussed whether the ability of a generator to recover its reasonable, verifiable operating costs should be capped at the HCAP. Commissioner McAdams requested that commenters address this topic.

TEAM supported the imposition of a cap on marginal cost recovery and recommended that this cap be set equal to the value of HCAP at $5,000 per MWh and $5,000 per MW per hour. ERCOT commented that the implementation of a cap on marginal cost recovery is operationally feasible--at either a value matching the HCAP or another value--but stated that such a cap would disincentivize generators from running during times of scarcity due to the risk of incurring unrecoverable costs.

NRG, OCSC, TCAP, TCPA, and TEC stated that a cap on marginal cost recovery will both disincentivize generators from running and negatively impact reliability in times of scarcity and increased demand. TEC argued that a marginal cost recovery cap would force not-for-profit entities, like electric cooperatives, to pass all unrecovered costs down to member owners.

TEC also contended that "the commission's jurisdiction does not extend to...the natural gas industry" and OCSC and TCAP noted that "competitive [natural] gas pricing" is beyond the commission's jurisdiction. Further, TCPA stated that this rule is "not the appropriate channel" to address these concerns.

NRG, TCPA, and TEC suggested that the rule mirror PURA §39.160, allowing generators to be reimbursed for "reasonable, verifiable operating costs that exceed the emergency cap." NRG, TCPA, and TEC noted that the proposed rule's current provision regarding reimbursement for costs exceeding the ECAP mirrors the LCAP reimbursement structure under §25.509(b)(7) by limiting cost recovery to only marginal costs.

Commission Response

The commission agrees with commenters that a cap on the recovery of costs for resource entities is not specifically contemplated in PURA §39.160. However, the commission modifies the rule to require a more stringent and transparent review process for the recovery of marginal costs over the HCAP. Under these requirements, a resource entity must submit to ERCOT an attestation stating that any and all fuel costs submitted for recovery are primarily related to the provision of fuel, or services directly tied to the provision of the purchased fuel, and any resource entity requesting cost recovery above HCAP must provide any additional documents or information requested by ERCOT including fuel purchase contracts.

Effective date of the adopted rule

ERCOT requested that the effective date of the rule fall on the same date as the commission's approval of the necessary protocol revisions for EPP implementation. If the commission prefers that the EPP be implemented prior to system changes necessary to automate the EPP, ERCOT requested that the rule preamble clarify that activation of the EPP may be as soon as practicable, including by the start of the next operating day.

Commission Response

The commission declines to modify the rule to make the effective date of the rule fall on the same day as the commission's approval of the necessary protocol revisions to automate the EPP. Instead, the commission modifies the rule to require ERCOT to implement the EPP immediately to ensure the EPP is available this winter. To account for ERCOT's concerns surrounding the automation of the EPP, the commission also modifies the rule to authorize ERCOT to use a manual activation process until the necessary protocol and system changes are complete.

One-time price adjustment for REPs

TEAM requested that the rule allow REPs a one-time price adjustment to existing fixed rate contracts that will account for any cost recovery mechanism for out-of-market costs paid under the EPP. TEAM argued that the activation of the EPP is a change resulting from a state law that imposes new or modified costs on REPs that are beyond the REP's control.

Commission Response

TEAM's comment concerns provisions of §25.475, relating to general retail electric provider requirements and information disclosures to residential and small commercial customers, which is beyond the scope of this rulemaking.

§25.509(c)(1) - Activation of the EPP

Section 25.509(c) establishes how the emergency pricing program (EPP) is administered and how it operates. Under §25.509(c)(1), the EPP will activate if the average system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

NRG supported the EPP activation parameters as proposed. However, several other commenters requested clarification around the criteria for EPP activation.

TPPA stated that the rule should clarify whether the 12 hours with energy prices at HCAP within a 24-hour period must be consecutive, or if they can be any combination of 12 hours within the 24-hour window. Additionally, TPPA requested clarification on whether an hour at the HCAP is meant to be four consecutive 15-minute settlement intervals at which the price of energy is at HCAP.

OPUC suggested a similar clarification. Specifically, OPUC requested that the rule clarify that the EPP may be triggered if the average system-wide energy price has been at the HCAP for "a total of 12 hours" within a rolling 24-hour period.

Commission Response

The commission disagrees with commenters that the rule would benefit from additional clarification surrounding the EPP's activation criteria. The proposed rule adequately clarifies that the EPP is activated when the system-wide energy prices, as determined by the ERCOT, are at HCAP for 12 hours within a rolling 24-hour period. The commission further clarifies that these 12 hours at HCAP need not be consecutive but they must occur within a rolling 24-hour period.

ERCOT argued that during an extended system-wide energy emergency, an "average system-wide energy price" could remain just below the HCAP because of transmission congestion and offer mitigation considerations. In this scenario, the EPP would not be triggered. ERCOT suggested the removal of the word "average" from the from the phrase "average system-wide energy price" provision to address this issue.

Commission Response

The commission agrees that transmission congestion and offer mitigation should not prevent the activation of the EPP. Accordingly, the commission modifies the proposed rule by removing the word "average" before "system-wide energy price" as requested by ERCOT.

LCRA requested that the commission direct ERCOT to assign a specific settlement point price for the average system-wide energy price in the nodal protocols. Specifically, LCRA suggested using the ERCOT Hub Average 345-kV settlement point price for this purpose.

Commission Response

The commission declines to modify the proposed rule to direct ERCOT to set this value equal to the ERCOT Hub Average 345-kV settlement point price as requested by LCRA. Removing "average" from the "system-wide energy price" in the proposed rule, as previously discussed, effectively allows ERCOT to set the system-wide energy price as equal to the real-time energy price, exclusive of congestion. Allowing the system-wide energy price to be set equal to the real-time energy price exclusive of congestion ensures that the EPP will be activated in response to energy prices that are truly system-wide, instead of energy prices that are tied to averaged locational marginal pricing.

§25.509(c)(2) - Emergency Offer Cap (ECAP)

Section 25.509(c)(2) sets the system-wide offer cap value for when the EPP is active equal to the value of the LCAP at $2,000 per MWh for energy offers and $2,000 per MW per hour for ancillary service offers.

LCRA, NRG, and TIEC supported the proposed rule language of setting the ECAP equal to the LCAP.

TEAM recommended that the ECAP be set below the LCAP at $1,500 per MWh. TEAM argued that the EPP will only be triggered when "normal market principles are not appropriate," specifically at times when economics is likely not the limiting factor for generation to be online and available in real-time. TEAM stated that setting the ECAP at $1,500 per MWh will "reduce

the risk premiums priced into the market," protect market participants and consumers from exposure to costs far above actual operating costs during emergency conditions, and ensure that each resource recovers its actual costs.

ETEC commented that the ECAP should be set equal to the lesser of either the LCAP or the market clearing price that would result under normal ERCOT operations. ETEC argued that the ECAP as proposed administratively sets a price that is unnecessary if load is capable of being met at a market clearing price below $2,000 per MWh or $2,000 per MW per hour.

Commission Response

The commission declines to modify the proposed rule to set the value of the ECAP at $1,500 per MWh as recommended by TEAM. Setting the ECAP equal to the value of the LCAP at $2,000 per MWh and $2,000 per MW per hour is appropriate because it provides consumers with sufficient protection from high prices during emergency energy situations while also minimizing the potential for uplift from covering costs above ECAP.

In response to ETEC, the commission notes that the ECAP establishes a system-wide offer cap, but does not administratively set the market price at a certain value. If the market clearing price is lower than ECAP while the EPP is active, that price will be the prevailing energy or ancillary services price.

§25.509(c)(3) - Duration of the EPP

Section 25.509(c)(3) sets the termination of the EPP as the later of: (A) 72 hours after the activation of the EPP, or (B) 24 hours after ERCOT exits emergency operations.

OCSC and TCAP argued that the proposed rule does not provide adequate flexibility for consideration of individual EPP events. Further, OCSC and TCAP proposed language that gives the commission discretion to adjust the EPP's duration parameters under "extraordinary conditions" provided that the commission acts in accordance with PURA §39.1514 and Texas Government Code §551.045.

TCPA commented that the rule should direct ERCOT to establish automatic activation and duration parameters for the EPP with specific attention to maintaining DAM incentives for generators. Further, TCPA commented that subparagraphs (A) and (B) should both align with the beginning of an operational day in order to accommodate the day-ahead market.

Commission Response

The commission declines to add a provision for explicit commission discretion over adjusting the EPP's duration parameters as circumstances may require, because it is unnecessary. The commission has the discretion to act in "extraordinary circumstances," and will follow the relevant legal requirements, including both the Texas Government Code and PURA as applicable, to exercise it.

Regarding TCPA's comments about aligning the entry and exit times of the EPP with DAM operations, the proposed rule has clearly defined entry and exit criteria, as well as requirements for notices. A market participant should be able to determine whether DAM offers will be impacted based on the timing of the notices. Protocols revisions could also be made to clarify further if needed.

Multiple commenters addressed subparagraph (A) of the EPP duration provision which establishes that the EPP may be terminated 72 hours after activation.

TPPA proposed alternative language that establishes the EPP termination triggers as either upon ERCOT's recall of any involuntary load shed instructions, or, if ERCOT did not issue instructions for involuntary load shed, 24 hours after EPP activation.

NRG proposed language that would limit the duration of the EPP to 72 hours after EPP activation, unless the EPP is activated during emergency conditions. In the case that EPP is activated during emergency conditions, NRG suggests maintaining the duration timelines proposed in the rule.

LCRA and TCPA proposed that the first exit provision be changed to "24 hours after the activation of the EPP." TCPA further commented that a minimum of 72 hours at an administratively set price cap has no basis in statute and is too long of a duration if ERCOT is not in emergency operations.

TEC and TPPA stated that the "72 hours after EPP activation" provision should be removed entirely.

TIEC proposed an increase in the minimum EPP duration from 72 hours after EPP activation to 120 hours. TIEC stated that this was necessary because, during extreme operational events, generators with forced outages may require more than 72 hours to reliably return to service and changing weather can cause uncertain conditions.

ETEC proposed language that would terminate the EPP after the end of ERCOT emergency operations but prior to the start of the next operating day.

Commission Response

The commission agrees with the commenters that a period of 72 hours is too long for EPP to remain in effect in the absence of ERCOT entering into emergency operations and modifies the rule to lower the minimum duration to 24 hours after activation of the EPP.

Multiple commenters requested clarity around the definition of "emergency operations" in subparagraph (B). TCPA proposed two versions of language to address the definition of "emergency operations." One version replaced the term "emergency operations" with "firm load shed" while the second version maintained the "emergency operations" language as proposed but defined it as "a period in which ERCOT experiences firm load shed."

Two commenters proposed the same or similar changes to TCPA's first version of language. TEC proposed the same change but expressed that the rule should also account for the possibility of EPP activation outside of a firm load shed event. TEC did not propose language to address this consideration. LCRA proposed a similar change but replaced "emergency operations" with "Energy Emergency Alert (EEA) Level 3 firm load shed."

Two commenters proposed similar changes to TCPA's second version of language. ETEC proposed defining "emergency operations" as "a period in which ERCOT experiences firm load shed." NRG proposed replacing "emergency operations" with "emergency conditions as declared by ERCOT in accordance with applicable protocols."

Commission Response

The commission agrees with commenters that the term "emergency operations" should be clearly defined in the rule. However, the commission disagrees that this definition should be tied to firm load shed. Once the EPP has been activated, it should remain active while ERCOT is under conditions that necessitate

an energy emergency alert (EEA), even if the conditions do not result in firm load shed. Accordingly, the commission modifies the rule to define "emergency operations" as ERCOT entering into any level of EEA.

ERCOT requested clarity around the EPP's general termination criteria. Because it is not specified that emergency conditions must be present for the activation of the EPP, ERCOT recommended the addition of clarifying language that states that subparagraph (B) applies only when a system-wide energy emergency has been declared.

Additionally, ERCOT requested clarity on whether the EPP is extended if ERCOT exits an EEA condition but then re-enters an EEA within 24 hours. ERCOT provided language that addresses both respective outcomes.

Commission Response

The commission agrees with ERCOT's suggestions and modifies the rule accordingly. Specifically, the modifications clarify that the duration provision in subparagraph (B) applies only if ERCOT has entered into emergency operations, and that the EPP will terminate 24 hours after ERCOT exits emergency operations as long as emergency operations have not been re-entered during that 24-hour period. If ERCOT exits but then re-enters emergency operations within 24 hours, the EPP will remain in effect.

§25.509(c)(4) - Market Notice

Section 25.509(c)(4) requires ERCOT to issue a market notice both when an EPP event is activated and deactivated.

LCRA and NRG supported the requireme nt for ERCOT to issue a market notice when the EPP is activated and deactivated as proposed. However, NRG requested that the date and time of activation and deactivation of the EPP be included in the respective notices.

OPUC provided language that requires the notice to be issued to both market participants and the public. OPUC states that expanding this notice requirement to the public is important for both increasing transparency on market conditions and supporting a positive relationship between ERCOT and the public.

ERCOT and OPUC requested that the rule language replace "market notice" with "notice." ERCOT reasoned that, while they intend to provide market notices on the activation and deactivation of the EPP as soon as practicable, a market notice is a formal process defined in ERCOT protocols that could take several hours to issue. Additionally, ERCOT stated that using the term "notice" would allow it to provide notice to stakeholders in near real-time via postings to the Operations Messages or Public Notices pages of the ERCOT website.

Commission Response

The commission agrees with commenters that the EPP notice should include the date and time of the respective activation or deactivation of the EPP and modifies the rule accordingly.

The commission agrees with ERCOT that prompt issuance of the EPP notice is paramount to ensuring that market participants and the public are sufficiently informed during emergency energy situations. The commission also agrees with OPUC that the public should be made aware of the activation of the EPP. Both goals can be accomplished by replacing "market notice" with "notice," and the commission modifies the rule accordingly.

§25.509(c)(5) - Reimbursement for Costs That Exceed the ECAP

Section 25.509(c)(5) requires ERCOT to reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource.

OCSC, NRG, TCAP, TCPA, and TEC requested that the rule allow generators to be reimbursed for actual operating costs, not just marginal costs as provided in the proposed rule language.

TCPA stated that the rule language should mirror the authorizing statute, PURA §39.160(g), by allowing generators to be reimbursed for "reasonable, verifiable operating costs" that exceed the ECAP. TEC recommended that ERCOT use the verifiable cost manual to the extent practicable to verify a resource entity's operating costs for reimbursement.

The IMM, OPUC, TEAM, and TIEC supported the reimbursement language as proposed. The IMM argued that the costs appropriate for reimbursement under the authorizing statute are any energy costs accepted by ERCOT under the RUC Make-Whole payment mechanism, including marginal costs.

Commission Response

The commission declines to modify the rule to provide reimbursement for actual operating costs instead of marginal costs as requested by stakeholders. PURA §39.160 requires generators be reimbursed for "reasonable, verifiable operating costs." Interpreting this to mean verifiable, marginal costs gives effect to the term "reasonable" in the statute, because using marginal costs is consistent with ERCOT's market design and with similar mechanisms such as RUC make-whole payments.

The commission agrees with the IMM that reimbursement of resource entities' marginal costs following an EPP event is reasonable because recovery of marginal costs provides adequate compensation for resource entities. The ERCOT energy-only market is not designed to guarantee complete recovery of a resource entity's costs across all intervals. Rather, the market is designed to provide recovery of marginal costs for most intervals and other costs across the lifetime of an asset. Fuel costs are precisely the type of costs that this make-whole provision provides protection against. Finally, it is not reasonable or consistent with the current market structure to require ERCOT to reimburse resource entities beyond recovery of a resource's marginal costs.

Multiple commenters requested clarity on how charges to recover reimbursable costs are allocated after the EPP. TEAM requested that, if the commission adopts a mechanism for awarding out-of-market costs to generators, those costs are allocated in a manner that is consumer-friendly and competitively neutral. ERCOT recommended the commission consider using load ratio share as an appropriate cost allocation methodology to equitably allocate charges for recoverable costs across the market. Additionally, ERCOT reasoned that specifying a cost allocation methodology would assist if ERCOT is required to utilize a manual process to activate the EPP prior to any system and protocol changes that effectuate EPP. OPUC proposed language that would prohibit any costs related to the EPP and generator reimbursement from being passed on to retail customers.

Commission Response

The commission declines to modify the rule to prohibit costs associated with the EPP from being recovered by an electric utility or retail electric provider either directly or indirectly from retail

customers as requested by OPUC. There is no statutory basis for completely insulating the retail market segment from costs, especially indirect costs, associated with the EPP.

The commission agrees with ERCOT that a load ratio share cost allocation methodology will allocate costs equitably across the market and be easy to implement. This methodology should also address TEAM's concerns surrounding the competitive neutrality of the cost allocation methodology. The commission modifies the rule accordingly.

§25.509(c)(6) - Report

Section 25.509(c)(6) requires ERCOT to file a report to the commission within 60 calendar days of the termination of an EPP event to provide: (A) a summary of the EPP event trigger, (B) an analysis of the EPP's performance while active, (C) the number of generators that filed for cost recovery and resulting total amount of recovered costs, and (D) any recommendations to modify or improve the EPP.

OCSC and TCAP supported the proposed reporting and timeframe requirements but requested the reporting timeframe for subparagraphs (A) and (B) be shortened to five days. OCSC and TCAP argued that these two elements of the report are feasible for to ERCOT deliver within five days of an EPP event and are important for providing timely information to market participants and the public. Further, OCSC and TCAP requested that ERCOT use the remaining 55 days to curate a more detailed, final response for subparagraphs (A) and (B).

Commission Response

The commission agrees with commenters that an initial report containing a summary of the EPP event trigger and an analysis of the EPP's performance while active should be delivered by ERCOT earlier than 60 calendar days after an EPP event to provide timely information to market participants and the public. However, the commission disagrees that the timeframe for this report should be set to five days after an EPP event. To provide ERCOT with sufficient time to compile and analyze data following an EPP event, the commission modifies the rule to allow ERCOT ten working days to file this initial report.

ERCOT requested that the EPP event report deadline be extended from 60 days to 90 days after an EPP event. ERCOT commented that if a cost recovery process similar to the one used for costs that exceed LCAP is adopted for EPP, QSEs would not be required to file their resources' recoverable costs until 60 days after an EPP event. Further, ERCOT argued that this constraint would limit its ability to sufficiently analyze QSEs' cost recovery information and compile it into a report in a timely manner.

Alternatively, ERCOT proposed rule language that would allow it to file the report in two phases. The first phase of the report would be delivered within 60 days of an EPP event and contain an EPP event trigger summary and performance analysis, while the second phase of the report would be delivered within 90 days of an EPP event and contain cost recovery information.

Commission Response

The commission agrees that requiring ERCOT to file a comprehensive report to the commission 60 days after an EPP event does not provide sufficient time for ERCOT to analyze data from the EPP event and provide recommendations. Accordingly, the commission modifies the rule to extend the reporting deadline for ERCOT to 90 calendar days. Additionally, the commission includes language to clarify that the 90-day report should include the dollar amounts of costs submitted and costs approved by fuel type, quantity, and any other information ERCOT finds relevant.

In addition to this comprehensive report, ERCOT must file an initial report containing a summary of the EPP event trigger and a performance analysis of the EPP while active within 10 working days of the termination of the EPP.

§25.509(d) - Review of System-Wide Offer Cap Programs

Section 25.509(d) requires the commission to review each of the system-wide offer cap programs every five years to determine whether to update aspects of each program.

OCSC and TCAP stated that the commission should review each system-wide offer cap program, including EPP, every two years instead of every five years as proposed.

Commission Response

The commission declines to modify the proposed rule to require a review of each system-wide offer cap program every two years as requested by commenters. The five-year timeframe for review of the system-wide offer cap programs is a minimum requirement, and the commission will review the system-wide offer cap programs more frequently if necessary.

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; §39.160, which directs the commission to establish an emergency pricing program for the wholesale electric market.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.160.

§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.

(a) Definitions. The following terms, when used in this section, have the following meanings, unless the context indicates otherwise:

(1) Emergency operations--ERCOT entering into any level of Energy Emergency Alert.

(2) Generation entity--an entity that owns or controls a generation resource.

(3) Generation resource--a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(4) Load entity--an entity that owns or controls a load resource.

(5) Load resource--a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(6) Resource entity--an entity that is a generation entity or a load entity.

(b) Scarcity Pricing Mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: ∑((RTEP - POC) * (number of minutes in a settlement interval / 60 minutes per hour)) for each settlement interval when RTEP - POC >0.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at $2,000 per MWh for energy offers and $2,000 per MW per hour for ancillary service offers.

(B) The high system-wide offer cap (HCAP) will be $5,000 per MWh for energy offers and $5,000 per MW per hour for ancillary service offers.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus $1 for the remainder of that calendar year.

(7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(c) Emergency Pricing Program (EPP). ERCOT will administer the EPP. The EPP will operate as follows.

(1) Activation of the EPP. The EPP must be activated if the system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

(2) Emergency Offer Cap (ECAP). While the EPP is active, the system-wide offer cap will be set to the ECAP for both energy and ancillary service offers. The ECAP will be set equal to the value of the LCAP.

(3) Duration of the EPP. The EPP will remain in effect until the later of:

(A) 24 hours after the activation of the EPP; or

(B) if ERCOT has entered into or remained in emergency operations while the EPP is activated, 24 hours after ERCOT exits emergency operations without re-entering emergency operations.

(4) Market Notice. ERCOT will issue a notice both when the EPP is activated and when the EPP is terminated. The notice must include the date and time of the activation or termination of the EPP.

(5) Reimbursement for Costs That Exceed the ECAP.

(A) While the EPP is active, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent practicable to verify the resource entity's costs for reimbursement.

(B) For reimbursement of actual marginal costs in excess of the HCAP, a resource entity must submit a reimbursement request in the manner prescribed by ERCOT. If a resource entity fails to provide information to ERCOT in its reimbursement request, as required by this subparagraph, ERCOT must not approve the reimbursement of the resource entity's fuel costs. This reimbursement request must include:

(i) for a resource entity requesting recovery of fuel costs, an attestation that the costs submitted for recovery are solely related to the provision of fuel or services directly related to the provision of the purchased fuel; and

(ii) any additional documents or information requested by ERCOT, including fuel purchase contracts.

(C) ERCOT must allocate costs associated with this paragraph on a load ratio share basis.

(6) Report.

(A) Within 10 working days from the date the EPP is terminated, ERCOT must file an initial report with the commission that contains the following information:

(i) a summary of the event that triggered the EPP; and

(ii) an analysis of the EPP's performance while the program was active.

(B) Within 90 calendar days from the date the EPP is terminated, ERCOT must file a final report with the commission that contains the following information:

(i) a final summary of the event that triggered the EPP;

(ii) a final analysis of the EPP's performance while the program was active;

(iii) the number of generators that filed for cost recovery under paragraph (5) of this subsection;

(iv) the total dollar amount of costs submitted and costs recovered under paragraph (5) of this subsection, including the fuel type, MW per hour, and number of units associated with recovered costs; and

(v) any recommendations to modify or improve the EPP.

(7) Immediate Implementation. ERCOT must implement the EPP immediately. Notwithstanding any conflicting language in this subsection, ERCOT may utilize a manual process to activate the EPP and may consider the real-time energy price, exclusive of any congestion, to determine the system-wide energy price, until any system and protocol changes are complete. ERCOT must issue a market notice when it transitions from a manual to an automated EPP activation process.

(d) Review of System-Wide Offer Cap Programs. Beginning January 1, 2026, and every five years thereafter, the commission will review each of the system-wide offer cap programs to determine whether to update aspects of each program.

(e) Development and Implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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 November 30, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts five repeals, ten amendments, and one new rule in Chapter 26 Substantive Rules Applicable to Telecommunication Service Providers as part of the statutorily required four-year rule review under Texas Government Code §2001.039. The commission also adopts corresponding revisions to commission forms.

The commission adopts the following rules with changes to the proposed text as published in the October 20, 2023 issue of the *Texas Register* (48 TexReg 6096): §26.5, relating to Definitions; §26.30, relating to Complaints; §26.31, relating to Disclosures to Applicants and Customers; §26.34, relating to Telephone Prepaid Calling Services; §26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services; §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria; §26.130, relating to Selection of Telecommunications Utilities; §26.207, relating to Form and Filing of Tariffs; new §26.208, relating to General Tariff Procedures; §26.276, relating to Unbundling; and §26.405, relating to Financial Need for Continued Support. These sections will be republished.

The commission adopts the following rules with no changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6096): §26.32, relating to Protection Against Unauthorized Billing Charges; §26.52, relating to Emergency Operations; §26.53, relating to Inspections and Tests; §26.54, relating to Service Objectives and Performance Benchmarks; §26.73, relating to Annual Earnings Reports; §26.79, relating to Equal Opportunity Reports; §26.80, relating to Annual Report on Historically Underutilized Businesses; §26.85, relating to Report on Workforce Diversity and other Business Practices; §26.123, relating to Caller Identification Services; §26.127, relating to Abbreviated Dialing Codes; §26.128, relating to Telephone Directories; §26.171, relating to Small Incumbent Local Exchange Company Regulatory Flexibility; §26.175, relating to Reclassification of Telecommunications Services for Electric Incumbent Local Exchange Companies (ILECs); §26.209, relating to New and Experimental Services; §26.210, relating to Promotional Rates for Local Exchange Company Services; §26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges; §26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs); §26.215, relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services; §26.217, relating to Administration of Extended Area Service (EAS) Requests; §26.221, relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges; §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; §26.272, relating to Interconnection; §26.403, relating to Texas High Cost Universal Service Plan (THCUSP); §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; §26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service; §26.409, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers; §26.414, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers; §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF); §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds; §26.419, relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service; and §26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers. These sections will not be republished.

The commission adopts the repeals of 16 Texas Administrative Code (TAC) §26.55, relating to Monitoring of Service; §26.78, relating to State Agency Utility Account Information; §26.87, relating to Infrastructure Reports; §26.142, relating to Integrated Services Digital Network; and §26.208 relating to General Tariff Procedures, with no changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6090). These sections will not be republished.

Definitions

Adopted §26.5 revises definition of "public service answering point (PSAP)," under §26.5(191), to include an emergency communications center.

Customer Complaints

Adopted §26.30 and §26.32 change the deadline for, as applicable, a Certificated Telecommunications Utility (CTU), billing telecommunications utility, a billing agent, or a service provider to respond to complaints submitted to the commission from 21 days to 15 days. This change aligns with recent changes to customer protection rules in project number 52796.

Consumer Protection Division Contact E-mail Address and Title

Sections 26.30(a)(2)(B)(iii)(IV), 26.31(b)(4)(C)(x), 26.34(f)(3), 26.130(g)(3) and (i)(4), as proposed, are amended to update "consumer@puc.texas.gov" as the contact e-mail for the commission's Consumer Protection Division. Sections 26.208(c)(2)(E) and 26.276(g)(1), as proposed, are amended to update the reference from "Office of Customer Protection" to "Consumer Protection Division."

Emergency Operations

Adopted §26.52 requires dominant certificated telecommunications utilities (DCTUs) to comply with the backup power obligations associated with fiber optic cables that are prescribed by federal law or other applicable regulations, including the requirements of 47 Code of Federal Regulations §9.20.

Inspections and Tests

Adopted §26.53, revises the requirement for DCTUs to report to the commission the numbers assigned for dial test terminations. Specifically, such numbers would only have to be provided by the DCTU if requested by the commission.

Service Objectives and Performance Benchmarks

Adopted §26.54 deletes requirements related to one-party line service and voice band data under subsection (b).

Annual Report on Historically Underutilized Businesses

Adopted §26.80, expands the list of providers to which the section does not apply to include any company that holds a certificate of operating authority (COA), a company that holds a service provider certificate of operating authority (SPCOA) and a registered interexchange carrier (IXC).

Report on Workforce Diversity and other Business Practices

Adopted §26.85 expands the list of providers to which the section does not apply to include any company that holds a COA, a company that holds a SPCOA and a registered IXC.

COA and SPCOA Criteria

Amended §26.111 revises subsection (i)(4) to require applicants to file SPCOA amendment applications with the Commission on State Emergency Communications (CSEC) via electronic mail within five working days from the date the amendment was filed. The change to subsection (i)(4) would require applicants to provide notice of the SPCOA amendment applications to all affected 9-1-1 administrative entities in the manner provided by paragraph (3)(A)-(D). Additionally, subsection (m)(2) is revised to require a COA or SPCOA holder that intends to cease operations to provide a copy of its application to cease operations and relinquish its certificate to CSEC. The commission also adopts minor and conforming changes to the commission prescribed SPCOA application form. Section 26.111(d), as proposed, is amended to include the term "or entity" where necessary for consistency with §26.111(a) and other provisions in the rule. Section 26.111(g)(3), as proposed, is amended to strike the term "initial" to make clear that the requirements under §26.111(g)(3)(A)-(D) apply to tariff amendment applications as well as new tariff applications, which is reflective of historical commission practice and for consistency with language in §26.111(g) requiring ongoing adherence to the requirements prescribed by that subsection. Section 26.111(i)(1)(C) was inadvertently omitted from the published rule and is re-inserted. Section 26.111(i)(1)(E)(i), as proposed, is revised to correctly reflect that the requirements for the discontinuation of optional services do not apply to a deregulated company holding a COA or to an exempt carrier.

9-1-1 administrative entities

The reference to "9-1-1 entity" in proposed §26.111(i)(4) and §26.272(e)(1)(B)(vi)(I) to is corrected to refer to "9-1-1 administrative entity." Amended §26.433 corrects the reference to "9-1-1 administrative entity" in subsection (i)(1).

Capitol Complex Telephone System Directory

Adopted §26.128 replaces the term State of Texas Telephone Directory with Capitol Complex Telephone System Directory in subsection (b)(1) and (2) and deletes the requirement under subsection (e)(5) for telephone directories published by certain telecommunications utilities or its affiliates to include sample long distance rates.

House Bill (HB) 1597 Implementation

HB 1597, adopted by the 88th Texas Legislature (R.S.), amends the requirements associated with filing a telecommunications tariff with the commission under PURA §52.251. Specifically, HB 1597 authorizes an affiliate or trade association to, on behalf of a public utility, file a tariff for telecommunications service with the commission. HB 1597 also provides that a tariff is considered approved if the commission does not approve or deny the tariff or request supplemental information from the filer within 60 days from the date the tariff was filed. Lastly, HB 1597 requires the filer to provide supplemental information to the commission within 15 days from the request and provides that a tariff is considered approved if the commission does not approve or deny the tariff within 30 days from the date the commission receives the supplemental information.

