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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 7. GAS SERVICES

SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION

16 TAC §7.480

The Railroad Commission of Texas (the "Commission") adopts new §7.480, relating to Energy Conservation Programs, with changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5796). The rule will be republished. The Commission adopts the new rule pursuant to House Bill 2263, 88th Legislative Session (2023) which added new Subchapter J, Natural Gas Energy Conservation Programs, in Chapter 104, Texas Utilities Code. House Bill 2263 relates to energy conservation programs that may be offered by a local distribution company (LDC) to its residential and commercial customers and requires an LDC seeking to recover the costs of the program to apply to the Commission. New §7.480 describes the process through which an LDC may apply for Commission approval. In the October 6th issue of the *Texas Register,* the Commission also proposed amendments to §7.460, relating to Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency. The Commission adopted amendments to §7.460 effective December 5, 2023 (48 TexReg 7044).

Regarding proposed new §7.480, the Commission received eleven comments, four from associations (Atmos Cities Steering Committee joined by the City of Austin (Atmos Cities), Commission Shift, the Lone Star Chapter of the Sierra Club, and the South-Central Partnership for Energy Efficiency as a Resource (SPEER)), three from companies (Atmos Energy Corporation (Atmos Energy), CenterPoint Energy Resources Corp. (CenterPoint), and Texas Gas Service Company (Texas Gas)), one from the City of Houston, one from the Office of Public Utility Counsel (OPUC), one from Public Citizen, and one from an individual.

The Commission appreciates these comments.

Atmos Cities, CenterPoint, OPUC, and SPEER expressed general support for §7.480. Commission Shift and an individual expressed general opposition to §7.480.

Atmos Cities, the City of Houston, Commission Shift, Public Citizen, Sierra Club, SPEER, and one individual requested that a cost-effectiveness standard be incorporated into §7.480. The City of Houston commented that the proposed rule does not ensure the measures included in an LDC's energy conservation program (ECP) are effectively reducing gas consumption or are cost-effective in reducing consumption. The ECP should require program evaluation by a third party to verify and report on performance of the program and measures and ensure the cost-effectiveness and efficacy of the program. Commission Shift supported establishing cost-effective criteria that ensures good management of the program and not the creation of another form of income or wasteful spending on the part of the LDC. Atmos Cities, the City of Houston, one individual, Sierra Club, and Public Citizen commented that cost-effectiveness should be subject to review by an independent auditor.

The Commission disagrees that a cost-effectiveness standard should be incorporated at this time. Texas Utilities Code §104.403 states that an LDC may recover costs that are prudently incurred in the manner required by Subchapter J, Natural Gas Energy Conservation Programs. Subchapter J does not require a finding of cost-effectiveness. However, in lieu of incorporating a cost-effectiveness standard, the Commission adopts a change to limit the ECP rate that can be charged to residential and commercial customers. The Commission agrees with a comment from Sierra Club that a maximum ECP rate should be established and adopts subsection (g) with a change such that an ECP rate may not exceed a volumetric charge of $0.20/Mcf for residential customers and $0.20/Mcf for commercial customers. The rate increase due to an ECP charge would be no more than approximately 1.2% of the 2023 average cost of residential gas service in Texas according to the U.S. Energy Information Administration. The Commission notes that this ECP rate cap will also limit the impact of the ECP rate on all customer bills including low-income customers.

Further, in accordance with subsection (f), the LDC may utilize third party verification of its ECP portfolio performance, including the cost-effectiveness and efficacy of the program. If an LDC chooses to evaluate cost-effectiveness itself or through a third-party independent auditor, the LDC is required to report the findings in its annual report as required by subsection (j). The Commission adopts subsection (j) with a change to require that any evaluation of cost-effectiveness be included in the LDC's annual report. The Commission intends to reevaluate the addition of a cost-effectiveness finding after successful implementation of the new rule.

SPEER recommended the Commission require periodic stakeholder meetings where stakeholders can meet and discuss any issues or improvements to the ongoing ECP's in the state.

The Commission declines to make any changes to the rule in response to this comment but will consider SPEER's suggestion as it implements new §7.480.

Sierra Club expressed concern that ECPs could be designed more to sell gas appliances versus encouraging customers to save gas through shifting use at peaks, using more efficient appliances, or other efficiency measures like insulation. Similarly,

Public Citizen recommended a more stringent review of ECPs that incentivize the purchase of appliances because the incentives are especially likely to be used as a means for growing market share rather than conserving energy.

The Commission declines to make any changes in response to these comments. Utilities Code §104.403 allows LDCs to offer programs that promote energy conservation or energy efficiency. Gas appliances may help consumers achieve these goals.

Regarding subsection (b), Definitions, CenterPoint suggested several changes to proposed definitions. Atmos Energy commented that it supports CenterPoint's comments. First, CenterPoint suggested that administrative costs be defined as all prudently incurred costs of creating, managing, and administering an ECP portfolio. The Commission agrees that "prudently incurred" should be added to the definition and adopts subsection (b)(1) with that change.

CenterPoint recommended changes to the definition of energy conservation program rate in subsection (b)(5). CenterPoint recommended the definition be changed to "ECP rate," and that the monthly customer charge be designed to recover an LDC's administrative and portfolio costs.

The Commission agrees with CenterPoint's recommended changes. The Commission agrees that the charge is designed to recover an LDC's authorized administrative and portfolio costs and adopts the definition with that change. Further, the Commission clarifies that the monthly charge is a volumetric charge, rather than a monthly customer charge based on comments from the City of Houston and the Sierra Club discussed below.

Next, CenterPoint recommended adding a definition of "lost marginal revenues." The Commission disagrees because the Commission declines to allow recovery of lost marginal revenues, as explained in the discussion of subsection (c) below.

CenterPoint provided a revised definition of portfolio costs, which defined these costs as, "All prudently incurred non-administrative costs that an LDC seeks to recover through the ECP rate to implement and deliver an ECP portfolio to customers and prospective customers, including but not limited to research and development costs, payment of rebates, material costs, the costs associated with installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency." The Commission agrees with this revised definition and adopts the changes in subsection (b)(8).

CenterPoint recommended defining portfolio term. The Commission agrees that subsection (b) should include a definition of portfolio term, but does not agree with all of CenterPoint's proposed definition. Instead, the Commission adopts subsection (b) with new paragraph (9), which defines portfolio term as the term during which an approved ECP portfolio will be in effect.

CenterPoint also recommended revising the definition of program year to ensure the program year corresponds to a calendar year. The Commission disagrees because the program year for an approved ECP is dependent on the date of Commission approval. However, the Commission agrees the program year and portfolio term concepts may need clarification and addresses those issues in the discussion on subsection (d) below. The Commission also adopts the definition of "program year" with a change to clarify that the program year begins the first day of the month following the Commission's approval of the portfolio.

CenterPoint's last recommendation in subsection (b) was to add a definition of research and development costs. The Commission agrees and adopts most of CenterPoint's recommended language in subsection (b)(11).

Regarding subsection (c), CenterPoint requested revisions to allow an ECP rate that includes an LDC's lost marginal revenue. The City of Houston and Sierra Club requested that a formula or detailed instructions be included for quantifying lost marginal revenue.

The Commission recognizes that Texas Utilities Code §104.403 allows the Commission to approve an ECP that accounts for the reduction in the company's marginal revenues due to lower sales or demand resulting from the ECP. Though the statute allows for the recovery of lost marginal revenues, the language is not mandatory. The Commission declines to include lost marginal revenue because allowing the LDC to recover the amount of its lost marginal revenues through the ECP rate is harmful to the ratepayer. First, it increases the ECP rate for each residential and commercial customer irrespective of whether a particular customer has chosen to participate in an ECP program offered as part of an ECP portfolio. Utilities Code §104.403 already allows LDCs to pass through ECP costs to customers who have chosen not to participate in an ECP. Second, it reduces the incentive for a customer to participate in an ECP, and is counter-intuitive for such a customer to participate if the customer will ultimately reimburse the LDC for lost profits resulting from his or her participation in the very program promoted and marketed by the LDC to the customer.

Atmos Cities commented that subsection (c)(1) should be revised to use "implements" rather than "complies with." The Commission agrees and adopts this change in subsection (c)(1).

Subsection (c)(3) relates to costs prudently incurred. CenterPoint commented that the rule should be revised to remove the ability of the Commission to approve a program with modifications. The Commission disagrees because its review and oversight of an ECP requires that it retain discretion.

Regarding subsection (c)(3), Atmos Cities stated that the prudence review should be accomplished through a contested case. Sierra Club requested clear standards governing intervention for customers, cities, and non-profit organizations.

The Commission notes that review of ECP applications will be conducted administratively by Commission staff in accordance with this rule. Commission staff will consider written comments received in accordance with subsection (e)(1)(F) when presenting its determination to the Commission for approval. Customers and intervening parties will be provided an opportunity to scrutinize and contest the prudency of ECP costs and the ECP portfolio in the LDC's statement of intent rate proceeding. This is similar to how the Commission handles interim rate adjustment (IRA filings), for which an evidentiary, contested case is not held, but costs are scrutinized for prudency at the LDC's base rate proceeding. To clarify the intent of subsection (c)(3), the Commission adopts the paragraph with changes and makes a related change to subsection (e) to remove the reference to a protest. The Commission's changes in subsection (c)(3) include a requirement for the LDC to provide support for the reasonableness and prudence of ECP costs in its next statement of intent application.

Subsection (d) contains the requirements for an LDC's initial ECP application. Atmos Cities' comment requested that a de-

scription of any existing ECP programs offered by the LDC and payments made under each ECP be included in the application.

The Commission agrees that the initial application should include a description of any existing energy conservation programs offered by the LDC in the applicable service area prior to the effective date of §7.480. This change is adopted in subsection (d)(1)(A). The Commission declines to add a request for payments made under each ECP because it is unclear what Atmos Cities meant by "payments."

Atmos Cities also requests that the application include the projected annual demand reduction per customer class for each ECP, the proposed ECP rate calculation, and any other information that supports determination of the ECP rate.

