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OPEN MEETING COVER SHEET

MEMORANDUM

MEETING DATE:	October 20, 2022
DATE DELIVERED:	October 18, 2022
AGENDA ITEM NO.:	#10
CAPTION:	Project No. 52405 – Review of Certain Water Customer Protection Rules
DESCRIPTION:	Staff Memorandum and Proposal for Adoption

Public Utility Commission of Texas

Memorandum

TO: Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

FROM: David Smeltzer, Director of Rules and Projects

DATE: October 18, 2022

RE: October 20, Open Meeting – Agenda Item No. #10
Project No. 52405, *Review of Certain Water Customer Protection Rules*

Please find attached to this memorandum Commission Staff's proposal for adopting new 16 TAC §§ 24.173 and 24.364, in the above-referenced project for consideration at the October 20, 2022, open meeting.

Commission Staff's proposal contains new § 24.173, relating to Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment and new § 24.364, relating to Civil Penalties for Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment.

Both rules will respectively implement § 13.151 and § 13.414 of the Texas Water Code passed under Senate Bill 3, enacted by the 87th Texas Legislature. Specifically, §24.173 will prohibit disconnections and late fees for nonpayment during an extreme weather emergency and require utilities to offer payment schedules to affected customers for bills due during an extreme weather emergency. New § 24.364 adopts a civil penalty classification system to be used by the Office of Attorney General and the courts for violations of the aforementioned requirements.

Commission Staff recommends the Commission adopt this order.

PROJECT NO. 52405

**REVIEW OF CERTAIN WATER
CUSTOMER PROTECTION RULES**

§

PUBLIC UTILITY COMMISSION

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OF TEXAS

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(STAFF RECOMMENDATION)

**PROPOSAL FOR ADOPTION OF NEW 16 TAC §24.173 AND §24.364
FOR CONSIDERATION AT THE OCTOBER 20, 2022, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §24.173, relating to Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment and §24.364, relating to Civil Penalties for Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment. The commission adopts this rule with changes to the proposed text as published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2646). These rules will implement requirements of Senate Bill 3 enacted by the 87th Texas Legislature, as codified in Texas Water Code (TWC) §13.151 and §13.414. Specifically, these new rules will prohibit disconnections and late fees for nonpayment during an extreme weather emergency, require retail public utilities to offer payment schedules for bills due during an extreme weather emergency, and adopt a civil penalty classification system for use by the courts for violations of §24.173.

The commission received comments on the proposed rules from Allen, Boone, Humphries, and Robinson (ABHR), the Association of Water Board Directors (AWBD), the Office of Public Utility Counsel (OPUC), MSEC Enterprises, Inc. (MSEC), San Antonio Water System (SAWS),

Schwarz, Page, and Harding (SPH), Texas Association of Water Companies, Inc. (TAWC), and Texas Rural Water Association (TRWA).

Commission Question for Comment

The commission requested comment on the following question:

Should the entities described in proposed paragraph 24.173(a) be required to provide notice to customers of their right to request a payment schedule upon the occurrence of an extreme weather emergency? If so, how and when should the covered entities notify customers of this right?

MSEC and OPUC responded affirmatively to the commission's issued question, while TAWC, TRWA, AWBD, SPH, and ABHR responded in the negative.

MSEC and OPUC argued that options such as payment schedules in response to an extreme weather emergency benefit customers when extenuating circumstances prevent timely payment. MSEC and OPUC recommended that the proposed rule specifically include methods to provide notice, such as bill inserts, e-mail, and physical mail, to ensure that customers are properly apprised of the option to request a payment schedule under this rule.

MSEC and OPUC recommended requiring utilities to which §24.173 applies to give customers notice of the payment schedule option within 180 days of the effective date of the rule. OPUC stated that if customers are not notified and therefore unaware of the proposed rule upon adoption, then customers would not benefit in the manner the commission intends and accordingly would be subject to the same hardship the proposed rule was intended to prevent. OPUC argued that, to

benefit customers, notice must be “easily accessible and “conspicuous,” so that customers can easily find and access the necessary information.

TAWC opposed individual notices to customers about payment schedules as overly burdensome. TAWC contended that alternative public outreach mechanisms would sufficiently notify customers, such as a general notice published on the applicable retail public utility’s website and on the commission’s website. TAWC highlighted that notice should be encouraged through various methods “determined to be appropriate by each covered entity.”

TRWA, AWBD, SPH, and ABHR opposed mailed notice as costly, subject to delay and therefore potentially untimely, and unlikely to be read or received. TRWA, AWBD, SPH, and ABHR further opposed adding any notice requirements on bills due to billing system limitations on adding additional language. TRWA, AWBD, SPH, and ABHR indicated that notice of payment schedules is “generally provided on an ongoing basis through a retail public utility’s tariff or service policies, and on the retail public utility’s website, if available.”