To implement HB 1597, the commission repeals and replaces §26.208 and adopts §§26.89, 26.207, 26.209, 26.210, and 26.211. Section 26.89(a)(3), as proposed, is further revised to authorize commission substantive rule citations applicable to a tariff to be included as a cover letter.

New §26.208 aligns the general requirements of PURA §52.251, as amended by HB 1597, with the more specific requirements of PURA Chapter 53, Subchapter C (§§53.101-53.113) when a tariff involves a rate change. New §26.208 also clarifies the requirements for tariff applications, including those related to effective dates and notice to affected persons, and more clearly describes the process for commission review of such applications. To conform with the abridged timeline for commission review and approval imposed by HB 1597, new §26.208 prohibits a tariff application from being docketed, unless the application involves a new tariff or a rate change under PURA Chapter 53, Subchapter C. Sections 26.209, 26.210, and 26.211 are adopted to remove references to docketing of an application filed under those provisions. New §26.208(b), as proposed, is amended by deleting §26.208(b)(1) and renumbering and retitling §26.208(b)(2) and (3) accordingly, revising the provisions for notice to municipalities and by newspaper to only apply to major rate changes, and authorizing an applicant to request a waiver to notice requirements for administrative or clerical tariff amendments, as determined by the presiding officer. New §26.208(c)(1)(C), as proposed, is also amended to further limit the prohibition on electronic notice only to applications involving a "major" rate change, or if otherwise required by the presiding officer. Additionally, §26.209 and §26.210 are adopted to more clearly indicate that a tariff to which §26.209 or §26.210 apply may be filed in accordance with §26.208. Similarly, §26.207 is amended to reference §§26.208, 26.209, and 26.211 more clearly. Section 26.211 is amended to clarify that an informational notice filing in accordance with §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies, suffices for compliance provided that the notice complies with §26.228, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies or §26.229, relating to Requirements Applicable to Chapter 52 Companies, as applicable. Section 26.207(d)(1)(A),as proposed, is further revised to authorize commission substantive

rule citations applicable to a tariff to be included as a cover letter. Lastly, amended §26.89 and §26.207, and adopted §§26.209, 26.210, and 26.211 more clearly reflect the statutory language of PURA §52.251.

Senate Bill (SB) 1425 and SB 1710 Implementation

SB 1425, adopted by the 88th Legislature, amends PURA §56.032 to require small ILECs seeking adjustments from the Small and Rural Plan to, every calendar year, publicly file with the commission operational information concerning the small ILEC's operations that are regulated by the commission. The commission adopts §26.407 to implement HB 1425. The commission also amends the commission prescribed form for the annual report and accompanying schedules used by small ILECs, as well as the associated instructions.

SB 1710 adopted by the 88th Legislature, amends PURA §56.023 to implement revisions to support levels received by eligible telecommunications providers under the High Cost Plan or Small and Rural Plan of the Texas Universal Service Fund (TUSF). SB 1710 also revises eligibility criteria for receipt of support from the TUSF and requires the commission to periodically review such criteria. Lastly, SB 1710 adds provisions for expiration and relinquishment of support from the TUSF. Section 26.405(d)(2)(B), as proposed, is further amended to omit the reference to "Version 7" of the National Broadband Map and instead refer to the version of the map in effect for at least 90 days.

The commission also adopts §26.409 by setting an expiration date for the provision of December 31, 2023, consistent with the requirements of PURA §56.023(s).

Comments

The commission received comments from Texas Cable Association, Texas Telephone Association, Verizon, and Windstream.

The comments received in this project were in response to a proposal for publication that was published in the *Texas Register* to provided formal notice of a rulemaking proceeding and were in response to a notice of the commission's chapter 26 rule review. Under Tex. Gov't Code, Chapter 2001, the commission may only adopt substantive amendments that address issues that were noticed in the commission's proposal for publication. Comments requesting amendments beyond the scope of the issues addressed in the proposal for publication are not being considered for implementation in this rulemaking proceeding but may be considered in a future rulemaking proceeding. This will ensure that all interested parties have an opportunity to comment on the proposed changes.

Consumer Protection Division Contact E-mail Address

Sections 26.30(a)(2)(B)(iii)(IV), 26.31(b)(4)(C)(x), 26.34(f)(3), 26.130(g)(3) and (i)(4) respectively refer to the e-mail address of the commission's Consumer Protection Division in the context of certain customer complaint rules.

Commission Response

The commission revises the reference to the e-mail address of the commission's Consumer Protection Division in these provisions from "customer@puc.texas.gov" to correctly refer to "consumer@puc.texas.gov."

Section 26.111(a) and (d) - Applicability and certification

Existing §26.111(a) establishes that the section applies to the certification of a person or entity to provide certain telecommunications services as holders of COAs and SPCOAs under PURA Chapter 54, Subchapters C and D. Proposed §26.111(d) adds language that prohibits a person from providing the services listed under §26.111(a) unless the person obtains a certificate of convenience and necessity, COA, or SPCOA in accordance with the requirements of §26.111.

TCA recommended that the prohibition added to §26.111(d) be deleted because it is unnecessary, ambiguous, and would impose costs with no commensurate benefit to the public. TCA argued that §26.111(a) should instead be amended to state that no provision in §26.111 prohibits the granting of a COA or SPCOA to entities that intend to utilize Voice over Internet Protocol (VoIP) or other advanced technologies but do not provide local exchange telephone service, basic local telecommunications service, or switched access service. TCA stated that its recommended change would better reflect the commission's holdings in Daemon Systems (Docket No. 52765), Earthgrid (Docket No. 53076), and Nexstream (Docket No. 52359). In these cases, TCA asserted, parties argued that the commission may only grant an SPCOA to an entity if it would be providing local exchange telephone service, basic local telecommunications, or switched access service. The commission rejected those arguments. Moreover, TCA stated that its recommended change would provide clarity and certainty to the telecommunications industry. TCA stated that such a change is reflective of the legislative intent of SB 2399 (88R), which would have expressly authorized the commission to grant a certificate to a VoIP provider. TCA provided redlines consistent with its recommendation.

Commission Response

The commission declines to amend §26.111(a) and (d) in the manner TCA recommends. Section 26.211(d) restates a prohibition under PURA §54.001, making TCA's proposed edits to §26.211(a) and (d) unnecessary.

The applicants in the cited cases both offered telecommunications-related services, such as VoIP (Daemon Systems and Nexstream), and optical service via fiber cable (Earthgrid). The holdings of those cases were intended to provide the commission discretion in reviewing applications for certification by stating that existing law does not prohibit certification despite the applicant not providing basic telephone service or even a telecommunications-related service. However, codification of the holdings of those cases in §26.111, as TCA recommends, may result in future applicants arguing that they cannot be denied certification despite not providing basic local telephone service or a telecommunications-related service. Accordingly, under the adopted rule, the commission retains the discretion to review each application for certification on a case-by-case basis.

The commission does not agree with TCA that the existence of SB 2399 is a persuasive basis for amending the rule because SB 2399 was not enacted into law.

The commission also modifies §26.111(d) to add the term "or entity" where appropriate for consistency with §26.211(a) and other provisions in the rule.

Section 26.111(i)(1)(A) - COA or SPCOA name change amendments

Section 26.111(i)(1)(A) establishes the process for a certificate holder to change its corporate or assumed name and requires a certificate holder to be in compliance with commission rules before they can change its corporate or assumed name.

Verizon recommended eliminating the requirement that a COA or SPCOA holder be in compliance with commission rules before name change requests are administratively granted. Verizon found this requirement overly burdensome, unnecessary, and wasteful, particularly for national carriers with multiple affiliates. Verizon recommended that the provision be revised so that carrier name changes are eligible for administrative disposition and be limited only to ensure the change does not lead to customer confusion. Verizon reasoned that the application form for a name change requires an applicant to provide five years of complaint history for itself and each of its affiliates, and to list the number of customers in each state, information which has no bearing on whether a name change should be permitted. Verizon provided redlines consistent with its recommendation.

Commission Response

The commission declines to revise §26.111(i)(1)(A) as proposed by Verizon. Name change amendments are eligible for administrative approval under §26.111(i)(1)(A)(i) and requiring compliance with commission rules before allowing a corporate name change ensures that the name change complies with the applicable customer protection rules. Additionally, providing complaint history to the commission is necessary to ensure ongoing compliance with commission rules, even for a name change, and is a standard requirement for other commission registrations such as §25.107(e)(2)(D), relating to Certification and Obligations of Retail Electric Providers (REPs), 25.111(f)(1)(Q), relating to Registration of Aggregators, and for affiliates under §25.84(g), relating to Annual Reporting of Affiliate Transactions for Electric Utilities. Furthermore, §26.111(g)(3)(A)(ii) substantially addresses Verizon's concerns. Specifically, the provision authorizes an applicant to request to limit the inclusion of complaint history, disciplinary records, and compliance records if it would be unduly burdensome to provide. The commission instead amends §26.111(g)(3) to strike the term "initial" as the application form has historically applied to both new SPCOA applications and amendments. Specifically, the revision makes clear that an applicant seeking an amendment to a SPCOA certificate is authorized to request to limit the inclusion of complaint history, disciplinary records, and compliance records if it would be unduly burdensome to provide. This change harmonizes the provision with historical commission practice and the requirements listed in the commission-prescribed application form and aligns the provision with §26.111(g) which requires ongoing adherence to the technical and managerial requirements prescribed under that subsection.

Section 26.111(i)(1)(C), (2), and (3) - Sale or transfer of certificate; acquisition or merger of certificate holder

Section 26.111(i)(1)(C) establishes the process and requirements for certificate holder to sell, transfer, assign, or lease a controlling interest in its COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. Section 26.111(i)(2) authorizes abbreviated amendment applications for corporate restructuring or internal change in ownership or controlling interest. Section 26.111(i)(3) requires notice to be filed with the commission if a certificate holder acquires or merges with another certificate holder, other than a CCN holder, and further requires a full amendment application to be filed if commission staff determines that it is necessary.

Verizon recommended that §26.111(i)(1)(C), (2), and (3) be revised to ensure the rule is consistent with the commission's authority regarding telecommunications carrier transactions. Verizon stated that the commission's authority to regulate stock sales, mergers, and asset and ownership transactions of public utilities is codified at PURA §14.101-103, and these sections apply only to public utilities, not to COA or SPCOA holders. Verizon also noted that PURA §51.010 specifically excludes COA and SPCOA holders from the provisions of PURA §14.101. For these reasons, Verizon concluded that the commission lacks authority to regulate stock sales, mergers, and acquisitions of COA and SPCOA holders. Specifically, the commission should only require SPCOA or COA holders to notify the commission of a sale, transfer, or merger of at least 50% of the company within 30 days after closing, without the need for commission approval. Verizon further recommended that the commission exempt COA and SPCOA holders from the requirement to file an application for such transactions. Verizon provided redlines consistent with its recommendation.

Commission Response

The commission disagrees with Verizon because commission review of such transactions by certificate holders is authorized under PURA §§54.103, 54.152-155, and 54.255 to ensure the company acquiring the certificate is eligible and can provide adequate service. Accordingly, the commission declines to revise §26.111(i)(1)(C), (2), or (3) because commission review of transactions involving the controlling interest of a certificate is substantively different from the process detailed in PURA §14.101. Commission review of transactions under §26.111 is limited to an analysis of eligibility and capability to provide service to ensure that the parties to the transaction comply with commission rules and otherwise are qualified to conduct the sale. In contrast, PURA §14.101 requires detailed reporting of certain transactions and authorizes commission investigation to determine whether the transaction is equitable and in the public interest, and to "disallow the effect of the transaction if the transaction will unreasonably affect rates or service."

Section 26.111(i)(1)(C) was inadvertently omitted from the rule and is re-inserted.

Section 26.111(i)(1)(E)(i) - Discontinuation of optional service

Section 26.111(i)(1)(E)(i) establishes the process for a deregulated company holding a COA or an exempt carrier to discontinue service and relinquish its certificate, or to discontinue an optional service.

Verizon recommended that the commission clarify the process for discontinuing optional services under §26.111(i)(1)(E)(i). Specifically, Verizon recommended that the provision be amended to clearly state that a deregulated company holding a COA or an exempt carrier is not required to provide the information that would ordinarily be required when discontinuing optional services.

Commission Response

The commission agrees with Verizon that a deregulated company holding a COA or an exempt carrier is not required to provide the information that would ordinarily be required when discontinuing optional services and amends the rule accordingly.

Section 26.111(i)(4) - Notice to CSEC and 9-1-1 administrative entities

Section 26.111(i)(4) requires an applicant to provide a copy of the COA or SPCOA application or amendment notice to CSEC and provide notice to all affected 9-1-1 administrative entities of the application or amendment.

TCA recommended that §26.111(i)(4) be amended to require the commission to maintain a complete contact list with email addresses for 9-1-1 administrative entities on the commission's website.

Commission Response

The commission declines to amend §26.111(i)(4) to require the commission to maintain a complete contact list of 9-1-1 administrative entities on its website. A map and contact list of 9-1-1 administrative entities are available on CSEC's website. A contact list maintained by the commission would be both duplicative and susceptible to becoming out of date, because the commission is not the agency tasked with maintaining such information.

Section 26.111(l)(5)(B) - Copy of most recent tariff in certification amendment

Section 26.111(l)(5)(B) requires an amendment for certification to include a copy of the applicant's most recent commission-approved tariff.

TCA recommended inserting language to §26.111(l)(5)(B) that would exempt COA and SPCOA holders from the requirement to file tariffs.

Commission Response

The commission declines to amend the rule as recommended by TCA because it is unnecessary. Section 26.111(l)(5)(B)(ii) exempts entities subject to §26.89, which applies to nondominant carriers, from the tariff filing requirement.

Section 26.89(a)(3) and §26.207(d)(1)(A) - Inclusion of rules applicable to each tariff

Sections 26.89(a)(3) and 26.207(d)(1)(A) require a tariff to include each rule that relates to or affects a rate of, or a utility service, product, or commodity furnished by, a nondominant carrier or utility.

TTA recommended the requirement for rule references be deleted from §26.89(a)(3) and §26.207(d)(1)(A). TTA commented that if the commission repealed or renumbered a rule, each tariff subject to the requirement would have to be revised and each company would consequently have to re-file its tariff. TTA further noted that, some tariff pages may require numerous different rule references depending on the level of detail that would be required. TTA recommended the rule references be included in the cover letter used to file a tariff with the commission. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the proposed language to clarify such information is to be provided a cover letter.

Section 26.208(b)(1) - Filing of a new DCTU tariff and application for certification

Section 26.208(b)(1) requires an application to file a new DCTU tariff prior to or concurrently with an application for certification and otherwise meet the requirements of §26.208(b)(2)(A) and (B).

Commission Response

The commission modifies the provision for clarity. There is no statutory requirement for a tariff to be filed prior to or concurrently with an application for certification. Further, the requirement to file a tariff with an amendment for certification is already covered by §26.111(l)(5)(B).

Section 26.208(b)(2)-(3) and (c)(1)(C) - Notice for tariff amendments involving a rate change

Section 26.208(b)(2) prescribes the requirements, including notice, for a tariff amendment involving a rate change, including a major rate change. Section 26.208(b)(3) prescribes the requirements, including notice, for other DCTU tariff amendments that do not involve a rate change. Sections §26.208(b)(2)(B) and §26.208(b)(3)(B) both require notice to be provided to affected persons, including each municipality and customer affected by the change, for tariff amendments involving a rate change and other tariff amendments, respectively. Section 26.208(c)(1)(C) authorizes notice for tariff applications to be provided electronically unless otherwise required by the presiding officer or if the application involves a major rate change. Section 26.208(c)(1)(C) also establishes the process for notice if the application involves a major rate change.

TTA recommended the newspaper and municipality notice requirements in proposed §26.208(b)(2) and (3) be revised to only apply to tariff amendments involving major rate change. Specifically, TTA recommended revising §26.208(b)(2) to state the provision only applies to a "major" rate change, with the effect of changing the applicability of the notice requirement under §26.208(b)(2)(B). Similarly, TTA recommended revising §26.208(b)(3) to apply to "non-major rate changes" in addition to other tariff amendments, and also revising §26.208(b)(3)(B) to remove the requirement to provide notice to municipalities and customers affected by the change. Lastly, TTA recommended the prohibition on electronic notice for tariff applications in §26.208(c)(1)(C), if required by the presiding officer or for applications involving a rate change, be further limited to only applications involving a "major" rate change. TTA commented that PURA §53.103(c) authorizes the commission to waive notice requirements for tariff changes in certain circumstances. TTA explained it has been the commission's historical practice to require publication only for major rate change tariff applications, but only require notice to OPUC for non-major rate changes. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the cited provisions accordingly.

Section 26.208(b)(3)(B) - Notice to affected persons of other DCTU tariff amendments

Section 26.208(b)(3)(B) requires a DCTU to provide notice to affected persons, including each municipality affected by the change, in the manner prescribed by §26.208(c) or as otherwise required by the presiding officer.

TTA recommended §26.208(b)(3)(B) be revised to allow an applicant to request a waiver of the notice requirement for non-major rate change tariffs, for good cause. Specifically, TTA recommended the good cause exception be available when tariff amendments are administrative or clerical and, therefore, have minimal or no impact on the public. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the rule accordingly.

Section 26.208(e)(1)(A) - Effective date of tariff

Section 26.208(e)(1)(A) requires the effective date of an applicant's tariff to be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

TTA recommended language in §26.208(e)(1) that requires the effective date of tariffs to be "no earlier than 35 days after the date a sufficient application is approved by the presiding officer" be deleted as it is not supported by HB 1597. Alternatively, TTA recommended a separate rulemaking be initiated on this policy alone. TTA remarked that this is a change in the commission precedent of establishing the default effective date for tariffs to be 35 days from the date of filing. TTA commented that this change is unnecessary and referenced existing §26.207((g)). TTA further commented that the default tariff effective date of 35 days after filing has provided consistency to companies and that the change "reverses the presumption of approval" and "empowers (c)ommission (s)taff to effectively delay the effective date of every routine tariff indefinitely." TTA recommended that this change be deleted from the rule or, alternatively, if the commission's objective is to implement this change, to initiate a separate rulemaking on this policy alone. TTA provided draft language consistent with its recommendation.

Commission Response

The commission rejects TTA's recommended change to §26.208(e)(1)(A) and suggestion to initiate a separate rulemaking on this issue. The change of the effective date of a tariff from the date of filing to the date of approval by the presiding officer is necessary to implement the timeline required by HB 1597. The extension of the proposed effective date under §26.111(e)(4) is limited only to tariff applications that involve a rate change. Requirements for tariff proceedings under PURA §52.251, as amended by HB 1597, must be read in pari materia with the specific requirements under PURA Chapter 53, Subchapter C. Likewise, the specific grant of statutory authority under PURA Chapter 53, Subchapter C prevails over the more general grant in PURA §52.251. This is further reflected in §26.208(f)(4) which curtails the circumstances in which a tariff application may be docketed and §26.208(h) which contemplates the procedures for docketing a tariff application involving a rate change. Furthermore, TTA's citation to §26.207(i) no longer exists, as that provision has been merged with what is now §26.111(e)(4). PURA §53.102 states, "(A) utility may not change its rates unless the utility files a statement of its intent with the commission at least 35 days before the effective date of the proposed change" which does not conflict with §26.208(e)(1)(A). Accordingly, the change regarding the effective date of the tariff is not inconsistent with existing law. A presumption of approval has never existed in §26.208, nor does the provision authorize commission staff to indefinitely delay a proposed tariff. As ever, the determination on the sufficiency of a tariff will be made by the presiding officer upon considering staff's recommendation. In any event, §26.208(e)(2) authorizes the presiding officer to approve an earlier effective date for good cause shown by an applicant.

Section 26.405(d)(2)(B) - TTA and Windstream

Section 26.405(d)(2)(B) prescribes the process the commission will use to determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange using the current version of the National Broadband Map.

TTA and Windstream recommended the reference to the National Broadband Map in §26.405(d)(2)(B) be revised to omit the reference to "Version 7" of the map and instead insert language requiring use of the version of the map that has been in effect for at least 90 days. TTA explained that the proposed language presents a timing issue when considering newly revised data from the map and application submission before the deadline. TTA provided draft language consistent with its recommendation. Windstream noted if the recommended change were not accepted, it would make filing a complete and accurate application on or before December 31, 2023 "nearly impossible" for providers.

Commission Response

The commission agrees with TTA and Windstream's recommendation and modifies the cited provision.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.5

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.5. Definitions.

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

(1) Access customer--Any user of access services which are obtained from a certificated telecommunications utility (CTU).

(2) Access services--CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.

(3) Administrative review--A process under which an application may be approved without a formal hearing.

(4) Affected person--

(A) a public utility affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(5) Affiliate--

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

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

(F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(6) Aggregate customer proprietary network information (CPNI)--A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.

(7) Alternate 9-1-1 routing--The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.

(8) Assumed name--Has the meaning assigned by Texas Business and Commerce Code, §36.10.

(9) Automatic dial announcing device (ADAD)--Any automated equipment used for telephone solicitation or collection that:

(A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and

(B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.

(10) Automatic location identification (ALI)--The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.

(11) Automatic number identification (ANI)--The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.

(12) Base rate area--A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.

(13) Basic local telecommunications service--Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

(14) Basic network services (BNS)--Those services identified in Public Utility Regulatory Act §58.051.

(15) Baud--Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.

(16) Bellcore--Bell Communications Research, Inc.

(17) Billing agent--Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.

(18) Billing telecommunications utility--Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.

(19) Bit Error Ratio (BER)--The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.

(20) Bit Rate--The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.

(21) Bona fide request--A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

(22) Business service--A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.

(23) Busy hour--The clock hour each day during which the greatest usage occurs.

(24) Busy season--That period of the year during which the greatest volume of traffic is handled in a switching office.

(25) Call aggregator--Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.

(26) Call splashing--Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.

(27) Call transferring--Handing off a call from one operator service provider (OSP) to another OSP.

(28) Caller identification materials (caller ID materials)--Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.

(29) Caller identification service (caller ID service)--A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

(30) Calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(31) Calling party information--

(A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or

(B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

(32) Capitalization--Long-term debt plus total equity.

(33) Carrier of choice--An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.

(34) Carrier-initiated change--A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(35) Central office--A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

(36) Census block group (CBG)--A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.

(37) Certificated service area--The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

(38) Certificated telecommunications utility--A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.

(39) Class of service or customer class--A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.

(40) Commercial mobile radio service (CMRS)--

(A) As defined in 47 C.F.R. §20.3, a mobile service that is:

(i) provided for profit with, i.e., the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.

(41) Commission--The Public Utility Commission of Texas.

(42) Commission on State Emergency Communications (CSEC)--The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.

(43) Competitive exchange service--Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

(44) Competitive services (CS)--Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.

(45) Completed call--A call that is answered by the called party.

(46) Complex service--The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.

(47) Consumer good or service--

(A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;

(B) A cemetery lot;

(C) A time-share estate; or

(D) A service related to real or personal property.

(48) Consumer telephone call--An unsolicited call made to a residential telephone number to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(49) Cooperative--An incumbent local exchange company that is a cooperative corporation.

(50) Cooperative corporation--

(A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or

(B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162,

or a predecessor statute to Chapter 162 and operating under that chapter.

(51) Corporate name--Has the meaning assigned by Texas Business Corporation Act, Article §2.05.

(52) Corporation--A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

(53) Custom calling-type services--Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.

(54) Customer access line--A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.

(55) Customer-initiated change--A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(56) Customer premises equipment (CPE)--Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

(57) Customer proprietary network information (CPNI), customer-specific--Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics *(e.g.,* rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(58) Customer trouble report--Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(59) dBrn--A unit used to express noise power relative to one Pico watt (-90 dBm).

(60) dBrnC--Noise power in dBrn, measured with C-message weighting.

(61) dBrnCO--Noise power in dBrnC referred to or measured at a zero transmission level point.

(62) D-Channel--The integrated-services-digital-network out-of-band signaling channel.

(63) Dedicated signaling transport--Transmission of out-of-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.

(64) Dedicated 9-1-1 trunk--Refers to either:

(A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or

(B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect dedicated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.

(65) Default routing--The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.

(66) Depreciation expenses--The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

(67) Deregulated company--An incumbent local exchange company (ILEC) for which all of the company's markets have been deregulated.

(68) Direct-trunked transport--Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.

(69) Disconnection of telephone service--The event after which a customer's telephone number is deleted from the central office switch and databases.

(70) Discretionary services (DS)--Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.

(71) Distance learning--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.

(72) Distribution lines--Those lines from which the end user may be provided direct service.

(73) Dominant carrier--A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

(74) Dominant certificated telecommunications utility (DCTU)--A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.

(75) Dual-party relay service--A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.

(76) Educational institution--Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(77) Electing local exchange company (LEC)--A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.

(78) Electric utility--Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(79) Element--Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.

(80) Eligible telecommunications provider (ETP) service area--The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(81) Embedded customer premises equipment--All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.

(82) Emergency service number (ESN)--A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.

(83) Emergency service zone (ESZ)--A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.

(84) End user choice--A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.

(85) Enhanced service provider--A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.

(86) Entrance facilities--The transmission path between the access customer's (such as an interexchange carrier) point of demarcation and the serving wire center.

(87) Equal access--Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.

(88) Exchange area--The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.

(89) Exempt Carrier--A nondominant telecommunications utility that satisfies any of the criteria of PURA §52.154.

(90) Expenses--Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.

(91) Experimental service--A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

(92) Extended area service (EAS)--A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

(93) Extended local calling service (ELCS)--Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(94) E911 or E9-1-1--9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.

(95) Facilities--All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.

(96) Facilities-based provider--A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.

(97) Foreign exchange (FX)--Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.

(98) Foreign serving office (FSO)--Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

(99) Forward-looking common costs--Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.

(100) Forward-looking economic cost--The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.

(101) Forward-looking economic cost per unit--The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.

(102) Geographic scope--The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.

(103) Grade of service--The number of customers a line is designated to serve.

(104) Health Center--A federally qualified health center service delivery site.

(105) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(106) Hearing carryover--A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.

(107) High cost area--A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.

(108) High cost assistance (HCA)--A program administered by the commission in accordance with the provisions of §26.403 of this title.

(109) Identity--The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

(110) Impulse noise--Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.

(111) Incumbent local exchange company (ILEC)--A local exchange company that had a CCN on September 1, 1995.

(112) Informational notice--Notice that is filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility if required by Public Utility Regulatory Act Chapter 52, 58, or 59.

(113) Information sharing program--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(114) Integrated services digital network (ISDN)--A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(115) Interactive multimedia communications--Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(116) Intercept service--A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

(117) Interconnection--Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating

to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.

(118) Interconnector--A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).

(119) Interexchange carrier (IXC)--A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

(A) the furnishing, or furnishing and maintenance of a private system;

(B) the manufacture, distribution, installation, or maintenance of customer premises equipment;

(C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or

(D) the provision of shared tenant service.

(120) Internet Protocol (IP)--A data communication protocol used in communicating data from one computer to another on the Internet or other networks.

(121) Internet Protocol enabled service--A service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.

(122) Interoffice trunks--Those communications circuits which connect central offices.

(123) IntraLATA equal access--The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.

(124) Intrastate--Refers to communications which both originate and terminate within Texas state boundaries.

(125) Least cost technology--The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) be consistent with overall network design and topology requirements.

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

(127) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(128) Lifeline Service--A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

(129) Line--A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(130) Local access and transport area (LATA)--A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.

(131) Local call--A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.

(132) Local calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(133) Local exchange carrier (LEC)--A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

(134) Local exchange telephone service or local exchange service--A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services;

(J) a competitive exchange service; or

(K) any other service the commission determines is not a "local exchange telephone service."

(135) Local message--A completed call between customer access lines located within the same local calling area.

(136) Local message charge--The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(137) Local service charge--The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.

(138) Local telecommunications traffic--

(A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(139) Long distance telecommunications service--That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(140) Long run--A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(141) Long run incremental cost (LRIC)--The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.

(142) Mandatory minimum standards--The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.

(143) Market--An exchange in which an incumbent local exchange company provides residential local exchange telephone service.

(144) Master street address guide (MSAG)--A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.

(145) Meet point billing--An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.

(146) Message--A completed customer telephone call.

(147) Message rate service--A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(148) Minor rate change--A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 50%.

(149) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(150) National integrated services digital network (ISDN)--The standards and services promulgated for integrated services digital network by Bellcore.

(151) Negotiating party--A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.

(152) Next generation 9-1-1 system (NG9-1-1 system)--A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for public safety answering positions and other emergency service organizations.

(153) New service--Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.

(154) Nonbasic services--Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.

(155) Non-discriminatory--Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.

(156) Non-dominant certificated telecommunications utility (NCTU)--A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.

(157) Nondominant carrier--

(A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier;

(ii) any other reseller of communications;

(iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or

(iv) a provider of operator services that is not also a subscriber.

(C) A deregulated company that holds a COA.

(158) North American Numbering Plan (NANP)--Use of 10-digit dialing in the format of a 3-digit "NPA" followed by a 3-digit "NXX" and a 4-digit line number, NPA-NXX-XXX.

(159) Numbering plan area (NPA)--The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.

(160) NXX--A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing the "Exchange Code" fields of a North American Numbering Plan telephone number.

(161) Open network architecture--The overall design of an ILEC's network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(162) Operator service--Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(163) Operator service provider (OSP)--Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

(164) Originating line screening (OLS)--A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.

(165) Out-of-service trouble report--An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(166) P.01 grade of service--A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy house will be blocked.

(167) Packaged Service--The combination of any regulated service with any other regulated or unregulated service or with any service of an affiliate, offered to customers at a packaged rate or rates.

(168) Partial deregulation--The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.

(169) Pay-per-call-information services--Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

(170) Pay telephone access service (PTAS)--A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

(171) Pay telephone service (PTS)--A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(172) Per-call blocking--A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.

(173) Per-line blocking--A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

(174) Percent interstate usage (PIU)--An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.

(175) Person--Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(176) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(177) Prepaid local telephone service (PLTS)--Prepaid local telephone service means:

(A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;

(B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;

(C) tone dialing service;

(D) access to 911 service;

(E) access to dual party relay service;

(F) the ability to report service problems seven days a week;

(G) access to business office;

(H) primary directory listing;

(I) toll blocking service; and

(J) non-published service and non-listed service at the customer's option.

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

(179) Pricing flexibility--Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

(A) customer specific contracts;

(B) volume, term, and discount pricing;

(C) zone density pricing, with zone to be defined as an exchange;

(D) packaging of services; and

(E) other promotional pricing flexibility.

(180) Primary interexchange carrier (PIC)--The provider chosen by a customer to carry that customer's toll calls.

(181) Primary interexchange carrier (PIC) freeze indicator--An indicator that the end user has directed the CTU to make no changes in the end user's PIC.