The Commission declines to include a requirement for projected annual demand reduction because subsection (d)(1)(H) already requires the applicant to include projected annual consumption reduction per customer class for each ECP and the ECP portfolio. However, the Commission adopts changes in subsections (d)(1) and (d)(2) requiring the initial and subsequent application to include normalized historical annual volumes per customer class and projected volumes for the upcoming program year per customer class. This change corresponds to the change in subsection (b)(5), regarding the volumetric rate. The Commission agrees that the initial application should include the proposed ECP rate calculation and any other information that supports determination of the ECP rate. Those changes are adopted in subsection (d)(1)(N) and (Q). The Commission also adds these requirements in the subsequent application in subsection (d)(2).

CenterPoint recommended striking subsection (d)(1)(F) and (d)(1)(G), which require the application to include the proposed proportion of ECP portfolio costs to be funded by customers and the proposed proportion to be funded by shareholders. CenterPoint states that all reasonable and prudent ECP costs should be recoverable through the ECP rate from rate payers and only unreasonable or imprudent ECP costs should be borne by shareholders.

The Commission disagrees. ECP programs implemented prior to House Bill 2263 and this rule included information on the proportion of costs funded by customers versus shareholders and the Commission finds the information will continue to be useful. The Commission supports allowing an LDC the opportunity to share ECP program costs between its ratepayers and its shareholders.

CenterPoint made two other suggestions on subsection (d)(1). First, CenterPoint recommended "proposed annual" be revised to "proposed per-program year" to ensure consistency with the definition of program year. Second, it recommended the application include per-program year budget rather than requesting the proposed budget for portfolio costs and administrative costs separately.

The Commission agrees with CenterPoint's first suggestion but declines to combine portfolio and administrative costs into one application requirement. The Commission prefers to receive information on portfolio costs and administrative costs separately for each ECP and the ECP portfolio. The Commission clarifies its intent with changes to subsection (d)(1)(D) and (d)(2)(C) to replace "budget" with "portfolio costs." The Commission also replaces "annual" with "per program year" where appropriate.

Atmos Cities and CenterPoint commented on the frequency of subsequent ECP applications. Atmos Cities requested that the Commission allow program modifications or new programs more frequently than once every three years. CenterPoint requested the ability to file subsequent applications no later than 90 days prior to the end of the portfolio term of the previously approved ECP portfolio.

The Commission declines to allow applications for new programs at an LDC's discretion due to the Commission's limited staff resources. Dictating application filing timelines will allow Commission staff to prioritize and prepare for ECP reviews among other responsibilities such as statement of intent and IRA filings. However, the Commission agrees that once every three years may be too limited. Therefore, the Commission adopts subsection (d)(2) to allow new program applications every other year. The subsequent application will be required 45 days following the end of the ECP portfolio's second program year.

Atmos Cities also asked that the Commission review the ECP every year to ensure rates match ECP costs.

The Commission agrees. The proposed and adopted versions of §7.480 contemplate an annual review of the ECP by Commission staff based on the annual report required under subsection (j). If staff's review determines the ECP rate as adjusted by the LDC's annual report is miscalculated or misapplied, staff will instruct the LDC to adjust its rate for the next program year.

CenterPoint offered additional comments on the subsequent application requirements in subsection (d)(2). CenterPoint suggested that its revisions to the initial application contents be incorporated into the subsequent application as well. The Commission agrees and adopts subsection (d)(2) with changes to ensure the application list is consistent with the list in subsection (d)(1).

CenterPoint also requested revisions to subsection (d)(2)(I) and (J) to require information on the consumption reduction and cost savings per customer class over the new portfolio term and the actual historical per-program year consumption reduction/cost savings for each ECP and the ECP portfolio over the previous portfolio term. This change will clarify the period to be covered, which is open-ended in the proposed version. The previous portfolio term would be the three program years of the previously approved ECP portfolio.

The Commission agrees and adopts subsection (d)(2)(I) as, "The projected per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the previous portfolio term." The Commission adopts subsection (d)(2)(J) as, "The projected per-program year net cost savings per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year cost savings per customer class for each ECP and the ECP portfolio over the previous portfolio term." The Commission notes that due to changes discussed above, the portfolio term will be less than three program years.

Regarding subsection (e), notice requirements for ECP applications, the City of Houston and the Sierra Club requested additional notice of an ECP application to the intervenors in the LDC's most recent general rate proceeding.

The Commission disagrees. As mentioned below, a list of filed ECP portfolio applications will be in the Gas Utilities Information Bulletins, which are published twice a month on the Commission's website. This information is sufficient to notify interested

persons who do not receive direct notice required by subsection (e).

Texas Gas Service commented that subsection (e) should be revised to include a date by which public comments must be submitted.

The Commission disagrees. The Commission will conduct the ECP review process similar to an IRA proceeding. In IRA proceedings, the public is not provided a deadline by which to submit comments. The Commission prefers to mirror the IRA proceeding where possible to ensure consistency and predictability in its proceedings.

Public Citizen, one individual, and Sierra Club commented that the public should be invited to participate in the review of all ECP applications and renewals.

The Commission disagrees. The ECP application review, like an IRA, is administrative and will not result in a contested case. However, the notice provided to customers alerts customers to their opportunity to file written comments with Commission staff and intervene as a party to contest the ECP during the LDC's next statement of intent rate case proceeding. The Commission recognizes the language in subsection (e)(1)(F) may cause confusion regarding the nature of the ECP process, and so the Commission adopts subparagraph (F) with a change.

Public Citizen and Sierra Club asked that all affected customers be notified of an ECP by mail and by email if that is how the customer receives bills. These commenters also suggested that notice be posted on the Commission's website. Sierra Club further suggested the Commission require LDCs to post their public input and outreach processes on their websites. Commission Shift asked the Commission to consider requiring LDCs to provide public access to their ECPs.

The Commission disagrees that notice should be sent by mail and email. The Commission notes that a list of filed ECP portfolio applications will be in the Gas Utilities Information Bulletins, which are published twice a month on the Commission's website. The Commission agrees LDCs should make information about ECPs available on their websites. The Bulletins, information on LDC websites, and mail or email notice will ensure interested persons are notified of ECP applications. The Commission adopts subsections (e) and (j) with changes to require an LDC to post its ECP portfolio applications and annual reports on its website. The LDC will be required to provide the specific webpage on which the filing is located.

Atmos Cities alerted the Commission to a typographical error in subsection (e)(1)(F). The Commission appreciates this comment and corrects "LDC Company" to "LDC."

Subsection (g) describes the cost recovery mechanism for an ECP. Atmos Energy requested that the Commission remove the requirement limiting administrative costs to 15% of the total portfolio costs. Atmos Energy notes their ECP has been successful in cost-effectiveness, but administrative costs may exceed 15%. CenterPoint commented that the ECP should be exempt from the 15% cap in its first program year because administrative start-up costs for a new ECP will be greater than costs in subsequent years, while the amount of portfolio costs in the first year will naturally be less than in subsequent years.

The Commission declines to remove or alter the cap on administrative costs. The rule does not prohibit administrative costs in excess of 15% - it simply limits the recovery of administrative costs in excess of 15% from ratepayers. Additionally, an existing ECP, previously approved in a rate case, has been in existence for over ten years and has successfully limited administrative costs to 15%.

Commission Shift commented that a 15% cap for administrative costs is meaningless without a cap on total costs.

The Commission disagrees. The cap discourages unreasonable or excessive spending on costs not directly related to the ECP. The Commission also notes that adopted §7.480 limits the ECP rate that may be charged to customers.

CenterPoint requested clarification that the ECP cost recovery mechanism applies to lost marginal revenue as well as incremental administrative and portfolio costs.

The Commission disagrees. The cost recovery mechanism applies to reasonable incremental administrative costs subject to the 15% cap and reasonable incremental portfolio costs. It does not apply to lost marginal revenue because recovery of lost marginal revenue is not authorized in §7.480.

CenterPoint also requested clarification regarding whether the cost recovery mechanism applies to both the initial ECP application and adjustments in subsequent years. The Commission confirms it does and adopts subsection (g) with a change to address this comment.

Texas Gas asked that the Commission clarify the time period for when approved ECP rates would be subject to refund. For example, whether ECP rates are subject to refund until reviewed in the LDC's next full rate case but not in a COSA, GRIP, or similar Interim Rate Case filing.

The Commission responds that ECP costs, including imprudent ECP costs or ECP costs recovered from customers without approval of the Commission will be subject to review and refund at the LDC's next statement of intent rate proceeding. The change adopted in subsection (c)(3) clarifies this issue.

The City of Houston, one individual, and the Sierra Club requested that the ECP rate be designed as a volumetric consumption rate and charged to customers on a volumetric or therm basis per month. They state that based on the formula in the proposal, the costs of the ECP are recovered on a monthly bill basis from customers within each class. However, natural gas conservation programs reduce consumption, or the volumes/therms sold to customers. Thus, the costs should be recovered on a volumetric or therm rate basis by the ECP rate.

The Commission agrees that the ECP rate should be designed as a volumetric consumption rate and adopts subsection (g) and (b)(5) with revisions to reflect that rate.

SPEER and the Sierra Club asked the Commission to consider a minimum percentage of 15% of ECP portfolio expenditures for a program year be focused on low-income customers included in the rule. According to the most recent census data, 14% of Texans are considered low-income. By setting aside a relatively proportional share of expenditures to go towards these communities specifically, we can begin to reduce the energy burden of those hardest hit by higher energy bills.

The Commission declines to adopt the recommended change because the Commission does not want to limit the overall impact of the program.

Subsection (h) relates to the Commission's procedure for reviewing ECP applications. CenterPoint recommended adding, "Neither the review of an ECP portfolio application filing nor the re-

view of a proposed ECP rate or rate schedule is a ratemaking proceeding for the purposes of Texas Utilities Code § 103.022." CenterPoint noted this language is consistent with the governing statute.

The Commission agrees and adopts subsection (h) with a change to include the recommended language.

Atmos Cities and Texas Gas requested that the rule include a deadline for when Commission staff's administrative review of an ECP application must be completed. Atmos Cities requested 120 days and Texas Gas requested 60 days.

The Commission agrees and adopts subsection (h) with a change to require staff's review to be completed within 120 days of the date the application is filed with Gas Services.

Regarding subsection (i), CenterPoint asked that the Commission clarify that the ECP rate schedule filing requirement applies not only during initial and subsequent ECP applications but also when filing the ECP annual report and rate adjustment under subsection (j).

