

QUESTION NO. 2-20

Does TCMUD 12 have agreements with developers that address the build-out schedule or plan of the developer(s)? If so, please provide a copy of each such agreement that was in effect commencing in 2008, and continuing until the present.

TCMUD 12'S RESPONSE:

TCMUD 12 does not have agreements with developers that address the build-out schedule or plan of the developers.

QUESTION NO. 2-21

Refer to page 12, line 21. Please describe the referenced "methodology change."

TCMUD 12'S RESPONSE:

Mr. DiQuinzio is referencing the methodology change stated on Ms. Nelissa Heddin's spreadsheet found at WTCPUA00009060.

QUESTION NO. 2-22

Refer to page 13, lines 2-9. What was the referenced anticipated cost of TCMUD 12 owning any part of the West Travis County System? Provide all documents that relate to the determination of the anticipated cost.

TCMUD 12'S RESPONSE:

TCMUD 12 does not have records to reflect the determination of the anticipated cost of owning a part of the West Travis County System. The cost figure was developed by a group of parties that were interested in acquiring the system. That group became the WTCPUA.

QUESTION NO. 2-23

Refer to page 13, line 18. Describe the "business dealings with LMUD" that support your conclusion that LMUD would not or could not provide wholesale water service to The Highlands. Provide all documents that relate to your contention.

TCMUD 12'S RESPONSE:

The "business dealings with LMUD" referenced in the testimony pertain to conversations between Joseph A. DiQuinzio and LMUD personnel and representatives. Through those conversations, Mr. DiQuinzio learned what LMUD was willing to provide and what it was not willing to provide. There are no documents responsive to this request.

QUESTION NO. 2-24

Has TCMUD 12 ever requested, in writing, that LMUD provide wholesale water service to The Highlands? If so, provide all related documents, including any response from LMUD. If not, explain why such a request was not made, and provide details as to who made the decision, if any, to not make such a request.

TCMUD 12'S RESPONSE:

No written request was made to LMUD requesting wholesale water service to the Highlands. The decision to not make the request in writing was based on the information that had been provided to Joseph A. DiQuinzio in his communications with LMUD personnel and representatives. As a result of those conversations, it was Mr. DiQuinzio's impression and understanding at the time that LMUD would not or could not provide water to the Highlands.

QUESTION NO. 2-25

Refer to page 13, line 28. Provide detailed information regarding the referenced "emergency interconnect," including its location, size, capacity, cost, and date of construction. Provide dates on which the emergency interconnect was used.

TCMUD 12'S RESPONSE:

Please see Attachment 2-25, which pursuant to PUC Proc. R. 22.144(h) is available for inspection at 4401 Westgate Blvd., Ste. 330, Austin, Texas 78745. Please contact Miguel A. Huerta at (512)494-9500 to arrange an appointment for inspection of the documents.

QUESTION NO. 2-26

Refer to page 14, lines 8-10. Explain why the referenced "emergency interconnection" is not actually connected, and include in your explanation why it is not connected and the value obtained by TCMUD 12 in constructing same.

TCMUD 12'S RESPONSE:

The emergency interconnection is a physical connection between the two systems but the two systems are not actually connected. There is a valve at each end of the emergency interconnect. Both of those valves are closed. In order to open those valves, authorization would be needed from both LMUD and the WTCPUA.

The value obtained by TCMUD 12 in building the emergency interconnect is that if an emergency occurs that warrants opening the interconnect, it could approach LMUD and WTCPUA to seek authorization to open the interconnect temporarily in the event of an emergency.

QUESTION NO. 2-27

Has TCMUD 12 ever requested that LMUD approve the emergency interconnection between LMUD and Rough Hollow? Please explain why such request was or was not made. Provide all relevant documents.

TCMUD 12'S RESPONSE:

No, TCMUD 12 has never requested an emergency interconnection between LMUD and Rough Hollow and no such interconnection exists. TCMUD 11 is directly connected to LMUD.

QUESTION NO. 2-28

Has TCMUD 12 ever requested that the WTCPUA approve the emergency interconnection between the WTCPUA and The Highlands? Please explain why such request was or was not made. Provide all relevant documents.

TCMUD 12'S RESPONSE:

TCMUD 12 has never requested that the WTCPUA approve the emergency interconnection between the WTCPUA and The Highlands. If an emergency were to arise, TCMUD 12 would need authorization from both LMUD and the WTCPUA.

QUESTION NO. 2-29

Refer to page 15, line 11. Define "disparate bargaining power" as used in your testimony.

TCMUD 12'S RESPONSE:

"Disparate bargaining power" means when one party has greater bargaining power than the other as I explain on page 11 of my testimony.

QUESTION NO. 2-30

Refer to page 16, lines 20-23. Did you attend any of the meetings with WTCPUA with regard to the rates effective January 1, 2014? If yes, please identify the meetings you attended.

TCMUD 12'S RESPONSE:

Yes, Joseph DiQuinzio did attend meetings with WTCPUA with regard to the rates effective January 1, 2014. Mr. DiQuinzio attended meetings with the WTCPUA on July 11, 2013, October 30, 2013, and November 8, 2013. In addition, a review of Mr. DiQuinzio's calendar shows that he was scheduled to attend meetings with the WTCPUA on the following dates:

March 25, 2013
April 1, 2013
April 4, 2013
April 24, 2013
May 30, 2013
November 20, 2013

QUESTION NO. 2-31

Provide a copy of the following testimony listed on Exhibit JJJ-2 of Mr. Joyce's Direct Testimony. If any of the following testimony is readily available online, detailed information on how the specific testimony may be obtained (e.g., providing the Uniform Resource Locator ("URL") for the appropriate webpage or File Transfer Protocol ("FTP") site may be provided in lieu of providing a copy of the testimony. If the work performed by Mr. Joyce in the "Representative Utility Projects" did not result in testimony being either filed or prepared by him, please provide a copy of any reports, memoranda, or recommendations prepared by Mr. Joyce for the client:

- a. Line 1: TNRCC Dockets 7796-M & 7831-M; City of Kilgore, Texas.
- b. Line 9: TNRCC Docket 8293-M; United Irrigation District of Hidalgo County, Texas.
- c. Line 13: TNRCC; Culleoka Water Supply Corporation.
- d. Line 14: TNRCC Docket 8338-A; City of Lewisville, Texas.
- e. Line 15: "N/A"; City of Paris, Texas.
- f. Line 16: TNRCC; City of Knollwood.
- g. Line 20: TNRCC; Lakeside Utilities, Inc.~
- h. Line 32: "N/A"; Fort Worth Water Department.
- l. Line 40: "N/A"; Pflugerville Water and Wastewater Utility.
- J. Line 41: "N/A"; Travis County Municipal Utility District No.4.
- k. Line 48: TNRCC Docket 97-0049-UCR; SOAH Docket 582-97-0178; Waco Water and Wastewater Utility.
- l. Line 58: TCEQ Docket 2004-0979-UCR; Chisholm Trail SUD.
- m. Line 59: TCEQ Docket 2004-1120-UCR; Aqua Texas.
- n. Line 60: Superior Court of Fulton County, Georgia; 2000-CV-20379; City of Atlanta Water Utility.
- o. Line 68: TCEQ; 2006-1919-UCR; Oak Shores Water System.
- p. Line 70: TCEQ Docket 2008-0804-UCR; Kendall County Utility Company.
- q. Line 75: TCEQ Docket 2008-1856-UCR; City of Pecos City.
- r. Line 87: TCEQ Docket 2011-1533-UCR; Monarch Utilities.
- s. Line 94: TCEQ Docket 2012-0065-WR; Upper Trinity Regional Water District.
- t. Line 96: TCEQ Docket 2013-0865-UCR; City of Austin Water Department.
- u. Line 97: TCEQ Docket 2012-0509-UCR; Oak Shores Water System.
- v. Line 99: TCEQ Docket 2012-2707-UCR; Wiedenfeld Water Works, Inc.
- w. Line 102: Texas PUC 42857; Austin Water Utilities.

Prepared by:
Witness:

TCMUD 12'S RESPONSE:

Mr. Joyce was unable to locate a copy of his testimony, report, memoranda or recommendations for the following requests:

- a. TNRCC Dockets 7796-M & 7831-M; City of Kilgore, Texas;
- b. TNRCC Docket 8293-M; United Irrigation District of Hidalgo County, Texas;
- c. TNRCC; Culleoka Water Supply Corporation;
- e. "N/A"; City of Paris, Texas;
- f. TNRCC; City of Knollwood;
- g. TNRCC; Lakeside Utilities, Inc;
- h. "N/A"; Fort Worth Water Department;
- i. "N/A"; Pflugerville Water and Wastewater Utility;
- j. "N/A"; Travis County Municipal Utility District No.4;
- k. TNRCC Docket 97-0049-UCR; SOAH Docket 582-97-0178; Waco Water and Wastewater Utility;
- m. TCEQ Docket 2004-1120-UCR; Aqua Texas;
- n. Superior Court of Fulton County, Georgia; 2000-CV-20379; City of Atlanta Water Utility;
- o. TCEQ; 2006-1919-UCR; Oak Shores Water System;
- q. TCEQ Docket 2008-1856-UCR; City of Pecos City; and
- r. TCEQ Docket 2011-1533-UCR: Monarch Utilities.

No testimony, reports, memoranda, or recommendations developed for:

- l. TCEQ Docket 2004-0979-UCR; Chisholm Trail SUD; and
- u. TCEQ Docket 2012-0509-UCR; Oak Shores Water System.

Please see attachment 2-31, which pursuant to PUC Proc. R. 22.144(h) is available for inspection at 4401 Westgate Blvd., Ste. 330, Austin, Texas 78745. Please contact Miguel A. Huerta at (512)494-9500 to arrange an appointment for inspection of the documents.

- d. TNRCC Docket 8338-A; City of Lewisville, Texas. (Please note, the Rate Study and the Testimony of Mr. Jack Stowe were prepared by Mr. Joyce under the direction of Mr. Stowe.)
- p. TCEQ Docket 2008-0804-UCR; Kendall County Utility Company.
- s. TCEQ Docket 2012-0065-WR; Upper Trinity Regional Water District.

Please see the PUC Interchange for the following

- t. TCEQ Docket 2013-0865-UCR; (SOAH Docket No. 582-13-4617); City of Austin Water Department (now PUCT Docket No. 42857)
- v. TCEQ Docket 2012-2707-UCR; Wiedenfeld Water Works, Inc. (now PUC Docket No. 42849).
- w. Texas PUC 42857; Austin Water Utilities.

Please note: TCEQ Docket No. 2014-0489-UCR (SOAH Docket No. 582-14-3145) is the Austin Wastewater case and is now PUCT Docket No. 42867. This docket was consolidated into PUCT Docket No. 42857.

Prepared by: Jay Joyce
Witness: Jay Joyce

QUESTION NO. 2-32

Provide a copy of the Texas Rural Water Association article entitled "How to Determine Your Cost of Service," referenced in Exhibit JJJ-l, page 5 of 5.

TCMUD 12'S RESPONSE:

Mr. Joyce was unable to locate a copy of this article.

QUESTION NO. 2-33

Were you involved on behalf of any person or entity in the negotiation of the 2008 Water Sale Contract between TCMUD 12 and the LCRA? If yes, describe the extent of your involvement, the dates of your involvement, and provide all documents related to such involvement.

TCMUD 12'S RESPONSE:

No.

QUESTION NO. 2-34

Were you involved on behalf of TCMUD 12 in the negotiation of the 2012 Agreement Regarding Transfer of Operations? If yes, describe the extent of your involvement, the dates of your involvement, and provide all documents related to such involvement.