(182) Primary rate interface (PRI) integrated services digital network (ISDN)--One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.

(183) Primary service--The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

(184) Print translations--The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(185) Privacy issue--An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:

(A) the type of information about a customer that is released;

(B) the customers about whom information is released;

(C) the entity or entities to whom the information about a customer is released;

(D) the technology used to convey the information;

(E) the time at which the information is conveyed; and

(F) any other change in the collection, use, storage, or release of information.

(186) Private line--A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(187) Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.

(188) Promotional rate--A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

(189) Promotional Service--A service offered to customers at a promotional rate or rates.

(190) Provider of pay telephone service--The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.

(191) Public safety answering point (PSAP)--A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772. The term includes an emergency communications center.

(192) Public utility or utility--A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(193) Public Utility Regulatory Act (PURA)--The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 66.016 (West 2007, Supplement 2013).

(194) Qualifying low-income consumer--A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(195) Qualifying services--

(A) residential flat rate basic local exchange service;

(B) residential local exchange access service; and

(C) residential local area calling usage.

(196) Rate--Includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(197) Reciprocal compensation--An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

(198) Reclassification area--The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.

(199) Redirect the call--A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.

(200) Regional planning commission--The meaning established in Texas Health and Safety Code §771.001(10).

(201) Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.

(202) Relay Texas Advisory Committee (RTAC)--The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.

(203) Relay Texas--The name by which telecommunications relay service in Texas is known.

(204) Relay Texas administrator--The individual employed by the commission to oversee the administration of statewide telecommunications relay service.

(205) Repeated trouble report--A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(206) Residual charge--The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(207) Retail service--A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(208) Return-on-assets--After-tax net operating income divided by total assets.

(209) Reversal of partial deregulation--The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

(210) Rule--A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(211) Rulemaking proceeding--A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.

(212) Rural incumbent local exchange company (ILEC)--An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(213) Selective routing--The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.

(214) Selective transfer--A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.

(215) Separation--The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(216) Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(217) Service connection charge--A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(218) Service order system--The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.

(219) Service provider--Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.

(220) Service provider certificate of operating authority (SPCOA) reseller--A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.

(221) Service restoral charge--A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(222) Serving wire center (SWC)--The CTU designated central office which serves the access customer's point of demarcation.

(223) Signaling for tandem switching--The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(224) Small certificated telecommunications utility (CTU)--A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(225) Small local exchange company (SLEC)--Any incumbent CTU as of September 1, 1995, that has fewer than 31,000

access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(226) Small incumbent local exchange company (Small ILEC)--An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas.

(227) Spanish speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(228) Special access--A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(229) Specialized Telecommunications Assistance Program (STAP)--The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).

(230) Specialized Telecommunications Assistance Program (STAP) voucher--A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(231) Stand-alone costs--The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(232) Station--A telephone instrument or other terminal device.

(233) Study area--An incumbent local exchange company's (ILEC's) existing service area in a given state.

(234) Supplemental services--Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.

(235) Suspension of service--That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(236) Switched access--Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.

(237) Switched access demand--Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(238) Switched access minutes--The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(239) Switched transport--Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(240) Tandem-switched transport--Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.

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

(242) Telecommunications provider--As defined in the Public Utility Regulatory Act §51.002(10).

(243) Telecommunications relay service (TRS)--A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(244) Telecommunications relay service (TRS) carrier--The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(245) Telecommunications utility--

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and

(G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(246) Telephones intended to be utilized by the public--Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(247) Telephone solicitation--An unsolicited telephone call.

(248) Telephone solicitor--A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(249) Test year--The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(250) Texas Universal Service Fund (TUSF)--The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(251) Tier 1 local exchange company--A local exchange company with annual regulated operating revenues exceeding $100 million.

(252) Title IV-D Agency--The office of the attorney general for the state of Texas.

(253) Toll blocking--A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(254) Toll control--A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(255) Toll limitation--Denotes both toll blocking and toll control.

(256) Total element long-run incremental cost (TELRIC)--The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.

(257) Transitioning company--An incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.

(258) Transport--The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.

(259) Trunk--A circuit facility connecting two switching systems.

(260) Two-primary interexchange carrier (Two-PIC) equal access--A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(261) Unauthorized charge--Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(262) Unbundling--The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(263) Unit cost--A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(264) Usage sensitive blocking--Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(265) Virtual private line--Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(266) Voice carryover--A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(267) Voice over Internet Protocol (VoIP)--The technology used to transmit voice communications using Internet Protocol.

(268) Voice over Internet Protocol service--A service that:

(A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;

(B) requires a broadband connection from the user's location; and

(C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(269) Volume insensitive costs--The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(270) Volume sensitive costs--The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(271) Wireless provider--A provider that:

(A) provides commercial mobile radio service as defined in paragraph (40) of this section; or

(B) utilizes fixed wireless technology to provide local exchange service.

(272) Wholesale service--A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(273) Working capital requirements--The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(274) "0-" call--A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(275) "0+" call--A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(276) 311 answering point--A communications facility that:

(A) is operated, at a minimum, during normal business hours;

(B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(C) is the first point of reception by a governmental entity of a 311 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(277) 311 service--A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(278) 311 service request--A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:

(A) be in writing;

(B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;

(C) contain an outline from the governmental entity for implementation of 311 service;

(D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and

(E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(279) 311 system--A system of processing 311 calls.

(280) 9-1-1 administrative entity--A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).

(281) 9-1-1 database management services provider--An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.

(282) 9-1-1 database services--Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.

(283) 9-1-1 network services--Services purchased by a 9-1-1 administrative entity that routes 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-1-1 system, Internet Protocol-based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.

(284) 9-1-1 network services provider--A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.

(285) 911 system--A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.

(286) 9-1-1 selective routing tandem switch--A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.

(287) 9-1-1 service--As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).

(288) 9-1-1 service agreement--A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.

(289) 9-1-1 service arrangement--Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

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

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For further information, please call: (512) 936-7322

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SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §§26.30 - 26.32, 26.34

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.30. Complaints.

(a) Complaints to a certificated telecommunications utility (CTU). A customer or applicant for a service may submit a complaint to a CTU either in person, by letter, telephone, or by any other means determined by the CTU. For purposes of this section, a complainant is a customer or applicant for a service that has submitted a complaint to a CTU or to the commission.

(1) Initial investigation. The CTU must investigate the complaint and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU must inform customers of the right to receive these results in writing.

(2) Supervisory review by the CTU. If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.

(A) A CTU supervisor must conduct the supervisory review and inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU must inform customers of the right to receive these results in writing.

(B) A complainant who is dissatisfied with a CTU's supervisory review must be informed of:

(i) the right to file a complaint with the commission;

(ii) the commission's informal complaint resolution process;

(iii) the following contact information for the commission:

(I) Mailing Address: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326;

(II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;

(III) FAX: (512) 936-7003;

(IV) E-mail address: consumer@puc.texas.gov;

(V) Internet address: http.//www.puc.texas.gov;

(VI) Relay Texas (toll-free): 1-800-735-2989.

(b) Complaints to the commission. The commission may only review a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.

(1) Informal complaints.

(A) The complaint to the commission should include:

(i) The complainant's name, address, and telephone number.

(ii) The name of the CTU or subsidiary company against which the complaint is being made.

(iii) The customer's account or phone number.

(iv) An explanation of the facts relevant to the complaint.

(v) Any other information or documentation which supports the complaint.

(B) Upon receipt of a complaint from the commission, a CTU must investigate and advise the commission in writing of the results of its investigation within 15 days of the date the complaint was forwarded by the commission.

(C) The commission will:

(i) review the CTU's investigative results;

(ii) determine a resolution for the complaint; and

(iii) notify the complainant and the CTU in writing of the resolution.

(D) While any informal complaint process is ongoing at the commission:

(i) basic local telecommunications service must not be suspended or disconnected for the nonpayment of disputed charges; and

(ii) a customer is obligated to pay any undisputed portion of the bill.

(E) The CTU must keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.

(i) This record must show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

(ii) A CTU is not required to keep records of protests regarding commission-approved rates or charges that require no further action by the CTU.

(2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided by §22.242 of this title (relating to Complaints).

§26.31. Disclosures to Applicants and Customers.

(a) Application. Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier that meets the criteria of Public Utility Regulatory Act (PURA) §52.154.

(b) Certificated telecommunications utilities (CTU). The disclosure requirements of this subsection only apply to residential customers and business customers with five or fewer customer access lines.

(1) Promotional requirements. Promotions, including advertising and marketing, conducted by a CTU must comply with the following:

(A) If any portion of a promotion is translated into another language, then all portions of the promotion must be translated into that language. Promotions containing a single informational line or sentence in another language to advise a person on how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions must not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) Prior to acceptance of service. A CTU must provide the following information to an applicant before the applicant accepts service:

(A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;

(B) an explanation of each product or service being offered;

(C) a description of how each charge will appear on the telephone bill;

(D) any applicable minimum contract service terms;

(E) disclosure of all money that must be paid prior to installation of a new service or transfer of an existing service to a new location, and whether the money is refundable;

(F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);

(G) information about any necessary change in the applicant's telephone number;

(H) disclosure of the company's cancellation policy; and

(I) information on whom to call and a working toll-free number for customer inquiries.

(3) Terms and conditions of service. A CTU must provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, a customer is entitled to receive an additional copy of the terms and conditions of service free of charge from the CTU every calendar year. Any contract offered by a CTU must include the terms and conditions of service. A CTU is prohibited from offering a customer a contract or

terms and conditions of service that waives the customer's rights under federal or state law, or commission rule.

(A) The information must be:

(i) sent to the new customer before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the terms and conditions of service;

(iii) provided in a readable format written in plain, non-technical language; and

(iv) provided in the same language in which the CTU markets the service.

(B) The following information must be included:

(i) each rate and charge as it will appear on the telephone bill;

(ii) an itemization of each charge that may be imposed on the customer, including charges for late payments and returned checks;

(iii) a full description of each product or service to which the customer has subscribed;

(iv) any applicable minimum contract service terms and fees for cancellation or early termination;

(v) all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether the money is refundable;

(vi) applicable construction charges in accordance with §26.22 of this title;

(vii) any necessary change in the applicant's telephone number;

(viii) the company's cancellation or early termination policy;

(ix) an operational toll-free number for customer service; and

(x) the provider's legal business name used for providing telecommunications services in the state.

(4) Customer rights. At the initiation of service, a CTU must provide to a customer information regarding customer rights in writing and free of charge.

(A) The informational disclosures relating to customer protections required by subparagraph (C) of this paragraph must be:

(i) sent to the new customer before payment for a full bill is due;

(ii) clearly labeled to indicate the customer protection disclosures contain information regarding customer rights;

(iii) provided in a readable format and written in plain, non-technical language; and

(iv) provided in the same language in which the CTU markets the service.

(B) The CTU must also provide:

(i) the information in subparagraph (C) of this paragraph to each customer at least every other year at no charge; or

(ii) a printed statement on the bill or a billing insert identifying where the information in subparagraph (C) of this paragraph can be obtained. The statement must be provided to each customer every six months.

(C) The following informational disclosures relating to customer protections must be provided by the CTU:

(i) the CTU's customer credit requirements and the circumstances under which a customer deposit or an additional deposit may be required, the manner in which a deposit and interest paid on deposits are calculated, the time frame and requirements for return of the deposit to the customer, and any other terms and conditions related to deposits;

(ii) the time period for payment of outstanding bills without incurring a penalty and the amount and conditions under which a penalty may be applied to delinquent bills;

(iii) the grounds for suspension or disconnection of service;

(iv) the requirements a CTU must meet to suspend or disconnect service;

(v) the requirements a CTU must meet for resolving billing disputes and how disputes affect suspension or disconnection of service;

(vi) information on alternative payment plans offered by the CTU, including payment arrangements and deferred payment plans. A CTU must provide to each customer a statement that the customer has the right to request these alternative payment plans;

(vii) the requirements to have the customer's service restored or reconnected after involuntary suspension or disconnection;

(viii) a customer's right to continue local service as long as full payment for local service is timely made;

(ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

(x) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and the customer's right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, e-mail address: consumer@puc.texas.gov, Internet address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989, must accompany this information;

(xi) the hours, addresses, and telephone numbers of each CTU office where bills may be paid and customer service information may be obtained, or a toll-free number at which the customer may obtain such information;

(xii) a toll-free telephone number or equivalent, such as the use of wide area telephone service or acceptance of collect calls, that a customer may call to report service problems or make billing inquiries;

(xiii) a statement that each CTU service is provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

(xiv) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(xv) notice of any special services such as readers or notices in Braille, if available, the phone number for Relay Texas: 1-800-735-2989, and any teletypewriter or text telephone service offered by the CTU;

(xvi) how a customer with a physical disability, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and

(xvii) if a CTU is offering Lifeline Service in accordance with §26.412 (relating to Lifeline Service Program), how information about customers who qualify for Lifeline Service may be shared between each relevant state agency and the customer's phone service provider.

(5) Notice of changes. A CTU must provide each customer written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and must give each customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or changes required by law.

(6) Right of cancellation.

(A) A CTU must provide each residential applicant and customer the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer enrolls in a contract with a minimum duration exceeding 31 days, a CTU must promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU must offer the applicant or customer a right to cancel the contract without penalty or fee for a period of six working days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(c) Dominant certificated telecommunications utility (DCTU). In addition to the requirements of subsection (b) of this section, the following requirements apply to residential customers and business customers with five or fewer customer access lines.

(1) Prior to acceptance of service. Before an applicant signs a contract for service, or a DCTU accepts any money for new residential service or transfers a customer's existing residential service to a new location, the DCTU must provide to each applicant the following:

(A) information relating to the DCTU's residential service alternatives, beginning with the lowest-priced option, and the range of service offerings available within the applicant's service area with full consideration to the cost associated with applicable equipment options and installation charges; and

(B) a statement written in plain English or Spanish that clearly informs the applicant about the availability of Lifeline Service.

(2) Customer rights.

(A) If a DCTU provides the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer in accordance with §26.128 of this title (relating to Telephone Directories), the DCTU must provide a printed statement on each customer's bill or a billing insert identifying the location of the information within the telephone directory. The statement or billing insert must be provided to customers at least every six months.

(B) The information required by subsection (b)(4)(C) of this section and this subsection must be provided in plain English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it must notify each customer through a statement provided in plain English and Spanish, in the customer rights disclosures that the information is available in Spanish from the DCTU, by mail or from the DCTU's offices.

(C) The information required in subsection (b)(4)(C) of this section must also include:

(i) the customer's right to information about rates and services;

(ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(iii) information on prohibitions for disconnection of local service for the ill and disabled;

(iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and

(v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

§26.34. Telephone Prepaid Calling Services.

(a) Purpose. The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider must disclose to customers regarding the rates and terms of service for prepaid calling services offered in this state.

(b) Application. This section applies to any "telecommunications utility" as defined by §26.5 of this title, relating to Definitions. This section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier utility that meets the criteria of Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.

(c) Liability. A prepaid calling services company is responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:

(1) end-user purchased prepaid calling service remains usable in accordance with the requirements of this section; and

(2) compliance requirements of all disclosure provisions of this section are met.

(d) Definitions. The following terms used in this section have the following meanings, unless the context indicates otherwise:

(1) Access telephone number--The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.

(2) Billing increment--A unit of time used to charge customers for prepaid calling services.

(3) Personal identification number (PIN)--A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.

(4) Prepaid calling services account--An amount of money paid by a customer in advance to access the services of a telecommu-

nications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.

(5) Prepaid calling card--A card or any other device purchased to establish a prepaid calling services account.

(6) Prepaid calling services--Any telecommunications transaction in which:

(A) a customer pays in advance for telecommunications services;

(B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and

(C) the customer must use a PIN and an access telephone number to use the telecommunications services.

(7) Prepaid calling services company--A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

(8) Recharge--A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.

(9) Surcharge--any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment including connection, payphone, and maintenance fees.

(e) Billing requirements for prepaid calling services.

(1) Billing increments must be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission, on any display at the point of sale, on any prepaid calling card, or on any prepaid calling card packaging.

(2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls are not completed calls and must not be charged against the account.

(3) A surcharge must not be levied more than once on a given call.

(4) Prepaid calling services companies must not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges must be disclosed at the time of purchase. Current international rates must be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

(5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate provided that the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company must keep internal records of changes to its international rates and must provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates must be updated annually in accordance with §26.89 of this title, relating to Information Regarding Rates and Services of Nondominant Carriers.

(6) Upon verbal or written request, prepaid calling services companies must be capable of providing a customer the following call detail data information at no charge:

(A) Dialing and signaling information that identifies the inbound access telephone number called;

(B) The number of the originating telephone;

(C) The date and time the call originated;

(D) The date and time the call terminated;

(E) The called telephone number; and

(F) The PIN or account number associated with the call.

(7) Prepaid calling services companies must maintain call detail data records for at least two years.

(f) Written disclosure requirements for all prepaid calling services.

(1) Information required on prepaid calling cards. Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted provided that the information required by subparagraphs (A) and (B) of this paragraph is printed in both languages.

(A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:

(i) The toll-free number as required by subsection (i) of this section;

(ii) The maximum rate per minute must be shown for local, intrastate, and interstate calls. International call prices must be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and

(iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company must honor it.

(B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:

(i) The value of the card and any applicable surcharges must be expressed in the same format such as a card whose value is expressed in minutes must express surcharges in minutes. If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;

(ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid calling services;

(iii) Instructions on using the card correctly; and

(iv) Expiration date or policy, if the card cannot be used after a date certain. If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.

(2) Information required at a point of sale. All the following information must be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision

before purchase. Bilingual information may be made available provided that the information in subparagraphs (A)-(I) of this paragraph is printed in both languages.

(A) A listing of applicable surcharges;

(B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid calling card services;

(C) The toll-free number as required by subsection (i) of this section;

(D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;

(E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;

(F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;

(G) The policy for rounding billing increments, if applicable;

(H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and

(I) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;; e-mail address: consumer@puc.texas.gov; Internet address: www.puc.texas.gov; and Relay Texas (toll-free): 1-800-735-2989.

(g) Verbal disclosure requirements for prepaid calling services. Prepaid calling services companies must provide an announcement:

(1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and

(2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.

(h) Registration requirements for prepaid calling services companies. All prepaid calling services companies must register with the commission in accordance with §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

(i) Business and technical assistance requirements for prepaid calling services companies. A prepaid calling services company must provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company must attempt to contact each customer no later than the next working day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company must resolve the inquiry or complaint by calling the customer or, if the customer requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten days of the request, the prepaid calling services provider must advise the complainant in writing of the status and subsequently complete the investigation within 21 days of the original request.

(j) Requirements for refund of unused balances. If a prepaid calling services company fails to provide service at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company must either refund the customer for each unused prepaid calling service or provide equivalent service.

(k) Requirements when a prepaid calling services company terminates operations in this state.

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company must at least 30 days prior to the termination of operations:

(A) Notify the commission in writing:

(i) That operations will be ending;

(ii) Of the date of the termination of operations; and

(iii) That the company certifies that the actions required by this subsection have been completed;

(B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;

(C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and

(D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

(2) Within 24 hours after ceasing operations, the prepaid calling services company must deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list must include the following:

(A) The identification number used by the company for billing and debit purposes; and,

(B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.

(l) Date of compliance for prepaid calling card services companies. Prepaid calling service offered for sale in the state of Texas and each prepaid calling services company must be in compliance with this rule within six months of the effective date of this section.

(m) Compliance and enforcement.

(1) Administrative penalties. If the commission finds that a prepaid calling services company has violated any provision of this section, the commission will order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions under PURA, Chapter 15.

(2) Enforcement. The commission will coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.

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

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SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §§26.52 - 26.54

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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16 TAC §26.55

The repeal is adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §§26.73, 26.79, 26.80, 26.85, 26.89

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.89. Nondominant Carriers' Obligations Regarding Information on Rates and Services.

(a) Filing of tariff by nondominant carrier. A nondominant carrier, including a nondominant carrier holding a certificate of operating authority or a service provider certificate of operating authority may, but is not required to file with the commission the information listed under paragraphs (1)-(3) of this subsection. If filed, such information must be updated and kept current at all times.

(1) A description of each type of telecommunications service provided;

(2) For each service listed in response to paragraph (1) of this subsection, the locations in the state by city in which service is originated or terminated. If a service is provided statewide, the carrier must specify either origination or termination; and

(3) A tariff, schedule, or list showing each rate for each service, product, or commodity offered by the nondominant carrier. A tariff must include a cover letter that lists each rule that relates to or affects a rate of the nondominant carrier, or a utility service, product, or commodity furnished by the nondominant carrier.

(b) Annual tariff update. By June 30 of each calendar year, each nondominant carrier that, during the previous 12 months, has not filed changes to the information specified by subsection (a) of this section must file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier that fails to file either this letter or the updates specified by subsection (a) of this section during the 12 month period ending on June 30 will no longer be registered with the commission.

(c) Filing of nondominant carrier tariff by affiliate or trade association. An affiliate of a nondominant carrier or trade association may file the information listed under subsection (a)(1)-(3) and (b) of this section on behalf of a nondominant carrier.

(1) For each filing, the nondominant carrier must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.

(2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the nondominant carrier or trade association.

(3) The filing by affiliate of the nondominant carrier or trade association must comply with the requirements of this section and other applicable law.

(d) Registration requirement for nondominant carriers. A nondominant carrier must comply with the registration requirements of §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

(e) Exceptions. A nondominant carrier:

(1) may, but is not required to, maintain on file with the commission each tariff, price list, or customer service agreement that governs the terms of providing service;

(2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;

(3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the nondominant carrier:

(A) files written notice of the withdrawal with the commission; and

(B) notifies each of its customers of the withdrawal and posts each current and applicable tariff, price list, or customer service agreement on its Internet website.

(4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the rates, terms, or conditions of such a service;

(5) is not subject to any rule or regulatory practice that is not imposed on:

(A) a holder of a certificate of convenience and necessity serving the same area; or

(B) a deregulated company that:

(i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or

(ii) serves an area also served by the nondominant telecommunications utility.

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

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16 TAC §26.78, §26.87

The repeals are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.111

The amendment is adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) Scope and purpose. This section applies to the certification of a person or entity to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) Definitions.

(1) Affiliate--An affiliate of, or a person affiliated with, a specified person, is a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(2) Annual Report--A report that includes, at a minimum, the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, primary and secondary emergency contacts and operation and policy migration contacts which is submitted to the commission every calendar year. Each provided contact must include the contact's company title.

(3) Application - An application for a new COA or SPCOA certificate or an amendment to an existing COA or SPCOA certificate.

(4) Control--The term control, including the terms controlling, controlled by and under common control with, means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(5) Executive officer--When used in reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(6) Facilities-based certification--Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(7) Permanent employee--An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(8) Person--An individual and any business entity, including a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(9) Principal--A person or member of a group of persons that controls the person in question.

(10) Shareholder--As context indicates and the applicable business entity requires, the legal or beneficial owner of any of the equity in a business entity, including , stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) Ineligibility for certification.

(1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity, as required by PURA §54.102 .

(3) An applicant is ineligible for an SPCOA if the applicant, and affiliates of the applicant, in the aggregate have more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) The commission will not grant an SPCOA to a holder of a:

(A) CCN for the same territory; or

(B) COA for the same territory.

(d) Application for COA or SPCOA certification. A person or entity is prohibited from providing local exchange telephone service, basic local telecommunications service, or switched access service unless the person or entity obtains a certificate of convenience and necessity in accordance with §26.101 of this title (relating to Certificate of Convenience and Necessity Criteria), or a certificate of operating authority or a service provider certificate of operating authority in accordance with this section.

(1) An applicant for COA or SPCOA certification must demonstrate the capability of complying with this section. An applicant who obtains a COA or SPCOA, or who receives a certificate under this section must maintain compliance with this section.

(2) An application must be made on the form prescribed by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.

(3) Except where good cause exists to extend the time for review, the presiding officer must issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice.

(4) While an application is pending, an applicant must inform the commission of any material change in the information provided in the application within five working days of any such change.

(5) Except where good cause exists to extend the time for review, the presiding officer will enter an order approving, rejecting, or approving with modifications, an application within 60 days of the filing of the application.

(6) While an application is pending, an applicant must respond to any request for information from commission staff within ten days after receipt of the request by the applicant.

(e) Standards for granting certification to COA and SPCOA applicants. The commission may grant a COA or SPCOA to an applicant that demonstrates eligibility in accordance with subsection (c) of this section, has the technical and financial qualifications required by this section, has the ability to meet the commission's quality of service requirements to the extent required by PURA and this title, and the applicant and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission will consider whether the applicant has satisfactorily provided the information required under this section in the application.

(f) Financial requirements. To obtain COA or SPCOA certification, an applicant must demonstrate shareholders' equity as required by this subsection.

(1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than $100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than $25,000.

(2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder must not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes dividend distributions, redemptions and repurchases of equity securities, loans, or loan repayments to shareholders or affiliates.

(3) Shareholders' equity must be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet must include the independent auditor's report. The unaudited balance sheet must include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) Technical and managerial requirements. To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.

(2) To support technical qualification, an applicant must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant must include the following in its application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information includes the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the complaint history, disciplinary record, and compliance record of the applicant and the principals and affiliates of the applicant.

(iii) The commission may also consider any complaint information on file at the commission.

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any

predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the principals of the applicant are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or principals of the applicant have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's applicable quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the applicable customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) Certificate Name. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission will grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:

(A) Form of business being registered (e.g., corporation, company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification or file number; and

(D) Date business was registered.

(2) Business names must not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a certificated telecommunications provider (CTU).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer must notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name to be certificated.

(i) Amendment of a COA or SPCOA Certificate.

(1) A person or entity granted a COA or SPCOA in accordance with this section must file an application to amend a COA or an SPCOA certificate in a commission approved format to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted via administrative approval if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it must notify the applicant that the requested name is prohibited for use by the applicant. An applicant is required to provide at least one suitable name or the amendment will be denied by the presiding officer.

(B) Change the geographic scope of a COA or an SPCOA.

(C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:

(i) be filed at least 60 days prior to the occurrence of the transaction;

(ii) be jointly filed by the transferor and transferee;

(iii) comply with the requirements for certification; and

(iv) comply with applicable commission rules.

(D) Change of type of provider from resale-only, facilities-based only or data-only on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of an optional service by a deregulated company holding a certificate of operating authority or an exempt carrier.

(i) A deregulated company holding a certificate of operating authority or an exempt carrier must provide the information in subclauses (I)-(III) of this clause for the discontinuation of service and relinquishment of its certificate. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.

(I) Certification that the carrier will send customers whose service is being discontinued a notification letter providing a minimum of 61 days of notice of termination of service and clearly stating the date of termination of service;

(II) A statement regarding the disposition of customer credits and deposits; and

(III) Certification that the carrier will comply with §26.24 of this title (relating to Credit Requirements and Deposits).

(ii) A carrier that does not meet the criteria of clause (i) of this subparagraph must comply with subsections (m) and (n) of this section to discontinue service, relinquish a certificate, or discontinue an optional service.

(2) If the application to amend the COA or SPCOA certificate is for a corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in

management personnel, or changes to the underlying financial qualifications of the certificate holder that were previously approved by the commission. If commission staff cannot determine continued compliance with the applicable substantive rules based on the information provided on the abbreviated amendment application, then a full amendment application must be filed by the applicant.

(3) When a certificate holder acquires or merges with another certificate holder, other than a CCN holder, the acquiring entity must file a notice within 30 calendar days of the closing of the acquisition or merger in a project established by staff. Staff will have ten working days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within ten working days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission must include but not be limited to:

(A) A joint filing statement;

(B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and

(C) An affidavit from each certificated entity attesting to compliance with COA or SPCOA certification requirements, as applicable.

(4) No later than five working days after filing an application or amendment with the commission, the applicant must provide a copy of the application or amendment to the Commission on State Emergency Communications and, in accordance with paragraph (3) of this subsection, notice to all affected 9-1-1 administrative entities. The applicant may provide the amendment application and notice via electronic mail.

(5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

(j) Non-use of certificates. Applicants must use their COA or SPCOA certificates expeditiously.

(1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

(2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) Renewal of certificates. Each COA and SPCOA holder must file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file a renewal of its certification.

(1) The certification renewal must include:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section, to the extent required by PURA and this title.

(2) A certification renewal must be filed on or before June 1, 2014, and every ten years thereafter.

(3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1 of each reporting year to comply with paragraph (1) of this subsection. Commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1. The first notice will be sent on or before July 1, the second notice will be sent on or before August 1, and the third notice will be sent on or before September 1. Failure to send any of these notices by commission staff or failure to receive any of these notices by a COA or SPCOA holder must not affect the requirement to renew a certificate under this section by October 1 of the renewal period.

(4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1 of each reporting year will automatically render the certificate of the COA or SPCOA invalid and therefore no longer in compliance with PURA §54.001.

(5) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.

(6) A certificate holder whose COA or SPCOA certificate is invalid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(l) Reporting Requirements.

(1) Each COA or SPCOA holder must provide and maintain accurate contact information via the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder must maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder must submit the required information in the manner established by the commission.

(2) The applicable annual report is due on or before April 30 of each calendar year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

(3) When terminating or disconnecting service to another CTU, a COA or an SPCOA holder must file a copy of the termination or disconnection notice with the commission not later than two working days after the notice is sent to the CTU. The service termination or disconnection notice must be filed in a project established for that purpose.

(4) COA and SPCOA holders must file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than five working days after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy such as Chapter 7, 11, or 13, and whether the bankruptcy is voluntary or involuntary, the bankruptcy case number; and

(B) The number of affected customers, the type of service provided to the affected customers, and the name of each provider of last resort associated with the affected customers.

(5) Reports.

(A) A certificate holder must file all reports to the extent required by PURA and this title, including §26.51 of this title (relating

to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(B) An amendment for certification must include a copy of the applicant's most recent tariff that has been approved by the commission in accordance with §26.207 of this title (relating to Form and Filing of Tariffs), §26.208 of this title (relating to General Tariff Requirements), and other commission rules as applicable or specified by those provisions. A tariff that has not been approved but is currently under review by the commission may be used to satisfy this requirement.

(i) A control number for the project associated with the applicant's most recently approved tariff or tariff that is currently under review by the commission may be provided as an alternative to providing a copy.

(ii) An entity subject to §26.89 of this title (Relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) may, but is not required to, comply with this paragraph.

(m) Standards for cessation of operations and relinquishment of certification. A COA or SPCOA holder may cease operations in the state only if authorized by the commission in accordance with this subsection. A COA or SPCOA holder that ceases operations and relinquishes its certification must comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications (CSEC), each affected 9-1-1 administrative entity, the Office of Public Utility Counsel (OPUC), each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Comptroller of Public Accounts, the Texas Secretary of State and the administrator of the Texas Universal Service Fund.