The Commission agrees and adopts changes in subsection (i) to clarify its intent.

Subsection (j) requires an LDC implementing an approved ECP portfolio to file an ECP annual report with the Commission. Atmos Cities requested the following items be included in the annual report in addition to the items proposed in subsection (j): the revenue collected through the ECP rate by customer class; the number of customers participating in each ECP; actual energy and demand savings achieved by customer class; and actual cost-effectiveness calculations.

The Commission notes that revenue collected is already required in subsection (j) but agrees a change is needed to clarify that the "per customer class" language applies to each annual report component in subsection (j)(1)(D). The Commission adopts subsection (j)(1)(D) with that change. The Commission also agrees to add the number of customers participating in each ECP and includes a requirement to provide normalized historical annual volumes and projected volumes per customer class as well. The Commission declines to require the actual energy and demand savings achieved by customer class because subsection (j) already requires the LDC to provide a description of each program's performance for the program year, actual program expenditures, and program results. As discussed above, the Commission also incorporates a requirement for a cost-effectiveness evaluation to be included in the report if a cost-effectiveness evaluation is conducted. The Commission declines to require cost-effectiveness calculations because the Commission did not incorporate a cost-effectiveness standard in §7.480.

Texas Gas requested that the Commission extend the time for filing the annual report to 60 days following the end of the program year.

The Commission disagrees. Subsection (j) requires the annual report be submitted no later than 45 days after the end of the program year. This filing timeline is necessary for the Commission and LDCs to comply with the statutory requirement that subsequent applications must be made no later than 3 years following the previous application.

CenterPoint recommended additional language in subsection (j) to clarify how ECP rates may be adjusted after each program year.

The Commission agrees and adopts subsection (j) with changes to require that the annual report include a rate adjustment request which adjusts the ECP rates then in effect to (1) true up the difference between the program costs and actual amounts collected through the ECP rates in effect during the previous program year; and (2) account for any changes to the proposed ECP costs and projected recovery.

Under the schedule for filing annual reports and subsequent applications reflected in subsections (d)(2) and (j), the LDC's first annual report will be due no later than 45 days following the end of the program year as that term is defined in subsection (b). The next program year will begin on the same day as the previous year, and any adjusted rates may begin 30 days after the LDC submits the annual report.

Similarly, the LDC must submit its annual report on its second program year 45 days following the end of the second program year. At the same time, the LDC must submit its subsequent application. The next portfolio term and program year start dates will depend on when the Commission approves the subsequent ECP application.

The Commission demonstrates the timeline with the following example. Suppose the Commission approves an ECP at an open meeting on May 15, 2024. The start date for the ECP is June 1, 2024, because the definition of program year in subsection (b) is "the 12-month period beginning the first day of the month following the Commission's approval of the ECP portfolio." The program year would end on May 31, 2025. According to subsection (j), the first annual report must be submitted no later than 45 days following the end of the program year, which would be July 15, 2025. The ECP rate charged during the first program year would remain in effect until an adjusted rate is implemented based on the first annual report filing. An LDC could begin charging any adjusted ECP rate 30 days after filing the annual report. The second program year would begin on June 1, 2025, and end on May 31, 2026. The second annual report and subsequent ECP application would both be due on July 15, 2026. The subsequent ECP application's program year would depend on the date the subsequent application is approved at the Commission open meeting. The ECP rate implemented after the second annual report filing would remain in effect until the subsequent ECP portfolio application is approved. The Commission adopts changes in subsection (h)(4) and (h)(5) to clarify the effect of existing ECP rates during review of an annual report or application.

Atmos Cities recommends replacing "preceding" with "program" in proposed subsection (j)(1)(B), which required in the annual report a description of each ECP offered under the portfolio that includes the program's performance for the preceding year, actual program expenditures, and program results.

The Commission agrees and adopts subsection (j)(1)(B) with this clarification.

Subsection (k) relates to the requirement for an LDC to reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under §7.480.

Regarding subsection (k), CenterPoint commented requesting that an LDC's reimbursement costs not be counted for any ECP measurement purpose since they are unavoidable costs that have no bearing on the actual performance of the ECP. To that end, CenterPoint suggested adding the following: An LDC's reimbursement costs shall be recoverable by the LDC but is not

subject to (1) the 15% cap on administrative costs described in subsection (g) of this section or (2) any cost/benefit test used by the Commission to determine the performance of an LDC's ECP in an annual report filed pursuant to subsection (j) of this section.

The Commission disagrees. The Commission intends to treat these costs as they are treated in an IRA proceeding, in which reimbursement costs cannot be passed to customers as part of the IRA rate.

Again, the Commission appreciates the review and input from commenters. As described above, the Commission adopts changes to subsections (b), (c), (d), (e), (g), (h), (i) and (j). The remaining subsections are adopted without changes. Those subsections are summarized below.

New subsection (a) explains the energy conservation program authority given to an LDC to offer such programs to current and prospective residential and commercial customers pursuant to House Bill 2263. Subsection (a) also states that the Commission has exclusive original jurisdiction over energy conservation programs implemented by LDCs.

New subsection (f) describes what the ECP portfolio must accomplish, including that it be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and to change customer behavior as necessary.

New subsection (k) states the procedure for an LDC implementing an approved ECP portfolio to reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the reimbursement amount.

The Commission adopts the new rule pursuant to Texas Utilities Code, §§104.401-104.403.

Statutory authority: Texas Utilities Code, §§104.401-104.403.

Cross-reference to statute: Texas Utilities Code, Chapter 104.

§7.480. Energy Conservation Programs.

(a) Energy conservation program authority. A local distribution company may offer to residential and commercial customers and prospective residential and commercial customers and provide to those customers an energy conservation program pursuant to this section and Texas Utilities Code, §§104.401-104.403. The Commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies. A political subdivision served by a local distribution company that implements an energy conservation program approved by the Commission pursuant to this section shall not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type or source of energy delivered to its customers.

(b) Definitions.

(1) Administrative costs--All prudently incurred costs of creating, managing, and administering an ECP portfolio.

(2) Director--The Director of the Gas Services Department of the Oversight and Safety Division or the Director's delegate.

(3) Energy conservation program (ECP)--A particular program that promotes energy conservation or energy efficiency.

(4) ECP portfolio--The entire group of energy conservation programs offered to a service area by a local distribution company as described in subsection (f) of this section. The portfolio may consist of one or more programs.

(5) ECP rate--The energy conservation program rate approved by the Commission in the form of a monthly volumetric charge designed to recover an LDC's authorized administrative and portfolio costs.

(6) Gas Services--The Gas Services Department of the Oversight and Safety Division of the Commission.

(7) Local distribution company (LDC)--An investor-owned gas utility that operates a retail gas distribution system.

(8) Portfolio costs--All prudently incurred non-administrative costs that an LDC seeks to recover through the ECP rate to implement and deliver an ECP portfolio to customers and prospective customers, including but not limited to research and development costs, payment of rebates, material costs, the costs associated with installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency.

(9) Portfolio term--The term during which an approved ECP portfolio will be in effect.

(10) Program year--The 12-month period beginning the first day of the month following the Commission's approval of the ECP portfolio.

(11) Research and development costs--The costs prudently incurred by an LDC to conduct market and engineering studies for the feasibility and design of potential ECPs. Research and development costs cannot exceed 5% of portfolio costs.

(c) General requirements.

(1) An LDC may recover costs of an ECP portfolio if the ECP portfolio is approved by the Commission pursuant to this section and the LDC implements the approved ECP portfolio. An LDC seeking to implement an ECP portfolio shall apply with Gas Services and receive a final order from the Commission before beginning to recover the approved costs of the ECP portfolio.

(2) An LDC applying for an ECP portfolio shall submit an application for each service area in which it seeks to implement an ECP.

(3) If the Commission approves the LDC's application or approves the application with modifications, the LDC may recover costs to implement the ECP portfolio, including costs incurred to design, market, implement, administer, and deliver the ECP portfolio. Any costs included in an ECP portfolio approved by the Commission shall be fully subject to review by the Commission for reasonableness and prudence during the LDC's next statement of intent rate proceeding. The LDC shall include support for this determination in its next statement of intent application. ECP costs that are imprudent or recovered from customers without approval of the Commission are subject to refund as determined by the Commission.

(d) Contents of application. An LDC may apply for approval of an ECP portfolio by submitting an application to Gas Services.

(1) Initial ECP portfolio application. An initial application for approval of an ECP portfolio shall include:

(A) a description of any existing energy conservation programs offered by the LDC in the applicable service area prior to the effective date of this section;

(B) a list and detailed description of each proposed ECP;

(C) the objectives for each proposed ECP;

(D) the proposed per-program year portfolio costs for each ECP and the ECP portfolio;

(E) the proposed per-program year administrative costs for each ECP and the ECP portfolio;

(F) the proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by customers;

(G) the proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by shareholders;

(H) the projected annual consumption reduction per customer class for each ECP and the ECP portfolio;

(I) the projected annual net cost savings per customer class for each ECP and the ECP portfolio;

(J) a copy of the notice to customers and an affidavit stating the method of notice and the date or dates on which the notice was given;

(K) copies of written correspondence received by the LDC in response to the notice;

(L) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if an ECP portfolio is approved;

(M) copies of the proposed ECP rate schedule or schedules;

(N) calculation of the proposed ECP rate;

(O) normalized historical annual volumes per customer class;

(P) projected volumes for the upcoming program year per customer class;

(Q) any other information that supports determination of the ECP rate; and

(R) the name of the LDC's representative, business address, telephone number, and email address.

(2) Subsequent ECP portfolio application. An LDC shall re-apply for approval of its ECP portfolio in accordance with this paragraph. A subsequent application shall be filed 45 days following the end of the ECP portfolio's second program year. A subsequent application for approval of an ECP portfolio shall include:

(A) a list and detailed description of each proposed ECP;

(B) the objectives for each ECP;

(C) the proposed per-program year portfolio costs for each ECP and the ECP portfolio;

(D) the proposed per-program year administrative costs for each ECP and the ECP portfolio;

(E) the actual historical per-program year portfolio costs for each ECP and the ECP portfolio;

(F) the actual historical per-program year administrative costs for each ECP and the ECP portfolio;

(G) the historical and proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by customers;

(H) the historical and proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by shareholders;

(I) the projected per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the previous portfolio term;

(J) the projected per-program year net cost savings per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year cost savings per customer class for each ECP and the ECP portfolio over the previous portfolio term;

(K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if the ECP portfolio is approved;

(L) copies of the proposed rate schedule or schedules;

(M) calculation of the proposed ECP rate;

(N) normalized historical annual volumes per customer class;

(O) projected volumes for the upcoming program year per customer class;

(P) any other information that supports determination of the ECP rate; and

(Q) the name of the LDC's representative, business address, telephone number, and email address.

