

PROTESTING A RATE CHANGE MADE BY A PRIVATE OR INVESTOR-OWNED UTILITY:

A CUSTOMER GUIDE TO THE PUBLIC HEARING PROCESS

You have received a notice telling you that your utility has requested approval to change the rates it charges you for water or wastewater service. You can either:

- ◆ accept the rate change because you believe it is reasonable.
- ◆ contact your utility for additional information so you can decide if the change is reasonable.
- ◆ file a protest of the rate change with the Texas Commission on Environmental Quality (TCEQ) or the municipality listed in the notice and ask that a hearing be held because you believe the change is not reasonable. **If you request a hearing, you should be prepared to actively participate in the hearing process, either personally or through a representative named, in writing, by you.**

Knowing how rates are designed and how utilities fund improvements may help you decide whether the rate change is reasonable. To find out, you may call TCEQ Publications at 512/239-0028 and ask for *Utility Funding and Rate Design: A Guide to Customers of Private or Investor-Owned Utilities*. You can also get this information on the TCEQ Web site at www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/gi/gi-257_169196.pdf.

THERE IS A DEADLINE FOR REQUESTING A HEARING should you decide to protest the rate increase. Be sure to read the

utility's notice carefully, because it includes information you need to know about when and how to protest the rate change or request a hearing. The remainder of this brochure describes what to expect from the hearing process itself.

The Public Hearing Process

The hearing process is required by law if the lesser of 10,000 or 10 percent of the utility's customers request a hearing. Hearings are normally held in Austin.

The Preliminary Hearing

The process begins with a *preliminary hearing*, which usually lasts one day. This preliminary hearing is an opportunity for everyone participating in the hearing:

- ◆ to discuss their concerns and issues in a semi-formal environment;
- ◆ to see if they can reach an agreement about how to address those concerns and issues;
- ◆ to agree on rates that would be appropriate; and
- ◆ to become a party to the rate change case.

The preliminary hearing is conducted by an *administrative law judge* assigned by the State Office of Administrative Hearings. The administrative law judge:

- ◆ presides over the hearing.
- ◆ grants *party* status to persons who want to actively participate in the hearing. For more information about party status, see "Participants and Their Roles."
- ◆ takes *public comments* from anyone who does not want to participate as a party, and then leaves the hearing to allow the named

parties an opportunity to talk with each other and reach an agreement on the rates.

- ◆ prepares an *order* for TCEQ approval, if the parties reach an agreement.

If the parties cannot reach an agreement, the administrative law judge can extend the hearing to a *formal evidentiary hearing*.

The Formal Evidentiary Hearing

This formal hearing generally lasts several days and is usually held in Austin. The formal hearing may:

- ◆ involve rate payers representing themselves, but since it is a formal legal hearing, obtaining the services of an attorney is usually in your best interest;
- ◆ involve a significant amount of pre-hearing work to gather information from all named parties;
- ◆ require that the parties have witnesses to provide sworn testimony to document their positions;
- ◆ require that the parties cross-examine the other parties' witnesses;
- ◆ involve post-hearing filings and review of the administrative law judge's proposed decision;
- ◆ involve costs which can, by law, be passed on to the customers in their rates;
- ◆ involve expenses for you as a hearing participant for which you cannot be directly reimbursed, although all customers could benefit from a decrease in rates; and
- ◆ require pre-filed testimony.

continued

Participants and Their Roles

Parties Named by the

Administrative Law Judge:

(Note: Customers of a utility seeking a rate change are generally entitled to party status.)

- ◆ must appear at the preliminary hearing, either personally or through an authorized representative.
- ◆ must show they have a personal interest that could be affected by the rate change.
- ◆ have the right to participate in settlement negotiations.
- ◆ have the right **and** the responsibility to participate in *discovery* if the case does not settle. "Discovery" is an exchange of questions and answers among all the parties and can result in significant costs if there are many parties.
- ◆ have the right **and** the responsibility to file motions and arguments.
- ◆ have the right to present witnesses and evidence at an evidentiary hearing.

The TCEQ is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation, or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TCEQ at 512/239-0028, Fax (512) 239-4488 or 1-800-RELAY-TX (TDD), or by writing P.O. Box 13087, Austin, TX 78711-3087.

- ◆ have the right to cross-examine (question) other parties' witnesses.
- ◆ have the right to appear before the TCEQ commissioners when the case is considered for a final decision.
- ◆ could be required to pay a portion of the cost for a court reporter if an evidentiary hearing is required.

Administrative Law Judge,

State Office of Administrative Hearings:

- ◆ opens and presides over the hearing.
- ◆ ensures the hearing process complies with applicable laws and rules.

Executive Director, TCEQ:

The executive director is represented by a staff attorney, accountant, and engineer who:

- ◆ evaluate the application for compliance with TCEQ rules and policies.
- ◆ provide support and information to help the parties reach an agreement that is fair to customers and the utility.

Public Interest Counsel (PIC), TCEQ:

- ◆ is, by law, a party to the hearing.
- ◆ may be represented by a staff member of the TCEQ's Office of the Public Interest Counsel.

- ◆ is charged with the responsibility of helping parties understand the process and everyone's role in it.
- ◆ does **not** represent either the utility or the customers.
- ◆ can be contacted at 512/239-6363.

Utility:

- ◆ is the party requesting the rate/tariff change.
- ◆ is responsible for presenting its application.
- ◆ has to provide sufficient documentation to support its request.
- ◆ is typically represented by an attorney and a rate consultant.

Additional Information

Please contact:

Utilities and Districts Section
Water Supply Division



TCEQ

512/239-4691

www.tceq.state.tx.us

State Office of Administrative Hearings

512/475-4993

 printed on recycled paper
 using soy-based ink

revised 9/04 GI-266



WATER SUPPLY DIVISION, MC 153
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
PO BOX 13087
AUSTIN TX 78711-3087

RETURN SERVICE REQUESTED