(A) The notification letter must clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter must provide each customer a minimum of 61 days of notice of termination of service, and the date of the termination of service must be clearly stated in the notification letter.

(C) The notification letter must inform each customer of the carrier of last resort or make other arrangements to provide service as approved by each customer.

(2) A COA or SPCOA holder that intends to cease operations must file with the commission an application to cease operations and relinquish its certificate, and provide a copy of the application to CSEC. The application must provide the following information:

(A) Name, address, and phone number of the certificate holder;

(B) COA or SPCOA certificate number being relinquished;

(C) The commission control number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic local telecommunications service is available from other certificate holders in these areas;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and

(F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.

(3) All customer deposits and credits must be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations must be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or other applicable law.

(n) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing an optional service must comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.

(1) The COA or SPCOA holder must file an application with the commission to discontinue optional services, which must provide the following information:

(A) Name, address, and phone number of the certificate holder;

(B) COA or SPCOA certificate number being amended;

(C) The commission control number in which the COA or SPCOA was granted;

(D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and

(F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, and must comply with the following requirements:

(A) The notification letter must clearly state the intent of the certificate holder to cease an optional service and a copy of the letter must be provided to the commission and OPUC.

(B) The notification letter must give customers a minimum of 61 days of notice of the discontinuation of optional services.

(3) All customer deposits and credits associated with a discontinued optional service must be returned within 30 days of the discontinuation.

(4) The certificate holder must maintain the optional services until it has obtained commission authorization to cease the optional services.

(5) If the amendment application requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or an SPCOA.

(o) Revocation or suspension. A certificate granted in accordance with this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the commission determines that holder of the certificate does not meet the requirements under this section to the extent required by PURA and this title. A suspension of a COA or an SPCOA certificate requires the cessation of all activities associated with obtaining new customers in the state of Texas for a product or service that require a COA or an SPCOA. A revocation of a COA or SPCOA certificate requires the cessation of activities in the state of Texas that require a COA or an SPCOA in accordance with commission order. The commission may also impose an administrative penalty on a person for a violation of PURA or commission substantive rules. Commission Staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or an SPCOA certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;

(2) Providing false or misleading information to the commission;

(3) Failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;

(4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;

(5) Failure to meet commission reporting requirements to the extent required by PURA and this title;

(6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;

(7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;

(8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;

(9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;

(13) Failure to serve as a provider of last resort if required to do so by the commission;

(14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;

(15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and

(16) Violations of PURA or any commission rule or order applicable to the certificate holder.

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

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §§26.123, 26.127, 26.128, 26.130

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.130. Selection of Telecommunications Utilities.

(a) Purpose and Application.

(1) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(2) Application. This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) Subpart K (entitled "Changing Long Distance Service"), applies to a "telecommunications utility," as that term is defined in §26.5 of this title

(relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility. Requirements related to proper authorization for a billing charge by a telecommunication utility are addressed by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

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

(1) Authorized telecommunications utility--Any telecommunications utility that submits a change request, after obtaining customer authorization with verification, in accordance with the requirements of this section.

(2) Customer--Any person, including the person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to request a change in local service or telecommunications utilities.

(3) Executing telecommunications utility--Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility, however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.

(4) Submitting telecommunications utility--Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.

(5) Unauthorized telecommunications utility--Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) Changes in preferred telecommunications utility.

(1) Changes by a telecommunications utility. A telecommunications utility is prohibited from submitting or executing a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization from the customer that such change is desired for each affected telephone line and ensure that verification of the authorization is obtained in accordance with 47 C.F.R. Subpart K. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. Subpart K, and subsection (d) of this section. A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer must be provided the option of using another authorization method as an alternative to an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order, except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. To verify the electronic authorization, the submitting telecommunications utility must:

(i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

(i) The customer's authorization must be given to an appropriately qualified and independent third party that obtains appropriate verification data including, at a minimum, the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide its federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative for the corporation or partnership to satisfy this subparagraph.

(ii) The entirety of the customer's authorization and the customer's verification of authorization must be electronically recorded on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recordings must be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification must elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name of each telecommunications utility affected by the change but not including the name of the displaced carrier, each telephone number to be switched, and the type of service involved. The third party verifier must not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.

(v) The third party verification must be conducted in the same language used in the sales transaction.

(vi) Automated systems must provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system must drop off the call once a three-way connection with the third party verifier has been established unless:

(I) the telecommunications utility files sworn written certification with the commission that the sales representative is unable to drop off the sales call after initiating a third party verification. Such certification should provide sufficient information as to each reason for the inability of the sales agent to drop off the line after the third party verification is initiated. A carrier is exempt from this requirement for a period of two years from the date the carrier's certification was filed with the commission;

(II) a telecommunications utility that seeks to extend the exemption provided under subclause (I) of this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission the utility's continued inability to comply with this clause.

(viii) The third party verification must immediately terminate if the sales agent of a telecommunications utility that has filed a sworn written certification in accordance with clause (vii) of this subparagraph responds to a customer inquiry or speaks after third party verification has begun.

(ix) The independent third party must:

(I) not be owned, managed, directed or controlled by the telecommunications utility or the telecommunications utility's marketing agent;

(II) not have financial incentive to confirm change orders; and

(III) operate in a location physically separate from the telecommunications utility and the telecommunications utility's marketing agent.

(2) Changes by customer request directly to the local exchange company. If a customer requests a change in the customer's current preferred telecommunications utility by contacting the local exchange company directly, and that local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The customer's current local exchange company must maintain a record of the customer's request for 24 months.

(d) Letters of Agency (LOA). A written or electronically signed authorization from a customer for a change of telecommunications utility must use a letter of agency (LOA) as specified in this subsection:

(1) The LOA must be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be fully completed, signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization must include the consumer disclosures required by the Electronic Signatures in Global and National Commerce Act 47 United States Code §7001(c).

(2) The LOA must not be combined with inducements of any kind on the same document, screen, or webpage, except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA must not contain any promotional language or material but must contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA must be clearly legible, printed in a text not smaller than 12-point type, and must contain clear and unambiguous language that includes and confirms:

(i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;

(ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility;

(iii) the name of the new telecommunications utility and that the customer designates the new telecommunications utility to act as the customer's agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service, such as local, intraLATA, and interLATA service, for each telephone number. The LOA must contain separate statements regarding those choices, although a separate LOA for each service is not required;

(v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change; and

(vi) appropriate verification data, including, at a minimum, the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph.

(B) Any telecommunications utility designated in a LOA as the customer's preferred and authorized telecommunications utility must be the carrier directly setting rates for the customer.

(C) The following LOA form meets the requirements of this subsection. Other versions may be used, but must comply with all of the requirements of this subsection.
Figure: 16 TAC §26.130(d)(3)(C)

(4) The LOA must not require or suggest that a customer take some action to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(6) The submitting telecommunications utility must submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a telecommunications utility to add presubscribed lines to their business locations during the course of a term agreement must be valid for the period specified in the term agreement.

(e) Notification of alleged unauthorized change.

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility must immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change must direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.

(3) The alleged unauthorized telecommunications utility must remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant in writing to file a complaint with the Public Utility Commission of Texas within 30 days after the customer's assertion of an unauthorized switch to the alleged unauthorized telecommunications utility. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

(5) The alleged unauthorized telecommunications utility must take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working days of the customer's request.

(6) The alleged unauthorized telecommunications utility must also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change must:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five working days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten working days of the customer's request;

(D) pay, within 30 working days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred;

(E) return to the customer within 30 working days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 calendar days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 calendar days in excess of the charges that would have been charged if the unauthorized change had not occurred;

(F) remove all unpaid charges; and

(G) pay the original telecommunications utility for any billing and collection expenses incurred in collecting charges from the unauthorized telecommunications utility.

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility must:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten working days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles, that would have been awarded had the unauthorized change not occurred, upon receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) each telephone number affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

(D) not bill the customer for any charges incurred during the first 30 calendar days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 calendar days based on what it would have charged if the unauthorized change had not occurred.

(g) Notice of customer rights.

(1) Each telecommunications utility must make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection must contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice must state:
Figure: 16 TAC §26.130(g)(3)

(4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.

(5) Language, distribution and timing of notice.

(A) Telecommunications utilities must send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility must print the notice in the white pages of its telephone directories, beginning with any directories published 30 calendar days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice must be in plain English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in plain English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes.

(A) The submitting telecommunications utility must maintain records of all change orders, including verifications of

customer authorizations, for a period of 24 months and must provide such records to the customer, if the customer challenges the change.

(B) A telecommunications utility must provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff 21 calendar days from the date the records were requested by commission staff.

(C) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility in accordance with subparagraph (B) of this paragraph and paragraph (2)(A) of subsection (l) must establish a valid authorized telecommunications utility change as defined by subsections (c) and (d) of this section. Failure by the alleged unauthorized telecommunications utility to timely submit a response that addresses the complainant's assertions, relating to an unauthorized change, within the time specified in subparagraph (B) of this paragraph or paragraph (2) of subsection (l) establishes a violation of this section.

(2) Administrative penalties. If the commission finds that a telecommunications utility is in violation of this section, the commission will order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties in accordance with Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) Evidence. Evidence supplied by the customer that meets the standards set out in Texas Government Code §2001.081, including one or more affidavits from a customer challenging the change, is admissible in a proceeding to enforce the provisions of this section.

(4) Certificate revocation. The commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of a telecommunications utility, denying the telecommunications utility the right to provide service in this state, in accordance with the provisions of either PURA §17.052 or PURA §55.306.

(5) Coordination with the office of the attorney general. The commission will coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.

(i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the following information in clear, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible, or be displayed prominently elsewhere in the bill:

(1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.

(2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, e-mail address: consumer@puc.texas.gov. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) Preferred telecommunications utility freezes.

(1) Purpose. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer consents to the local exchange company that implemented the freeze.

(2) Nondiscrimination. All local exchange companies that offer freezes must offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) Type of service. Customer information on freezes must clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze must obtain separate authorization for each service for which a freeze is requested.

(4) Freeze information. All information provided by a telecommunications utility about freezes have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and must not market or induce the customer to request a freeze. The freeze information provided to customers must include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze, including information describing the specific procedures by which the freeze may be lifted; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) Freeze verification. A local exchange company must not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization must confirm appropriate verification data including the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number and the information required in paragraph (6)(G) of this subsection. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph. The local exchange company must establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data as required by subparagraph (B) of this paragraph. This must include clear and conspic-

uous confirmation that the customer authorized a freeze. The independent third party must:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company and its marketing agent.

(D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) Written authorization. A written freeze authorization must:

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and each telephone number to be covered by the freeze;

(ii) the decision to impose a freeze on each telephone number and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) Lifting freezes. A local exchange company that executes a freeze request must allow customers to lift a freeze by:

(A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data as indicated in paragraph (5)(B) of this subsection;

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer with appropriate confirmation verification data from the customer as indicated in paragraph (5)(B) of this subsection; or

(D) any other method approved by Federal Communications Commission rule or order granting a waiver.

(8) No customer charge. The customer must not be charged for imposing or lifting a freeze.

(9) Local service freeze prohibition. A local exchange company must not impose a freeze on local telephone service.

(10) Marketing prohibition. A local exchange company must not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) Freeze records retention. A local exchange company must maintain records of all freezes and verifications for a period of 24 months and must provide these records to customers and to the commission staff upon request.

(12) Suggested freeze information language. A telecommunications utility that informs a customer about freezes may use the following language. Other versions may be used, but must comply with all of the requirements of paragraph (4) of this subsection.

(13) Suggested freeze authorization form. The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but must comply with all of the requirements of paragraph (6) of this subsection.
Figure: 16 TAC §26.130(j)(13) (No change.)

(14) Suggested freeze lift form. The following form is recommended for written authorization to lift a freeze. Other versions may be used, but must comply with all of the requirements of paragraph (7) of this subsection.
Figure: 16 TAC §26.130(j)(14) (No change.)

(k) Transferring customers from one telecommunications utility to another.

(1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, must provide notice to each affected customer. The notice must be in a billing insert or separate mailing at least 30 calendar days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 calendar days prior to the transfer, the notice must be sent promptly after all legal and regulatory conditions are met. The notice must:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunications utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

(G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;

(H) explain that the customer will not incur any charges associated with the transfer;

(I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and

(J) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility must provide the commission with a copy of the notice when it is sent to customers.

(l) Complaints to the commission. A customer may file a complaint with the commission's CPD against a telecommunications utility for any reasons related to the provisions of this section.

(1) Customer complaint information. CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.

(2) Telecommunications utility's response to complaint. After review of a customer's complaint, CPD must forward the complaint to the telecommunications utility. The telecommunications utility must respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response must include the following:

(A) all documentation related to the authorization and verification used to switch the customer's service; and

(B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.

(3) CPD investigation. CPD must review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD must inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD must also inform, if known, the authorized telecommunications utility if there was an unauthorized change in service.

(m) Additional requirements for changes involving certain telecommunications utilities.

(1) Definitions. The following words and terms, when used in this subsection, have the following meanings unless the context clearly indicates otherwise.

(A) Local service provider (LSP)--the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.

(B) Old local service provider (old LSP)--The local service provider immediately preceding the change to a new local service provider.

(C) New local service provider (new LSP)--The local service provider from which the customer requests new service.

(D) Primary interexchange carrier (PIC)--the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.

(E) Old primary interexchange carrier (old PIC)--The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.

(F) New primary interexchange carrier (new PIC)--The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.

(G) Change execution--means the date the LSP initially has knowledge of the PIC or LSP change in the switch.

(2) Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.

(A) Notice must contain at least:

(i) the effective date of the change in the switch;

(ii) the customer's billing name, address, and number; and

(iii) any other information necessary to implement the change.

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC must be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate utility directory maintained by the commission.

(3) Notification requirements for change in PIC only. The LSP must notify the old PIC and the new PIC of the PIC change within five working days of the change execution.

(A) The new PIC must initiate billing the customer for presubscribed services within five working days after receipt of such notice.

(B) The old PIC must discontinue billing the customer for presubscribed services within five working days after receipt of such notice.

(4) Notification requirements for change in LSP.

(A) Requirement of the new LSP to notify the old LSP. Within five working days of the change execution, the new LSP must notify the old LSP of the change in the customer's LSP.

(B) Requirement of the new LSP to notify the new PIC. Within five working days of the change execution, the new LSP must notify the new PIC of the customer's selection of such PIC as the customer's PIC.

(C) Requirement of the old LSP to notify the old PIC. Within five working days of the old LSP's receipt of notice in accordance with to subparagraph (A) of this paragraph, the old LSP must notify the old PIC that the old LSP is no longer the customer's LSP.

(5) Requirements of the new PIC to initiate billing customer. If the new PIC receives notice in accordance with paragraph (4)(B) of this subsection, within five working days after receipt of such notice, the new PIC must initiate billing the customer for presubscribed services.

(6) Requirements of the old PIC to discontinue billing customer. If the old PIC receives notice in accordance with paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC must discontinue billing the customer for presubscribed services within seven working days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC in accordance with paragraph (4)(B) of this subsection.

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

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For further information, please call: (512) 936-7322

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SUBCHAPTER G. ADVANCED SERVICES

16 TAC §26.142

The repeal is adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER I. ALTERNATIVE REGULATION

16 TAC §26.171, §26.175

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §§26.207 - 26.211, 26.214, 26.215, 26.217, 26.221, 26.224

The amendments and new rules are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-

55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.207. Form and Filing of Tariffs.

(a) Application. Unless the context clearly indicates otherwise, in this section the term "utility" or "public utility" refers to a dominant carrier.

(b) Purpose. This section establishes standards for the form, filing and review of a dominant certificated telecommunications utility's (DCTU's) tariff.

(c) Effective tariff. A utility is prohibited from directly or indirectly demanding, charging, or collecting any rate or charge, or imposing any classifications, practices, rules, or regulations different from those prescribed in its currently effective tariff filed with and approved by the commission.

(d) Tariff required.

(1) A public utility, or an affiliate of the public utility or a trade association on behalf of the public utility, must file with the commission a tariff showing each rate that is subject to the commission's jurisdiction and is in effect for a utility service, product, or commodity offered by the utility. A current or proposed tariff must:

(A) include a cover letter that lists each rule that relates to or affects a rate of the utility, or a utility service, product, or commodity furnished by the utility;

(B) be filed prior to or concurrently with an application for certification, including a certificate amendment, under §26.111 (relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria); and

(C) as applicable, comply with the requirements of this section and §26.208 of this title (relating to General Tariff Procedures), §26.209 of this title (relating to New and Experimental Services), or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges).

(2) A public utility must also file each subsequent tariff revision with the commission. Each revision must be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, the effect of the change if it revises an existing rate, and a statement describing the impact on rates of the change for each customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class, then the commission may require that notice be given.

(3) A telecommunications utility, upon the issuance of a commission order determining that the telecommunications utility is a dominant carrier, must file a tariff complying with the requirements of this subsection. Such a tariff must be filed within the time specified in the commission order, or within 60 days in the absence of such a specification.

(e) Filing of public utility tariff by affiliate or trade association. An affiliate of a public utility or trade association may file a tariff or tariff revision under this section or other applicable law, on behalf of a public utility.

(1) For each filing, the public utility must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.

(2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the public utility or trade association.

(3) The filing by affiliate of the public utility or trade association must comply with the requirements of this section and other applicable law.

(f) Tariff filing requirements.

(1) The front page of the tariff must include the name of the utility and location of its principal office and the type of service rendered.

(2) Each rate schedule must clearly state the territory, city, county, or exchange where the rate schedule applies.

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

(g) Composition of tariffs. A tariff must contain sections setting forth:

(1) a table of contents;

(2) a preliminary statement containing a brief description of the utility's operations;

(3) a list of the cities, exchanges, and counties in which service is provided;

(4) the rate schedules; and

(5) the service rules and regulations, including forms of the service agreements.

(h) Tariff filings in response to commission orders. A tariff filed in response to a commission order must include a transmittal letter affirming that the tariff is in compliance with the order, provide the control number, date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets must comply with all other rules of this title and must include only the changes ordered. The effective date or wording of the tariffs must comply with the provisions of the order.

(i) Symbols for changes. Each proposed tariff sheet must contain notations in the right-hand margin indicating each change made. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision, such as the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision; (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. Each changed provision in the tariff must contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(j) Availability of tariffs. Each utility must make available to the public electronically and at each of its business offices or designated sales offices within Texas, each tariff that is currently on file with the commission. The utility must assist persons seeking information on its tariffs and permit such persons the opportunity to examine any tariff upon request. The utility must also provide copies of each of its tariffs at a reasonable cost.

§26.208. General Tariff Procedures.

(a) Application. This section establishes the process for commission review of a dominant certificated telecommunications utility (DCTU) tariff and tariff amendments. A DCTU must meet the requirements of this section to file a new tariff or amend an existing tariff to which this section applies, including changes to a rate or service, the types of service provided, jurisdiction or service area, or for the withdrawal of a service. For purposes of this section, the term "trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(1) This section applies to a DCTU and to an affiliate of a DCTU or a trade association that elects to file or amend a tariff on a DCTU's behalf, and to each tariff filed by those entities in accordance with §26.207 of this title (relating to Form and Filing of Tariffs) and the following provisions, as applicable:

(A) section 26.209 of this title (relating to New and Experimental Services) or §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), if determined to be necessary by the presiding officer; or

(B) section 26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges).

(2) This section does not apply to a person, or a tariff submitted by a person, to which §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) or §26.171 of this title (relating to Small Incumbent Local Exchange Company Regulatory Flexibility) applies.

(3) For purposes of this section, "major rate change" means an increase in rates that would increase the aggregate revenues of an applicant more than $100,000 or two and a half percent, whichever is greater. The term does not include an increase in rates approved by the commission, or otherwise ordered by the commission after hearings are held with public notice.

(b) General tariff requirements.

(1) DCTU tariff amendments involving a major rate change. For a tariff amendment involving a major rate change, an applicant must meet the following requirements prior to amending its tariff.

(A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff;

(B) Provide notice to affected persons, including each municipality and customer affected by the change, in the manner prescribed by subsection (c) of this section, or as otherwise required by the presiding officer; and

(C) If applicable, publish notice of the DCTU's intent to change rates in accordance with PURA §53.103, as provided under subsection (c)(1)(C)(i) and (ii) of this section. Notice under this subparagraph is waived if the rate change only involves a rate reduction.

(2) Non-major rate changes and other DCTU tariff amendments. For a tariff amendment that does not involve a rate change under paragraph (1) of this subsection, a DCTU must meet the following requirements prior to amending its tariff:

(A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff; and

(B) Provide notice to affected persons in the manner prescribed by subsection (c) of this section or as otherwise required by the presiding officer. An applicant may request a waiver to this requirement if the tariff amendments are of an administrative or clerical nature, or have minimal or no impact to the public, as determined by the presiding officer.

(c) Public notice. An application must include plans to provide public notice of the tariff filing.

(1) General requirements for public notice.

(A) Prior to the issuance of notice, an applicant may request, or the presiding officer may require, the contents of the notice to be reviewed and approved by the presiding officer.

(B) Notice must be written in plain language and must contain sufficient detail to provide each affected person, including each affected municipality, adequate notice of the filing.

(C) Notice may be provided electronically unless otherwise required by the presiding officer or, if the application involves a major rate change, in accordance with PURA §53.103, which requires the applicant to:

(i) publish, in a conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(ii) mail notice of the proposed change to any other affected person as required by the commission's rules.

(D) The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU.

(2) Content of public notice. Public notice of the application must include at a minimum:

(A) a description of each service or proposed service and each applicable rate;

(B) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;

(C) each customer class likely to be affected if the application is approved;

(D) the probable effect on the DCTU's revenues if the service is approved; and

(E) the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application, located at (hyperlink to application). Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Consumer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. Requests to participate in the proceedings and comments should reach the commission no later than (date, 20 days after the application was filed)."

(d) Proof of notice. An application must include a statement indicating the date public notice was completed in accordance with subsection (c) of this section and a copy of the issued notice.

(e) Effective date of tariff amendment.

(1) General standard.

(A) The effective date of an applicant's tariff must be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

(B) On the presiding officer's own motion or at the request of the applicant, an alternative effective date may be established unless a specific effective date is required under this section or other law.

(2) Early effective date. Upon a showing of good cause by the applicant, the presiding officer may approve a sufficient application, other than an application involving a major rate change, to take effect prior to the 35-day period prescribed by paragraph (1) of this subsection.

(A) The presiding officer may establish additional conditions, such as notice, that an applicant must meet prior to granting an early effective date. Any additional conditions prescribed by the presiding officer are subject to suspension of the effective date under paragraph (4) of this subsection.

(B) Upon approval of an early effective date by the presiding officer, the applicant must immediately revise the tariff to include the change.

(3) Recalculation of effective date upon cure of an insufficient application. Upon the filing of an application curing each deficiency specified by the presiding officer, any deadlines must be determined from the date the application is deemed sufficient or from the effective date if the presiding officer extends that date.

(4) Suspension of effective date. For an application involving a rate change, the commission may suspend the effective date of the tariff change for 150 days after the requested effective date.

(A) In the event that a hearing on the merits exceeds 15 working days, the suspended effective date is extended two calendar days for each working day the hearing exceeds 15 working days.

(B) If the presiding officer does not make a final determination concerning the effective date of a rate change before the expiration of the suspension period, the effective date is automatically approved unless a hearing is already in progress.

(f) Administrative review. An application filed in accordance with this section will be reviewed administratively.

(1) Review of sufficiency.

(A) The presiding officer will deem an application to be sufficient if it, at a minimum:

(i) includes an effective date and, as applicable, meets the requirements of subsection (b)(1)(A) or (2)(A) of this section;

(ii) meets the requirements of §26.207 of this title and the applicable provision specified by subsection (a)(1) of this section under which the application was filed;

(iii) includes proof that notice of the application was provided in compliance with subsection (d) of this section; and

(iv) if the application involves the withdrawal of a service, that the requirements of subsection (i) of this section have been met.

(B) No later than 20 days after the date an application is filed:

(i) an interested person, including the Office of Public Utility Counsel (OPUC), may file written comments or recommendations concerning the sufficiency of the application; and

(ii) commission staff must file a recommendation regarding the sufficiency of the application.

(C) If the presiding officer concludes that the application is insufficient, the presiding officer will notify the applicant of the insufficiency in the relevant portions of the application and cite the particular requirement with which the application does not comply. The presiding officer will grant the applicant an opportunity to cure each specific deficiency within a specified time period, and change the effective date in accordance with subsection (e)(3) of this section.

(2) Substantive review of application. The presiding officer must approve or deny an application not later than 60 days after a complete application is filed. An application is complete if the presiding officer has deemed that the application is sufficient under paragraph (1) of this subsection.

(A) The presiding officer will substantively review the application to determine whether the application fulfills the requirements of this subparagraph and other applicable law. To approve an application, the presiding officer must, at a minimum, determine that:

(i) the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(ii) provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.

(B) Commission staff must file a recommendation regarding whether the application meets the substantive requirements of this paragraph. Commission staff's recommendation on whether an application meets the substantive requirements for administrative approval may be provided with its recommendation on the sufficiency of the application in accordance with paragraph (1) of this subsection, or in a subsequent filing.

(C) While the application is under substantive review by the presiding officer, commission staff and OPUC may submit requests for information to the applicant.

(i) Notwithstanding the requirements of §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), the applicant must file the requested information with the commission within 15 days after receipt of such a request for information.

(ii) If an applicant does not respond to a request for information within the time period specified by clause (i) of this subparagraph, the presiding officer will reject the application without prejudice and notify the applicant of the rejection.

(iii) If the presiding officer does not approve or deny the application within 30 days from the date the requested information is filed with the commission, the application is automatically approved.

(3) Automatic approval. A complete application is automatically approved 60 days from the date it is filed if:

(A) the presiding officer does not approve or deny the complete application; and

(B) commission staff or the presiding officer do not request supplemental information from the applicant.

(4) Docketing prohibited. An application, except for an application involving a rate increase as provided by subsection (h) of this section, cannot be docketed.

(g) Approval or denial of applications. For an application to be approved, the applicant must meet the requirements of the applicable provisions of this section and other applicable law, unless such requirements are modified or waived by the presiding officer. If, based on the administrative review, the presiding officer determines that:

(1) all requirements not waived have been met, the application will be approved in the manner specified by the presiding officer.

(2) one or more of the requirements not waived have not been met, the presiding officer will:

(A) dismiss the application without prejudice; or

(B) docket the application in accordance with subsection (h) of this section if the application involves a rate change, except for a rate change covered by §26.171 of this title.

(h) Docketing and of an application involving a rate change. The presiding officer may docket an application involving a rate change, except for a rate change covered by §26.171 of this title, in accordance with this section.

(1) If an application is docketed, the presiding officer may suspend the effective date of a rate change in the manner provided by subsection (e)(4) of this section via order.

(1) A copy of all answers to requests for information issued after docketing must be filed with the commission within 15 days after receipt of the request.

(2) An affected person may move to intervene in the docket, and a hearing on the merits will be scheduled.

(3) The application will be processed in accordance with the commission's rules applicable to docketed proceedings.

(i) Withdrawal of a service. When an applicant seeks to withdraw a tariffed service, the application must be filed in accordance with this subsection. An applicant must provide the following in its application before withdrawing a service.

(1) The control number for the project where the tariff was filed, including a hyperlink to the project;

(2) Proof of notice by the applicant, as required by subsection (d), or as otherwise required by the presiding officer.

(3) The number of current customers in each exchange, by customer class;

(4) The reason for withdrawing the service;

(5) Provisions for grandfathering each current customer or for competitive alternatives available within the exchange locations, including each alternative provided by the DCTU;

(6) Annual revenues for the last three years for the service; and

(7) If the service has no current customers, the applicant must provide an affidavit to this effect.

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

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Adriana Gonzales
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For further information, please call: (512) 936-7322

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16 TAC §26.208

The repeal is adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.272, §26.276

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and ap-

plied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.276. Unbundling.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) Application.

(1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.

(2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.

(c) Unbundling requirements.

(1) Unbundling in accordance with current FCC requirements. Each ILEC that is subject to this section must unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect must unbundle its network or services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.

(A) The ILEC's network must be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and

(B) Signaling for tandem switching must be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.

(2) Unbundling in accordance with future FCC requirements. An ILEC must unbundle its network or services for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect must unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.

(d) Costing and pricing of services in compliance with this section.

(1) Cost standard. Services unbundled in compliance with this section must be subject to the following cost standard.

(A) The cost standard for unbundled services must be the long run incremental costs (LRIC) of providing the service.

(B) Any ILEC subject to §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services), as applicable, must file LRIC studies in accordance with that rule for unbundled components specified in subsection (c)(1) of this section.

(C) For any ILEC that is subject to §26.214 or §26.215 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section must be the long run incremental costs as prescribed by §26.214 or §26.215 of this title, as applicable.

(D) The long run incremental cost standard does not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC in accordance with paragraph (2)(B) of this subsection.

(2) Pricing standard. Services unbundled in compliance with this section must be subject to the following pricing standard.

(A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC must amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling in accordance with the filing requirements established in subsection (f)(4) of this section.

(B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §26.214 or §26.215 of this title may adopt the rates of another ILEC that are developed in accordance with the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC in accordance with subparagraph (B) of this paragraph, the following requirements apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service must be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there is a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service must not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection are subject to §26.214

or §26.215 of this title, as applicable, to the same extent as any other service offered by an ILEC subject to the applicable provision.

(e) Basket assignment. An ILEC electing for incentive regulation under PURA Chapter 58 must, in its compliance tariff filed in accordance with subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.

(f) Filing requirements.

(1) Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines. An ILEC serving one million or more access lines must file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

(2) Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines. An ILEC serving one million or more access lines must file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

(3) Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines. If an ILEC serving fewer than one million access lines receives a bona fide request, the ILEC must unbundle its network or services in accordance with the bona fide request within 90 days from the date of receipt of the bona fide request or has the burden of demonstrating the reasons for not unbundling in accordance with the bona fide request.

(4) Filings to comply with subsection (d)(2)(A) of this section. An ILEC proposing rates in accordance with subsection (d)(2)(A) of this section must file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

(g) Requirements for notice and contents of application in compliance with this section.

(1) Notice of Application. The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice must include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989."

(2) Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section. An ILEC must request approval of an unbundled service by filing an application that complies with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel. The application must contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions comply with the requirements in subsections (c), (d), and (e) of this section, as applicable;

(B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;

(C) a copy of the text of the notice, if any;

(D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;

(E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint or common costs, if the rates are not at parity with the carrier's interstate rates;

(G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and

(I) any other information which the ILEC wants considered in connection with the commission's review of its application.