TCMUD 12'S RESPONSE:

No.

QUESTION NO. 2-35

Do you contend that in establishing its revenue requirement for the rates to be effective on January 1, 2014, the WTCPUA changed from the cash basis to the utility basis? If yes, explain the basis for your contention, and provide citations to all documents that support your contention.

TCMUD 12'S RESPONSE:

No.

QUESTION NO. 2-36

Do you contend that in establishing its revenue requirement for the rates to be effective on January 1, 2014, the WTCPUA changed from the utility basis to the cash basis? If yes, explain the basis for your contention, and provide citations to all documents that support your contention.

TCMUD 12'S RESPONSE:

No.

QUESTION NO. 2-37

Refer to page 7, lines 19-21. Provide all documents that support your conclusion stated on these lines.

TCMUD 12'S RESPONSE:

See Attachment 2-37.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

Subchapter I. WHOLESALE WATER OR SEWER SERVICE.

§24.133. Determination of Public Interest.

- (a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:
- (1) the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;
 - (2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;
 - (3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:
 - (A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;
 - (B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;
 - (C) the seller changed the computation of the revenue requirement or rate from one methodology to another;
 - (D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;
 - (E) incentives necessary to encourage regional projects or water conservation measures;
 - (F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;
 - (G) the rates charged in Texas by other sellers of water or sewer service for resale;
 - (H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser;
 - (4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.
- (b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.

TEXAS REGISTER

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for approval as soon as practicable. RCs may be utilized only after the Executive Director grants approval of the revised initial control plan.

(8) The owner or operator desiring to utilize the RC in accordance with subsection (d) of this section shall document this in the final control plan submitted in accordance with §117.115 or §117.215 of this title (relating to Final Control Plan Procedures). The new emission limit for each unit as calculated in subsection (d) of this section shall be clearly listed and will be considered federally enforceable. RCs may be utilized only after the Executive Director grants approval of the final control plan.

(9) After submission of the final control plan in accordance with §117.115 or §117.215 of this title, an owner or operator who wishes to transfer an RC to revise the basis for compliance with the emission specifications of this chapter shall submit a revised final control plan to the Executive Director in accordance with §117.117 or §117.217 of this title. The owner or operator shall not vary from the representations made in the final control plan without prior approval from the Executive Director.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority

Issued in Austin, Texas, on July 27, 1994.

TRD-9445986

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: August 23, 1994

Proposal publication date: March 1, 1994

For further information, please call: (512) 239-1970

Chapter 291. Water Rates

Subchapter I. Wholesale Water or Sewer Service

• 30 TAC §§291.128-291.138

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§291.131-291.136 and new §§291.128-291.138. New §§291.128-291.138 are adopted with changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3899). The repeals are adopted without changes and will not be republished. This repeal is necessary to address an administrative processing error from a previous rulemaking and does not affect the current rules in §§291.121-291.127, Subchapter H, Utility Submetering. The new §§291.128-291.138 concern appeals of wholesale water and sewer rates.

A public hearing was held on June 10, 1994, and several persons appeared and presented

testimony. These individuals also submitted written comment during the comment period.

The commission received several comments questioning the propriety of this entire rules proposal. Commenters contend the proposal is contrary to constitutional and statutory authority and/or premature. For several years, participants in Texas Water Code Chapter 11, 12, and 13 wholesale rate cases have urged the need for rules governing these proceedings. The courts continue to recognize the commission's jurisdiction in these matters and have reconciled that jurisdiction with the argument that commission review interferes with a constitutional right of contract. The commission believes a review process with an inherent deference to contracts will encourage careful planning by sellers and purchasers, foster regionalization and generate an efficiency factor absent from the current process.

One commenter proposed stylistic and grammatical changes to §§291.130-291.135, 291.137, 291.138. The commission has adopted several of the suggested changes.

One commenter suggested §291.128 be amended to limit its applicability "to instances where service is provided pursuant to a contract." The commission agrees that these rules should apply only to those petitions filed that involve a written contract, including filings submitted pursuant to Chapters 11 and 12 of the Texas Water Code (Water Code).

Several commenters addressed §291.129 claiming the definitions of "Cash Basis" and "Utility Basis" were too restrictive. The commission agrees with the comments on these two definitions and has modified the text accordingly. One commenter suggested that use of the term "demanded" in the definition of "Protested Rate" is inappropriate because it presumes rates stipulated in a contract are "demanded" by the seller. The commission notes that the rule assumes the seller's "protested rate" correctly interprets any existing agreement between the seller and purchaser. There will be instances where the purchaser files a petition or appeal and the commission finds the protested rate does not adversely affect the public interest. The commission decision is not tantamount to a judicial interpretation of any underlying agreement. The parties would still have the courts to seek this redress. In addition, rates set forth in a contract do not generally give rise to appeals before the commission. It is those rates demanded pursuant to a contract that are usually appealed.

A few commenters suggested changes to §291.130 which would impose additional requirements on petitioners, such as requiring them to serve a copy of its petition on the seller complained of and that the petition contain specific factual allegations. One commenter suggests that a petitioner's complaint be subject to sanctions under the Texas Rules of Civil Procedure. The commission agrees that petitioner should serve its complaint on the party against whom the petitioner seeks relief and that the petition should contain specific allegations which will support a finding of at least one criteria identified in §291.133. The section has been revised to reflect these suggestions. The commission

has general discovery rules which can be used in these rate proceedings so there is no need to reference the civil court rules.

Several commenters identified an incorrect reference in §291.131 which the commission has corrected.

One commenter proposed modifications to §291.131 which clarify the executive director's role when reviewing petitions filed under the Water Code, §11.041. Another commenter suggests §291.131 clarify that petitions filed pursuant to the Water Code, §11.041, are also subject to the public interest test in §291.133. This commenter also asks the commission to recognize an authority in the executive director to dismiss the Water Code, §11.041, petitions. The functions performed by the executive director under the Water Code, §11.041, are ministerial, so the commission has revised the section to clearly reflect his role.