(3) Notice of subsequent application. If in the subsequent application the LDC proposes a new ECP or proposes changes to an existing ECP such that costs to customers increase, the LDC shall provide notice in accordance with subsection (e) of this section and include in its subsequent application the documents required by paragraph (1)(J) and (K) of this subsection.

(4) Addition of new programs to existing ECP portfolio. An initial or subsequent application may contain information on one or more ECPs. If an LDC proposes to add a new ECP to its portfolio after approval of its initial application, the LDC shall propose the new ECP in its subsequent application and include the information required by paragraph (1) of this subsection for the proposed new ECP.

(e) Notice and promotional materials.

(1) Notice. An LDC shall print the notice of its application for an ECP portfolio in type large enough for easy reading. The notice shall be the only information contained on the piece of paper on which it is written or in the emailed notice if applicable. An LDC may give the notice required by this section either by separate mailing or by otherwise delivering the notice with its billing statements. Notice may be provided by email if the customer to receive the notice has consented to receive notices by email. Notice by mail shall be presumed to be complete three days after the date of deposit of the paper upon which it is written, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care of the United States Postal Service. The notice shall be provided in English and Spanish. The notice to customers shall include the following information:

(A) a description of each ECP in its proposed portfolio;

(B) the effect the proposed ECP portfolio is expected to have on the rates applicable to each affected customer class and on an average bill with and without gas cost for each affected customer class;

(C) the service area in which the proposed ECP portfolio would apply;

(D) the date the proposed ECP portfolio application was or will be filed with the Commission;

(E) the LDC's address, telephone number, and web address of the specific webpage on which the ECP portfolio application may be obtained; and

(F) a statement that any affected person may file written comments concerning a proposed ECP portfolio with Gas Services by email to MOS@rrc.texas.gov and to an email address for the LDC included in its notice.

(2) Promotional materials. Any ECP program or portfolio promotional materials shall be provided to customers in English and Spanish.

(f) Portfolio. An ECP portfolio:

(1) shall be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and be designed to change customer behavior as necessary; and

(2) may include measures such as:

(A) direct financial incentives;

(B) technical assistance and information, including building energy performance analyses performed by the LDC or a third party approved by the LDC;

(C) discounts or rebates for products; and

(D) weatherization for low-income customers.

(g) Cost recovery mechanism. The application for approval of an ECP portfolio shall include a proposed ECP rate. Cost recovery shall be limited to the incremental costs of providing an ECP portfolio that are not already included in the then-current cost of service rates of the LDC. Administrative costs in excess of 15% of the portfolio costs shall not be included in the ECP rate or recovered from customers in any way. The cost recovery mechanism applies to both initial and subsequent ECP applications.

(1) A separate ECP rate shall be calculated for each customer class in accordance with the following formula: ECP rate = (CCR per Class + BA per Class)/Projected Volume per Class per Program Year, where:

(A) CCR, Current Cost Recovery, is all projected costs attributable to the LDC's energy conservation portfolio for the program year;

(B) BA, Balance Adjustment, is the computed difference between CCR collections by class and expenditures by class, including the pro-rata share of common administrative costs for each class for the program year and collection of the over/under recovery during the prior program year; and

(C) Class is the customer class to which the ECP rate will apply.

(2) An ECP rate may not exceed $0.20/Mcf for the residential customer class and $0.20/Mcf for the commercial customer class.

(3) Upon the Commission's approval of the ECP rate, the LDC shall update its residential and commercial ECP rate schedules to reflect the approved ECP rate.

(h) Procedure for review. The Director of Gas Services shall ensure that applications for ECP portfolios are reviewed for compliance with the requirements of Texas Utilities Code, §§104.401-104.403 and this section. Upon completion of the review, Gas Services will prepare a written recommendation, which shall be provided to the applicant LDC. The written recommendation shall be provided to the applicant LDC within 120 days of the date the application is filed with Gas Services.

(1) The recommendation may include:

(A) approval of the application for an ECP portfolio as filed;

(B) approval of the application for an ECP portfolio with modifications; or

(C) rejection of the application for an ECP portfolio.

(2) The recommendation shall be submitted to the Commission for decision at a scheduled open meeting.

(3) If the Commission approves an ECP portfolio application at an open meeting, the LDC shall file the applicable ECP rate schedules in accordance with subsection (i) of this section.

(4) Previous ECP rates shall remain in effect while an annual report or a subsequent ECP portfolio application is under review.

(5) Previous ECP rates shall cease to be in effect 30 days after an LDC fails to meet a required filing deadline.

(6) Neither the review of an ECP portfolio application nor the review of a proposed ECP rate or rate schedule is a ratemaking proceeding for the purposes of Texas Utilities Code § 103.022.

(i) Rate schedules. The LDC shall include proposed rate schedules with its initial application, each subsequent application, and each annual report for an ECP portfolio. Each ECP rate schedule shall be made on a form approved by the Commission and made available on the Commission's website. If the LDC's proposed ECP portfolio is approved by the Commission, the approved rate schedules shall be electronically filed by the LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). If an ECP rate is adjusted in an annual report filing, the LDC shall also file an adjusted rate schedule. An ECP rate approved by the Commission at an open meeting and implemented by the LDC or adjusted in an annual report filing pursuant to subsection (j) of this section shall be subject to refund unless and until the rate schedules are electronically filed and accepted by Gas Services in accordance with §7.315 of this title and reviewed for prudence and reasonableness in a subsequent statement of intent rate proceeding.

(j) ECP annual report.

(1) An LDC implementing an approved ECP portfolio pursuant to this section shall file an ECP annual report with the Commission. The report shall be filed each year an approved ECP portfolio is implemented and shall be filed no later than 45 days following the end of the LDC's program year. The ECP annual report shall be in the format prescribed by the Commission and shall include the following:

(A) an overview of the LDC's ECP portfolio;

(B) a description of each ECP offered under the portfolio that includes the program's performance for the program year, including any evaluation of cost-effectiveness, actual program expenditures, and program results;

(C) the LDC's planned ECPs for the upcoming program year;

(D) for each applicable customer class, rate schedules detailing program expenditures for the program year, actual amounts collected for the program year, and the calculation of the adjusted ECP rate;

(E) the number of customers participating in each ECP per customer class per the applicable program year;

(F) normalized historical annual volumes per customer class per the applicable program year; and

(G) projected volumes for the upcoming program year per customer class.

(2) In its annual report, an LDC shall include an ECP rate adjustment request if applicable. A separately adjusted ECP rate shall be calculated for each customer class in accordance with the formula described in subsection (g) of this section. The rate adjustment request shall adjust the ECP rates then in effect to:

(A) true up the difference between the program costs and actual amounts collected through the ECP rates in effect during the previous program year; and

(B) account for any changes to the proposed ECP costs and projected recovery.

(3) The LDC shall not implement any adjusted ECP rates until 30 days after submitting the annual report.

(4) Each annual report filed with the Commission shall be made available on the LDC's website.

(k) Reimbursement. An LDC implementing an approved ECP portfolio pursuant to this section shall reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the amount of the reimbursement.

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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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.240

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §24.240, relating to Water and Sewer Utility Rates After Acquisition with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5598) and will be republished. The new rule implements Texas Water Code (TWC) §13.3011, added by House Bill (HB) 1484, enacted by the 87th Texas Legislature (R.S.). It allows an acquiring water and sewer utility (transferee) to apply rates from an existing tariff to the customers of an acquired system without initiating a new rate proceeding. To be eligible to apply, an existing tariff must be currently in force and filed with a regulatory authority for another water and sewer system owned by the transferee. The rule is adopted under Project No. 53924.

The commission received comments on the proposed rule from CSWR-Texas Utility Operating Company, (CSWR), Double Diamond Entities (Double Diamond), the Office of Public Utility Counsel (OPUC), Texas Association of Water Companies (TAWC), and Texas Water Utilities (TWU).

A public hearing was requested by TAWC and was held on January 23, 2024. AQUA Texas, Inc. (AQUA), CSWR, TAWC, TWU, OPUC and Mr. David Miller (on behalf of The Retreat, which filed written comments with the Double Diamond) provided comments.

General Comments

TAWC commented that the proposed rule does not apply the "filed rate doctrine" legal principle as intended by the statute and, as drafted, would create obstacles for a transferee in extending its pre-existing rates to acquired customers. TAWC recommended that the commission extend previously approved tariff and the rates selected by the transferee to new customers without further examination in the Sale, Transfer, and Merger (STM) proceeding to achieve the goals of TWC §13.3011.

Commission Response

The commission disagrees that the filed rate doctrine is relevant to the outcome of this rulemaking proceeding. Neither the statutory text of TWC §13.3011 - the statute being implemented in this rulemaking proceeding - nor the bill analysis for HB 1484 refer to the "filed rate doctrine." Accordingly, analyzing the similarities between a common law legal principle, and TAWC's interpretation of this principle, and the statutory text being implemented in this rulemaking proceeding is unnecessary. The commission interprets the statutory text directly.

The commission declines to modify the rule to extend previously approved rates to new customers without further examination for reasons discussed below.

TAWC, TWU, and CSWR opposed the proposed rule on the grounds that the rate review process it establishes is inconsistent with HB 1484. Both TAWC and CSWR recommended that no additional criteria should be used to evaluate an initial rate request beyond what is contemplated under TWC §13.3011.

TWU stated that the proposed rule goes beyond the two statutory criteria for approving an initial rate request and uses the just and reasonable standard provided by TWC §13.182(a) as the benchmark for evaluating an initial rate requested under TWC §13.3011. TWU further stated that while the commission uses the criteria under TWC §13.182(a), it ignores TWC §13.182(b) which requires rates to not be unreasonably preferential, prejudi-

cial, or discriminatory, and instead must be sufficient, equitable, and consistent in application to each class of consumers. Rates must recover a level of revenue that permits the utility an opportunity to earn a reasonable return on its invested capital and preserves the utility's financial integrity. TWU stated that the proposed approval process would introduce uncertainty regarding the approval of initial rates and may lead to unintended consequences of discouraging acquisitions.