(3) Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section. An ILEC must file with the commission an application complying with the requirements of this section. A copy of the application must the Office of Public Utility Counsel. The application must contain the following:

(A) contents of the application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

(B) contents of the application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service and the rates, terms, and conditions under which the service is proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(E) projections of the amount of revenues that will be generated by the proposed service.

(h) Commission processing of application.

(1) Administrative review. An application considered under this section is eligible for administrative review unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date must be according to the requirements in subsection (f) of this section.

(B) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is under administrative review, commission staff and the staff of the Office of the Public Utility Counsel (OPUC) may submit requests for information to the ILEC. Answers to such requests for information must be filed with the commission and a copy must be provided to OPUC within ten days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff must and OPC may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer will issue an order approving, denying, or docketing the ILEC's application.

(2) Approval or denial of application. The application will be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer will docket the application.

(3) Standards for docketing. The application may be docketed in accordance with §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule will be automatically suspended to a date 120 days after the applicant has filed its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates will be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) Commission processing of waivers. Any request for modification or waiver of the requirements of this section must include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer will rule on the request expeditiously.

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

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403 - 26.405, 26.407, 26.409, 26.414, 26.417 - 26.419

The amendments are adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.405. Financial Need for Continued Support.

(a) Purpose. This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Ex-

change Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.

(b) Application. This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with a customer specific contract or that is otherwise not served in accordance with a tariff, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Physical 911 address--For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use must not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) Determination of financial need.

(1) Criteria to determine financial need. For each exchange that is served by an ILEC ETP filing a petition in accordance with subsection (f)(1) of this section, the commission will determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) Establishing the existence of an unsubsidized wireline voice provider competitor. For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission will determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support or successor federal programs, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) offers basic local service or broadband service of 3 megabits per second down and 768 kilobits per second up using wireline-based technology using either its own facilities or a combination of its own facilities and purchased unbundled network elements (UNEs).

(B) Using the current version of the National Broadband Map in effect for at least 90 days, the commission will determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange must be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission will determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the FCC's Broadband Data Collection creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific

census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the FCC's Broadband Data Collection with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.

(3) Periodic review of criteria to demonstrate financial need for continued support. Beginning September 1, 2024, and every four years thereafter, the commission will review and may adjust the standards and criteria to demonstrate financial need for continued support under this subsection.

(e) Criteria for determining amount of continued support. In a proceeding conducted in accordance with subsection (f) of this section, the commission will set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts must be effective beginning with the first disbursement following a commission order entered in accordance with subsection (f)(2) of this section, except that the new amounts must not be effective earlier than January 1, 2024 for an exchange with service supported by the THCUSP or earlier than January 1, 2025 for an exchange with service supported by the SRILEC USP.

(1) Exchanges in which the ILEC ETP does not have a financial need for continued support.

(A) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission will reduce the monthly per-line support amount to zero.

(B) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and which is not included in the petition, the commission will reduce the monthly per-line support amount to zero.

(2) Exchanges in which the ILEC ETP has a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission will set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange must be equal to:

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2023 for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2024 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request in accordance with subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated in accordance with subsection (g) of this section for an ILEC ETP that has filed a request in accordance with subsection (g) of this section.

(B) Initial monthly per-line support amounts for each exchange must be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition in accordance with subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed in accordance with subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may consider any appropriate factor, including the residential line density per square mile of any affected exchanges.

(C) For each exchange with service supported by the THCUSP, monthly per-line support must not exceed:

(i) the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed before January 1, 2024;

(ii) 75 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2024, and before January 1, 2025;

(iii) 50 percent of the monthly per-line support the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2025, and before January 1, 2026;

(iv) 25 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2026, and before January 1, 2027; or

(v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2027, and before January 1, 2028.

(D) For each exchange with service supported by the SRILEC USP, monthly per-line support must not exceed:

(i) the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed before January 1, 2025;

(ii) 75 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2025, and before January 1, 2026;

(iii) 50 percent of the monthly per-line support the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2026, and before January 1, 2027;

(iv) 25 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2027, and before January 1, 2028; or

(v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2028, and before January 1, 2029.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition in accordance with subsection (f)(1) of this section.

(F) Portability of support. The support amounts established in accordance with this section are applicable to all ETPs and are portable with the customer.

(f) Proceeding to Determine Financial Need and Amount of Support.

(1) Petition to determine financial need. An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP that is subject to either §26.403(f) or §26.404(g) of this title may only file one petition in accordance with this subsection. A petition filed in accordance with this subsection must include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition in accordance with this subsection must provide notice as required by the presiding officer in accordance with §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice must be published in the *Texas Register*.

(C) A petition filed in accordance with this subsection must include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:

(i) Plant-specific operations expense;

(ii) Plant non-specific operations expense;

(iii) Customer operations expense;

(iv) Corporate operations expense;

(v) Depreciation and amortization expenses;

(vi) Other operating expenses;

(vii) Total telecom plant in service;

(viii) Total property held for future use; and

(ix) Total telecom plant under construction.

(D) A summary filed in accordance with this subsection must be filed publicly. Workpapers filed in accordance with this subsection may be filed publicly or confidentially.

(E) Upon receipt of a petition in accordance with this section, the commission will initiate a contested case proceeding to determine whether the ILEC ETP has a financial need for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission will set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) Issuance of final order on petition. The commission will issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP must continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) Effect of final order. An ILEC ETP is not subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) Burden of proof. The ILEC ETP filing a petition in accordance with this subsection must bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) De-averaging of the support received by ILEC ETPs from the SRILEC USP. On or before January 1, 2017, an ILEC ETP filing a petition in accordance with subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission will use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

Figure: 16 TAC §26.405(g)(1)

(2) Using the per-line proxy support amount levels set forth in this subsection, the commission will create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange must be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed in accordance with subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) Reporting requirements. An ILEC ETP that receives support in accordance with this section is subject to the reporting requirements prescribed by §26.403(g) or §26.404(h) of this title.

(i) Additional Financial Assistance. Nothing in this section prohibits an ILEC or a cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance in accordance with §26.408 of this title (relating to Additional Financial Assistance (AFA)).

(j) Service to be supported. The services to be supported in accordance with the section are subject to the same definitions and limitations as those prescribed by §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

(k) Expiration of support to an ILEC ETP. On December 31, 2024, support to an ILEC ETP or cooperative must be reduced to zero percent of the amount of support that the company is eligible to receive on that date if the following conditions are met:

(1) The support to the ILEC ETP or cooperative has been reduced to 25 percent of the amount of support the ILEC ETP or cooperative was eligible to receive before December 31, 2022; and

(2) The ILEC ETP or cooperative has not submitted a petition under subsection (f)(1) of this section.

(l) Relinquishment of support. An ETP may file a notice with the commission of the ETP's relinquishment of the support it is entitled to receive under this subchapter.

(1) After notice by the provider, the commission will notify the TUSF administrator of the relinquishment and require the TUSF administrator to terminate support to the provider.

(2) If the commission does not notify the TUSF administrator before 90 days of the date the ETP filed the notice with the commission, the ETP may stop receiving support 90 days from the date the ETP filed notice with the commission.

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 December 1, 2023.

TRD-202304451
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 21, 2023
Proposal publication date: October 20, 2023
For further information, please call: (512) 936-7322

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SUBCHAPTER Q. 9-1-1 ISSUES

16 TAC §26.433

The amendment is adopted generally under PURA §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; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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 December 1, 2023.

TRD-202304452
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 21, 2023
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For further information, please call: (512) 936-7322

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS SUBCHAPTER E. PROCUREMENT AND PROCUREMENT BID PROTEST PROCEDURES

22 TAC §850.221

The Texas Board of Professional Geoscientists (TBPG) adopts new Subchapter E and new rule §850.221 Procurement and Procurement Bid Protest Procedures to 22 Texas Administrative Code Chapter 850. This new rule is adopted as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6170) and will not be republished.

The adopted new Subchapter E and new rule §850.221 align with Texas Government Code §2155.076, each state agency, by rule, "shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the [Comptroller's] rules."

No public comments were received regarding the proposal.

This section is adopted under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties. The rule is adopted pursuant to Texas Government Code section 2155.075, which requires the agency to adopt rules relating to bid protest procedures in purchasing.

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 December 4, 2023.

TRD-202304478
Rene Truan
Executive Director
Texas Board of Professional Geoscientists
Effective date: December 24, 2023
Proposal publication date: October 20, 2023
For further information, please call: (512) 936-4428

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CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.22

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.22 Waivers and Substitutions: Policy, Procedures, and Criteria. This amendment is adopted as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5949) and will not be republished.

The adopted amendment to 22 TAC §851.22 would eliminate an unnecessary barrier to possible licensure. The adopted amendment would also allow the person who failed an exam to apply for a waiver of the exam after five years have passed since the applicant last failed the exam. Five years offers an applicant sufficient time to gain further education and experience that would possibly qualify the person to become licensed without the need to take the exam the applicant previously failed.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required fees.

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 December 4, 2023.

TRD-202304476
Rene Truan
Executive Director
Texas Board of Professional Geoscientists
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Proposal publication date: October 13, 2023
For further information, please call: (512) 936-4428

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to Title 30 Texas Administrative Code (TAC) §§114.1, 114.2, 114.50, 114.53, and 114.309.

Amended §§114.2, 114.50, and 114.309 are adopted *without changes* to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3174) and, therefore, will not be republished. Amended §114.1 and §114.53 are adopted *with changes* to the proposed text and, therefore, will be republished.

Amended §§114.1, 114.2, 114.50, 114.53, and 114.309 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On October 7, 2022, the EPA published its reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS), effective November 7, 2022 (87 *Federal Register* (FR) 60897). Bexar County is subject to the moderate nonattainment requirements in federal Clean Air Act (FCAA), §182(b). The FCAA and 40 Code of Federal Regulations (CFR) Part 51, as amended, require a basic vehicle emissions inspection and maintenance (I/M) program in ozone nonattainment areas classified as moderate, so the state must implement an I/M program in Bexar County. Rulemaking is required to implement I/M and set the testing fee applicable in Bexar County, and a SIP revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to the EPA by January 1, 2023, and implementation of the I/M program in Bexar County is required by November 7, 2026.

Also on October 7, 2022, the EPA published its reclassification of the 10-county Dallas-Fort Worth (DFW) area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS, effective November 7, 2022 (87 FR 60926). Beginning one year after reclassification to severe, participation in the federal reformulated gasoline (RFG) program is required in the 10-county DFW nonattainment area. RFG is gasoline that is blended to burn more cleanly than conventional gasoline to reduce smog-forming and toxic pollutants. In RFG-covered areas, the sale of gasoline that the EPA has not certified as reformulated is prohibited. Collin, Dallas, Denton, and Tarrant Counties are already covered under the federal RFG rules because they opted into the program effective January 1, 1995 under the 1979 one-hour ozone NAAQS (57 FR 46316, October 8, 1992).

Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties are currently subject to the state low Reid Vapor Pressure (RVP) rules in Chapter 114, Subchapter H, Division 1, but on November 7, 2023 they will be subject to the federal RFG program. To avoid overlapping applicability between the state RVP rules and the federal RFG program for those six counties, this rulemaking adoption removes these counties from the state low RVP program.

During the 2019 Quadrennial review of Chapter 114, staff identified definitions that are no longer necessary. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The adopted revisions remove these obsolete definitions.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

Under FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The commission provides the following information to demonstrate why the adopted changes to the I/M program rules and low RVP requirements in Chapter 114 will not: negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS.

The adopted amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that will be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by the EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. Additional details regarding the adopted Bexar County I/M program are discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), adopted concurrently with this rulemaking. These amendments do not affect the EPA-

approved I/M program requirements for other areas, and the adopted requirements for the Bexar County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the adopted rulemaking will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

The adopted amendments to Chapter 114 also modify administrative aspects of 30 TAC Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. The removal of these six counties from the state low RVP program will not interfere with attainment or maintenance of the NAAQS for the DFW area due to implementation of federal RFG requirements, which are more stringent than the state rules. The Chapter 114 low RVP program requires a maximum gasoline RVP of no greater than 7.8 pounds per square inch (psi) and has a seasonal applicability, the specific time period of the summer ozone season. The federal RFG program controls more components of gasoline as well as requiring a lower RVP for gasoline and has no seasonal limitations. The adopted revisions will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

Section by Section Discussion

The amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to repeal obsolete definitions and revise the I/M program rules to provide for implementation of the Bexar County program. The amendments also revise 30 TAC Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements.

The commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, remove outdated definitions identified during the Quadrennial review, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

Subchapter A: Definitions

§114.1. Definitions

The revisions remove obsolete definitions in this section that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and updated the mail code in the Texas Inspection and Maintenance State Implementation Plan definition to MC 206 from MC 166 as included in the proposed rulemaking. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The definitions removed are: Heavy-duty vehicle, Inherently low emission vehicle, Light-duty vehicle, Loaded mode inspection and maintenance test, Low emission vehicle, Mass transit authority, Reformulated gasoline, Tier I federal emission standards, Ultra low emission vehicle, and Zero emission vehicle. The remaining definitions are renumbered as appropriate.

§114.2. Inspection and Maintenance Definitions

The revisions add new language under the definition for Program area in §114.2(10) to reflect that the new Bexar County program area consists of Bexar County.

Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 1: Vehicle Inspection and Maintenance

§114.50. Vehicle Emissions Inspection Requirements

The revisions to §114.50(a) add new paragraph (5) to specify the program start dates, specify the model year vehicles in the Bexar County program area to be tested, and that all vehicle emissions testing stations must offer OBD tests. The new subparagraph (A) requires all Bexar County vehicles subject to I/M program requirements to receive the EPA-approved OBD test beginning November 1, 2026. The new subparagraph (B) requires all vehicle emissions inspection stations in the Bexar County program area to offer the OBD test.

The revisions to §114.50(b) amend paragraphs (1), (3), and (6) by adding the Bexar County program area to the list of program areas subject to the control requirements of the subsection.

§114.53. Inspection and Maintenance Fees

The revision to §114.53(a) adds a new paragraph (4) to establish the maximum fee of $18.50 that Bexar County program area emissions inspection stations may charge for the OBD test. In 2020, TCEQ commissioned a study to help prepare for the future implementation of an I/M program in Bexar County. The Bexar County Inspection and Maintenance Program Study Final Report (Bexar County I/M Study) is available at https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf. The Bexar County I/M Study recommended a fee between $18 and $22. The Commission adopts a fee of $18.50, as the Commission finds that this amount is comparable to the existing OBD fee in the Houston-Galveston-Brazoria and Dallas-Fort Worth program areas, and this amount is also consistent with the Bexar County I/M Study's recommendation. The revision does not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017 and all participating counties have opted out of the LIRAP. If TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, TCEQ will initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The revision to §114.53(d)(4) adds a new paragraph that requires affected vehicle owners to remit $2.50 to the Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

Subchapter H: Low Emission Fuels

Division 1: Gasoline Volatility

§114.309. Affected Counties

The revisions remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. These six counties are subject to the federal RFG program as of November 7, 2023, prior to the anticipated effective date of this rulemaking, if adopted. Federal RFG

program requirements are more stringent, and exempting these counties from the state low-RVP rules eliminates unnecessary overlapping state requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "Major Environmental Rule" as defined in that statute, and in addition, if it did meet the definition, will not be subject to the requirement to prepare a regulatory impact analysis. A "Major Environmental Rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking's purpose is to implement the required vehicle I/M program in Bexar County and to remove certain counties in the DFW area from the state low RVP program since they will be subject to the federal RFG rules as of November 7, 2023. These changes are necessary to comply with federal requirements for the implementation of vehicle I/M programs required by 42 United States Code (U.S.C.) §7511a(a), FCAA, §182(b) for the Bexar County 2015 eight-hour ozone nonattainment area and to remove counties in the DFW 2008 eight-hour ozone severe nonattainment area from the state low RVP program that will become subject to requirements for RFG as required by 42 U.S.C. §7545, FCAA, §211(k)(10)(D). The requirement to implement and enforce vehicle I/M programs is specifically required for certain nonattainment areas by the FCAA, and the adopted revisions to 30 TAC Chapter 114 are anticipated to be used as a control strategy for demonstrating attainment of the 2015 eight-hour ozone NAAQS upon implementation of the program in the Bexar County area.

The adopted rulemaking implements requirements of 42 U.S.C. §7410, FCAA, §110, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state; as well as the removal of counties from the existing state low RVP program that will become subject to the requirements of the 42 U.S.C. §7545, FCAA, §211(k)(10)(D), as discussed elsewhere in this preamble. While 42 U.S.C. §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs are specifically required by the FCAA, as are the requirements for federal RFG for severe ozone nonattainment areas. The SIP must also include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS, and when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410, FCAA, §110; nor does it allow states to ignore specific requirements of the FCAA. States are not free to ignore the requirements of 42 U.S.C. §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

If a state does not comply with its obligations under 42 U.S.C., §7410, FCAA, §110 to submit SIPs that comply with the requirements of the FCAA, states are subject to discretionary sanctions under 42 U.S.C., §7410(m), FCAA, §110(m) or mandatory sanctions under 42 U.S.C., §7509, FCAA, §179 as well as the imposition of a FIP under 42 U.S.C., §7410, FCAA, §110(c).

As discussed earlier in this preamble, states are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of the preamble to the proposed rule, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the 2015 eight-hour ozone NAAQS, comply with the specific requirements for vehicle I/M programs, or 42 U.S.C. §7545, FCAA, §211(k)(10)(D) on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. No comments were received.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement will seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but vehicle I/M programs are specifically required by the FCAA for moderate nonattainment areas,

as are the requirements for federal RFG for severe ozone nonattainment areas; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the required attainment deadlines and comply with EPA requirements for vehicle I/M programs and the federal RFG program. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the rules do not impose burdens greater than required to demonstrate attainment of the 2015 eight-hour ozone NAAQS and comply with the requirements for vehicle I/M programs and the federal RFG program as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to comply with requirements for vehicle I/M programs and federal RFG requirements and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this rulemaking adoption is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of vehicle I/M programs and removal of the six specified counties from the state low RVP program since they will become subject to the federal RFG program one year after reclassification to severe for the 2008 eight-hour ozone NAAQS. Therefore, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the adopted rulemaking implements requirements of the FCAA, 42 U.S.C., §7410, FCAA, §110 which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C., §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs and federal RFG are specifically required by the FCAA. The SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the

FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C., §7410, FCAA, §110. States are not free to ignore the requirements of 42 U.S.C., §7410, FCAA, §110 and must develop programs to assure that nonattainment areas can be brought into attainment on the schedule prescribed by the FCAA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 U.S.C., §7410, FCAA, §110 to submit SIPs that meet the requirements of the FCAA, states are subject to discretionary sanctions under 42 U.S.C., §7410(m) or mandatory sanctions under 42 U.S.C., §7509, FCAA, §179; as well as the imposition of a FIP under 42 U.S.C., §7410, FCAA, §110(c).

The adopted rulemaking will not create any additional burden on private real property beyond what is required under federal law, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rulemaking will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Note: §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §505.11(b)(4) applies to all other actions. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on July 6, 2023 at 7:00 p.m. in Arlington, Texas for the state RVP program, but no attendees registered to make comments on the record, so the public hearing was not opened. The commission held a public hearing on July 13, 2023 at 7:00 p.m. for the Bexar County I/M program in San Antonio, Texas, and testimony was received and transcribed for the record. The comment period closed on July 17, 2023. No comments were received regarding the removal of the six DFW area counties from the state low RVP program. Oral and/or written comments on the Bexar County I/M program proposal were received from the following: Alamo Area Council of Governments (AACOG); EPA Region 6; Official Inspection Station (OIS); Rema Investment Group, LLC (RIE); San Antonio Auto Service, LLC (SAAS); Texas State Inspection Association (TSIA); and 16 individuals. After the comment period closed, Texas Department of Public Safety (DPS) submitted a letter to TCEQ regarding the timeline for Bexar County vehicle emissions inspection implementation, which was added to the comments received for commission consideration on this SIP revision. Comments were received concerning the maximum fees set for individual emissions inspections in Bexar County as well as the other I/M counties in Texas. Comments were also received concerning the timing of the proposed start of the I/M program in Bexar County, TCEQ's outreach efforts associated with implementing I/M in Bexar County, and the end of the state's safety inspection program.

Response to Comments

Comment

RIE, SAAS, and two individuals stated that they were in support of the proposal to implement I/M in Bexar County. AACOG expressed thanks to the TCEQ for holding the public hearing in San Antonio to provide residents an opportunity to testify on the proposal. OIS offered that committee hearings should not be timed or censored and commented that the rule comment period should be extended to allow DPS to hold information meetings in which inspectors and automotive store owners may participate.

Response

The commission appreciates support for the proposed rulemaking and public hearing. The commission complied with all applicable public notice and rulemaking requirements for this rulemaking: (Texas Government Code, Subchapter B, Chapter 2001; Texas Clean Air Act, THSC, §382.017; Texas Water Code, §5.103; 30 TAC Chapter 20; and 40 CFR §51.102). The comment period lasted for 45 days, longer than the required 30 days. The commission applied a time limit for providing oral testimony at its July 13, 2023 public hearing to allow as many potential attendees to participate as possible. No word limit was applied to written comments, which were accepted during the entire 45-day comment period. DPS's outreach efforts are beyond the scope this rulemaking. No changes were made in response to this comment.

Comment

AACOG commented that because San Antonio is a poor city, elected officials are concerned about the impact the emissions inspection fee will have on residents. AACOG thanked TCEQ for including Bexar County elected officials in its outreach efforts and for listening to their concerns.

OIS commented that industry representatives should be notified about information meetings and allowed to provide input. OIS pointed out that the public information meetings held during development of the proposed rulemaking were scheduled for the middle of the workday and were poorly attended by shop owners. OIS noted that no in-person townhall meetings were offered, which was part of the process for previous I/M implementation.

Without in-person townhall meetings, OIS stated, industry representatives are unable to participate in an open dialogue on the topic or to provide input, and elected officials do not have the opportunity to hear their input. Not providing an opportunity for elected officials to hear industry's perspective allows them to conclude that industry is supportive of the plan.

Response

The commission appreciates the support for its outreach efforts related to this rulemaking as well the comments suggesting additional outreach. For this rulemaking, the commission was required to offer a public hearing, which it did on July 13, 2023. Prior to that hearing, TCEQ provided information on I/M implementation in Bexar County at meetings held throughout development of this rulemaking. TCEQ presented on I/M implementation planning at a San Antonio Air Quality Technical Information Meeting on August 16, 2021, which was open to the public, and again at a November 8, 2022 meeting of the TSIA. TCEQ then held a public information meeting on January 17, 2023 that was targeted at Bexar County stakeholders. For that meeting, TCEQ contacted area elected officials, TSIA, Texas Clean Air Working Group, regional planning authorities in all of the areas in the state that implement I/M, the Bexar County Environmental Services Department, and the City of San Antonio Metropolitan Health District to invite their representatives to the meeting. Additionally, notice of the meeting was distributed as a bulletin to inspection machines statewide and shared through GovDelivery, TCEQ's Public Information Meeting on the Expansion of Vehicle Inspection and Maintenance (I/M) to Bexar County webpage, which was created for the meeting, and the events calendar on the TCEQ's homepage. The public information meeting was held virtually to maximize attendance, and time was set aside to receive input and questions from attendees.

No changes were made in response to this comment.

Comment

AACOG, SAAS, OIS, TSIA, REI, and 13 individuals provided input on the maximum fees set for individual emissions inspections in Texas, with OIS and one individual providing similar input in written comments and oral testimony at the public hearing. AACOG, TSIA, OIS, and four individuals specifically commented on the proposed maximum fee of $11.50 for Bexar County, with AACOG commenting that the low fee is welcome because it will provide relief for the area's low-income drivers. TSIA, OIS, and the four individuals commented that the proposed fee for Bexar County is too low. Three individuals commented that they owned inspections stations that would close if the fee were not increased. One individual stated they were a station owner in a neighboring county and, though they were unsure whether they would be part of the program, they would not consider conducting emissions inspections if the maximum fee were $11.50.

RIE, SAAS, OIS, TSIA, and 13 individuals commented on the I/M fee in general, all stating that the maximum fee should be increased, and RIE, SAAS, TSIA, and nine of those individuals recommended fees ranging from $22 to $40. OIS, TSIA, and nine individuals expressed concern that the proposed maximum inspection fee will not cover the costs associated with conducting the inspections. One individual commented that the previous TCEQ inspection fee survey indicated that the current fee rates are inadequate. The same individual indicated they participated in multiple inspection fee surveys and claimed that Texas has the lowest inspection fee in the United States.

OIS and two individuals commented on the consequences of not setting an adequate fee for emissions inspections in Texas. OIS and one individual warned that stations would stop offering inspections, which would lead to longer wait times and frustrated vehicle owners. One individual went on to describe a scenario in which inspection stations close on January 1, 2025, the end date for state vehicle safety inspections, and the long lines and angry vehicle owners result in negative media coverage holding TCEQ accountable for the situation. The individual indicated that the described outcome can be avoided by increasing the emissions inspection fee for all counties in the I/M program.

Response

The commission adopts a maximum vehicle emissions inspection fee of $18.50 for the Bexar County I/M program. This amount was changed from the proposed fee of $11.50. The adopted fee of $18.50 for Bexar County is comparable to the maximum OBD fee of $18.50 for the Houston-Galveston-Brazoria (HGB) and Dallas-Fort-Worth (DFW) program areas. This amount is also consistent with the Bexar County I/M Study that recommended an OBD fee for all program areas between $18 and $22. The Bexar County I/M Study is available at: https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf.

Under THSC, §382.202(f), the commission is required to review the vehicle emissions fee for the I/M program every two years. The next fee study is planned for Fiscal Year 2024. The upcoming study will include a review of changes in costs associated with conducting emissions inspections and could include a review of fees in other states. If additional changes are determined to be necessary, rulemaking could be recommended for the commission's consideration.

Comment

AACOG, OIS, TSIA, and two individuals referenced TCEQ's biennial fee analysis studies to assesses the adequacy of the vehicle emissions inspection fee. In addition to the 2020 fee study, TCEQ conducted a separate program study to explore the efforts needed to implement I/M in Bexar County (Bexar County I/M Study). AACOG, OIS, TSIA, and the individuals referenced the proposed fee of $11.50 in comparison to the 2020 studies' recommendations. AACOG supported the decision, and OIS, TSIA, and the two individuals disagreed with it.

Response

The commission adopts a maximum vehicle emissions inspection fee of $18.50 for the Bexar County I/M program. As mentioned above, this amount was changed from the proposed fee of $11.50 and is comparable to the maximum OBD fee of $18.50 for the HGB and DFW program areas. The adopted fee of $18.50 is also consistent with the Bexar County I/M Study that recommended a fee between $18 and $22. As previously mentioned, the 2024 fee study will specifically consider whether fees in all program areas, including Bexar County, should be changed in light of the elimination of the vehicle safety inspection program.

The commission appreciates previous participation and looks forward to continued participation in studies regarding the vehicle emissions inspection fee.

Comment

OIS commented that TCEQ is not statutorily required to set a price for emissions testing and that doing so enables potential legal action. OIS suggested that inspection stations be allowed to set their own fees and that specific signage could be prominently displayed for public view indicating the inspection fee at each station.

Response

Emissions inspection fee authority is granted to the commission under Tex. Health & Safety Code (THSC), §382.202. While the statute provides some discretionary authority, the intent of the legislature is clear that the commission exercise authority to set emission inspection fees.

Additionally, since states are required under federal regulations to demonstrate adequate resources to implement their inspection and maintenance programs, and since Texas chose to implement a decentralized emission testing program, the commission's predecessor agencies submitted its fee authority and the fee rules to the EPA as part of its demonstration that the program would have adequate resources for implementation. EPA published approval of the Texas enhanced inspection and maintenance program, including the fees and resource demonstration, on November 14, 2001 (66 FR 57261). That approval made TCEQ's fee authority federally enforceable. No changes were made in response to this comment.

Comment

TSIA and 10 individuals commented in support of increasing the inspection fee in various counties other than Bexar County or statewide. One of these individuals commented that there is a significant demand for inspections compared to available inspection stations and without a fee increase, a significant amount of current stations, including three of their own, will close, making it harder for consumers to inspect and register their vehicles. The same individual commented that the higher fees charged in Dallas and Houston are allowing some stations to offer discounts in those areas, so supply and demand are more in balance at a $25.50 fee.

Response

Revising the maximum vehicle emissions inspection fee charged by stations outside of Bexar County is beyond the scope of this rulemaking. No change was made in response to this comment.

Comment

OIS commented that TCEQ plans on eliminating 50% of inspection stations, recommending only 458 locations for Bexar County, which would cause motorists to drive further to locate an inspection station and wait four times as long.

Response

The commission does not set the number of inspection stations in emissions testing areas. A Bexar County I/M Study suggested that the county would need approximately 458 inspection stations to adequately test the vehicle fleet for an I/M program. No change was made in response to this comment.

Comment

OIS and four individuals provided comments against the end of state safety inspections for noncommercial vehicles. One individual station owner stated their business would close, and OIS commented that the inspection industry will be dismantled when safety inspections end in 2025. An individual station owner offered that their customers are concerned that ending the safety inspection program will result in more cars being left alongside the road, and another individual commented that the safety inspection program helps avoid accidents. That individual went on to suggest that organizations should protest the statutory repeal of the program and keep roads and air safe.

One individual commented that the safety inspection program has contributed to Texas' greatness for 70 years. Another individual conveyed that inspection customers are frustrated by the current system and suggested that the answer is to improve it by modernizing and streamlining the testing process. The same individual provided an example suggestion of eliminating the emergency brake system test.

Response

These comments are outside the scope of this rulemaking, which addresses requirements in the FCAA and 40 CFR Part 51, as amended, to implement a basic vehicle emissions I/M program in the Bexar County 2015 ozone NAAQS nonattainment area. This program is separate from the state's vehicle safety inspection program that will end on January 1, 2025 as a result of HB 3297, 88th Texas Legislature, Regular Session. No changes were made in response to this comment.