The commission received one comment supporting language in §291.132 which allows parties to agree to "opt out" of the bifurcated hearing process. The remaining comment identifies various problems with the rule. One commenter contends the use of a "probable grounds" standard also used in §291.131 is confusing. The commission has revised this section to more accurately identify the purpose of the first phase hearing which is to determine if the protested rate is adverse to the "public interest." Thus, all references to "probable grounds" in §291.132 and subsequent sections have been replaced with "public interest."

Another commenter proposed changes to §291.132 clarifying that a petition will be heard by a hearings examiner before it is presented to the commission. This change is consistent with changes to §291.131 and has been made.

The commission received one comment suggesting the time frames in §291.132 be condensed in order to reduce the possibility of "pancaking" rate cases. The commission believes that even the original 120 day time frame in §291.132 will be difficult to satisfy. Therefore, it is more appropriate to have the time frame begin on the day the petition is forwarded to the office of hearings examiners rather than on the day of filing. This approach will ensure adequate administrative review, particularly of petitions which fall short of meeting minimum filing requirements.

One commenter asks §291.132 be modified to define "relevance," for purposes of first phase discovery, in terms of the specific "probable grounds" allegations raised in the petition. The commission disagrees with this comment and believes such a limitation is understood particularly with the limited time available in the initial phase of the process.

Two commenters argued that §291.132 and other sections making up the bifurcated hearing approach are too restrictive, may result in dismissal of otherwise legitimate rate appeals, and may force parties to litigate twice the same contested issues. The commission disagrees with this argument. The bifurcated approach will serve to identify frivolous appeals and more efficiently process legitimate

ones. While the process will require petitioners to conduct some pre-filing research and preparation to support their allegations, the process will also serve to encourage contracting parties to more carefully negotiate their agreements. A petitioner need not allege every item outlined in §291.133, only those it can substantiate. A petitioner with a supportable claim should be able to demonstrate violation of a public interest criteria within the time frames and process prescribed in §291.132. Changes to §§291.132-291.134 clarifying that the parties will litigate public interest issues in the first evidentiary hearing and cost of service issues in the subsequent hearing are intended to forestall the waste and delay associated with litigating an issue more than once. Finally, adopted §291.132 clarifies that findings of fact and conclusions will be included in an order prepared by the examiner rather than in the proposal for decision.

Most of the comment received was directed at all or parts of §291.133. About half of these commenters argued that the determination of the public interest requires an analysis of the seller's cost of service. On the other hand, the other half of the commenters argued that the seller's cost of service cannot be part of the analysis of the public interest, and that the proposed rules should be revised to clarify that cost of service will not be considered during the evidentiary hearing on public interest.

The commission concludes the public interest does not demand that a wholesale rate shall equal the seller's cost of providing service to the purchaser. The commission believes this is an appropriate conclusion which is consistent with the statutory requirements of the Water Code, Chapters 11, 12, and 13. This is appropriate even though the Code requires the commission to ensure that rates are "just and reasonable," "not unreasonably preferential, prejudicial, or discriminatory," and that they shall be "sufficient, equitable, and consistent in application to each class of customers." While these terms are traditionally used to invoke a regulatory authority's duty to set rates that are based upon cost of service, the circumstances which justify cost of service ratemaking are not present here. As is explained in the Water Code, the Legislature imposed a comprehensive regulatory system upon retail water and sewer utilities which are by definition monopolies in the areas they serve, and that the regulatory system is intended to serve as a substitute for competition. This system calls for rates based on the seller's cost of providing service. The circumstances of wholesale water and sewer service are not the same. The disputes concerning wholesale rates which have come before the commission concern parties who are in a position quite different than the typical retail customer. The purchaser is itself a utility that is sophisticated in utility transactions, and the purchaser, generally, has had several options from which it may obtain water or sewer service, including self service.

The commission's conclusion is consistent with the entirety of the statutory requirements. First, the Water Code provisions concerning the commission's appellate jurisdiction over disputes between utilities states that rates

must be "just and reasonable." See, Water Code, §13.043(f), (i). But nowhere does it specify that the rates must equal the seller's cost of providing service to the purchaser. Moreover, the 73rd Legislature amended the Water Code, §13.043(j), so that it now specifies that the commission shall consider the terms of any agreement between municipalities. The new requirement is not conditional. The commission must consider the agreement even when the agreement calls for rates that are not based upon cost of service. Second, Water Code, Chapter 12, specifies the commission may use any reasonable basis for fixing rates for the furnishing of raw or treated water. Water Code §12.013(c). The commission believes this provision alone is sufficient authority to support the commission's conclusion, at least with respect to those disputes raised pursuant to the Water Code, Chapters 11 and 12.

The commission's conclusion is also consistent with the opinions of the courts. The court in *High Plains Natural Gas Company v. Railroad Commission of Texas*, 467 S.W.2d 532 (Tex. Civ. App.--Austin 1971, writ ref'd n.r.e.) was confronted by a similar wholesale rate dispute, but concerning a contract for the sale of natural gas. The court specifically rejected the argument that the court should compare the disputed rate with a rate based on cost of service in order to determine the public interest. The court rejected the argument that this was a relevant inquiry. The commenters' citations to opinions such as *Texas Water Commission v. City of Fort Worth*, No. 3-92-00502-CV (Tex. App.--March 2, 1994, writ requested) did not cause the commission to change its conclusion. The court in *Fort Worth*, like the Water Code itself, calls for rates not "unreasonably preferential, prejudicial, or discriminatory." The opinion does not state one way or the other whether the public interest must, or even can, be analyzed on the basis of cost of service. The commission believes its conclusion is consistent with this opinion, for the same reasons its conclusion is consistent with the statutory requirements.