OPUC replied that an alternative notice specific to payment schedules for extreme weather emergencies would impose no additional burden if the retail public utility already provides notice of the availability of payment schedules on its website. Replying to comments asserting that mailed notice would not be read by customers, OPUC commented that tariff and service filings, as suggested by TRWA, AWBD, SPH and ABR, are far less likely to be read by customers than notice mailed directly to a customer. OPUC emphasized that not requiring notice would undercut the intent of the rule.

Commission Response

The commission agrees with MSEC and OPUC that payment schedules and other similar options allow customers greater flexibility to manage bills that could become a financial burden. The commission also agrees with MSEC and OPUC that §24.173 should include a notice provision that requires retail public utilities to make customers aware of the option to request a payment schedule. The commission further agrees with OPUC that tariff and service filings are an insufficient means to provide customers with notice of the rule upon adoption. However, as noted by TAWC, TRWA, AWBD, SPH, and ABHR, notices can also impose an administrative burden on retail public utilities. Such a burden could ultimately increase costs for the customers the notice is intended to help. Therefore, the commission amends the rule to require retail public utilities to issue a one-time written notice no later than January 31, 2023 to make customers aware of the requirements of adopted §24.173. The one-time notice may be issued by first class mail, as a bill insert, or by other means such as e-mail or hand delivery. A website posting alone is insufficient to fulfill this requirement but is encouraged in addition to the written notice.

The one-time notice must provide information on the prohibition on imposing late fees or disconnections during extreme weather events, the customer's ability to request a payment schedule, and the prohibition on disconnection of service of to customers that have requested a payment schedule unless they do not agree to, or violate, the terms of the payment schedule offered. Commission staff may develop standardized language to assist retail public utilities in complying with this provision.

Proposed §24.173(a) – Applicability

1 Proposed §24.173(a) indicates that the section applies to a retail public utility that is required to
2 possess a certificate of convenience and necessity to provide retail water or sewer utility service,
3 an affiliate of such a retail public utility, and a district or affected county that provides retail water
4 or sewer utility service.

5
6 TAWC and SAWS commented that TWC §13.151 only applies to a “retail public utility that is
7 required to possess a certificate of convenience and necessity (CCN) or a district or affected county
8 that furnishes retail water or sewer utility service.” TAWC noted that for investor-owned utilities
9 (IOUs), the CCN holder is the entity responsible for the provision of “retail water or sewer utility
10 service” and, accordingly, the affiliates of the CCN holder should not be responsible for
11 implementing the new requirements of §24.173 on adoption.

12
13 *Commission Response*

14 **The commission disagrees with TAWC that affiliates of the entity required to possess a CCN**
15 **should not be responsible for the requirements of §24.173. TWC §13.414(a-1) specifically**
16 **states that “a retail public utility or affiliate interest that violates Section 13.151**
17 **[implemented as §24.173] is subject to a civil penalty.” This language clearly establishes that**
18 **affiliates are capable of violating §24.173, and therefore, are subject to its provisions.**

19
20 SAWS stated that TWC §13.151 does not apply to municipally owned utilities (MOUs) as MOUs
21 are not required to possess a CCN to provide retail water or sewer service. SAWS recommended
22 that §24.173(a) include an express statement exempting MOUs from the rule’s requirements.

23
24 *Commission Response*

1 **The commission declines to include an express statement exempting MOUs from the rule’s**
2 **requirements, because it is unnecessary. As noted by SAWS, MOUs are not required to**
3 **possess a CCN, so the rule does not apply to them. Including such an unnecessary exclusion**
4 **in this rule could cause confusion – or even create a presumption that MOUs are included –**
5 **in the applicability of other commission rules that do not include such an exception.**

6
7 TRWA, AWBD, SPH, and ABHR recommended revising §24.173(a) for clarity and further
8 recommended replacing the term “county” with the term “area” to more accurately conform to
9 TWC §13.151. TRWA, AWBD, SPH, and ABHR stated that the use of the term “county” creates
10 ambiguity “as to whether the rule requires that a retail public utility located in a county with an
11 extreme weather emergency declaration falls under these rules or whether the retail public utility
12 could rely on one of sometimes numerous National Weather Service (NWS) reports within a
13 particular county.” TRWA, AWBD, SPH, and ABHR recommended that the rule not refer to large
14 areas such as counties or ZIP codes as many counties in Texas cover large geographic areas and
15 that weather within a single county could vary.

16
17 ***Commission Response***

18 **The commission agrees that temperatures can vary within large counties and replaces the**
19 **term “county” with “area” as requested. However, an entity to which this rule requires may**
20 **rely upon county-level data to determine if an extreme weather emergency occurred, if**
21 **appropriate based upon the availability of data or scope of the weather emergency.**

22
23 ***Adopted §24.173(b)(1) – “Affected customer”***

1 **The commission adds a definition of “affected customer” to the rule to provide more clarity**
2 **on the rule’s applicability. An affected customer is “a customer of an entity to which this**
3 **section applies that receives water or sewer service from that entity in an area experiencing**
4 **an extreme weather emergency and has a bill due during the extreme weather emergency.”**

5
6 ***Proposed §24.173(b)(1) – “Extreme weather emergency”***

7 Proposed §24.173(b)(1) defines “extreme weather emergency” as a period when the previous day’s
8 highest temperature did not exceed 28 degrees Fahrenheit and the temperature is predicted to
9 remain at or below that level for the next 24 hours according to the National Weather Service
10 reports for the county where the affected customer receives water or sewer service.