Comment

Comments were received from AACOG, DPS, OIS, TSIA, and two individuals concerning the proposed start of I/M in Bexar County, November 1, 2026. AACOG commented that it was critical to have as much time as possible to disseminate information about and to implement the program due to the planned end of state safety inspections on January 1, 2025. DPS suggested a start date of January 1, 2025 for vehicle emissions inspections in Bexar County to align with the end of non-commercial safety inspections. DPS commented that safety-only vehicle inspection stations will close and exit the program before January 1, 2025, creating a shortage of available stations when the emissions inspection program begins in 2026. DPS also commented that the proposed start date of November 1, 2026 would potentially have a negative impact on existing safety stations, the process of closing inspection stations to then open up new stations several months later would be a significant increase in workload for the agency, and that the complexity of educating citizens on the inspection process for the next three years could cause significant confusion. OIS, TSIA, and an individual commented that starting I/M on the proposed date of November 1, 2026 would leave an inspections gap once safety inspections end that would be difficult for stations to endure financially. OIS and TSIA commented that the Bexar County I/M start date should be as close to the end date for safety inspections as possible. OIS went on to comment that there is no statutory requirement or mandate requiring TCEQ to establish a specific start date for I/M in Bexar County, including the proposed November 1, 2026 start date. OIS stated that TCEQ may choose to implement I/M in Bexar County starting January 1, 2025, eliminating the inspections gap, which would preserve the workforce, clean the air, and save lives. OIS added that San Antonio is a poor city but a growing city with poor air quality that needs to be cleaned up.

Response

Under the FCAA, §182(i), states generally must meet new requirements associated with a reclassification according to the schedules prescribed in connection with such requirements. The I/M rules in 40 CFR Part 51, Subpart S allow areas newly required to establish programs up to four years after the effective date of reclassification, 40 CFR §§51.373(b), 51.352(c) and

(e)(2). In its final reclassification rule published October 7, 2022 (87 FR 60897), EPA also took comment on, and established, the I/M program implementation deadline of no later than four years after the effective date of reclassification (November 7, 2026). The commission adopts this rulemaking with its proposed November 1, 2026 start date to ensure adequate time for delivery and setup of vehicle emissions inspection equipment and to work with partner agencies to develop and implement a public awareness plan. The commission is aware that the end of state safety inspections will occur before I/M starts in Bexar County and will work with DPS on the transition from safety-only inspections to emissions and commercial safety inspections. No changes were made in response to this comment.

Comment

The EPA requested that TCEQ review opportunities to incorporate environmental justice (EJ) considerations adequately and appropriately into SIP revisions. The EPA encouraged the TCEQ to screen SIP revisions for EJ concerns and consider civil rights issues for potentially impacted communities early in the SIP revision process. The EPA recommended utilizing EJScreen and knowledge of the impacted area. The EPA expressed that the TCEQ should consider whether pollution sources contribute to community risk.

Response

The purpose of this rulemaking is to implement I/M and set the testing fee applicable in Bexar County in accordance with EPA's guidance and FCAA requirements. TCEQ followed all relevant federal and state statutes, regulations, and guidance in the development of this rulemaking for the Bexar County nonattainment area.

This rulemaking is not the appropriate mechanism to address EJ issues. No federal or state statute, regulation, or guidance provides a process for evaluating or considering the socioeconomic or racial status of communities within an ozone nonattainment area. In a recent proposed approval of a TCEQ submittal for El Paso County, which did not include an EJ evaluation, EPA stated that the FCAA "and applicable implementing regulations neither prohibit nor require such an evaluation" (88 FR 14103). TCEQ continues to be committed to protecting Texas' environment and the health of its citizens regardless of location.

While EPA may encourage states to utilize EJScreen in rulemaking actions, it is not necessary, because the NAAQS are protective of all populations. If the NAAQS are not sufficient to protect public health, it is incumbent upon EPA to revise the NAAQS.

This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's Language Access Plan (LAP) and TCEQ's Public Participation Plan (PPP). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.

TCEQ translated the Plain Language Summaries, GovDelivery notices, Public Hearing notices, and SIP Hot Topics notices into Spanish for all projects. Newspaper publications were also in Spanish. Additionally, two Spanish translators were available at all hearings, and the notices included a statement that Spanish translation would be available at each hearing.

No changes were made in response to these comments.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.1, §114.2

Statutory Authority

The expansion of the vehicle I/M program to Bexar County is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The expansion of the vehicle I/M program to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of the vehicle I/M program to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety of the State of Texas.

The adopted rules implement TWC, §§5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.201-382.203, and 382.205.

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.

(6) Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration and includes the weight the vehicle can carry or draw.

(7) Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(8) Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015, or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(9) Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission and approved by the EPA. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 206, Austin, Texas 78711-3087.

(10) Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.

(11) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

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

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §114.50, §114.53

Statutory Authority

The expansion of vehicle I/M program to Bexar County is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §.7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The expansion of vehicle I/M to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable

emissions standards, as well as consult with the DPS; THSC, §382.206, Collection of Data; Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits; which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment; THSC, §382.209, Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, which authorizes the commission to establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; and THSC, §382.210, Implementation Guidelines and Assistance, which requires the commission to adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program..

The adopted rules implement TWC, §§5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.201-382.210.

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of $14 and remit $2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of $16 and remit to the DPS $4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed $11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS $2.50 for each acceleration simulation mode (ASM-2) test and $8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS $2.50 for each ASM-2 test and $8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.

(4) In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(5)(A) or (B) of this title must collect a fee not to exceed $18.50.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS, must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, the following requirements apply.

(A) If participating in the LIRAP, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00

constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) If not participating in the LIRAP, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(4) In the Bexar County program area, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER H. LOW EMISSION FUELS
DIVISION 1. GASOLINE VOLATILITY

30 TAC §114.309

Statutory Authority

The removal of the six specified counties from the low Reid Vapor Pressure (LVP) program is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorizes the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The removal of the six specified counties from the low RVP program is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012 concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The adopted rules implement TWC, §§5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, and 382.017.

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

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Charmaine Backens
Deputy Director, Environmental Law Division
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CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41 - 290.47

The Texas Commission on Environmental Quality (TCEQ) adopts amendments to 30 Texas Administrative Code (TAC) §§290.38, 290.39, and 290.41 - 290.47.

Amended §§290.38, 290.39, 290.41 - 290.44 and 290.47 are adopted *without changes* to the adopted text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3835) and, therefore, will not be republished. Amended §290.45 and §290.46 are adopted *with changes* to the adopted text as published in the July 14, 2023, issue of the *Texas Register* and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC, §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the TCEQ for review and approval. TWC, §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the TCEQ has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the TCEQ approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC, §13.1394 also specifies that the TCEQ will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the TCEQ an emergency preparedness plan required by TWC, §13.1394, no later than March 1, 2022, and stated in 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, TCEQ approved timeline.

Amended TWC, §13.1395, excludes from the requirement of creating an emergency preparedness plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the TCEQ organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the TCEQ during a work session, held on May 19, 2022.

Section by Section Discussion

§290.38, Definitions

The TCEQ adopts this rulemaking to add a definition to §290.38 for "accredited laboratory" to clarify the requirements for laboratories used to analyze drinking water samples for determination of compliance with maximum contaminant levels, actions levels, and microbial contaminants. This adopted change corresponds to the definition of "certified laboratory" in §290.38(12), which indicates that laboratories must be accredited, rather than certified, after June 30, 2008. Laboratory accreditation is issued by the TCEQ under Texas Water Code, Chapter 5, Subchapter R, and its associated TCEQ rules.

The TCEQ adopts this rulemaking to add a definition to §290.38 for "adverse weather conditions". This adopted change is a recommendation which resulted from the after-action review findings.

The TCEQ adopts this rulemaking to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC, §13.1394 and §13.1395. The TCEQ adopts these amendments to reflect the requirements of TWC, §13.1394(a)(1) and §13.1395(a)(1).

The TCEQ adopts this rulemaking to amend the definition of "approved laboratory" to clarify that laboratory approval is required for determining compliance with treatment technique requirements in addition to maximum or minimum allowable constituent levels currently stated in rule.

The TCEQ adopts this rulemaking to amend the definition of "emergency operations" to clarify the minimum required water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC, §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC, §13.1395, which is 35 pounds per square inch.

The TCEQ also adopts this rulemaking to amend sequential numbering for this section as necessary.

§290.39, General Provisions

The TCEQ's adopted amendments for this section will clarify existing rules and also add provisions relating to TWC, §13.1394 and §13.1395 to implement SB 3.

The TCEQ adopts this rulemaking to amend §290.39(a) to include a statement that authority for this subchapter includes TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.39(c)(4) by adding language that references TWC, §13.1394 and §13.1395, replacing §§290.39(c)(4)(A) through 290.39(c)(4)(E) with a refer-

ence to §290.39(o) instead. This will reduce repetitive language already contained in §290.39(o).

The TCEQ adopts this rulemaking to amend §290.39(n) to add a subsection tagline. This amendment will meet Texas Register rule standards and guidelines and will make the subsection consistent with other subsections in §290.39.

The TCEQ adopts this rulemaking to amend the tagline of §290.39(o) to clarify that this subsection applies to affected utilities as defined in TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.39(o)(1) to remove a date and reference to the use of another emergency preparedness plan that meets the requirements of the rule. The templates, included in Appendix G, may be used for the submittal of emergency preparedness plans for affected utilities as defined in TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.39(o)(2), and add §§290.39(o)(2)(A) through 290.39(o)(2)(C), to include language from TWC, §13.1394(d) and §13.1395(d), requiring affected utilities who provide or convey surface water to wholesale customers to demonstrate in their emergency preparedness plan the ability to do so during emergencies, unless they provide raw water service that is unnecessary or subject to interruption or curtailment during emergencies under a contract.

The TCEQ adopts this rulemaking to amend §290.39(o)(3) by adding a reference to the requirement that affected utilities select one of the options listed in §§290.45(h)(1)(A) through 290.45(h)(1)(N) when operating as an affected utility as defined in TWC, §13.1394, or options listed in §§290.45(i)(1)(A) through 290.45(i)(1)(H) when operating as an affected utility as defined in TWC, §13.1395. The amended reference clarifies which options are applicable under each water code section.

The TCEQ adopts this rulemaking to amend §290.39(o)(4) to remove outdated language and to clarify the requirement for implementation of an approved emergency preparedness plan applies to all affected utilities defined in TWC, §13.1394 and §13.1395.

§290.41, Water Sources

The TCEQ adopts this rulemaking to add §290.41(f) requiring that all critical equipment associated with a raw water source be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in its region of the state. The TCEQ adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.42, Water Treatment

The TCEQ adopts amendments and additions to this section in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend §290.42(l) to include additional minimum content requirements for a plant operations manual so that operators will have the necessary information for the continuation of operations.

The TCEQ adopts this rulemaking to add §290.42(l)(1) to require that a plant operations manual include a description of planned protective measures for critical plant equipment during adverse weather conditions, replacement part information, information on manufacturer's user manuals, vendor/technician information, and information on alternative sources of equipment outside the area.

The TCEQ adopts this rulemaking to add §290.42(l)(2) to require that a plant operations manual identify all chemicals used for the treatment of drinking water, the entity's chemical vendor information, and information on alternative sources of chemicals outside the area.

The TCEQ adopts this rulemaking to add §290.42(l)(3), and §§290.42(l)(3)(A) through 290.42(l)(3)(F) to require that a plant operations manual include the following routine activities: protocol, schedules, and documentation related to chemical pump feed rate verification, chemical dose adjustments, process control sampling, calibration and accuracy verifications; operations of critical plant equipment, to include plant start-up and shut-down under normal and emergency conditions, while in manual and automated settings, as applicable, and the inclusion of manufacturer's specifications for maintaining and troubleshooting of critical plant equipment.

The TCEQ adopts this rulemaking to add §290.42(l)(4) to require that a plant operations manual include information outlining a continuity of operations plan in the event that critical equipment fails, or key personnel are not available. This information could include arrangements for emergency plant coverage or mutual aid agreements with other utilities for equipment or personnel.

The TCEQ adopts this rulemaking to add §290.42(l)(5) to require that a plant operations manual be reviewed and, if necessary, updated when a significant change occurs, as outlined in §290.39(j), after emergency events that impact plant operation, but at least every three years. This requirement is intended to ensure that a plant operations manual is evaluated and kept up-to-date.

The TCEQ adopts this rulemaking to add §290.42(o) to require that all critical components associated with drinking water treatment facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state.

§290.43, Water Storage

The TCEQ adopts this rulemaking to amend §290.43(b)(1) to add new language that includes a setback distance of 150 feet between an elevated or ground storage tank and an on-site sewage facility (OSSF) spray field. This addition is consistent with the setback distance between a public water supply well and an OSSF spray field, which is a standard determined to provide adequate protection of public health. This addition streamlines the approval process by eliminating the requirement for a system to submit an exception if they cannot meet the previous setback distance of 500 feet between a storage tank and OSSF spray field, while still protecting public health.

The TCEQ adopts this rulemaking to amend §290.43(d)(2) to clarify that only one pressure gauge is required when more than one pressure tank is connected by a common manifold. This amendment streamlines the approval process by eliminating the requirement for a system to submit an exception if they plan to use only one pressure gauge.

The TCEQ adopts this rulemaking to add §290.43(g) to require that all critical equipment associated with water storage facilities

be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The TCEQ adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.44, Water Distribution

The TCEQ adopts this rulemaking to amend §290.44(d) to correct a compound word error and to specify that the distribution system of public water systems that are affected utilities, defined in TWC, §13.1394 or §13.1395, must be designed to implement the requirements of §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.44(i)(2)(J) to clarify that an accredited laboratory must analyze samples used to determine compliance for microbial contaminants. This adopted change is intended to make this regulation consistent with §290.119 and the definition of accredited laboratory.

The TCEQ adopts this rulemaking to add §290.44(k) to require that all critical equipment associated with water transmission facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The TCEQ adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.45, Minimum Water System Capacity Requirements

The TCEQ adopts this rulemaking to amend §§290.45(a)(2), 290.45(g)(1)(F) and 290.45(g)(6)(A)(i) to correct a compound word error.

The TCEQ adopts this rulemaking to amend §290.45(a)(7) to include the minimum emergency pressure requirement of 20 psi or a pressure approved by the executive director for affected utilities under TWC, §13.1394.

The TCEQ adopts this rulemaking to add §290.45(a)(8) to include requirements for an affected utility to review their emergency preparedness plan at least once every three years and to submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after certain conditions occur. Subparagraphs (A)-(D) describe the conditions which require a new or revised emergency preparedness plan to the executive director. These adopted requirements are intended to provide resiliency and continuity of operations to affected utilities and to eliminate the unnecessary burden of submitting an entire emergency preparedness plan for changes to emergency contacts.

The TCEQ adopts this rulemaking to amend §290.45(b)(1)(D)(v) and §290.45(b)(2)(H) to clarify the rules by deleting the generator maintenance requirement portion of the rule, clarifying that minimum pressure requirements must be met in the event of loss of normal power and adding language which states emergency power must be maintained as required by adopted §290.46(m)(8).

The TCEQ adopts this rulemaking to amend §290.45(b)(3) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(c)(3) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in §290.45(h) or §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(d)(4) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(e)(1) to clarify that if a contract prohibits a water purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

The TCEQ adopts this rulemaking to amend §290.45(e)(3) to clarify that if emergency power is required it must be sufficient to meet the minimum pressure requirements, and to add that all wholesale contracts executed or amended on or after January 1, 2025, must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations. This addition is meant for the wholesale entity to clarify whether it intends to provide both water and pressure to the purchasing entity or if the wholesale entity only intends to provide water under emergency operations. This addition is not intended to conflict with a wholesaler's "Force Majeure" clause but is required to ensure compliance with TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.45(e)(4) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) or §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(f)(6) to clarify that this paragraph references capacity requirements, consistent with other portions of §290.45, and to add that all wholesale contracts executed or amended on or after January 1, 2025, must specify if the wholesaler intends to supply water, pressure, or both water and pressure during emergency operations. This requirement is meant for the wholesale entity to clarify whether it intends to provide both water and pressure to the purchasing entity or if the wholesale entity only intends to provide water under emergency operations. This requirement is not intended to conflict with a wholesaler's "Force Majeure" clause but is required for wholesalers to comply with TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(A)(i) to include a requirement to provide 20 psi or a pressure approved by the executive director in distribution, as stated in TWC §13.1394, when operating emergency power facilities.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(A)(iv) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for

emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(B) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(B)(i) - (iii) to add language that emergency power facilities must be maintained as prescribed in §290.46(m)(8), that the emergency power must be activated before the distribution pressure falls below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC, §13.1394 and §13.1395, respectively, and increase the fuel requirement to operate emergency power facilities during emergency operations for at least 48 hours. The emergency power maintenance and the increase in available fuel requirements are in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to delete §290.45(g)(5)(D) which requires public water systems to maintain and submit an emergency response plan that details the procedures to follow and individuals to contact during a power outage. This requirement is redundant because it is required by all affected utilities in their emergency preparedness plan and all non-affected utilities in their plant operations manual.

The TCEQ adopts this rulemaking to add a new §290.45(h) to differentiate the requirements between affected utilities defined in TWC, §13.1394 and §13.1395 and to specify emergency power requirements in addition to the existing power requirements for public water systems in §290.45. The TCEQ adopts to amend sequential numbering for this section and correct any cross-references within this chapter, as necessary.

The TCEQ adopts this rulemaking to add new §290.45(h)(1) and subsequent subparagraphs to include the fourteen emergency operation options, as listed in TWC, §13.1394(c)(1) through 13.1394(c)(14) for emergency preparedness plans.

The TCEQ adopts this rulemaking to add new §290.45(h)(2) to require that affected utilities that provide raw surface water to wholesale customers must include in their emergency preparedness plan how they intend to provide raw water services during emergencies, except during instances when raw water services are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract, as stated in TWC, §13.1394(d).

The TCEQ adopts this rulemaking to add new §290.45(h)(3) which requires that auxiliary power facilities for affected utilities be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in adopted §290.46(m)(8). The TCEQ adopts this addition to implement TWC, §13.1394(h). The TCEQ also adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add new §290.45(h)(4) to allow an affected utility to adopt and enforce limitations on water use while providing emergency operations, as stated in TWC §13.1394(k).

The TCEQ adopts this rulemaking to add new §290.45(h)(5) to add that during emergency operations, affected utilities with elevated storage must operate in accordance with their approved emergency preparedness plan, which may or may not include using elevated storage, as stated in TWC, §13.1394(e).

The TCEQ adopts this rulemaking to add new §290.45(h)(6) which requires an affected utility maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any emergency power equipment during emergency operations for at least 48 hours. The TCEQ adopts this in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add new 290.45(h)(7) to require that each affected utility implement an emergency preparedness plan upon approval by the executive director under TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.45(i) to add language that specifies that this subsection applies to affected utilities as defined in TWC, §13.1395 and to remove repetitive language. This amendment will differentiate the requirements for affected utilities under TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.45(i)(1)(G) to remove reference for this emergency preparedness option to apply to existing facilities only and to correct a compound word error.

The TCEQ adopts this rulemaking to amend §290.45(i)(2) to clarify that the requirements under this paragraph do not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to a contract, as indicated in TWC, §13.1395(d).

The TCEQ adopts this rulemaking to amend §290.45(i)(3) to require maintenance of an emergency generator, which is part of an approved emergency preparedness plan, by adding language that requires the generator to be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendations if the affected utility serves 1,000 connections or greater, or manufacturer's specifications and as outlined in §290.46(m)(8) if the affected utility serves fewer than 1,000 connections. The TCEQ adopts this amendment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend §290.45(i)(5) to abbreviate "Texas Water Code" to TWC.

The TCEQ adopts this rulemaking to amend §290.45(i)(6) to clarify that an affected utility must provide enough fuel necessary to operate emergency power facilities during emergency operations for at least 48 hours. The TCEQ adopts this amendment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.45(i)(7) to require that each affected utility implement an emergency preparedness plan upon approval by the executive director under TWC, §13.1395.

§290.46, Minimum Acceptable Operating Practices for Public Water Systems

The TCEQ adopts this rulemaking to amend §290.46(f)(5) to clarify that public water systems that are affected utilities, as defined by TWC, §13.1394 or §13.1395, must maintain records related to their emergency preparedness plan for as long as the plan is applicable.

The TCEQ adopts this rulemaking to amend §290.46(f)(5)(B) to add that an affected utility must maintain copies of operating, inspection, testing, and maintenance records for auxiliary power equipment and associated components required to be maintained or actions performed as prescribed in §290.46(m)(8). These record requirements support implementation of TWC, §13.1394(i), because the statute requires that the TCEQ periodically inspect affected utilities to ensure compliance with their approved emergency preparedness plan.

The TCEQ adopts this rulemaking to amend §290.46(g) to clarify that an accredited laboratory must analyze samples used to determine compliance for microbial contaminants. This adopted change is for consistency with §290.119 and the definition of accredited laboratory.

The TCEQ adopts this rulemaking to amend §290.46(i) to correct a spelling error.

The TCEQ adopts this rulemaking to add §290.46(m)(8) to require that emergency generators be maintained and tested monthly under at least 30% load based on manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(A) to require that emergency generators operated at water systems serving 1,000 connections or greater to be maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturer's recommendations. In addition, the water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B) to require that emergency generators operated at water systems with fewer than 1,000 connections to be maintained according to §§290.46(m)(8)(B)(i) through 290.46(m)(8)(B)(x) and with any additional requirements prescribed in the manufacturer's specifications or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(i) to require inspection and maintenance of the generator fuel system prior to monthly generator start-up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §§290.46(m)(8)(B)(i)(I) through 290.46(m)(8)(B)(i)(V) to require inspection of the fuel tank for fuel levels, contamination, and condensation in the portion of the tank occupied by air; inspection of fuel lines and fittings for breaks, degradation, and replacement; inspection of fuel filters and water separators for clogging, sediment buildup, and replacement; inspection of the fuel transfer pumps, float switches and valves, where provided between holding tanks and the generator, to verify that they are operating properly; and inspection of fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(ii) to require inspection of the fuel pump to verify that it is working properly when the generator is operating under load. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(iii) to require inspection and maintenance of the generator lubrication system, prior to monthly generator start up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(iii)(I) and §290.46(m)(8)(B)(iii)(II) to require inspection of oil lines and oil reservoirs for adequate oil levels, leaks, breaks, degradation, and oil replacement, as well as the greasing of all bearing components and grease fittings. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(iv) to require inspection and maintenance of the generator coolant system, prior to monthly generator start up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §§290.46(m)(8)(B)(iv)(I) through 290.46(m)(8)(B)(iv)(III) to require inspection of the

block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks, and degradation; inspection of coolant filters for clogging, sediment buildup, and coolant filter replacement; and inspection of the radiator, fan system, belts, and air intake and filters for obstruction, cracks, breaks, and leaks. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(v) to require inspection of the exhaust manifold and muffler, and that fumes are directed away from enclosed areas when the generator is operating under load. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(vi) to require that a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational inside enclosed structures where generators are located. The TCEQ adopts this requirement as a safety measure for utility staff.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(vii) to require inspection and maintenance of the generator's electrical system be conducted prior to monthly generator start up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(vii)(I) and §290.46(m)(8)(B)(vii)(II) to require inspection of battery chargers, wiring and cables for damage, corrosion, and connection continuity, verification that batteries are mounted and secured, that all contacts are tightened onto battery terminals, and inspection of each battery unit for electrolyte levels, adequate charge retention and appropriate discharge voltage. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(viii) to require inspection of generator engine starters and alternators when the generator is operating under load to verify that they are operating properly. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(ix) to require a monthly inspection of the Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight, not subject to floods, are properly ventilated, and that backup power supplies have adequate charge. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(x) to require a monthly inspection of the generator's switch gears to ensure they are water-tight and in good, working condition. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(9) to require that all critical components necessary for the continued operations of the water system's facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend subsection §290.46(q) to clarify the subject matter of the subsection, which is special precautions, protective measures, and boil water notices. Overall, the adopted amendments to the subsection clarify when to issue notices and defines language that must be used when a special precaution, protective measure, or boil water notice is issued or rescinded, as well as the timeframe and documentation required to the executive director. The adopted amendments also rearrange portions of the subsection for clarity. These adopted amendments do not result in requirements that are less stringent than federal drinking water requirements.

The TCEQ adopts this rulemaking to amend §290.46(q)(1) to remove the tagline and to clarify that along with boil water notices, this paragraph applies to special precautions and protective measures. A subparagraph will be added to include the situations that require these types of notices. The delivery method to customers and to the executive director for the initial and rescind notices, along with requirements for multilingual postings, are adopted to be deleted from this paragraph and relocated into adopted §§290.46(q)(2) through 290.46(q)(4).

The TCEQ adopts this rulemaking to add §290.46(q)(1)(A), to include §§290.46(q)(1)(A)(i) through 290.46(q)(1)(A)(iii), and new §290.46(q)(1)(A)(iv) and 290.46(q)(1)(A)(v), which describe the situations that require a boil water notice. Included in these situations are instances of low system water pressure, *E. coli* or MCL violations, turbidity exceedances, low distribution residuals, and waterborne disease outbreaks. These changes are adopted to clarify the instances that require a boil water notice, special precaution, or protective measure. Additionally, the TCEQ adopts to delete the summarized conditions for combined filter effluent because the precise requirements are located in the reference and to amend §290.46(q)(1)(A)(i) through §290.46(q)(1)(A)(iii) to remove the taglines.

The TCEQ adopts this rulemaking to add §290.46(q)(1)(B) to clarify that situations requiring special precautions or protective measures (other than boil water notices) may be determined by the public water system or at the discretion of the executive director. Executive director discretion will be determined as described in §290.46(q)(5).

The TCEQ adopts this rulemaking to add §290.46(q)(2) to clarify that all boil water notices, special precautions, and protective measures must be issued using one or more of the Tier 1 delivery methods specified in §290.122(a)(2) and by using language and format specified by the executive director.

The TCEQ adopts this rulemaking to add §290.46(q)(3) to clarify when and how a boil water notice, special precaution, or protective measure should be delivered to the executive director.

The TCEQ adopts this rulemaking to add §290.46(q)(4) to clarify that a boil water notice, special precaution, or protective measure must be multilingual where appropriate based on local demographics.

The TCEQ adopts this rulemaking to amend §290.46(q)(5) to remove the tagline, and to amend §290.46(q)(5)(A)(ii) and §290.46(q)(5)(A)(iii) to move the description of waterborne disease outbreak and the failure to maintain adequate disinfectant residuals into the situations that require boil water notices, special precautions, or protective measures, under §290.46(q)(1)(A).

The TCEQ adopts this rulemaking to amend §290.46(q)(5)(B) to add that the executive director may require additional actions be performed in order to rescind a notice, depending on local conditions and the nature of the event that triggered the initial notice. The executive director will provide such additional actions in writing.

The TCEQ adopts this rulemaking to amend §290.46(q)(5)(C) to clarify that a public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures and boil water notices required at the discretion of the executive director.

The TCEQ adopts this rulemaking to amend §290.46(q)(6) to remove the tagline, to add language regarding notifying customers when a boil water notice, special precaution or protective measure has been rescinded, to reorganize the paragraph into subparagraphs and clauses that include the actions that must be performed prior to rescinding a boil water notice, and to amend sequential numbering as necessary.

The TCEQ adopts this rulemaking to amend §290.46(q)(6)(A)(ii) and move the reference to flushing affected areas of a distribution system to §290.46(q)(6)(A)(iii).

The TCEQ adopts this rulemaking to add §290.46(q)(6)(A)(iv) to address situations in which the executive director may require, in writing, that additional actions be completed, and that the executive director receives and approves documentation of those actions prior to rescinding a boil water notice.

The TCEQ adopts this rulemaking to amend §290.46(q)(6)(B) to include that the method of rescind notice delivery to customers be in a manner similar to the original notice.

The TCEQ adopts this rulemaking to amend §290.46(q)(6)(C) to include that the public water system must submit a Certificate of Delivery for the rescind notice to be consistent with §290.122(f).

The TCEQ adopts this rulemaking to amend §290.46(r) to clarify that an affected utility, as defined in TWC, §13.1394 or TWC, §13.1395, must maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster. The TCEQ adopts the latter amendments pursuant to TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.46(c) and §290.46(x)(4) to correct a compound word error.

§290.47, Appendices

The TCEQ adopts this rulemaking to amend §290.47(c) and remove boil water notice templates which will allow executive director's staff to make warranted modifications to these templates and add to this subsection a table containing a non-exhaustive list of critical equipment, components and facilities that must be protected from adverse weather conditions. The phrase "variable flow device" was amended to "variable frequency drive" to be consistent with industry terminology. The TCEQ adopts these changes to assist water operators with the identification of facilities and components that if lost or impacted by adverse weather would result in water system being unable to produce, treat, store, or distribute treated water to customers.

The TCEQ adopts this rulemaking to amend §290.47(g) to add an emergency preparedness plan template, under §290.47(g)(1), for use by those affected utilities defined in TWC, §13.1394, and to amend the template, under §290.47(g)(2), for use by those affected utilities defined in TWC, §13.1395. The TCEQ adopts these changes to comply with TWC, §13.1394 and §13.1395 requirements regarding the creation of templates by rule.

Final Regulatory Impact Determination

The TCEQ reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to ensure that affected utilities as defined by TWC, §13.1394 and §13.1395 have emergency preparedness plans to provide potable water service during emergency operations and to clarify existing drinking water rules.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code, §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems and is consistent with and no less stringent than federal rules; does not exceed any express requirement of state law under Texas Health and Safety Code (THSC), Chapter 341, Subchapter C; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but specifically under THSC, §341.031, which authorizes the TCEQ to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act, as well under as SB 3, which authorizes the TCEQ to promulgate rules in its implementation of TWC, §13.1394 and §13.1395, and the other general powers of the TCEQ.

The TCEQ invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No written comments on the Draft Regulatory Impact Analysis Determination were received.

Takings Impact Assessment

The TCEQ evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The TCEQ adopts these rules to clarify existing requirements and for the specific purpose of implementing SB 3, 87th R.S. (2021), which requires the TCEQ to receive, review, and monitor compliance with affected utilities' emergency preparedness plans to ensure provision of potable water service during emergency operations.

The TCEQ's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b)(13). The rulemaking is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the public health and safety purpose; and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(13). Lack of potable water service during emergency operations constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of affected utilities' emergency preparedness plans and their implementation and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose.

Further, the TCEQ has determined that promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The rules require affected utilities to submit emergency preparedness plans, comply with their emergency preparedness plans, and operate under their emergency preparedness plans during emergency operations. Therefore, the rules will not constitute a taking under Texas Government Code Chapter 2007.

Consistency with the Coastal Management Program

The TCEQ reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The TCEQ invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received during the public comment period.

Public Comment

The TCEQ held a public hearing on August 11, 2023. The comment period closed at 11:59 p.m. on August 14, 2023. The TCEQ received comments from Dallas Water Utilities (DWU) and Texas Rural Water Association (TRWA). Commentors expressed concern with several topics included in the rule package and TRWA suggested some changes to the rule language.