The commission next addresses the statements of those commenters on the public interest finding who argued the commission cannot, or at least should not, evaluate cost of service as part of the analysis. One commenter argued that the *High Plains* opinion shows the commission cannot consider cost of service because the court there imposed a public interest test which did not mention cost of service.

The commission concludes that under the adopted bifurcated hearing procedure the commission should not consider cost of service in the determination on public interest. The commission relies on three rationales to reach this conclusion. First, the adopted public interest criteria and related factors seek the facts which lie at the heart of disputes concerning wholesale rates. The commission reaches this conclusion after conducting numerous public meetings where both sellers and purchasers generally agreed that most agreements for the sale of wholesale services are reasonable and are the product of arms length negotiations. However, there are situations where a seller and purchaser have en-

tered into a long term agreement that later is disputed. Over time the seller exercises near monopoly power over the purchaser because many agreements allow the seller the unilateral right to adjust the rate. Moreover, the purchaser substantially has no alternatives to obtain water or sewer service because it has entered into a long term agreement with the seller. The adopted criteria focus on the actual facts which will show whether the protested rate reflects this latter type of agreement so much that it invokes the public interest. Second, the commission concludes the determination of the seller's cost of service is not as reliable a mechanism to determine the public interest as some commenters believe. The discussions at the public meetings showed generally that there will be as many different determinations of cost of service as experts who are asked the question. Moreover, the expert opinions can arrive at equally reasonable conclusions which recommend rates that are two or three times the rates recommended by other experts. Third, the use of cost of service to determine the public interest does not give sufficient deference to contractual agreements between the seller and purchaser.

One commenter argued that the determination of the public interest should not be limited to the public interest criteria listed in §291.133(a)(1)-(4). However, the commission favors a conservative approach when evaluating whether to cancel a rate which was set pursuant to a private agreement between utilities. The public interest criteria as adopted are sufficiently broad. A party should not be allowed to urge that some other criteria have been violated. Two commenters argued that the violation of one of the public interest criteria alone should not lead to a finding the rate adversely affects the public interest, and one commenter argued *all* the public interest criteria should be proved up before such a finding is made. The commission disagrees because the violation of any one of the four public interest criteria shows there has been a substantial breach of the public interest.

One commenter argued that §291.133(a)(1) is not relevant to the commission's jurisdiction and should be deleted. The commission disagrees. There have been past instances where a purchaser filed a petition or appeal, and even the seller argued against the protested rate but for opposite reasons. This criteria will address this type of situation. Moreover, the commission has asked the courts to reconsider commission jurisdiction under the Water Code, Chapters 11 and 12.

Two commenters argued that the public interest criteria in §291.133(a)(2) should at least be expanded to include a definition of "excessive financial burden." Another commenter opposed the paragraph altogether. The commission agrees this public interest criteria was not sufficiently defined. The paragraph as adopted incorporates the standard used in §291.133(a)(1), but focuses the inquiry upon the purchaser. Basically, the criteria states the public interest will be violated if the protested rate would impair the purchaser's ability to provide service to its retail customers, based on the purchaser's financial integrity and operational capability. The commission believes this would be an unusual circum-

stance. Nonetheless, were it to occur it would adversely affect the public interest.

Two commenters argue that citing monopoly power in §291.133(a)(3), as a public interest criteria is improper because the fact that a utility is a monopoly does not alone determine a violation of the public interest. The commission agrees, but points out that the rule inquires into whether there exists an abuse of monopoly power.

One commenter contends that the factors in §291.133(a)(3) are ill-defined, and will lead to substantial uncertainty whether a seller must fear the commission will cancel the contract it reached with a purchaser. However, the adopted rules are actually a substantial move towards giving due consideration to contracts. The adoption of these rules marks the end of past policy where the commission essentially automatically cancelled the rate set by contract and set a rate based on cost of service. Nor are the factors ill-defined. During the commission's public meetings the parties discussed the issues that are commonly the basis of disputes. The factors focus upon those issues. Moreover, during the public meetings the commission met with near universal rejection of mathematic tests and safe harbors meant to define the public interest because these "exact" methods often require lengthy cost of service analyses which lead to ancillary disputes on whether the thresholds have been met.

This same commenter suggests that §291.133(a)(3)(A) should refer to issues surrounding possible annexation into a municipality. The commission believes the subparagraph is already sufficiently broad to allow such an analysis.

One commenter argued that §291.133(a)(3)(B), improperly focuses on the seller's cost of providing service to the purchaser. As discussed previously, the commission agrees and has revised the subparagraphs so that the focus is not on cost of service. The commenter argued for a provision specifying the pass-through of an increase in purchased water costs is a reasonable change in conditions. The commission rejects this because the commission cannot assume that every agreement allows for the pass-through of purchased water costs.

One commenter suggested the commission evaluate the water or sewer rates charged by other Texas utilities as described in §291.133(a)(3)(G) only if they are comparable. Another commenter argued the factor should be deleted. The commission rejects these comments because the commission will use a rate comparison only for limited purposes. The commission believes the rates charged by other utilities is a relevant inquiry to determine the public interest. However the commission, like the commenters, understands that there are numerous reasons which may explain why one utility's rate may be higher than the rates imposed by another utility. Given that understanding, the commission will not be placing dispositive weight on the fact the protested rate is different than the rates charged by other utilities. While the commission is interested in broad terms why there are differences in rates, the commission

believes a requirement that rates must be comparable would unduly complicate the hearing, often concerning a utility that is not even before the commission.

One commenter argued §291.133(a)(3)(H) should be amended to provide that a comparison of retail rates should not be undertaken when the purchaser has earlier refused annexation by the seller. The commission rejects this recommended amendment. Another commenter opposed the requirement altogether. Again, as in §291.133(a)(3)(G), the commission believes it focuses on a relevant inquiry to determine the public interest. However, the commission understands that it cannot place dispositive weight on this factor.