TWU asserted that initial rates that are filed with a regulatory authority and are in effect for another water or sewer system owned by the transferee automatically meet all four statutory requirements under TWC §§13.182(a), 13.182(b), 13.183(a) and 13.190(a). Most significantly, TWC §13.182(a) is satisfied because the rates in a tariff filed with a regulatory authority for another system have already been reviewed and found just and reasonable by the regulatory authority.

CSWR stated that the proposed rule is inconsistent with TWC §13.3011 and creates a vague and potentially complicated rate review procedure in an STM proceeding that will delay approval of acquisitions of substandard systems.

In contrast, OPUC and Double Diamond supported the proposed rule and argued that the requested authorized acquisition rates must be scrutinized by the commission to ensure that they are just and reasonable. OPUC and Double Diamond stated that applying a pre-existing water or sewer tariff that is not tailored to customers of an acquired system could routinely lend itself to rate shock for affected ratepayers. OPUC commented that TWC §13.3011 provides the commission with the authority to approve or deny adoption of an in-force rate taken from an existing tariff. Additionally, OPUC opined that without proper safeguards in place, application of HB 1484 could result in the imposition of a higher tariff on the customers of the acquired system without an adequate prudence review from which rates should be derived. OPUC supported commission staff's efforts to ensure that there are adequate safeguards to mitigate rate shock to customers of the acquired system.

Commission Response

The commission disagrees that the only criteria the commission should consider are the two criteria provided in TWC §13.3011. The two criteria listed - (i) shown in a tariff filed with a regulatory authority, and (ii) in force for the other water and sewer system on the date the STM application is filed - are not characterized in the statute as considerations. They are a description of the type of initial rates the transferee is permitted to request authorization to charge. This is plain from the statutory phrasing "may request" initial rates for the service that are...". TWC has many instances of the Legislature indicating that the commission "shall consider" certain criteria when evaluating a certain decision. TWC §13.3011 contains no such language. The most straightforward reading of TWC §13.3011's use of descriptive language is that paragraphs (1) and (2) are necessary, but not sufficient conditions for authorization of a requested rate. Moreover, TWC §13.182(a) unambiguously requires that the commission "shall ensure that every rate made, demanded, or received by any utility shall be just and reasonable." Without specific language countermanding this directive in TWC §13.3011, the commission cannot approve a request for authorized acquisition rates without ensuring that the requested rates are just and reasonable.

The commission also disagrees with TWU that a rate contained in an in-force tariff that is filed with a regulatory authority is, for that reason alone, just and reasonable as applied to all customers or water systems. In response to proposed subsection (d)(1), which would require the transferee to provide a revenue comparison using existing and requested authorized acquisition rates, TWU stated "a comparison of revenues generated at the existing rates to the revenues generated at the requested initial rates has no bearing on the just and reasonableness of the requested initial rates because these rates were derived from two totally separate costs of service, {emphasis added}." TWU further contended that such an approach is "antithetical to the concept of cost of service ratemaking." While TWU was not addressing the immediate point, its analysis perfectly captures why an approved rate for one system is not necessarily just and reasonable for another: because the two systems have two distinct costs of service. As addressed further below, the statutory prohibition against requiring a rate case - which would be necessary to conduct a full cost of service analysis - requires the commission to use a more general facts-and-circumstances analysis to determine whether a proposed rate is just and reasonable under this section. It does not, as argued by TWU, CSWR, and TAWC, mean that the commission must accept that a rate deemed just and reasonable for one system is automatically just and reasonable for another.

The commission also disagrees with TWU's argument that the commission's focus on just and reasonable rates ignores TWC §13.182(b), which TWU interprets to require that rates must recover a level of revenue that permits the utility an opportunity to earn a reasonable return on its invested capital and preserves the utility's financial integrity. Regarding the financial integrity of the utility, the adopted rule requires the commission to consider whether the rates are just and reasonable for the customer and the transferee. Furthermore, every STM proceeding requires an evaluation of the financial wellbeing of the transferee and its ability to provide continuous and adequate service. With regards to TWU's claim that the transferee must be provided an opportunity to earn a reasonable return on its invested capital, the commission notes that - unlike the customers of the acquired system - the transferee has complete discretion over whether to complete the transaction or request authorized acquisition rates. The transferee also has the option to initiate a rate case to ensure it is receiving an appropriate rate of return on its invested capital. Outside of the context of a rate case, the commission cannot adjust a rate to, among other things, ensure the transferee is earning a reasonable rate of return.

The commission agrees with CSWR that the proposed rule creates a vague and potentially complicated rate review that could delay the approval of acquisitions of substandard systems. Accordingly, the commission modifies the rule to clarify how the commission will review requests for authorized acquisition rates. These modifications are designed to provide procedural clarity on how the commission will process requests for authorized acquisition rates, provide certainty on the outcome of the request for authorized acquisition rates before the transferee closes on the transaction, limit the scope of the commission's rate review to ensure the statutory prohibition on requiring a rate case is fully captured in the rule, and provide general guidance on the criteria the commission may consider when reviewing the request.

The commission adds new (c)(5) to clarify that the commission will take the transferee's request to charge authorized acquisition rates into account as part of the public interest determination on whether the proposed transaction serves the public interest under §24.239(h). The rates that a customer will be charged, and that the transferee will be able to collect, could po-

tentially influence several of the public interest criteria contained in §24.239(h)(5). To facilitate this determination, the commission also modifies the requirements of proposed subsection (d) to require the applicant to include an explanation of how granting the request to charge authorized acquisition rates would change the public interest analysis under any of the criteria in §24.239(h)(5).

The commission further modifies the rule to include a new subsection (f), that codifies how the commission will conduct its review. Under subsection (f)(1), which is modeled after the hearing provisions of §24.239, the commission will determine whether a hearing on the requested rates is necessary to determine if those rates are just and reasonable. If the commission elects to hold a hearing, the commission will not approve the requested rates unless they are found to be just and reasonable. However, if the commission determines that a hearing is unnecessary and that the transferee has complied with the applicable notice requirements, the request will be approved in the commission's final order approving the transaction.

The commission also adds subsection (f)(2) to clarify the scope of the commission's rate review. Because the commission is statutorily prohibited from requiring a rate case, the commission will determine whether the requested rates are just and reasonable based on the relevant facts and circumstances. Subsection (f)(2)(A) lists several restrictions on the scope of the commission's rate review that address commenters' concerns that this rate review will function as a de facto rate case. Specifically, the transferee is not required to support its request for authorized acquisition rates by initiating a rate proceeding; establishing the cost of service for the acquired water or sewer system; establishing substantial similarity between the acquired system and the system to which the rates already apply; or defending the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.

Subsection (f)(2)(B) provides further clarification on the restrictions in subsection (f)(2)(A) by providing examples of factors the commission may consider without violating the above restrictions. These considerations include whether any charges or significant components of the requested rates would be unjust or unreasonable if applied to the acquired water or sewer system. In many instances, a system-specific or local pass through charge will be either explicitly listed on a tariff or rolled directly into rates. Such a charge may provide evidence that the requested rates should not be applied to another system to which the identified charge does not apply.

Because investigating such charges does not require a rate proceeding or cost of service determination for the acquired system, it is within the scope of the commission's rate review.

Similarly, the commission may consider whether the customers of the acquired system are receiving continuous and adequate service. This is a potentially important consideration for the customers and the transferee. If customers are not receiving continuous and adequate service, that may suggest that either the existing rates are insufficient to ensure such service or that the transferee will have to operate at a loss to make the necessary improvements. This is especially relevant in situations where there are identified improvements that will lead to known and measurable increases in the cost of serving the acquired system. Conversely, if a system is fully functioning and providing a high level of service, that may suggest that authorized acquisition rates that are significantly higher than the existing rates would not be just and reasonable. These considerations are appropriately within the scope of the commission's rate review, because evaluating specific costs associated with system improvements necessary to provide continuous and adequate service does not require a rate proceeding or a comprehensive evaluation of the system's cost of service.

This new subparagraph also clarifies that the commission may consider evidence regarding whether the requested rates are generally consistent with the rates charged to similar systems. In other words, the commission will not require that the two specific systems in question be similar to each other (i.e., substantial similarity), but the commission can consider macro-level data, if available and appropriate, on the rates that are generally charged to systems with similar characteristics. This factor is not, in itself, determinative of whether the rates are just and reasonable. But, if there is evidence that the requested rates are relatively high or that the existing rates are relatively low, that may be indicative of whether the requested rates are just and reasonable.

Finally, the commission modifies the rule to clarify that the commission is not limited to the factors enumerated in subsection (f)(2)(B). The commission may consider any pertinent facts and circumstances that are not proscribed by subsection (f)(2)(A). The commission also notes, without modifying the rule, that the list of factors is permissive and each enumerated factor may not be relevant in each proceeding under this section.

Section 24.239 -- Merge 16 TAC §24.240 with 16 TAC §24.239

TAWC, TWU, and AQUA suggested the commission should implement TWC §13.3011 in the existing STM rule, 16 TAC §24.239, rather than adopting a new rule.

Commission Response

Section 24.239 was not noticed in this project and is, therefore, beyond the scope of this proceeding. The commission may consider combining these sections in a future rulemaking project.

Proposed §24.240(a) - Applicability

Proposed §24.240(a) limits the application of the rule to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011.

TWU recommended modifying subsection (a) to use the term "initial rates" instead of "authorized acquisition rates." to conform to its recommended definitions.

Commission Response

The commission declines to accept the modifications recommended by TWU, because the commission did not accept TWU's recommendation to delete the definition of "authorized acquisition rates." Refer to commission response under "Proposed §24.240(b) - Definitions."

Proposed §24.240(b) - Definitions

Proposed §24.240(b) defines "authorized acquisition rates" as initial rates that are in force and shown in a tariff filed with a regulatory authority by an acquiring utility for another water or sewer system owned by it. "Initial rates" are defined as rates charged by an acquiring utility to the customers of an acquired system upon acquisition.