Response to Comments

Comment

Dallas Water Utilities (DWU) and the Texas Rural Water Association (TRWA) commented with concerns related to the implementation of a 48-hour onsite fuel reserve for emergency power generation facilities. DWU suggested that TCEQ consider alternatives, such as the Joint Commission Emergency Management Standard for emergency resource management plans, to develop plans for specific needs and circumstances for each individual utility rather than a blanket statewide fuel reserve requirement. TRWA suggested lowering the onsite fuel reserve requirement to 24 hours in §290.45(g)(5)(B)(iii), §290.45(h)(6) and §290.45(i)(6) because TRWA believes that 48 hours' worth of generator fuel is excessive, costly, and is a potential environmental and safety hazard.

Response

The TCEQ disagrees that 48-hours of generator fuel is excessive because the American Water Works Association (AWWA) Standards (J100-10 Risk and Resilience Management of Water and Wastewater Systems) reference the 2008 edition of the National Electric Code (NEC), Article 708, which establishes a 72-hour backup power minimum for critical operations and assets. Participants of the Winter Storm Uri after-action review stated that their water systems did not have enough fuel, nor did they have access to ancillary fuel reserves, and internal public drinking water subject matter experts supported an increase in fuel reserve requirements. Based on this, the TCEQ noted that a 48-hour onsite fuel reserve, or an option that makes fuel readily available during emergency operations, should be sufficient to maintain distribution pressure during an extended power outage. Discussion on this topic occurred during the May 19, 2022, Commissioner's Work Session. Additionally, the executive director staff acknowledge that while there may be costs, security needs and compliance requirements associated with acquiring and maintaining an amount of fuel beyond that which a public water system currently maintains, the accessibility to that fuel during an

extended power outage will limit system downtime and reduce impacts to customers, meeting the intent of this rule. Regarding the suggestion from DWU, the TCEQ supports the participation of public water systems in mutual aid programs and additional contracts to assist in providing fuel during emergency situations, however, developing plans for specific needs is not practicable for the varied water system types and sizes in Texas. No changes were made to the rule language.

Comment

TRWA commented that §290.45(g)(5)(B)(iii), §290.45(h)(6), and §290.45(i)(6) should not apply to onsite power generation equipment that is fueled by natural gas because this type of generator is fueled through a direct connection pipeline. TRWA suggested revising the rule language to specifically exclude utilities that have installed generators that run on natural gas.

Response

The TCEQ disagrees with the suggested revision because natural gas generators fueled by a natural gas pipeline are compliant with the rule as proposed because the generators are supplied with a direct fuel source; therefore, fuel is readily available. Affected utilities that operate generators without a continuous, direct fuel connection must maintain a 48-hour onsite fuel reserve or make fuel readily available during emergency operations. No changes were made to the rule language.

Comment

TRWA commented with concerns that affected utilities could misinterpret the circumstances in which emergency power generation facilities are required to be put online, causing equipment damage or hazards. TRWA suggested revising rule language to clarify circumstances in which generators will be required in §290.45(b)(1)(D)(v), §290.45(g)(5)(B)(ii) and §290.47(g)(1).

Response

The TCEQ disagrees that clarification is necessary because the definitions of emergency operations, emergency power, and extended power outage are included in this rule package under §290.38(28)-(30). The TCEQ believes that the inclusion of these definitions provide clarity to when emergency power generation equipment is needed to maintain distribution pressure due to outages caused by electrical power failure. Additionally, emergency power generation equipment is one of fourteen options identified under Texas Water Code (TWC) §13.1394, and one of eight options identified under TWC §13.1395, to maintain distribution pressure during an extended power outage. No changes were made to the rule language.

Comment

TRWA commented that affected utilities should include in their plant operations manual a description of a weatherization plan for critical equipment and that rule references related to weatherization should refer the reader to this weatherization plan. TRWA suggested revising the rule language to include reference to the affected utility's plant operations manual in §290.41(f), §290.42(o), §290.44(k) and §290.46(m)(9).

Response

The TCEQ disagrees with the suggested revisions because the requirement to identify critical plant equipment and planned protective measures for this equipment during adverse weather conditions, contained in §290.42(l)(1), alleviates any need to restate that information in each rule that references weatherization. Additionally, the rule as proposed allows public water systems the flexibility to install weatherization methods appropriate for the specific type and severity of event beyond those described in their operations manual. No changes were made to the rule language.

Comment

TRWA commented with concerns that affected utilities could misinterpret the requirement by which updated emergency preparedness plan contact information must be submitted to the TCEQ, resulting in the overreporting of personnel changes and causing unnecessary burden to the utility. TRWA suggested revising rule language by removing the phrase "personnel changes" and adding the word "information" to clarify that changes in a utility's emergency contact information is required under §290.45(a)(8)(D).

Response

The TCEQ agrees with the comment because the rule as proposed was not intended to encompass every personnel change at an affected utility. Section 290.45(a)(8)(D) has been revised in response to this comment.

Comment

TRWA commented with concerns that affected utilities could misinterpret the length of time that emergency preparedness plan-related records are required to be retained causing excessive record retention. TRWA suggested revising §290.46(f)(5)(A)-(C) to clarify how long records related to emergency preparedness plans and generators are required to be retained.

Response

The TCEQ disagrees with the suggested revisions because the retention timeframe in §290.46(f)(5) is unchanged from existing rule. The existing rule has not resulted in common misinterpretation and allows an affected utility operational flexibility. An affected utility is required to maintain an emergency preparedness plan and the rule requires the affected utility determine which applicable documents and records must be retained. When an affected utility makes changes to its emergency preparedness plan or when equipment related to its emergency preparedness plan is retired, records relating to the prior emergency preparedness plan or to retired equipment may be discarded. No changes were made to the rule language.

Comment

TRWA commented with concerns that the rule language regarding multilingual boil water notices, special precautions and protective measures is too vague for public water systems to effectively implement. TRWA suggested revising §290.46(q)(1) and §290.46(q)(4) based on public notice language in Title 40 Code of Federal Regulations (40 CFR) §141.205(C)(2).

Response

The TCEQ disagrees with the suggested revisions because specific public notice language is governed under a subchapter of Chapter 290 that is not open for this rulemaking. At the time that Chapter 290, Subchapter F is opened for

rulemaking, this issue will be revisited. No changes were made to the rule language.

Comment

TRWA commented with concerns that the phrase "or as recommended by the manufacturer" in §290.46(m)(8) is not clear regarding whether it modifies the frequency of testing, number of minutes a generator is required to be tested, or the load under which the generator must be tested. TRWA suggested revising §290.46(m)(8) rule language by moving "or as recommended by the manufacturer" to modify only the frequency a generator is required to be tested.

Response

The TCEQ disagrees with the suggested revisions because the placement of the phrase "or as recommended by the manufacturer" is meant to modify the frequency of testing, number of minutes a generator is required to be tested, and load under which the generator is operated during the testing. This phrase placement allows the public water systems operational flexibility to ensure generator testing can occur in accordance with manufacturer recommendations which should reflect optimal actions for the specific equipment selected. No changes were made to the rule language.

Comment

TRWA commented with concern that the language in §290.46(m)(8)(B), specifically, "spare parts" is vague and may be interpreted to mean large items. TRWA suggested revising §290.46(m)(8)(B) rule language by removing the phrase "spare parts" and specifying "operational maintenance items such as fuel filters, air filters".

Response

The TCEQ agrees with the comment regarding "spare parts" because the phrase may be too general. It could be interpreted as requiring a public water system to maintain a stock of replacement parts for every portion of a generator on site. Section 290.46(m)(8)(A)-(B) has been revised to clarify the rule in response to this comment.

Comment

TRWA commented with concerns that not all valves, gauges, and meters should be required to be protected against adverse weather conditions, especially those located inside a buried vault or buried in the ground. TRWA suggested revising the table in §290.47(c) to add the term "exposed" to valves, gauges, and meters to distinguish this type of device from those which may not require weatherization.

Response

The TCEQ disagrees with the suggested revisions because the intent of the rule is to require that all valves, gauges, and meters be protected against adverse weather conditions which may impact device operability and performance. By not specifying exposed, the public water system is given the operational flexibility to determine which devices require weatherization. This recommendation, discussed in a TCEQ Commissioner's Work Session on May 19, 2022, resulted from the Winter Storm Uri after-action review and discussion with industry professionals and subject matter experts. To address the varied climate and weather conditions experienced by public water systems across the state, the TCEQ has decided to provide supplemental guidance which will include available options for public water systems to meet the requirements of this rule. The guidance will be offered after the adoption of this rule. No changes were made to the rule language.

Statutory Authority

These amendments are adopted under the authority of the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; Texas Health and Safety Code (THSC), §341.031, which establishes the commission's authority to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act; and SB 3, specifically TWC §13.1394 and §13.1395, which authorized the commission to promulgate rules in its implementation of these statutes.

The adopted amendments implement TWC §13.1394, as added by Senate Bill (SB 3) of the 87th Texas Legislative Session (2021), and TWC §13.1395 and §13.1396, as amended by SB 3 of the 87th Texas Legislative Session. Additional amendments adopted by the commission provide clarity to existing rules.

§290.45. Minimum Water System Capacity Requirements.

(a) General provisions.

(1) The requirements contained in this section are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes which serve portions of the system that are hydraulically separated from, or incapable of being served by, other pump stations or pressure planes. The capacities specified in this section are minimum requirements only and do not include emergency fire flow capacities for systems required to meet requirements contained in §290.46(x) and (y) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(2) The executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, or if the system's maximum daily demand exceeds its total production and treatment capacity. The executive director will also require additional capacities for a system that is unable to maintain a minimum pressure of 20 psi during firefighting, line flushing, other unusual conditions, and systems that are required to provide fire flow as specified in §290.46(x) and (y) of this title.

(3) The executive director may establish additional capacity requirements for a public water system using the method of calculation described in subsection (g)(2) of this section if there are repeated customer complaints regarding inadequate pressure or if the executive director receives a request for a capacity evaluation from customers of the system.

(4) Throughout this section, total storage capacity does not include pressure tank capacity.

(5) The executive director may exclude the capacity of facilities that have been inoperative for the past 120 days and will not be returned to an operative condition within the next 30 days when determining compliance with the requirements of this section.

(6) The capacity of the treatment facilities shall not be less than the required raw water or groundwater production rate or the anticipated maximum daily demand of the system. The production capacity

of a reverse osmosis or nanofiltration membrane system shall be the quantity of permeate water after post-treatment that can be delivered to the distribution system. The amount available for customer use must consider:

(A) the quantity of feed water discharged to waste;

(B) the quantity of bypass water used for blending;

(C) the quantity of permeate water used for cleaning and maintenance; and

(D) any other loss of raw water or groundwater available for use due to other processes at the reverse osmosis or nanofiltration facility.

(7) If a public water system that is an affected utility fails to provide a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395 respectively, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan or justification regarding pressure drop shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

(8) A public water system that is an affected utility is required to review its emergency preparedness plan once every three years. An affected utility shall submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after any of the following conditions occur:

(A) An affected utility chooses to implement a different option or options other than those in the most recent approved emergency preparedness plan;

(B) A previously non-affected utility meets the definition of an affected utility;

(C) An affected utility makes a significant change as described in §290.39(j) of this title that affects emergency operations; or

(D) An affected utility makes changes to utility contact or emergency communications information. For these changes, the affected utility must submit only the updated applicable pages of the emergency preparedness plan to the executive director.

(b) Community water systems.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 50 connections without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.5 gallons per minute (gpm) per connection; and

(ii) a pressure tank capacity of 50 gallons per connection.

(B) If fewer than 50 connections with ground storage, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more service pumps having a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(C) For 50 to 250 connections, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; and

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection.

(D) For more than 250 connections, the system must meet the following requirements:

(i) two or more wells having a total capacity of 0.6 gpm per connection. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gpm for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gpm per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open. In this case, the systems' capacities will be rated as though a single system existed;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required;

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(v) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

(E) Mobile home parks with a density of eight or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must meet the following requirements:

(i) a well capacity of 1.0 gpm per connection; and

(ii) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required.

(F) Mobile home parks and apartment complexes which supply 100 connections or greater, or fewer than 100 connections and utilize ground storage must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm for each connection in the combined system;

(ii) a total storage of 200 gallons per connection;

(iii) at least two service pumps with a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(2) Surface water supplies must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per connection with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per connection under normal rated design flow;

(C) transfer pumps (where applicable) with a capacity of 0.6 gpm per connection with the largest pump out of service;

(D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity;

(E) a total storage capacity of 200 gallons per connection;

(F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane;

(G) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for systems of up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(H) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

(3) Any community public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in subsection (h) or (i) of this section. This includes any affected utility that provides 100 gallons of elevated storage capacity per connection.

(c) Noncommunity water systems serving transient accommodation units. The following water capacity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 100 accommodation units without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.0 gpm per unit; and

(ii) a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per unit;

(ii) a ground storage capacity of 35 gallons per unit;

(iii) two or more service pumps which have a total capacity of 1.0 gpm per unit; and

(iv) a pressure tank capacity of ten gallons per unit.

(2) Surface water supplies, regardless of size, must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per unit with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per unit;

(C) a transfer pump capacity (where applicable) of 0.6 gpm per unit with the largest pump out of service;

(D) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity;

(E) two or more service pumps with a total capacity of 1.0 gpm per unit; and

(F) a pressure tank capacity of ten gallons per unit with a minimum requirement of 220 gallons.

(3) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall meet the requirements of subsection (h) or (i) of this section.

(d) Noncommunity water systems serving other than transient accommodation units.

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed.
Figure: 30 TAC §290.45(d)(1) (No change.)

(2) Groundwater supplies must meet the following requirements.

(A) Subject to the requirements of subparagraph (B) of this paragraph, if fewer than 300 persons per day are served, the system must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand of the system during the hours of operation; and

(ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(B) Systems which serve 300 or more persons per day or serve fewer than 300 persons per day and provide ground storage must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand;

(ii) a ground storage capacity which is equal to 50% of the maximum daily demand;

(iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand;

(iv) if the maximum daily demand is 15 gpm or more, at least two service pumps with a total capacity of three times the maximum daily demand; and

(v) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(3) Each surface water supply or groundwater supply that is under the direct influence of surface water, regardless of size, must meet the following requirements:

(A) a raw water pump capacity which meets or exceeds the maximum daily demand of the system with the largest pump out of service;

(B) a treatment plant capacity which meets or exceeds the system's maximum daily demand;

(C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;

(D) a clearwell capacity which is equal to 50% of the maximum daily demand;

(E) two or more service pumps with a total capacity of three times the maximum daily demand; and

(F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(4) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, shall meet the requirements of subsection (h) or (i) of this section.

(e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations. If a contract prohibits a purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

(2) For wholesale water suppliers, minimum water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, fire flow capacities, if required by §290.46(x) and (y) of this title and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.

(3) Emergency power is required for each portion of the system which supplies more than 250 connections under direct pressure and does not provide an elevated storage capacity of at least 100 gallons per connection. If emergency power is required, it must be sufficient to deliver 20% of the minimum required service pump capacity and meet minimum pressure requirements in the event of the loss of normal power supply. When the wholesaler provides water through an air gap into the purchaser's storage facilities it will be the purchaser's responsibility to meet all minimum water system capacity requirements including emergency power. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(4) A wholesaler that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.

(1) The water purchase contract must be available to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated. For purposes of this section, a contract may be defined as a signed written document of specific terms agreeable to the water purchaser and the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.

(2) The contract shall authorize the purchase of enough water to meet the monthly or annual needs of the purchaser.

(3) The contract shall also establish the maximum rate at which water may be drafted on a daily and hourly basis. In the absence of specific maximum daily or maximum hourly rates in the contract, a uniform purchase rate for the contract period will be used.

(4) The maximum authorized daily purchase rate specified in the contract, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system must be at least 0.6 gpm per connection.

(5) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.

(6) The purchaser is responsible for meeting all capacity requirements. If additional capacity to meet increased demands cannot be attained from the wholesaler through a new or amended contract, additional capacity must be obtained from water purchase contracts with other entities, new wells, or surface water treatment facilities. However, if the water purchase contract prohibits the purchaser from securing water from sources other than the wholesaler, the wholesaler is responsible for meeting applicable capacity requirements. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(7) All other minimum capacity requirements specified in this section and §290.46(x) and (y) of this title shall apply.

(g) Alternative capacity requirements. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. Any water system requesting to use an alternative capacity requirement must demonstrate to the satisfaction of the executive director that approving the request will not compromise the public health or result in a degradation of service or water quality and comply with the requirements found in §290.46(x) and (y) of this title. Alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in subsection (b)(1) of this section or for noncommunity water systems as specified in subsections (c) and (d) of this section.

(1) Alternative capacity requirements for public water systems may be granted upon request to and approval by the executive director. The request to use an alternative capacity requirement must include:

(A) a detailed inventory of the major production, pressurization, and storage facilities utilized by the system;

(B) records kept by the water system that document the daily production of the system. The period reviewed shall not be less than three years. The applicant may not use a calculated peak daily demand;

(C) data acquired during the last drought period in the region, if required by the executive director;

(D) the actual number of active connections for each month during the three years of production data;

(E) description of any unusual demands on the system such as fire flows or major main breaks that will invalidate unusual peak demands experienced in the study period;

(F) any other relevant data needed to determine that the proposed alternative capacity requirement will provide at least 35 psi in the public water system except during line repair or during firefighting when it cannot be less than 20 psi; and

(G) a copy of all data relied upon for making the proposed determination.

(2) Alternative capacity requirements for existing public water systems must be based upon the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of paragraph (3) of this subsection. The maximum daily demand must be determined based upon the daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.

(A) Maximum daily demand is the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Maximum daily demand excludes unusual demands on the system such as fire flows or major main breaks.

(B) For the purpose of calculating alternative capacity requirements, an equivalency ratio must be established. This equivalency ratio must be calculated by multiplying the maximum daily demand, expressed in gpm per connection, by a fixed safety factor and dividing the result by 0.6 gpm per connection. The safety factor shall be 1.15 unless it is documented that the existing system capacity is adequate for the next five years. In this case, the safety factor may be reduced to 1.05. The conditions in §291.93(3) of this title (relating to Adequacy of Water Utility Service) concerning the 85% rule shall continue to apply to public water systems that are also retail public utilities.

(C) To calculate the alternative capacity requirements, the equivalency ratio must be multiplied by the appropriate minimum capacity requirements specified in subsection (b) of this section. Standard rounding methods are used to round calculated alternative production capacity requirement values to the nearest one-hundredth.

(3) Alternative capacity requirements which are proposed and submitted by licensed professional engineers for review are subject to the following additional requirements.

(A) A signed and sealed statement by the licensed professional engineer must be provided which certifies that the proposed alternative capacity requirements have been determined in accordance with the requirements of this subsection.

(B) If the system is new or at least 36 consecutive months of data is not available, maximum daily demand may be based upon at least 36 consecutive months of data from a comparable public water system. A licensed professional engineer must certify that the data from another public water system is comparable based on consideration of the following factors: prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable public water system shall not exhibit any of the conditions listed in paragraph (6)(A) of this subsection.

(4) The executive director shall consider requests for alternative capacity requirements in accordance with the following requirements.

(A) For those requests submitted under the seal of a licensed professional engineer, the executive director must mail written acceptance or denial of the proposed alternative capacity requirements to the public water system within 90 days from the date of submission. If the executive director fails to mail written notification within 90 days, the alternative capacity requirements submitted by a licensed professional engineer automatically become the alternative capacity requirements for the public water system.

(B) If the executive director denies the request:

(i) the executive director shall mail written notice to the public water system identifying the specific reason or reasons for denial and allow 45 days for the public water system to respond to the reason(s) for denial;

(ii) the denial is final if no response from the public water system is received within 45 days of the written notice being mailed; and

(iii) the executive director must mail a final written approval or denial within 60 days from the receipt of any response timely submitted by the public water system.

(5) Although elevated storage is the preferred method of pressure maintenance for systems of over 2,500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements to the elevated storage requirements may be obtained based on request to and approval by the executive director. Special conditions apply to systems qualifying for an elevated storage alternative capacity requirement.

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable

of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

(i) A signed and sealed statement by a licensed professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed, and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

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

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

(iv) A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must conduct the modeling requirements contained in clauses (i) - (iii) of this subparagraph using the requirements specified in subsection (h) or (i) of this section.

(B) Emergency power facilities must be maintained and provided with necessary appurtenances to assure immediate and dependable operation in case of normal power interruption. A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(i) The facilities must be serviced and maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers' recommendations if the affected utility serves 1,000 connections or greater, or in accordance with manufacturer's recommendations and as prescribed in §290.46(m)(8) of this title if the affected utility serves fewer than 1,000 connections.

(ii) The switching gear must be capable of bringing the emergency power generating equipment on-line during a power interruption such that the pressure in the distribution network does not fall below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively.

(iii) The minimum on-site fuel storage capacity shall be determined by the fuel demand of the emergency power facilities and the frequency of fuel delivery. An amount of fuel equal to that required to operate the emergency power facilities during emergency operations for a period of at least 48 hours must always be maintained on site or made readily available.

(iv) Residential rated mufflers or other means of effective noise suppression must be provided on each emergency power motor.

(C) Battery-powered or uninterrupted power supply pressure monitors and chart recorders which are configured to activate immediately upon loss of normal power must be provided for pressure maintenance facilities. These records must be kept for a minimum of three years and made available for review by the executive director. Records must include chart recordings of all power interruptions including interruptions due to periodic emergency power under-load testing and maintenance.

(6) Any alternative capacity requirement granted under this subsection is subject to review and revocation or revision by the executive director. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.

(A) The following conditions, if attributable to the alternative capacity requirements, may constitute grounds for revocation or revision of established alternative capacity requirements or for denial of new requests, if the condition occurred within the last 36 months:

(i) documented pressure below 35 psi at any time not related to line repair, except during firefighting when it cannot be less than 20 psi;

(ii) water outages due to high water usage;

(iii) mandatory water rationing due to high customer demand or overtaxed water production or supply facilities;

(iv) failure to meet a minimum capacity requirement or an established alternative capacity requirement;

(v) changes in water supply conditions or usage patterns which create a potential threat to public health; or

(vi) any other condition where the executive director finds that the alternative capacity requirement has compromised public health or resulted in a degradation of service or water quality.

(B) If the executive director finds any of the conditions specified in subparagraph (A) of this paragraph, the process for revocation or revision of an alternative capacity requirement shall be as follows, unless the executive director finds that failure of the service or other threat to public health and safety is imminent under subparagraph (C) of this paragraph.

(i) The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action.

(ii) The public water system has 30 days from the date the written notice is mailed to respond to the proposed action.

(iii) The public water system has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed.

(iv) After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the executive director's final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.

(C) If the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the executive director's final decision to revoke or revise an alternative capacity requirement at any time.

(h) Affected utilities as defined in TWC §13.1394. This subsection applies to all affected utilities, as defined in TWC §13.1394, and is in addition to any other requirements pertaining to emergency power found in this chapter.

(1) Affected utilities must provide one or more of the following options to ensure the emergency operation of its water system during an extended power outage at a minimum of 20 psi, or a pressure approved by the executive director, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyers of potable water or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distribution generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives;

(H) designation of the water system as a critical load facility or redundant, isolated or dedicated electrical feeds;

(I) water storage capabilities with sufficient storage to provide water to customers during an extended power outage;

(J) water supplies can be delivered from outside the service area of the affected utility by opening an emergency interconnect or using a water hauler;

(K) affected utility has ability to provide water through artesian flows;

(L) affected utility has ability to open valves between pressure zones to provide redundant interconnectivity between pressure zones;

(M) affected utility will implement emergency water demand rules to maintain emergency operations; or

(N) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan, under paragraph (1) of this subsection, provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility necessary to provide raw water service to its wholesale customers during emergencies. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in 290.46(m)(8) of this title.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1394 including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title (related to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the production, treatment, total storage, and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement its emergency preparedness plan upon approval by the executive director.

(i) Affected utilities as defined by TWC §13.1395. This subsection applies to all affected utilities as defined by TWC §13.1395 and is in addition to any other requirements pertaining to emergency power found in this subchapter.

(1) Affected utilities must provide one of the following options of sufficient power to meet the capacity requirements of paragraph (1) or (2) of this subsection, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distributed generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives; or

(H) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall install and maintain automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This does not apply to raw water services that are

unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be maintained, tested, and operated in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers specifications if the affected utility serves 1,000 connections or greater, or the manufacturer's specifications and as outlined in §290.46(m)(8) of this title for affected utilities serving fewer than 1,000 connections.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1395, including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title and the production, treatment, total storage and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement their emergency preparedness plan upon approval by the executive director.

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

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state including the required elements of a sanitary survey as defined in §290.38 of this title (relating to Definitions). Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to an accredited laboratory. (A list of the accredited laboratories can be obtained by contacting the executive director.) The samples shall be submitted to the executive director in a manner prescribed by the executive director.

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that distribute chloraminated water.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in paragraph (1) of this subsection, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer.

(1) Transient, noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration or the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.

(D) Effective September 1, 2016, reverse osmosis or nanofiltration membrane systems must have operators that have successfully completed at least one executive director-approved training course or event specific to the operations and maintenance of reverse osmosis or nanofiltration membrane treatment.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must use an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must use an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must use an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must use an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must use an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must use at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must use an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must use at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must use at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(B) Surface water systems that serve more than 1,000 connections must use at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. All public water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated and distributed:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated and distributed each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water distributed each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water distributed each week.

(IV) Systems that serve 250 or more connections or serve 750 or more people and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each day.

(V) Systems that serve fewer than 250 connections, serve fewer than 750 people, use only groundwater or purchase treated water, and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities. For systems using reverse osmosis or nanofiltration, maintain records of each clean-in-place process including the date, duration, and procedure used for each event;

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section; and

(viii) the owner or manager of a public water system that is operated by a volunteer to meet the requirements of subsection (e) of this section, shall maintain a record of each volunteer operator indicating the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the public water system. These requirements apply to full-time and part-time licensed volunteer operators. Part-time licensed volunteer operators are excluded from the requirements of clause (vii) of this subparagraph.

(B) The following records shall be retained for at least three years:

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

(iii) the disinfectant residual monitoring results from the distribution system;

(iv) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;

(v) the records of backflow prevention device programs;

(vi) the raw surface water monitoring results and source water monitoring plans required by §290.111 of this title (relating to Surface Water Treatment) must be retained for three years after bin classification required by §290.111 of this title;

(vii) notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring;

(viii) except for those specified in subparagraphs (C)(iv) and (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal;

(ix) free and total chlorine, monochloramine, ammonia, nitrite, and nitrate monitoring results if chloramines are used in the water system; and

(x) the records of treatment effectiveness monitoring for systems using reverse osmosis or nanofiltration membranes. Treatment effectiveness monitoring includes the parameters for determining when maintenance is required. Examples of parameters to be monitored include conductivity (or total dissolved solids) on each membrane unit, pressure differential across a membrane vessel, flow, flux, and water temperature. At a minimum, systems using reverse osmosis or nanofiltration membranes must monitor the conductivity (or total dissolved solids) of the feed and permeate water once per day.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants;

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; and

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

(iii) the results of inspections (as required by subsection (m)(2) of this section) for all pressure filters;

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample and documentation of a total coliform-positive sample collected at a location with conditions that could cause such positive samples in a distribution system;

(vi) notification to wholesale system(s) of a distribution coliform-positive sample for consecutive systems using groundwater;

(vii) Consumer Confidence Report compliance documentation;

(viii) records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the executive director-approved minimum specified disinfectant residual for a period of more than four hours for groundwater systems providing 4-log treatment;

(ix) records of executive director-specified compliance requirements for membrane filtration, records of parameters specified by the executive director for approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours for groundwater systems. Membrane filtration can only be used if it is approved by the executive director and if it can be properly validated;

(x) assessment forms, regardless of who conducts the assessment, and documentation of corrective actions completed or documentation of corrective actions required but not yet completed as a result of those assessments and any other available summary documentation of the sanitary defects and corrective actions taken in accordance with §290.109 of this title (relating to Microbial Contaminants) for executive director review;

(xi) seasonal public water systems shall maintain executive director-approved start-up procedures and certification documentation in accordance with §290.109 of this title for executive director review; and

(xii) records of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(ix) any Sample Siting Plans required by §290.109(d)(6) of this title and monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans); and

(x) records of the executive director-approved minimum specified disinfectant residual and executive director-approved membrane system integrity monitoring results for groundwater systems providing 4-log treatment, including wholesale, and consecutive systems, regulated under §290.116(c) of this title.

(F) A public water system shall maintain records relating to lead and copper requirements under §290.117 of this title (relating to Regulation of Lead and Copper) for no less than 12 years. Any system subject to the requirements of §290.117 of this title shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, executive determinations, and any other information required by the executive director under §290.117 of this title. These records include, but are not limited to, the following items: tap water monitoring results including the location of each site and date of collection; certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form; where residents collected the sample; certification that the water system informed the resident of proper sampling procedures; the analytical results for lead and copper concentrations at each tap sample site; and designation of any substitute site not used in previous monitoring periods.

(G) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

(4) Public water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the licensed water works operator.

(5) All public water systems that are affected utilities under TWC §13.1394 or §13.1395 must maintain the following records for as long as they are applicable to the system:

(A) An emergency preparedness plan approved by the executive director and a copy of the approval letter.

(B) All required operating, inspection, testing, and maintenance records for auxiliary power equipment, and associated components required to be maintained, or actions performed as prescribed in §290.46(m)(8) of this title.

(C) Copies of the manufacturer's specifications for all generators that are part of the approved emergency preparedness plan.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to an accredited laboratory. The sample results must indicate that the facility is free of microbiological con-

tamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(f) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(7) Reverse osmosis or nanofiltration membrane systems shall be cleaned, or replaced, in accordance with the allowable operating conditions of the manufacturer and shall be based on one or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(8) Emergency generators must be appropriately tested and maintained monthly under at least 30% load based on the manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations.

(A) Emergency generators operated at water systems serving 1,000 connections or greater must be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendation. In addition, the water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.

(B) Emergency generators operated at water systems serving fewer than 1,000 connections must be maintained according to clauses (i) - (x) of this subparagraph, supplemented with any additional requirements not listed below as prescribed in the manufacturer's specifications, or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.

(i) Prior to monthly generator start-up, inspect and perform any needed maintenance on the generator fuel system.

(I) Document tank levels and inspect fuel tanks for fuel contamination and condensation in the portion of the tank occupied by air. If contamination is suspected, replace or polish the contaminated fuel before use.

(II) Inspect fuel lines and fittings for breaks and degradation. Replace fuel lines if needed.