One commenter argued that the public interest criteria in §291.133(a)(4) should concern unreasonable discrimination between customers, but should only focus on wholesale customers. The commission agrees that a comparison of the protested rate with rates the seller charges other wholesale customers is relevant to the public interest inquiry, and that the statutory language gives sufficient guidance concerning the scope of the inquiry. The public interest inquiry under paragraph §291.133(a)(3) should sufficiently cover whether any disparity in treatment between retail and wholesale customers adversely affects the public interest. Accordingly, the adopted rule includes a revised paragraph §291.133(a)(4) which uses the statutory language found in the Water Code, §13.047(j), that the rate shall not be unreasonably preferential, prejudicial, or discriminatory, and specifies that under the subsection the inquiry shall be limited to a comparison of seller's rates charged to wholesale customers. A commenter argued that §291.133(a)(4) imposed an unlawful standard to determine the public interest because the subsection inquired concerning the mere appearance of discrimination, as opposed to the existence of discrimination. This issue has been resolved by the adopted changes which inquire whether the protested rate is unreasonably preferential, prejudicial, or discriminatory.

Several commenters opposed §291.133(a)(5) because it appeared to require that all wholesale contracts entered into after the effective date of the rules must be based upon the seller's cost of service. A commenter argued that the subsection imposed a criteria irrelevant to the public interest finding. Several of the commenters argued the test would ignore that cities may base their agreements upon considerations that cannot be added easily to a cost of service analysis. Moreover, a municipality that desires to provide wholesale service to one entity would not want to incur the expense of a cost of service study. The commission believes proposed §291.133(a)(5) should be deleted because it is not consistent with the commission's conclusion stated previously that the public interest does not demand that a wholesale rate shall equal the seller's cost of providing service.

Several commenters addressed §291.134. One commenter stated that the procedure was unclear once the commission finds a protested rate adversely affects the public interest, while another commenter argued the

subsection should not include the "just and reasonable" standard as a test used to evaluate the protested rate. These comments persuade the commission to clarify the rule. If the commission in the evidentiary hearing on public interest determines the protested rate adversely affects the public interest, there is no need to revisit and reanalyze the protested rate during the evidentiary hearing on cost of service. The sole purpose of the evidentiary hearing on cost of service will be to determine the seller's cost of providing service to the purchaser, and to set a rate on that basis. One commenter argued that the commission should not limit itself to setting the rate based on cost of service. The commission disagrees because the commission wishes to add as much certainty to this process as possible. The commission has found it difficult indeed to anticipate all the possible disputes which could arise and to give guidance, to the extent possible, concerning how the commission will determine the public interest. The commission believes that if the public interest criteria cannot be explained in more definite form, then at least the commission should show in clear terms the remedy the commission will use whenever it finds the public interest has been adversely affected.

One commenter argued that when the commission finds the protested rate adversely affects the public interest, and remands the proceeding to an examiner for an evidentiary hearing on cost of service, such finding should be issued in a final order. The commission disagrees because a remand is an interim order, marking roughly the end of the first half of the proceeding, not the end of the entire proceeding. Moreover, the commenter's proposal would unreasonably prolong appeals and unduly complicate them. If the remand order were final and subject to a judicial appeal then the seller would appeal in many instances. This would likely leave the remaining cost of service proceedings before the commission in administrative limbo while the seller seeks his day in court concerning the commission's public interest finding. If the commission were to nonetheless proceed with the cost of service determination the proceedings would be unduly complicated by the fact the same proceeding was already at the courthouse. This would be an unreasonable burden on the parties' time and resources.

The commission also disagrees with commenter's argument that the opinion in *Texas Water Commission v. City of Fort Worth* requires the immediate issuance of a final order where the commission finds the protested rate adversely affects the public interest. The opinion does not discuss, much less resolve, the argument that the commission must make a public interest finding in a separate proceeding subject to immediate judicial review. The commission could have issued rules which provide for one evidentiary hearing on all contested issues, but elected not to. The commission adopts the bifurcated hearing approach because it believes the procedure will clarify the contested issues and conserve both the commission's and the parties' resources. The adoption of the commenter's argument would substantially thwart these benefits.

One commenter argued that §291.134(b) should provide that if the commission sets rates the commission will take into account any agreement between the seller and purchaser. The commission believes this would merely restate a provision found in §291.135(a). A commenter pointed out that the proposed rule had no provision concerning interim rates. The commission believes it may impose interim rates where appropriate, but that there is no need to add an interim rates provision to the rule.

The commission received numerous comments addressing §291.135. One commenter suggested that §291.135(a), which provides that the commission "may" rely on reasonable methodologies set by contract should be made mandatory. The commission agrees with this comment and revised the rule to provide that the commission "shall" rely on reasonable methodologies set by contract in calculating the cost of service.

Two commenters suggested that cost of service for non-profit utilities should be determined based on the cash basis methodology regardless of the methodology specified in the contract. The commission disagrees. While the commission has traditionally applied cash basis methodology to such utilities, these rules are intended to afford increased deference to reasonable contractual provisions such as the specification of a reasonable accounting methodology. With respect to §291.135(b), which provides that the commission may, under specific circumstances, decline to recognize a change in methodologies imposed by a service provider, (suggesting that a change in methodologies may be reasonable and authorized by the contract), the commission believes such a situation could be appropriately addressed pursuant to the rule since it remains permissive, *i.e.*, it does not prohibit the commission from recognizing a change in methodologies under appropriate circumstances.

The commission received a few comments relating to §291.136. Two commenters suggest that the law and sound policy require that the burden of proof should always be on the service provider. One commenter suggests that the burden of proof should always be on the "applicant," (the party seeking relief from the commission) whether the applicant is the seller or the buyer. A final commenter suggests that the law requires imposition of a heightened burden of proof "by clear and satisfactory evidence" on the party seeking to set aside the contract based on the public interest.