TWU recommended modifying the definitions in the proposed rule to use the terms "transferor" and "transferee" that are found in §24.239 to promote uniformity between these rules.

Commission Response

The commission agrees with TWU's recommendation and modifies the rule to use the terms "transferor" and "transferee." The commission also modifies the rule to use the term "transaction" in place of "acquisition" where necessary to align with use of the term "transaction" in §24.239.

The commission also re-sequences the definitions to appear in alphabetical order.

TWU recommended deleting the definition of "authorized acquisition rate" to minimize use of confusing phrases like "requested authorized acquisition rate" and to avoid having to use a defined term - "initial rates" - in the definition of another defined term. TWU opined that deleting this definition also allows for the use of simplified terms like "requested initial rates" and "approved initial rates." TWU provided recommended language for terms "initial rates" and "existing rates."

TAWC also stated that the definitions of "Initial rates" and "Authorized Acquisition Rates" are duplicative.

Commission Response

The commission declines to make the changes requested by TWU. The commission disagrees that "initial rates" and "authorized acquisition rates" are duplicative. "Initial rates" refers to the rates that are paid by the customers of the acquired system - regardless of whether such rates are the "existing rates" they previously paid or are "authorized acquisition rates." This is also consistent with the plain meaning of "initial" (i.e. first) and the statutory language allowing the transferee to request approval to charge "initial rates for the service that are:" {emphasis added}." The use of "that" sets off a restrictive adjective clause identifying which initial rates the utility may request (i.e., in force and shown in a filed tariff). The commission uses the term "authorized acquisition rates" to refer to this category of initial rates. The commission, however, modifies the definition of "initial rates" to reflect that an "initial rate" can be an existing rate, an authorized acquisition rate, or another rate authorized by law. This modification will provide clarity and prevent unintended consequences, such as reading the provisions of this rule to disallow a utility from retaining temporary rates after an STM, as is permitted under §24.239.

Proposed §24.240(c)(1)

Proposed §24.240(c)(1) requires an acquiring utility to use existing rates as initial rates until the commission approves other rates.

TWU recommended minor clarifying changes to proposed subsection (c)(1) to conform with its proposal to delete the definition of "authorized acquisition rate" and continue the use of terms "transferor" and "transferee."

Commission Response

The commission modifies the proposed rule and replaces the terms "acquiring utility" and "acquired utility" with "transferee" and "transferor" as recommended by TWU but declines to make other changes to subsection (c)(1) because the commission did not accept TWU's recommendation to delete the definition of "authorized acquisition rates."

The commission uses these updated terms, as applicable, throughout this order.

TAWC argued that proposed subsection (c)(1) contemplates a gap period between STM approval and approval of the request to charge authorized acquisition rates after STM approval. TAWC and CSWR recommended that the commission must approve initial rates simultaneously with approval of the STM transaction to provide certainty to the STM applicants about the rates that will be in place after an STM transaction is completed. TAWC noted that certainty about rates prior to completing a system acquisition will allow sufficient time to the transferee to prepare to switch customers to new rates.

Commission Response

The commission agrees with TAWC that the commission should review the STM and the request for approval to charge authorized acquisition rates simultaneously. Further, the commission agrees that, if approved, the transferee is required to begin charging the authorized acquisition rates after the commission has approved the transaction in its final order. The commission modifies the rule accordingly.

Proposed §24.240 (c)(3)

Proposed §24.240(c)(3) clarifies that an authorized acquisition rate must be in force and shown in a tariff filed with a regulatory authority by the transferee for another water and sewer system on the date an STM application is filed.

TWU recommended deleting proposed subsection (c)(3) because it will be redundant with the new definition of "initial rates" recommended by TWU.

TAWC stated that subsection (c)(3) aligns with the language in TWC §13.3011 and recommended that this language be added to 16 TAC §24.239.

Commission Response

The commission declines to delete subsection (c)(3) as recommended by TWU, because the commission did not adopt the corresponding definition of "initial rates" proposed by TWU.

The commission also declines to move the language of subsection (c)(3) to §24.239 as recommended by TAWC, because §24.239 was not noticed in this proceeding and modifications to that section are, therefore, beyond the scope of this rulemaking.

Proposed §24.240(c)(4) - Multiple in-force tariffs

Proposed §24.240(c)(4) establishes that if the transferee has multiple in-force tariffs filed with regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

TAWC recommended deleting proposed subsection (c)(4), stating that the utility should be permitted to choose the approved tariff rates to use regardless of which regulatory authority has approved them. TAWC opined that proposed subsection (c)(4) would create the possibility of disparate rate treatment using in-force tariffs not selected by the utility.

TWU recommended modifying subsection (c)(4) to require a showing of good cause to approve an initial rate that is shown in a tariff on file with a regulatory authority that does not have original jurisdiction over the rates for the systems that will be transferred as part of an STMs.

Commission Response

The commission agrees with TAWC that the transferee may choose which in-force tariff to use for its request for authorized acquisition rates but declines to remove from the rule the

presumption that the in-force tariff should be one approved by the same regulatory authority. Each regulatory authority with ratemaking authority in Texas has its own practices, preferences, and tendencies with regards to ratemaking outcomes. All else being equal, using a rate that has been previously approved by the commission is more likely to reflect an outcome that the commission would find just and reasonable than a rate approved by a different regulatory authority. However, this is a rebuttable presumption because many other factors more directly contribute to the justness and reasonableness of a rate. Furthermore, because the commission must consider all of the relevant facts and circumstances in determining whether the requested rates are just and reasonable, the commission does not require a showing of good cause to use rates approved by a different regulatory authority as requested by TWU.

OPUC recommended adding language under §24.240(c) that would expand the scope of the rebuttable presumption and provided language that specifies that if the transferee has multiple in-force tariffs filed with the regulatory authority, an in-force tariff within the same geographic area or county as the acquired system would be used as the authorized acquisition rates when deemed to be in the public interest.

Commission Response

The commission declines to accept OPUC's recommendation to create a rebuttable presumption that the authorized acquisition rates should be based on a tariff within the same geographic area or county as the acquired system. An underlying premise behind the included rebuttable presumption is that the commission, in virtually all cases, will be more familiar with its own ratemaking processes and therefore possess a better ability to assess if rates it previously approved are appropriate for the acquired system than rates approved by a different regulatory authority. A similar premise does not apply to geographic area. For example, in many counties there are dense urban areas situated only a few miles away from sparsely populated rural areas, or there are large disparities in terms of existing quality of service, customer class profile, or access to surface water. When relevant, the commission will consider the geographic area as part of its just and reasonable determination, but this may not be a relevant factor in every situation.

Proposed §24.240(c)(5) - Phased-in rates

Proposed §24.240(c)(5) states if the in-force tariff contains rates that are phased in over time, any step of the phase-in rates included in the tariff may be considered an authorized acquisition rate if it is in the public interest.

TWU recommended clarifying that a request for an initial rate that has a phased-in rate should be construed as a request for the phase that is in place at the time the application under TWC §13.301 is filed, all subsequent phases, and the final rate.

TAWC commented that subsection (c)(5) is "unclear and somewhat contradictory" as it "seems to contemplate simultaneously using both a selected step of a set of phased rates in an in-force tariff and the same phase-in schedule from an in-force tariff." TAWC argued that transferees should be allowed to select rates from any current phase of an in-force tariff as an authorized acquisition rate as there is "no such prohibition in TWC §13.3011."

On the other hand, OPUC supported the proposed rule that allows a phased-in approach if the in-force tariff contains rates that are phased-in over time. OPUC recommended that any rate in a multi-phased tariff may be deemed a rate in-force - by virtue of its inclusion in the tariff and may be given effect by the commission subject to certain exceptions like pass-through rates.

Commission Response

The commission generally agrees with TWU that authorized acquisition rates should use rates that are in effect at the time the application is filed, and that the applicable rates will proceed through each subsequent phase, including the final phase. The commission modifies the rule to state that, unless determined by the commission, the schedule in the tariff for the effective period of each phase will be applied to the customer of the acquired water or sewer system. The commission also modifies the rule to clarify that the commission's review of whether the requested rates are just and reasonable will include an evaluation of whether the final phase of the requested rates are just and reasonable. To facilitate this evaluation, the commission further modifies the rule to clarify that the application must include financial projects, rate schedules, and billing comparisons for each phase in the tariff.

The commission also agrees with TAWC and OPUC that the transferee can request rates based on a phase other than the phase that is currently in place for customers to which the tariff already applies. The commission modifies the rule such that the commission may approve rates that use an earlier phase than is currently in place, or establish a different schedule for the effective period of each phase, if necessary to moderate the effects of a rate increase on customers.

This approach establishes an appropriate balance by ensuring that the final rates are just and reasonable while still offering the potential to mitigate rate shock when the in-force tariff contains a phased-in rate structure.

Proposed §24.240(d)(1)

Proposed §24.240(d)(1) requires an application for authorized acquisition rates to include a comparison of expected revenues under the acquired utility's existing rates and the requested authorized acquisition rates.

TAWC recommended that subsection (d)(1) should only require financial projections for expected revenues from the requested authorized acquisition rates, instead of the acquired utility's existing rates that the applicant is not seeking to use.

TWU stated that comparison of revenues generated at the existing rates with the revenues generated at the requested initial rates, as required under subsection (d)(1), has no bearing on the just and reasonableness of the requested initial rate because these rates are derived from two separate costs of service and is antithetical to the concept of cost-of-service ratemaking. TWU suggested that for revenue comparison, and for ascertaining if the initial rates could result in the transferee overearning, annual reports filed by the transferee would be more appropriate and ensure a holistic review of the transferee' s overall financial position.

Commission Response

The commission declines to accept the recommendations from both TAWC and TWU to remove the revenue comparison between existing and authorized acquisition rates from the proposed rule. The commission agrees with TWU's argument that comparing rates derived from two separate costs of service has no bearing on the just and reasonableness of the requested rates under a conventional cost of service ratemaking. However, as noted by TWU and other commenters, a conventional, compre-

hensive cost of service ratemaking is statutorily prohibited in the context of requests for authorized acquisition rates. However, the change in expected revenues, if the requested rates are approved, is pertinent to a relevant-facts-and-circumstances analysis of the requested rates. If, for example, granting the request would result in an extremely large increase in expected revenues, but there is no corresponding evidence that any system improvements are necessary to provide continuous and adequate service, the commission may consider this indicative that the requested rates are not just and reasonable.