(III) Inspect fuel filters and water separators for water accumulation, clogging and sediment buildup. Replace fuel filters and separators at the frequency recommended by the manufacturer, or as needed.

(IV) Inspect fuel transfer pumps, float switches and valves, where provided, between holding tanks and the generator to verify that they are operating properly.

(V) Where provided, inspect fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective.

(ii) While the generator is operating under load, inspect the fuel pump to verify that it is operating properly.

(iii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator lubrication system.

(I) Inspect oil lines and oil reservoirs for adequate oil levels, leaks, breaks and degradation. Change oil at the frequency recommended by the manufacturer.

(II) Grease all bearing components and grease fittings at the frequency recommended by the manufacturer.

(iv) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator coolant system.

(I) Inspect the block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks and degradation; replace as needed.

(II) Inspect coolant filters for clogging and sediment buildup. Replace coolant filters at the frequency recommended by the manufacturer, or as needed.

(III) Inspect the radiator, fan system, belts and air intake and filters for obstruction, cracks, breaks, and leaks; replace as needed.

(v) While the generator is operating under load, inspect the exhaust manifold and muffler to verify that they are not obstructed or leaking, are in good working condition and that fumes are directed away from enclosed areas.

(vi) Where a generator is located inside an enclosed structure, a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational.

(vii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator electrical system.

(I) Confirm that all batteries are mounted and properly secured. Inspect battery chargers, wiring and cables for damage, corrosion, connection continuity, and that all contacts are securely tightened onto battery terminals.

(II) Inspect each battery unit for adequate electrolyte levels, charge retention and appropriate discharge voltage.

(viii) While the generator is operating under load, inspect engine starters and alternators to verify that they are operating properly.

(ix) At least once per month, inspect Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight and not subject to floods, are properly ventilated, and that backup power supplies have adequate charge.

(x) At least once per month, inspect switch gears to ensure they are water-tight and in good, working condition.

(9) All critical components as described in the table in §290.47(c) associated to the source, treatment, storage, or other facilities necessary for the continued operations and distribution of water to customers must be protected from adverse weather conditions. Weatherization methods must be maintained in good condition and replaced as needed to ensure adequate protection.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data as defined in §290.41(c)(3)(A) of this title (relating to Water Sources) shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

(p) Data on public water system ownership and management. The agency shall be provided with information regarding public water system ownership and management.

(1) When a public water system changes ownership, a written notice of the transaction must be provided to the executive director. The grantee shall notify the executive director of the change in ownership within 30 days after the effective date of the change in ownership by providing the name of the grantor, the effective date of the change in ownership, the physical and mailing address and phone number of the grantee, the public water system's drinking water supply identification number, and any other information necessary to identify the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a list of all the operators and operating companies that the public water system uses. The notice shall contain the name, contact information, work status, license number, and license class of each operator and the name and registration number of each operating company. Public water systems may report the list of operators and operating companies to the executive director by utilizing the Texas Commission on Environmental Quality (TCEQ) online "Operator Notice" form. If reporting cannot be accomplished utilizing the TCEQ online "Operator Notice" form, then a public water system may report the list of operators and operating companies on the written "Operator Notice" form to the executive director by mail, email or facsimile. (See §290.47(d) of this title).

(q) Special precautions, protective measures, and boil water notices. Special precautions, protective measures, and boil water notices shall be instituted by the public water system as specified in this subsection in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain *Escherichia coli (E. coli)* (or other approved fecal indicator), failure to maintain adequate disinfectant residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised. Special precautions, protective measures, and boil water notices are corrective or protective actions which shall be instituted by the public water system to comply with the requirements of this subsection.

(1) A public water system shall issue a boil water notice, special precaution, or protective measure to customers throughout the distribution system or in the affected area(s) of the distribution system as soon as possible, but in no case later than 24 hours after the public water system has met any of the criteria described in subparagraph (A) and (B) of this paragraph.

(A) Situations requiring boil water notices:

(i) The flowchart found in §290.47(e) of this title shall be used to determine if a boil water notice shall be issued by the public water system to customers in the event of a loss of distribution system pressure.

(ii) A public water system shall issue a boil water notice to customers for a violation of the MCL for *E. coli* (or other approved fecal indicator) as described in §290.109(b)(1) of this title.

(iii) A public water system shall issue a boil water notice to customers if the combined filter effluent turbidity of the finished water, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, is above the turbidity level requirements as described in §290.122(a)(1)(B) of this title.

(iv) A public water system shall issue a boil water notice to customers if the public water system has failed to maintain adequate disinfectant residuals as described in subsection (d) of this section and as described in §290.110 of this title (relating to Disinfectant Residuals) for more than 24 hours.

(v) A public water system shall issue a boil water notice to customers if a waterborne disease outbreak occurs as defined in 40 Code for Federal Regulations §141.2.

(B) Situations requiring special precautions or protective measures may be determined by the public water system or at the discretion of the executive director, as described in paragraph (5) of this subsection.

(2) Boil water notices, special precautions, or protective measures shall be issued to customers by using one or more of the Tier 1 delivery methods as described in §290.122(a)(2) of this title (relating to Public Notification) and shall be issued using the applicable language and format specified by the executive director.

(3) A copy of boil water notice, special precaution, or protective measure issued shall be provided to the executive director electronically, within 24 hours or no later than the next business day after the issuance by the public water system, and a signed Certificate of Delivery shall be provided to the executive director within ten days after issuance by the public water system in accordance with §290.122(f) of this title.

(4) Boil water notices, special precautions, or protective measures shall be multilingual where appropriate, based upon local demographics.

(5) Special precautions, protective measures, and boil water notices may be required at the discretion of the executive director and shall be instituted by the public water system, upon written notification to the public water system, and shall remain in effect until the public water system meets the requirements of subparagraph (C) of this paragraph and paragraph (6) of this subsection.

(A) Circumstances warranting the exercise of such discretion may include:

(i) the public water system has failed to provide any of the required compliance information to the executive director as described in §290.111(h)(2) of this title (relating to Surface Water Treatment) and the failure results in the inability of the executive director to determine compliance as described in §290.111(i) of this title or the existence of a potential or actual health hazard, as described in §290.38 of this title (relating to Definitions); or

(ii) waterborne emergencies for situations that do not meet the definition of waterborne disease outbreak as defined in 40 Code of Federal Regulations §141.2, but that still have the potential to have serious adverse health effects as a result of short-term exposure. These can include, but are not limited to, outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

(B) The executive director will provide written notification to the public water system in the event a public water system is required to institute special precautions, protective measures, or issue boil water notices to customers at the discretion of the executive director. Upon written notification from the executive director, the public water system shall implement special precautions, protective measures, or issue boil water notices to customers within 24 hours or within the time period specified by the executive director. The executive director may specify, in writing, additional required actions to the requirements described in paragraph (6) of this subsection for a public water system to rescind the notice.

(C) The public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director under this paragraph.

(6) Once the boil water notice, special precaution, or protective measure is no longer in effect, the public water system shall notify customers that the notice has been rescinded. A public water system shall not rescind a notice or notify customers that a notice has been rescinded until the public water system has met all the applicable requirements, as described in subparagraph (A) of this paragraph.

(A) Required actions prior to rescinding a boil water notice include:

(i) water distribution system pressures in excess of 20 psi are consistently being maintained throughout the distribution system in accordance with the flowchart found in §290.47(e) of this title (relating to Appendices);

(ii) a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present and is consistently being maintained in each finished water storage tank and throughout the distribution system as described in subsection (d) of this section;

(iii) finished water entering the distribution system, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, has a turbidity level that is consistently below 1.0 NTU and the affected areas of the distribution system have been thoroughly flushed;

(iv) additional actions may be required by the executive director, in writing, and these additional actions shall be completed and documentation provided to the executive director for approval prior to the public water system rescinding the notice, and

(v) water samples for microbiological analysis, marked as "special" on the laboratory sample submission form, were collected from representative locations throughout the distribution system or in the affected area(s) of the distribution system after the public water system has met all other applicable requirements of this paragraph and the water samples collected for microbiological analysis are found negative for coliform organisms. The water samples described in this subparagraph shall be analyzed at laboratories in accordance with §290.119 of this title (relating to Analytical Procedures).

(B) A public water system shall notify customers that the notice has been rescinded within 24 hours or no later than the next business day, using language and format specified by the executive director once the public water system has met the requirements of this paragraph. The method of delivery of the rescind notice must be in a manner similar to the original notice.

(C) The public water system shall provide a copy of the rescind notice, a copy of the associated microbiological laboratory analysis results, as required by subparagraph (A) of this paragraph, and a signed Certificate of Delivery to the executive director within ten days after the public water system has issued the rescind notice to customers in accordance with §290.122(f) of this title.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as firefighting. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility, as defined in TWC §13.1394 or §13.1395, shall maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system during an extended power outage.

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) Flow-measuring devices and rate-of-flow controllers that are required by §290.42(b) and (d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturer specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturer specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 90 days using chlorine solutions of known concentrations.

(ii) The accuracy of continuous disinfectant residual analyzers shall be checked at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method in accordance with §290.119 of this title.

(iii) If a disinfectant residual analyzer produces a result which is not within 15% of the expected value, the cause of the discrepancy must be determined and corrected and, if necessary, the instrument must be recalibrated.

(D) Analyzers used to determine the effectiveness of chloramination in §290.110(c)(5) of this title shall be properly verified in accordance with the manufacturer's recommendations every 90 days. These analyzers include monochloramine, ammonia, nitrite, and nitrate equipment used by the public water system.

(E) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the UV Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(F) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(G) Conductivity (or total dissolved solids) monitors and pressure instruments used for reverse osmosis and nanofiltration membrane systems shall be calibrated at least once every 12 months.

(H) Any temperature monitoring devices used for reverse osmosis and nanofiltration shall be verified and calibrated in accordance with the manufacturer's specifications.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system; or

(5) a natural disaster, accident, or act that results in damage to the public water system.

(x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits; a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million; a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction (ETJ), with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; or a municipality, including any industrial district within the municipality or its ETJ, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(1) In this subsection:

(A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

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

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75% of the front footage along the block face; or

(iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(D) "Industrial district" has the meaning assigned by Texas Local Government Code, §42.044, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) When the regulatory authority is a municipality, it shall by ordinance adopt standards for installing fire hydrants in residential areas in the municipality. These standards must, at a minimum, follow current AWWA standards pertaining to fire hydrants and the requirements of §290.44(e)(6) of this title.

(3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (4) of this subsection are the minimum acceptable standards.

(4) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as firefighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.

(5) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the effective date of this subsection or within one year of the date this subsection first applies to the municipality, whichever occurs later.

(6) A public utility shall comply with the standards established by a municipality under both paragraphs (2) and (3) of this subsection within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (5) of this subsection, then a public utility shall comply with the standards specified in paragraphs (2) and (4) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.

(y) Fire hydrant flow standards.

(1) In this subsection:

(A) "Municipal utility" means a retail public utility, as defined by Texas Water Code (TWC), §13.002, that is owned by a municipality.

(B) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(C) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by TWC §13.002.

(2) The governing body of a municipality by ordinance may adopt standards set by the executive director requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's ETJ. The municipality must submit a signed copy of the ordinance to the executive director within 60 days of the adoption of an ordinance by its governing body.

(3) In addition to a utility's maximum daily demand, the utility must provide, for purposes of emergency fire suppression:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 psi.

(4) If a municipality adopts standards for a minimum sufficient water flow and pressure to fire hydrants, the municipality must require a utility to maintain at least the minimum sufficient water flow and pressure described by paragraph (3) of this subsection in fire hydrants in a residential area located within the municipality or the municipality's ETJ. If the municipality adopts a fire flow standard exceeding the minimum standards set in paragraph (3) of this subsection, the standard adopted by the municipality must be based on:

(A) the density of connections;

(B) service demands; and

(C) other relevant factors.

(5) If the municipality owns a municipal utility, it may not require another utility located in the municipality or the municipality's ETJ to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the executive director.

(6) If the municipality does not own a municipal utility, it may not require a utility located in the municipality or the municipality's ETJ to provide a minimum sufficient water flow and pressure greater than the standard established by paragraph (3) of this subsection.

(7) An ordinance under paragraph (2) of this subsection may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

(8) A municipality with a population of less than 1.9 million that adopts standards under paragraph (2) of this subsection or that seeks to use a utility's water for emergency fire suppression shall enter into a written memorandum of understanding with the utility.

(A) The memorandum of understanding must provide for:

(i) the necessary testing of fire hydrants; and

(ii) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this subsection.

(B) The municipality must submit a signed copy of the memorandum of understanding to the executive director within 60 days of the execution of the memorandum of understanding between its governing body and the utility.

(9) A municipality may notify the executive director of a utility's failure to comply with a standard adopted under paragraph (3) of this subsection.

(10) On receiving the notice described by paragraph (9) of this subsection, the executive director shall require a utility in violation of a standard adopted under this subsection to comply within a reasonable time established by the executive director.

(z) Nitrification Action Plan (NAP). Any water system distributing chloraminated water must create a NAP. The system must create a written NAP that:

(1) contains the system-specific plan for monitoring free ammonia, monochloramine, total chlorine, nitrite, and nitrate levels;

(2) contains system-specific action levels of the above monitored chemicals where action must be taken;

(3) contains specific corrective actions to be taken if the action levels are exceeded; and

(4) is maintained as part of the system's monitoring plan in §290.121 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.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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CHAPTER 291. UTILITY REGULATIONS
SUBCHAPTER L. STANDARDS OF EMERGENCY OPERATIONS

30 TAC §§291.160 - 291.163

The Texas Commission on Environmental Quality (TCEQ) adopts amendments to 30 Texas Administrative Code §§291.160, 291.161, and 291.162, and the addition of new §291.163.

Amended §291.160 and §291.161 are adopted *without changes* to the text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3889) and, therefore, will not be republished. Section 291.162 and the addition of new §291.163 are adopted *with changes* due to capitalization and punctuation corrections and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the TCEQ for review and approval. TWC §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the TCEQ has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the TCEQ approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC §13.1394 also specifies that the TCEQ will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the TCEQ an emergency preparedness plan required by TWC §13.1394, no later than March 1, 2022, and stated in Section 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, TCEQ approved timeline. The TCEQ notes that these additions to the TWC, made by SB 3, give the TCEQ the authority to regulate water service providers that have not previously been regulated by the TCEQ because, as the definition appears in TWC §13.1394, not all affected utilities are public water systems.

Amended TWC §13.1395, excludes from the requirement of creating an Emergency Preparedness Plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the TCEQ organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the TCEQ during a work session, held on May 19, 2022.

Section by Section Discussion

§291.160, Purpose

The TCEQ adopts to amend §291.160 to add a reference to TWC §13.1394 and to adjust the verb tense of the section based on the addition.

§291.161, Definitions

The TCEQ adopts this rulemaking to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC §13.1394 and §13.1395. The TCEQ adopts these amendments to reflect the requirements in TWC §13.1394(a)(1) and §13.1395(a)(1). Current subsection lettering will be revised to accommodate the amended definition.

The TCEQ adopts this rulemaking to amend the definition of "emergency operations" to clarify the minimum water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC §13.1395, which is 35 pounds per square inch.

§291.162, Emergency Operation of An Affected Utility as Defined in TWC §13.1395

The TCEQ adopts this rulemaking to amend the title of §291.162 to clarify that this section is applicable to affected utilities as defined in TWC §13.1395.

The TCEQ adopts this rulemaking to amend §291.162(d) to clarify that this subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract as stated in TWC §13.1395.

The TCEQ adopts this rulemaking to amend §291.162(e) to revise the appendix reference from "Appendix J" to "Appendix G2" for consistency with adopted amendment to §290.47.

The TCEQ adopts this rulemaking to amend §291.162(f) with language that refers to the generator maintenance requirements listed in adopted amendments to §290.46(m)(8). This adopted change is a recommendation approved by the TCEQ as a result of the After-Action Review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions will have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend §291.162(i) to change "subchapter" to "section" based on the adopted addition

of §291.163 to the subchapter. This amendment will make language consistent with adopted additions to §291.163(i).

The TCEQ adopts this rulemaking to delete §291.162(j) and (k) because the deadlines listed in these subsections have passed and are no longer applicable; subsection lettering will be revised to accommodate these deletions.

The TCEQ adopts this rulemaking to amend new §291.162(j) to clarify that affected utilities created after December 31, 2012, are required to have emergency preparedness plans approved and implemented prior to providing water to customers.

§291.163, Emergency Operation of an Affected Utility as Defined in TWC §13.1394

The TCEQ adopts this rulemaking to add new §291.163 to provide regulatory requirements for affected utilities as defined in TWC §13.1394.

The TCEQ adopts this rulemaking to add §291.163(a) which requires an affected utility to adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and a timeline for implementing the plan, as required by TWC §13.1394(b)(2)(A) and §13.1394(b)(2)(B).

The TCEQ adopts this rulemaking to add §291.163(b) which requires the executive director to review the emergency preparedness plan submitted by an affected utility, to determine if the plan is acceptable, and to request additional information or recommend changes if the plan is not acceptable. The executive director's request for information or recommended changes must be made on or before the 90th day after the executive director receives the plan as required by TWC §13.1394(c).

The TCEQ adopts this rulemaking to add §291.163(c), to include §291.163(c)(1) through §291.163(c)(14), which provides the 14 emergency operation options available to affected utilities as listed in TWC §13.1394(c)(1) through §13.1394(c)(14).

The TCEQ adopts this rulemaking to add §291.163(d) which requires affected utilities that provide raw surface water to wholesale customers to include in their emergency preparedness plan how they intend to provide raw water services to their wholesale customers during emergencies. This requirement does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract under TWC §13.1394(d).

The TCEQ adopts this rulemaking to add §291.163(e) which addresses the requirement for the TCEQ to develop an emergency preparedness plan template. This new subsection informs affected utilities that they may use the template included in Appendix G1 of §290.47 to create their emergency preparedness plan as required under TWC §13.1394(g).

The TCEQ adopts this rulemaking to add §291.163(f) which requires that any generator used as part of an approved emergency preparedness plan must be inspected, operated, and maintained according to the manufacturer's specifications, per TWC §13.1394(h) and the requirements listed in §290.46(m)(8), which are adopted in a companion rulemaking in response to the After-Action Review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions will have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §291.163(g) which allows the executive director to grant an affected utility a financial waiver to the requirement of submitting an emergency preparedness plan pursuant to TWC §13.1394(j). The executive director will consider whether complying with the emergency preparedness plan requirements will cause a significant financial burden on the affected utilities customers. The adopted rule requires that the affected utility submit documentation to the executive director that must demonstrate the significant financial burden on customers before a waiver is granted.

The TCEQ adopts this rulemaking to add §291.163(h) which allows an affected utility to adopt and enforce limitations on water use while the utility is providing emergency operations pursuant to TWC §13.1394(k).

The TCEQ adopts this rulemaking to add §291.163(i), which states that information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552 as stated in TWC §13.1394(l).

The TCEQ adopts this rulemaking to add §291.163(j), which provides that affected utilities which are established after December 31, 2022, must have an emergency preparedness plan approved and implemented prior to providing water to customers. The TCEQ adopts this addition based on emergency preparedness plan submission and implementation deadlines in March and July 2022, respectively, included in SB 3 for existing affected utilities.

The TCEQ adopts this rulemaking to add §291.163(k) which provides that an affected utility that cannot provide a minimum of 20 psi, or a water pressure approved by the TCEQ, during emergency operations to revise and submit their emergency preparedness plan within 180 days of restoration of power, and that based on a review of the plan, the executive director may require additional or alternative auxiliary emergency facilities to implement TWC §13.1394(b)(1).

Final Regulatory Impact Determination

The TCEQ reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to ensure that affected utilities have emergency preparedness plans to provide potable water service during emergency operations.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems and is consistent with and no less stringent than federal rules; does not exceed any express requirement of state law under Texas Health and Safety Code (THSC), Chapter 341, Subchapter C; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but specifically under TWC §5.107 which establishes the TCEQ's authority to collect regulatory assessments from utility service providers under TWC Chapter 13; THSC §341.031, which allows the TCEQ to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act, as well as under SB 3, which authorizes the TCEQ to promulgate rules in its implementation of TWC §13.1394 and §13.1395, and the other general powers of the TCEQ.

The TCEQ invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No written comments on the Draft Regulatory Impact Analysis Determination were received.

Takings Impact Assessment

The TCEQ evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The TCEQ adopts these rules to clarify existing requirements and for the specific purpose of implementing SB 3, 87th R.S. (2021), which requires the TCEQ to receive, review, and monitor compliance with affected utilities' emergency preparedness plans to ensure provision of potable water service during emergency operations.

The TCEQ's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code §2007.003(b)(13). The rulemaking is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the public health and safety purpose; and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code §2007.003(b)(13). Lack of potable water service during emergency operations constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of affected utilities' emergency preparedness plans and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose.

Further, the TCEQ has determined that promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The rules require affected utilities to submit emergency preparedness plans, comply with their emergency preparedness plans, and operate under their emergency preparedness plans during emergency operations. Therefore, the rules will not constitute a taking under Texas Government Code Chapter 2007.

Consistency with the Coastal Management Program

The TCEQ reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The TCEQ invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received during the public comment period.

Public Comment

The TCEQ held a public hearing on August 11, 2023. The comment period closed at 11:59 p.m. on August 14, 2023. No comments were received on the proposed rule. However, public comments were received regarding Chapter 290 which are addressed in that concurrent rulemaking.

Statutory Authority

These amendments are adopted under the authority of the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendments implement TWC, §13.1394, as added by requirements in Senate Bill (SB) 3 of the 87th Texas Legislative Session (2021), and TWC, §13.1395. Additional commission adopted amendments provide clarity to existing rules.

§291.162. Emergency Operation of an Affected Utility as Defined in TWC §13.1395.

(a) An affected utility shall adopt and submit to the executive director for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

(b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan.

(c) An emergency preparedness plan shall provide for one of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) for existing facilities, the maintenance of direct engine or right angle drives; or

(8) any other alternative determined by the executive director to be acceptable.

(d) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(e) The affected utility may use the template in Appendix G2 of §290.47 of this title (relating to Appendices) to assist in preparation of the plan.

(f) An emergency generator used as part of an approved emergency preparedness plan must be inspected, operated, and maintained according to the manufacturer's specifications and the requirements listed in §290.46(m)(8) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(i) Information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.

(j) Affected utilities which are established after December 31, 2012 must have emergency preparedness plans approved and implemented prior to providing water to customers.

(k) An affected utility may file with the executive director a written request for an extension, not to exceed 90 days, of the date by which the affected utility is required under this subchapter to submit the affected utility's emergency preparedness plan or the date the affected utility is required to implement the plan.

(l) If an affected utility fails to provide a minimum of 35 pounds per square inch throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

§291.163. Emergency Operation of an Affected Utility as Defined in TWC §13.1394.

(a) An affected utility shall adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and a timeline for implementing the plan.

(b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall request additional information or recommend changes to the plan. The executive director shall communicate to the affected utility the request for information or recommendations on or before the 90th day after the executive director receives the plan.

(c) An emergency preparedness plan shall include one or more of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) the maintenance of direct engine or right-angle drives;

(8) designation of the water system as a critical load facility or redundant, isolated, or dedicated electrical feeds;

(9) water storage capabilities;

(10) water supplies delivered from outside the service area of the affected utility;

(11) the ability to provide water through artesian flows;

(12) redundant interconnectivity between pressure zones;

(13) emergency water demand rules to maintain emergency operations; or

(14) any other alternative determined by the executive director to be acceptable.

(d) Each affected utility that supplies, provides, or conveys raw surface water to wholesale customers shall include in its emergency preparedness plan provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facil-

ity necessary to provide water service to its wholesale customers. This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(e) The affected utility may use the template in Appendix G1 of §290.47 of this title (relating to Appendices) to assist in preparation of the plan.

(f) An emergency generator used as part of an approved emergency preparedness plan must be inspected, operated, and maintained according to the manufacturer's specifications and the requirements listed in §290.46(m)(8) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(i) Information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.

(j) Affected utilities, established after December 31, 2022, must have emergency preparedness plans approved and implemented prior to providing water to customers.

(k) If an affected utility fails to provide a minimum of 20 psi, or a water pressure approved by the commission, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

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

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 2. STATEWIDE PROCUREMENT DIVISION SERVICES - TRAVEL AND VEHICLES

34 TAC §20.411, §20.413

The Comptroller of Public Accounts adopts amendments to §20.411, concerning state agency reimbursement and reporting and §20.413, concerning state travel credit cards, without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6193). The rules will not be republished.

In its planning and administration of the state travel program, the comptroller utilizes data collected through the state travel credit card. Because that data is sufficient for comptroller purposes, the amendment deletes the requirement for agencies to manually report travel data. Reference to agency reporting is deleted from §20.411(e) and §20.413(a).

The amendment substantially modifies §20.413(c), regarding issuance of state travel credit cards to state agency employees, in three ways. First, it clarifies the obligation imposed by the first sentence of the subsection. The phrase should be issued could be interpreted as an aspiration rather than a requirement, and does not specify whether it addresses employees, state agencies, or the financial institution administering the credit card program. The amendment replaces that phrase with a plain statement that a state agency shall encourage certain employees to obtain the state travel credit card.

Second, the amendment raises the level of annual travel spending that §20.413(c) addresses from $500 to $1,000. The $1,000 threshold better balances the administrative costs of establishing, monitoring, and terminating card accounts against the rebates generated from the cards.

Finally, the amendment to §20.413(c) eliminates the need to forecast the number of trips an employee will take in a fiscal year. Instead, agencies will use the expected monetary value of travel to determine whether §20.413(c) applies. Because the amount spent through the state travel credit card is the primary factor in calculating rebates, it is the best measure of value.

Section 20.413 is further revised to ensure consistent usage of the term state travel credit card.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §403.023, which authorizes the comptroller to adopt rules relating to the use of credit or charge cards by state agencies to pay for purchases, and Government Code, §2171.002, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2171.

These amendments implement Government Code, §§403.023, 2171.051, and 2171.055.

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 November 30, 2023.

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Don Neal
General Counsel for Operations and Support Legal Services
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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SUBCHAPTER F. CONTRACT MANAGEMENT
DIVISION 2. REPORTS AND AUDITS

34 TAC §20.509

The Comptroller of Public Accounts adopts amendments to §20.509, concerning vendor performance reporting, without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5967). The rule will not be republished.

The amendments delete subsection (a), which contained a requirement that is adequately stated in subsection (b).

The amendment of former subsection (b), now subsection (a), removes language providing that a state agency shall submit a vendor performance report and grade within 30 days of completion or termination of a purchase order or contract. The subsection now states only that the submission is mandatory. The time for submitting a vendor performance report is addressed in relettered subsection (c).

The amendment also revises subsection (b)(1) through (b)(4). Amended paragraph (1) provides the requirement to report and grade a vendor's performance applies to a purchase exceeding $25,000 from a contract administered by the comptroller and the Department of Information Resources, which refers to contracts entered into by the comptroller under Government Code, §2155.061, and by the Department of Information Resources under Government Code, §2157.068, respectively. Amendments to paragraph (2) state that the requirement applies to any agency contract, and remove the reference to purchases made through an agency's delegated authority. This revised language is consistent with Government Code, §2155.089, which provides that the requirement applies to all contracts aside from those expressly exempted by Government Code, §2155.089(c). The amendments delete paragraphs (3) and (4) because all contracts subject to the requirement to report and grade a vendor's performance in Government Code, §2155.089, are covered by amended paragraphs (1) and (2).

The amendment of former subsection (c), now subsection (b), removes language providing that a state agency shall, for contracts in excess of $5 million, submit a vendor performance report and grade within 30 days of completion of a key milestone identified in the contract and at least once each year during the term of the contract. The subsection now states only that the submission is mandatory. The time for submitting a vendor performance report is addressed in relettered subsection (c).

The amendment of former subsection (d), now subsection (c), adds language requiring submission of a vendor performance report and grade within 30 days of completion or termination of a purchase order or contract and, for a contract with a value that exceeds $5 million, the completion of a key milestone identified in the contract. The 30-day requirement has been relocated to amended subsection (c) to clarify that a state agency's obligation to submit the vendor performance report and grade is separate from the requirement to submit within 30 days, and that a failure to submit within the 30-day period does not invalidate the report or grade. The amendment also corrects a grammatical error.

The amendment of former subsection (e), now subsection (d), corrects a grammatical error.

Subsection (f) is now subsection (e), and the text of this subsection is unchanged.

The amendment of former subsection (g), now subsection (f), excludes certain purchases from the requirement to report and grade a vendor's performance. Because paragraph (1) now states that the section does not apply to contracts described in Government Code, §2155.089(c), it no longer reproduces the operative language from the Government Code.

Subsection (f), formerly subsection (g), also excludes certain small purchases from the requirement to report and grade a vendor's performance. Paragraph (2) excludes spot purchases of $10,000 or less, for which competitive bidding is not required under §20.82(b)(1) of this title. Paragraph (3) excludes purchase orders resulting from informal bids under §20.82(d)(1)(A), which applies to purchases of goods and services not exceeding $25,000.

There is no requirement in statute to report vendor performance for spot purchases. Spot purchases are not "contracts" within the meaning of Government Code, Title 10, Subtitle D. Spot purchases are carved out by Government Code, §2155.132(e), which distinguishes a purchase "made under a written contract" from the broader category of purchases. Therefore, not every purchase is a "contract," and smaller purchases are not subject to all formal contracting requirements. Because Government Code, §2155.089 applies to contracts, spot purchases are outside its scope.

Likewise, there is no requirement in statute to report vendor performance for purchases resulting from informal bids. Purchases resulting from informal bids are not "contracts" within the meaning of Government Code, Title 10, Subtitle D. The informal bidding method of procurement is described in Government Code, Chapter 2156, Subchapter B. That method of procurement is expressly distinguished in Chapter 2156 from the "Contract Purchase Procedure" in Subchapter A and the formal bidding procedure in Subchapter C. While Subchapters A and C each reference the awarding of a "contract" (§2156.007 and §2156.125, respectively), Subchapter B does not mention that term. Because Government Code, §2155.089 applies to contracts, purchases resulting from informal bids are outside its scope.

Prudent procurement policy does not require vendor performance reporting for spot purchases and purchases resulting from informal bids. Government Code, §2155.002, instructs the comptroller to focus resources on purchases "that involve relatively large amounts of money." Reporting and grading performance on every small purchase would consume significant amounts of agency staff time. By allowing, rather than requiring, agencies to report vendor performance on small purchases, the rule will allow agencies to focus on the most remarkable vendor performance, good and bad. Thus, the most useful reports may still appear in the comptroller's vendor performance tracking system.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155.

The amendments implement Government Code, §2155.089.

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

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