

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** May 30, 2008

Thru: LaDonna Castañuela, Chief Clerk
Glenn Shankle, Executive Director

From: Dan Eden, Deputy Director
Office of Permitting, Remediation and Registration

Docket No.: 2007-0998-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 291, Utility Regulations
HB 3475 and SB 3: Border Counties' Water and Sewer Systems, CCNs and Rates
Rule Project No. 2007-048-291-PR

Scope of the rulemaking:

The adopted rules would implement changes from the 80th Legislative Session, 2007, including House Bill (HB) 3475 and specific sections of Senate Bill (SB) 3 regarding certain capabilities of retail public utilities to provide water and sewer service in the state, by amending various sections of Chapter 291.

Reasons for the rule package:

In 2007, the 80th Legislature passed SB 3 and HB 3475. HB 3475, and §2.05, Definitions; §2.06, Consolidated Billing; §2.07, Rates; §2.08, Certificates of Convenience and Necessity (CCNs); §2.32, Duties of Water Service Providers; §2.39, CCNs; and §7.01, Rates, of SB 3 relate to retail public utilities. This legislation amended Texas Water Code (TWC), §13.002, §13.147, §13.188, §13.2451, §49.2122, and Local Government Code, §402.017 and §402.911. This rulemaking implements these changes by amending Chapter 291, Utility Regulations.

Statutory Authority:

The amendments are adopted under TWC, §5.102, which provides the commission the general powers to carry out its duties under the TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. Finally, TWC, §13.188 mandates that the commission shall adopt a procedure allowing a utility to file an application with the commission to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs.

Potentially controversial matters:

None.

Public comment:

The commission held a public hearing on February 26, 2008. The comment period closed on March 3, 2008. The commission received written comments from Representative Callegari; Aqua Texas, Inc. (Aqua); Russell & Rodriguez L.L.P. on behalf of the Cities' Coalition on CCNs (Cities' Coalition); and Texas Rural Water Association (TRWA).

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Representative Callegari and Aqua commented that the proposed rules did not include a procedure for water and sewer utilities to file an application with the commission to adjust their rates to reflect changing energy costs. In its comments, Aqua provided a recommended procedure. Additionally, Representative Callegari and Aqua commented that the proposed rules did not provide a proper mechanism for utilities to pass through documented increases and decreases in energy costs within a reasonable time.

TRWA commented that the definition of "nonfunctioning system" in proposed §291.3(28) improperly applies only to utilities. Under TWC, §13.046(a), TRWA proposed to broaden the definition of "nonfunctioning system" to include a retail public utility that is failing to maintain adequate water or wastewater capacity; is failing to maintain facilities capable of providing continuous and adequate service; or is failing to provide service adequate for the protection of public health and welfare or the environment. TRWA also commented that proposed §291.21(k)(2)(E) failed to accurately implement the procedure contemplated by TWC, §13.046(a), and as proposed, this subparagraph does not protect cities, districts, or nonprofit water supply companies from expensive and time-consuming appeals by customers of a nonfunctioning system.

Significant changes from proposal:

In response to comment, the proposed §291.21(k)(4) was deleted and in its place §291.21(b)(2)(A)(ix) and (p) were added to provide an energy cost adjustment clause procedure. Also in response to comment, the proposed changes to §291.3(28), §291.14(b)(2), §291.21(k)(2)(E), and §291.144(b) were withdrawn. These proposed changes all relate to the implementation of HB 149, 80th Legislative Session, 2007, and will be addressed in a subsequent rulemaking.

Key points in adoption rulemaking schedule:

<i>Texas Register</i> proposal publication date:	February 1, 2008
Six-month <i>Texas Register</i> filing deadline:	August 1, 2008
Anticipated <i>Texas Register</i> publication date:	July 4, 2008
Anticipated effective date:	July 10, 2008

Agency contacts:

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Attachments

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