The commission believes the rule appropriately places the burden of proof on the petitioner to show that the rate demanded violates the public interest, and upon the service provider to establish the appropriate cost based rate. The commission believes this standard is fair and consistent with current case law.

The commission received several comments relating to §291.137. Five of the commenters assert that the section is illegal because the commission "enjoys" only appellate jurisdiction over these wholesale rates disputes. In light of these comments, this section has been revised to clarify that it does not prohibit a service provider from proposing a rate increase at any time and; if the proposed in-

crease is not appealed, it will go into effect. This section will apply only when a utility has had a rate demanded set aside as violating the public interest, raises its rates within three years of the end of the test year from the prior proceeding, and the customer appeals. The effect of this section, under these limited circumstances, is to require the seller to justify the increase and place an automatic interim rate in effect at the level set in the prior proceeding. At the conclusion of the proceeding, the appropriate party will be required to pay to the other party the difference between the automatic interim rate and the final rate set. The commenters generally believed §291.137 is unfair in addition to being unlawful. In light of the limited applicability and consequences of the section, the commission believes that it is legal, fair, and efficient.

Two commenters contend the requirements set forth in §291.138 invite inappropriate rate comparisons, are overly burdensome, and require information that will fail to identify the unique characteristics of a water or sewer service relationship. The commission has revised the rule to allow more flexibility on data to be reported concerning all types of rates and other characteristics of water and sewer service relationship. The adopted rule allows for guidelines on the contents of these reports to be established. Since annual filings may create hardships, the section has also been modified to require submittals in odd-numbered years only. The reference to a specific agency division was duplicative and has been removed.

Comments were received from the following: City of Arlington, City of Carrollton, City of Dallas, Dallas Water Utilities, City of Denton, City of El Paso, City of Fort Worth, City of Lewisville, City of Wichita Falls, Lost Creek Municipal Utility District, Lower Colorado River Authority, Northwest Travis County Municipal Utility District No. 1; Tarrant County Water Control and Improvement District No. 1. Comments were also received from the following: Butler, Porter, Gay & Day; Law Offices of Ronald J. Freeman; Gebhard Sarma Group, Inc.; Hutchison Boyle Brooks & Fisher, and Scanlan & Buckle, P.C.

The new sections are adopted under the Texas Water Code, §5.103, which authorizes the commission to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state and Texas Water Code, §§11.041, 12.013, and 13.043 which govern appeals or petitions for review of wholesale water and wastewater rates.

§291.128. Petition or Appeal Concerning Wholesale Rate. This subchapter sets forth substantive guidelines and procedural requirements concerning:

- (1) a petition to review rates charged pursuant to a written contract for the sale of water for resale filed pursuant to the Texas Water Code, Chapter 11 or 12; or
- (2) an appeal pursuant to the Texas Water Code, §13.043(f), (appeal by retail public utility concerning a decision by a provider of water or sewer service).

§291.129. Definitions. For purposes of

this subchapter, the following definitions apply:

- (1) **Petitioner**—The entity that files the petition or appeal.
- (2) **Protested rate**—The rate demanded by the seller.
- (3) **Cash Basis calculation of cost of service**—A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and capital expenditures which are not debt financed. Other cash revenue requirements should be considered where applicable. Basic revenue requirement components under the cash basis do not include depreciation.
- (4) **Utility Basis calculation of cost of service**—A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, depreciation, and return on investment.

§291.130. Petition or Appeal.

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.

(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.

(c) The petitioner must file an appeal pursuant to the Texas Water Code, §13.043(f), in accordance with the time frame provided therein.

§291.131. Executive Director's Determination of Probable Grounds. When a petition or appeal is filed, including a petition subject to the Texas Water Code, §11.041, the executive director shall determine within ten days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the executive director's review of probable grounds shall be limited to a determination whether the petitioner has met the requirements of §291.130 of this title (relating to Petition or Appeal). If the executive director determines that the petition or appeal does not meet the requirements of §291.130, the executive director shall inform the petitioner of the deficiencies with the petition or ap-

peal and allow the petitioner the opportunity to correct these deficiencies. If the executive director determines that the petition or appeal does meet the requirements of §291.130, the executive director shall forward the petition or appeal to the office of hearings examiners for an evidentiary hearing.

§291.132. Evidentiary Hearing on Public Interest.

(a) If the executive director forwards a petition to the office of hearings examiners pursuant to §291.131 of this title (relating to Executive Director's Determination of Probable Grounds), the office of hearings examiners shall conduct an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.

(b) Prior to the evidentiary hearing on public interest discovery shall be limited to matters relevant to the evidentiary hearing on public interest.

(c) The examiner shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law concerning whether the protested rate adversely affects the public interest, and shall submit this recommendation to the commission no later than 120 days after the executive director forwards the petition to the office of hearings examiners pursuant to §291.131 of this title (relating to Executive Director's Determination of Probable Grounds).

(d) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on cost of service. If the seller and buyer so agree the examiner shall hold a consolidated evidentiary hearing.

§291.133. Determination of Public Interest.

(a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:

(1) the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;

(2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;

(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:

(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;

(B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) the seller changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in Texas by other sellers of water or sewer service for resale;

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser;

(4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.

(b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.

§291.134. Commission Action to Protect Public Interest, Set Rates.

(a) If as a result of the evidentiary hearing on public interest the commission determines the protested rate does not adversely affect the public interest, the commission will deny the petition or appeal by final order. The commission must state in the final order that dismisses a petition or appeal the bases upon which the commission finds the protested rate does not adversely affect the public interest.

(b) If the commission determines the protested rate adversely affects the pub-

lic interest, the commission will remand the matter to the office of hearings examiners for further evidentiary proceedings. The remand order is not a final order subject to judicial review.

(c) No later than 90 days after remand the seller shall file with the Office of Chief Clerk five copies of a cost of service study which supports the protested rate.