The commission also disagrees with TWU's argument that the commission should instead evaluate the transferee's annual reports. Annual reports may not provide a breakdown of the transferee's financial information by system. Furthermore, requiring a revenue comparison does not preclude the commission from considering the transferee's annual reports, when appropriate.

Proposed §24.240(d)(2) - Capital improvements plan

Proposed §24.240(d)(2) requires a capital improvements plan for the acquired system to be included in the application.

TAWC and TWU argued that the transferee should not be required to provide a capital improvements plan. TWU stated that the requirement to provide a capital improvements plan is broad and vague and the proposed rule also does not clarify what form or type of information may be considered sufficient to fulfil this requirement.

Commission Response

The commission does not agree with commenters that the requirement to provide a capital improvements plan is broad or vague. However, the commission removes the requirement for a transferee to include a capital improvements plan in an application, because the commission regularly requires a capital improvements plan as a part of all STM applications based on the requirements of TWC §13.244. Therefore, the proposed requirement is duplicative and unnecessary.

Proposed §24.240(d)(3) - Explanation for the Tariff

Proposed §24.240(d)(2) requires an explanation for the tariff or rate schedule the tranferee proposes to use as authorized acquisition rates if it has multiple eligible in-force tariffs or rate schedules.

TAWC recommended that proposed subsection (d)(3) be deleted, because it goes beyond the statutory requirements listed under TWC §13.3011.

Commission Response

The commission declines to modify the rule to remove the requirement that a transferee with multiple in-force tariffs provide an explanation for which tariff it based its request for authorized acquisition rates on, as requested by TAWC. The primary policy justification for allowing a transferee to immediately begin charging different rates without the full scrutiny of a rate case is to expedite transactions necessary to ensure the customers of the acquired system are served by an entity capable of providing them with continuous and adequate service. In the interest of this pressing policy objective, the transferee is permitted to use rates that have been approved by a regulatory authority, because such rates are the only available rates that have been subject to the scrutiny of a formal rate case. However, if the transferee has multiple tariffed rates that could have been applied, the existence of these other rates are part of the facts and circumstances surrounding the request and may be relevant to the just and reasonable determination. The commission does, however, modify the proposed rule to clarify that this explanation must include a list of the eligible tariffs.

Proposed §24.240(d)(5) - Acquiring Utility and Affiliated Entities

Proposed §24.240(d)(5) establishes a requirement for an "acquiring utility" to disclose in its initial rates application if the acquired and acquiring systems are affiliates or have been affiliates in the preceding five years.

Double Diamond stated that the statutory intent of TWC §13.3011 is to facilitate acquisition of underperforming water and sewer systems by utilities that can operate these systems effectively, not to allow acquiring utilities to merge their affiliated utilities under the umbrella of the affiliated system that has the highest tariffed rates. Further, Double Diamond argued that such an outcome would circumvent the statutory intent of TWC §13.3011 and would adversely impact ratepayers because the rates being paid would be wholly disconnected from the cost of serving those ratepayers.

Double Diamond recommended adding a definition of the term "Acquiring Utility" that specifically excludes an entity that is seeking to merge with an affiliated entity. Double Diamond also recommended that the term "affiliate" be tied to the definition in §24.3(3) for "Affiliated Interest or Affiliate".

Alternatively, Double Diamond argued that a transferee requesting authorized acquisition rates for a transaction involving an affiliate be required to provide a cost of service or rates study to support its request.

Commission Response

The commission declines to tie the term "affiliate" to the definition of "affiliated interest or affiliate" in §24.3, because it is unnecessary. The definitions in §24.3 apply to the entirety of Chapter 24, including §24.240. The commission further declines to define "acquiring utility" as a term that specifically excludes a utility acquiring an affiliate, because this conflicts with the plain language of the statute. TWC §13.3011 provides that any "person" that files a request for the "purchase or acquisition" of a water or sewer system may request approval of authorized acquisition rates. As defined in both statute and commission rule, an affiliate relationship can be established with a little as a five percent interest. Accordingly, it is reasonable that even a person that already has such an ownership interest can still "purchase or {acquire}" the remainder of the system.

The commission also declines to require a cost of service study for all affiliate transactions requesting authorized acquisition rates. The commission agrees with Double Diamond that affiliates could attempt to use this rule to shift multiple systems to a higher rate without a rate case, and that requiring a cost of service study on known and measurable changes required to provide adequate service would not violate the statutory prohibition on requiring a rate proceeding. However, there is no statutory basis for imposing a materially higher mandatory requirement on affiliates than on nonaffiliates. Under the adopted rule, the commission will conduct a rate review of every request for authorized acquisition rates to ensure it results in just and reasonable rates. This review will consider the facts and circumstances involved in each case, and the applicant carries the burden to demonstrate that the rates are just and reasonable. Accordingly, an applicant may elect to provide such a study in support of its request.

In recognition of the risk of strategic transactions between affiliates designed to circumvent rate reviews, the commission does require requests for acquisition rates in transactions involving affiliates to include an explanation for why the transferee is requesting authorized acquisition rates instead of filing a rate case. This explanation will allow the commission to consider the reasoning in support of the request as part of the facts and circumstances assessed as part of its determination of whether the requested rates are just and reasonable.

Proposed §24.240(d)(7) - Documentation from most recent base rate case

Proposed §24.240(d)(7) requires an application for authorized acquisition rates to provide documentation from the most recent base rate case in which the requested authorized acquisition rates were approved.

TWU commented that information required under subsection (d)(7) is vague and goes beyond what is required statutorily. TAWC commented that subsection (d)(7) should be limited to the order or other evidence of a regulatory decision approving the tariff that the transferee seeks to use. TAWC argued that "documentation" from the base rate case that resulted in the regulatory approval is publicly available and should not be required. Such a requirement could entail thousands of pages that would unreasonably burden the STM application record.

Commission Response

The commission agrees that proposed subsection (d)(7) should be clarified. The commission modifies the requirement - as adopted (d)(4) - to clarify that the documentation must be sufficient to allow the commission to evaluate what was included in the revenue requirement that was used to establish the authorized acquisition rates. This information is necessary to allow the commission to evaluate if there are any charges or components in the requested rates that would be unjust or unreasonable, such as a pass through or other local or system-specific charge, if applied to the acquired system.

The commission also agrees that this information is typically publicly available online, so the commission modifies the rule to allow the transferee to provide a website where the information can be located in lieu of the actual documents.

Proposed §24.240(d)(8) - Other information

Proposed §24.240(d)(8) requires the applicant to provide any other information necessary to demonstrate that the authorized acquisition rates are just and reasonable and that the request is in the public interest.

TWU commented that the information required under subsection (d)(8) is both vague and goes beyond what is required statutorily. Further, TWU and TAWC argued that such a requirement could lead to contention on what form or type of information may or may not be sufficient in an application.

TAWC commented that subsection (d)(8) is unnecessary because discussions around the public interest of a transaction are already prescribed by the STM rule and application form.

Commission Response

The commission makes several modifications to proposed subsection (d)(8). To address TWU's concerns that the vagueness of the requirement could lead to sufficiency challenges to the application, the commission modifies the proposed requirement to require "additional explanation, including any applicable documentation, supporting the request to charge authorized acquisition rates, including: This modification will allow the transferee to articulate the facts and circumstances that it believes supports its request.

The commission also relocates the requirement that the transferee justify its choice of tariffs and the required explanations for affiliate transactions to this paragraph. This appropriately groups the explanation-based application requirements together. As discussed previously, the commission also modifies this paragraph to include a requirement that the transferee include an explanation for how granting the request for authorized acquisition rates would change the public interest analysis regarding the proposed acquisition, according to any applicable criteria listed in §24.239(h)(5). Finally, the commission modifies the rule to more specifically reflect that the public interest determination is made under §24.239 on the transaction as a whole, whereas the commission's review of the request for authorized acquisition rates is primarily focused on whether the requested rates are just and reasonable as applied to the customers of the acquired system.

Proposed §24.240(e) - Notice

Proposed §24.240(e) contains the notice requirements an transferee must meet, in addition to the notice requirements for applications filed under §24.239. Specifically, it requires the notice to include an explanation of how intervention differs from protesting a rate increase, a rate schedule showing the existing rates and the authorized acquisition rates, and a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

TAWC disagrees with proposed subsection (e) in its entirety. TAWC stated that the commission-approved notices for STM applications using TWC §13.3011 should only include the initial rates that the transferee is requesting to charge post-acquisition in addition to standard STM application notice requirements. TWU agreed with TAWC's comments and recommended the commission change the notice requirements to focus on providing customers with information about the requested initial rates in a form and manner that keeps it separate and distinct from the form and notice contents required for a rate case. TWU also recommended deleting paragraphs requiring information about the differences in intervening in and protesting a rate increase. TWU also included addition of a webpage address where a copy of the tariffs can be accessed by ratepayers.

Commission Response

The commission disagrees with TAWC's and TWU's comments about the contents of the notice. The requirement to provide an explanation of how intervening in an STM docket is different from protesting a rate increase is essential to ensure that an affected ratepayer understands the process before filing a motion to intervene.

The commission also disagrees with commenters that the notice should not provide information on the existing rates or comparisons between the existing and requested rates. The only reasoning provided by commenters in support of their position is that these notice requirements are too similar to the notice requirements for a rate case. While this is not a full rate case, ratepayers that are subject to a change in rates are entitled to fully understand the consequences of that rate change and be given an opportunity to make an informed decision on whether to intervene in the proceeding. Requiring the notice to include some information that is included in the notice requirements for

a rate case does not, as commenters seem to imply, violate the statutory prohibition on requiring a transferee to initiate a rate case to request authorized acquisition rates.

The new rule is adopted under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also adopted under TWC §13.301 which governs the Sale, Merger, etc.; Investigation; Disallowance of Transaction and TWC §13.3011 that relates to Initial Rates for Certain Water or Sewer Systems after Purchase or Acquisition.

Cross Reference to Statute: Texas Water Code §§13.041,13.301, and 13.3011.

§24.240. Water and Sewer Utility Rates After Acquisition.

(a) Applicability. This section applies to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011. For purposes of this section, the term "transaction" is used to align with its usage in the procedural provisions of §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Authorized acquisition rates--Initial rates that are in force and shown in a tariff filed with a regulatory authority for the transferee for another water or sewer system owned by the transferee on the date an application is filed for the acquisition of a water or sewer system under §24.239 of this title.

(2) Existing rates--Rates a transferor charged its customers under a tariff filed with a regulatory authority prior to the water system or sewer system being acquired.

(3) Initial rates--Rates charged by a transferee to the customers of an acquired water or sewer system upon approval of the transaction by the commission. An initial rate may be an existing rate, an authorized acquisition rate, or a rate authorized by other applicable law.

(c) Initial Rates.

(1) A transferee must use existing rates as initial rates unless the commission authorizes, under this section or other applicable law, the use of different initial rates.

(2) A transferee may request commission approval to charge authorized acquisition rates to the customers of the water or sewer system for which the transferee seeks approval to acquire as part of an application filed in accordance with §24.239 of this title.

(3) If the transferee has in-force tariffs filed with multiple regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the same regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

(4) Phased-in rates. If the in-force tariff contains rates that are phased in over time, the provisions of this paragraph apply.

(A) Unless determined otherwise by the commission, the schedule in the tariff for the effective period of each phase will be applied to the customers of the acquired water or sewer system. To moderate the effects of a rate increase on customers, the commission may approve authorized acquisition rates that start customers of the acquired water or sewer system on an earlier phase than is in place for the customers to which the tariff already applies or establish a different schedule for the effective period of each phase.

(B) The transferee's application must include financial projections, rate schedules, and billing comparisons, consistent with the requirements of subsection (d) of this section, for each phase in the in-force tariff.

(C) The commission's review of whether the authorized acquisition rates are just and reasonable under subsection (f) of this section will include an evaluation of whether the final phase of the requested rates are just and reasonable.

(5) Public interest determination. In determining whether to approve an acquisition under §24.239 of this title, the commission will consider whether approving the transferee's request to charge authorized acquisition rates under this section would change whether the proposed transaction would serve the public interest under §24.239(h)(5) of this title.

(d) Application. In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 proceeding must include the following:

(1) a rate schedule showing the existing rates and the requested authorized acquisition rates;

(2) financial projections including a comparison of expected revenues under the acquired water or sewer system's existing rates and the requested authorized acquisition rates;

(3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;

(4) documentation from the most recent base rate case in which the rates that the transferee is requesting to use as authorized acquisition rates were approved; this documentation must be sufficient to allow the commission to evaluate what was included in the revenue requirement for the requested rates and, if available online, may consist solely of a web address where the documentation can be located and the applicable docket number or any other information required to locate the documentation;

(5) a disclosure of whether the transferor and transferee are or have been affiliates in the five-year period before the proposed acquisition, and the nature of each applicable affiliate relationship;

(6) additional explanation, including any applicable documentation, supporting the request to charge authorized acquisition rates, including:

(A) that the requested authorized acquisition rates would be just and reasonable rates for the customers of the acquired system and for the transferee;

(B) how approving the requested rates would change how the commission should evaluate whether the proposed transaction would serve the public interest, according to any applicable criteria listed in §24.239(h)(5) of this title;

(C) if the transferee has multiple eligible in-force tariffs or rate schedules, a list of eligible tariffs or rate schedules and an explanation for the tariff or rate schedules the transferee proposes to use for authorized acquisition rates;

(D) if the transferor and transferee are affiliates or have been affiliates in the five-year period before the proposed acquisition, the application must also include an explanation for why the transferee is requesting to charge authorized acquisition rates instead of using other available ratemaking proceedings.

(e) Notice requirements. Unless the commission waives notice in accordance with other applicable law, a transferee requesting approval to charge authorized acquisition rates under this section must,

as part of the notice provided under §24.239 of this title, also provide notice of the information outlined in this subsection. Commission staff must incorporate this information into the notice provided to the transferee for distribution after the application is determined to be administratively complete.

(1) How intervention differs from protesting a rate increase.

(2) A rate schedule showing the existing rates and the authorized acquisition rates.

(3) A billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

(f) Commission review. The commission will, with or without a public hearing, investigate the request for authorized acquisition rates to determine whether the requested rates are just and reasonable for the acquired customers and the transferee. That a regulatory authority has determined that the requested rates are just and reasonable for a water or sewer system to which the rates already apply is not, in itself, sufficient to conclude that the requested rates are just and reasonable for the acquired water or sewer system.

(1) Public hearing. As part of its determination on whether to require a public hearing on the proposed transaction under §24.239(h) of this title, the commission will also consider whether a hearing is required to determine if the requested authorized acquisition rates are just and reasonable.

(A) If the commission requires a public hearing under this section or §24.239(h) of this title, the request to charge authorized acquisition rates will not be approved unless the commission determines that the requested rates are just and reasonable.

(B) If the commission does not require a public hearing under this section or §24.239(h) of this title, and the transferee has complied with the notice provisions of this section, the request to charge authorized acquisition rates will be approved in the commission's order approving the transaction. This subparagraph does not apply if the commission does not approve the transaction.

(2) Scope of rate review. The commission will determine whether the requested rates are just and reasonable based on the relevant facts and circumstances, subject to the limitations of subparagraph (A) of this paragraph.

(A) The transferee is not required to support its request for authorized acquisition rates by initiating a rate proceeding, establishing the cost of service for the acquired water or sewer system, or establishing substantial similarity between the acquired water or sewer system and the water or sewer system to which the requested rates already apply. The transferee is also not required to defend the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.

(B) The commission may consider whether any charges or significant components of the requested authorized acquisition rates (e.g., local or system-specific charges, pass throughs, etc.) would be unjust or unreasonable if applied to the acquired water or sewer system. The commission may also consider evidence of whether the customers of the acquired water or sewer system are currently receiving continuous and adequate service. The commission may also consider evidence of whether the requested rates are generally consistent with the rates charged to similar water or sewer systems. The commission's review is not limited to the factors enumerated in this subparagraph.

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 March 21, 2024.

TRD-202401255
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: April 10, 2024
Proposal publication date: September 29, 2023
For further information, please call: (512) 936-7322

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. PROFESSIONAL STANDINGS

22 TAC §501.62

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.62 concerning Other Professional Standards, without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 464) and will not be republished.

The Board attempts to identify, as much as possible, all professional standards that a CPA is expected to adhere to. Forensic services is a professional standard that has not previously been identified.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 March 21, 2024.

TRD-202401246
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 10, 2024
Proposal publication date: February 2, 2024
For further information, please call: (512) 305-7842

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.9

The Texas State Board of Public Accountancy (Board) adopts an amendment to §521.9 concerning Certificate Fee, without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 466) and will not be republished.

Individuals applying for their initial CPA license are assessed a fee to cover the administrative costs of processing an application. The rule amendment clarifies that the fee will not be refunded for any reason.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 March 21, 2024.

TRD-202401247
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 10, 2024
Proposal publication date: February 2, 2024
For further information, please call: (512) 305-7842

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER E. LEAVE POOLS

31 TAC §51.143

The Texas Parks and Wildlife Commission in a duly notice meeting on January 25, 2024, adopted new 31 TAC §51.143, concerning Leave Pools, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7864). The rule will not be republished.

The most recent session of the Texas Legislature enacted Senate Bill 922, which amended Parks and Wildlife Code, Chapter 11, by adding new §11.0183, which requires the department to allow a peace officer commissioned by the department to voluntarily transfer up to eight hours of compensatory time or annual leave per year to a leave pool for use as leave for legislative activities conducted on behalf of a law enforcement association. Senate Bill 922 requires the commission to adopt rules and prescribe procedures relating to the operation of the legislative leave pool.

The new rule sets forth the purpose of the leave pool, designates a pool administrator, and requires the pool administrator, with the advice and consent of the executive director of the agency, to develop and implement operating procedures consistent with the requirements of the new rule and relevant law governing operation of the pool.

The department received two comments opposing adoption. Both commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule would require the department to hire additional employees to compensate for employees not available for scheduled duties. The department disagrees with the comment and responds that there is no scenario in which additional employees would be necessary to compensate for peace officers using the leave pool. No changes were made as a result of the comment.

One commenter opposed adoption and stated that S.B. 922 does not permit use of leave pool for activities on behalf of an association with fewer than 300 members. The department agrees and responds that the commission does not have the authority to modify or eliminate any provision of the statute. No changes were made as a result of the comment.

The department received one comment supporting adoption of the rule as proposed.

The new rule is adopted under the authority of Parks and Wildlife Code, §11.0183, which requires the commission to adopt rules to create and administer a peace officer legislative leave pool.

The adopted new rule affects Parks and Wildlife Code, Chapter 11.

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 March 21, 2024.

TRD-202401243
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: April 10, 2024
Proposal publication date: December 22, 2023
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

The Texas Juvenile Justice Department (TJJD) adopts the repeals of §385.8101, Public Information Requests; §385.8117, Private Real Property Rights Affected by Governmental Action; §385.8136, Notices to Public and Private Schools; 385.8137, Media Access; §385.8141, Confidentiality; §385.8153, Research Projects; §385.8161, Notification of a Facility Opening

or Relocating; §385.8163, Decentralization; §385.9959, Transportation of Youth; §385.9967, Court-Ordered Child Support; and §385.9993, Canteen Operations, without changes as proposed in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5644). The repeals will not be republished.

SUMMARY OF CHANGES

The repeals of these sections allow them to be recodified in TJJD policies not contained in the Texas Administrative Code.

PUBLIC COMMENTS

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

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §§385.8101, 385.8117, 385.8136, 385.8137, 385.8141, 385.8153, 385.8161, 385.8163

STATUTORY AUTHORITY

The repeals are adopted under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these adopted repeals.

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 March 21, 2024.

TRD-202401244

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Effective date: July 1, 2024

Proposal publication date: September 29, 2023

For further information, please call: (512) 490-7278

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §§385.9959, 385.9967, 385.9993

STATUTORY AUTHORITY

The repeals are adopted under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these adopted repeals.

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 March 21, 2024.

TRD-202401245

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Effective date: July 1, 2024

Proposal publication date: September 29, 2023

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