(d) After remand the parties shall not offer evidence or argument on whether the protested rate adversely affects the public interest. After further evidentiary proceedings the commission shall cancel the protested rate, and set a rate consistent with the ratemaking mandates of the Texas Water Code, Chapters 11, 12, and 13. The commission must state in a final order that grants a petition or appeal the bases upon which the commission finds the protested rate adversely affects the public interest.

§291.135. Determination of Cost of Service.

(a) The commission shall follow the mandates of the Texas Water Code, Chapters 11, 12, and 13 to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

(b) When the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.

§291.136. Burden of Proof. The petitioner shall have the burden of proof in the evidentiary proceedings to determine if the protested rate is adverse to the public interest. The seller of water or sewer service (whether the petitioner or not) shall have the burden of proof in evidentiary proceedings on determination of cost of service.

§291.137. Commission Order to Discourage Succession of Rate Disputes.

(a) If the commission finds the pro-

tested rate adversely affects the public interest and sets rates on a cost of service basis, then the commission shall add the following provisions to its order.

(1) If the purchaser files a new petition or appeal, and the executive director forwards the petition or appeal to the office of hearings examiners pursuant to §291.131, then the examiner shall set an interim rate immediately. The interim rate shall equal the rate set by the commission in this proceeding where the commission granted the petition or appeal and set a cost of service rate.

(2) The commission shall determine in the proceedings pursuant to the new petition or appeal that the protested rate adversely affects the public interest. The examiner shall not hold an evidentiary hearing on public interest but rather shall proceed with the evidentiary hearing to determine a rate consistent with the ratemaking mandates of the Texas Water Code, Chapters 11, 12, and 13.

(b) The effective period for the provisions issued pursuant to subsection (a) of this section shall expire upon the earlier of three years after the end of the test year period, or upon the seller and purchaser entering into a new written agreement for the sale of water or sewer service which supersedes the agreement which was the subject of the proceeding where the commission granted the petition or appeal and set a cost of service rate. The provisions shall be effective in proceedings pursuant to a new petition or appeal if the petition or appeal is filed before the date of expiration.

(c) For purposes of subsection (b) of this section, the "test year period" is the test year used by the commission in the proceeding where the commission granted the petition or appeal and set rates on a cost of service basis.

§291.138. Filing of Rate Data.

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission requires each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.

(b) By January 31st of each odd-numbered year each provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 3, 1994.

TRD-9446017 Mary Ruth Holder
 Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: August 23, 1994

Proposal publication date: May 20, 1994

For further information, please call: (512) 463-8069

Subchapter I. Nonsubmetered Master Meter Utilities

• 30 TAC §§291.131-291.136

The repealed sections are adopted under the Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 3, 1994.

TRD-9446018 Mary Ross McDonald
 Director, Legal Division
 Texas Natural Resource
 Conservation
 Commission

Effective date: May 20, 1994

Proposal publication date: August 23, 1994

For further information, please call: (512) 463-8069

TITLE 34. PUBLIC FI- NANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter CC. Waste Tire Recycling Fee

• 34 TAC §3.721

The Comptroller of Public Accounts adopts an amendment to §3.721, concerning the tires that are subject to the waste tire recycling fee, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 892).

The 73rd Legislature, 1993, amended the Health and Safety Code, §361.472, effective October 1, 1993, to impose the fee on basically all new tires with a rim diameter equal to or greater than 12 inches but less than 25 inches, including all sizes of new motorcycle tires, and to repeal the authority for dealers to retain a portion of the fees remitted.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Health and Safety Code, §361.472.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 2, 1994.

TRD-9445992 Martin Cherry
 Chief, General Law
 Comptroller of Public
 Accounts

Effective date: August 23, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 463-4028

Chapter 9. Property Tax Administration

Subchapter A. Practice and Procedure

• 34 TAC §9.17

The Comptroller of Public Accounts adopts an amendment to §9.17, concerning notice of public hearing on tax increase, without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4410).

The Tax Code, §26.06, requires the comptroller to prescribe by rule the form and content of the notice of a public hearing on a tax increase. The rule adopts by reference amended model form 26.06. The form is amended to delete unnecessary information.

The amendment is necessary because Senate Bill 7, 73rd Legislature, 1993, abolished county education districts. The abolishment of county education districts returned to school districts the portion of the school district's tax rate formerly levied by the county education district. The current notice reflects the abolition of county education districts. Because county education districts levied taxes for the last time in 1992, reference to county education districts is no longer needed on the notice.

The amendment deletes the optional information for school districts concerning county education districts on model form 26.06. Amendment of the rule also changes the address of the Comptroller of Public Accounts, Property Tax Division, and deletes the date of the amendment of the form.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §26.06, which requires the comptroller by rule to prescribe the form and wording for notice of a public hearing on a tax increase. The amendment implements the Tax Code, §26.06.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

QUESTION NO. 2-38

Do you contend that a revenue requirement methodology is the same thing as a cost of service methodology? If yes, explain the basis for your contention, and provide citations to all documents that support your contention.

TCMUD 12'S RESPONSE:

No, they are substantially "the same thing," but they are not exactly "the same thing."

QUESTION NO. 2-39

Do you contend that a rate methodology is the same thing as a cost of service methodology? If yes, explain the basis for your contention, and provide citations to all documents that support your contention.

TCMUD 12'S RESPONSE:

No, they are substantially "the same thing," but they are not exactly "the same thing."

QUESTION NO. 2-40

Do you contend that cost allocation methodologies are the same as revenue requirement methodologies? If yes, explain the basis for your contention, and provide citations to all documents that support your contention.

TCMUD 12'S RESPONSE:

No.

QUESTION NO. 2-41

Explain how the allocation of costs is relevant to the determination of a revenue requirement.

TCMUD 12'S RESPONSE:

Allocation of costs may be required to develop a revenue requirement.