11
12 TAWC requested that the commission clarify whether the commission, another state agency, or
13 the utility is responsible for determining when an “extreme weather emergency,” as defined under
14 §24.173(b)(1), is occurring or has taken place as defined in the proposed rule. If the commission
15 or another state agency is responsible, TAWC further requested the commission clarify how
16 utilities are to be notified of the occurrence and the end of an “extreme weather emergency.”

17
18 ***Commission Response***

19 **Neither the commission nor any other state agency is responsible for declaring the**
20 **occurrence of an extreme weather emergency. The occurrence of an extreme weather**
21 **emergency is based on objective information published by NWS. Specifically, the term is**
22 **defined as when the previous day’s highest temperature did not exceed 28 degrees Fahrenheit**
23 **and the temperature is predicted to remain at or below that level for the next 24 hours**

1 according to NWS reports for the area. The statute and rule implicitly require a utility to
2 monitor NWS reports during winter months. This duty may be accomplished by monitoring
3 information routinely published by NWS or otherwise communicated from NWS directly or
4 indirectly.

5
6 With respect to the end of an extreme weather emergency, allowing a utility to resume
7 disconnections and imposing late fees for nonpayment, the commission adds language
8 specifying that for purposes of this section, an extreme weather emergency is over on the
9 second business day the temperature exceeds 28 degrees Fahrenheit. This definition provides
10 affected customers with a one-day grace period to make payments and allows entities to
11 resume disconnections and imposing late fees on the second business day the temperature
12 exceeds 28 degrees Fahrenheit.

13
14 In accordance with its recommendation for proposed subsection (a), TRWA, AWBD, SPH, and
15 ABHR recommended revising the definition of “extreme weather emergency” to refer to an “area”
16 as opposed to a “county.” TRWA additionally recommended using the “nearest” NWS report so
17 that the rule is more consistent with TWC §13.151. AWBD, SPH, and ABHR offered similar
18 redline edits as those of TRWA but left to the discretion of the utility the determination of the
19 NWS weather station “nearest to the retail service area” that will serve as a reference.

20
21 *Commission Response*

22 The commission agrees with TRWA, AWBD, SPH, and ABHR and amends the proposed
23 language to refer to “area” instead of “county” consistent with the changes made to
24 subsection (a). Furthermore, the commission agrees that using temperatures from the

1 **“nearest” NWS reports to that area aligns with the language of the statute. The commission**
2 **modifies the proposed language accordingly.**

3
4 ***Proposed §24.173(b)(2) – “Payment schedule”***

5 Proposed §24.173(b)(2) defines “payment schedule” as any arrangement or agreement between an
6 entity to which this section applies and a customer in which an outstanding bill will be paid in
7 installments.

8
9 TRWA and OPUC recommended revising the definition of “payment schedule” under
10 §24.173(b)(2) to refer to an outstanding bill “due during an extreme weather emergency” to
11 conform with TWC §13.151. Specifically, TRWA stated that this revision and conforming edits
12 to §24.173(c)(1) and (2) are necessary to clarify that the rule applies only to “outstanding bills due
13 during the extreme weather emergency.”

14
15 ***Commission Response***

16 **The commission agrees with TRWA and OPUC that payment schedules are distinct from**
17 **other types of deferred payment plans and are specifically designed for customers with an**
18 **unpaid bill due during an extreme weather emergency. The commission modifies the rule**
19 **accordingly.**

20
21 ***Proposed §24.173(c)(1) and (2) – Prohibited actions***

22 Proposed §24.173(c)(1) prohibits an entity to which §24.173 applies from imposing a late fee on
23 a customer for non-payment of bills related to retail water or sewer utility service during an
24 extreme weather emergency until the extreme weather emergency is over. Proposed §24.173(c)(2)

1 prohibits an entity to which §24.173 applies from disconnecting a customer's retail water or sewer
2 service for nonpayment of bills related to retail water or sewer utility service during an extreme
3 weather emergency until the extreme weather emergency is over.

4
5 TRWA, AWBD, SPH, ABHR, and OPUC recommended revising §24.173(c)(1) and (2) to be more
6 consistent with the language of TWC §13.151 as well as proposed §24.173(d) and proposed
7 §24.364. AWBD, SPH, and ABHR offered redline edits that would insert the term "that become
8 due" to indicate that the prohibitions only apply to disconnections and late fees for a customer's
9 nonpayment of bills "that become due" during an extreme weather emergency. TRWA offered a
10 similar redline as AWBD, SPH, and ABHR that used the phrase "that *are* due" instead of "that
11 *become* due."

12
13 ***Commission Response***

14 **The commission agrees with TRWA and OPUC that the rule should conform to TWC**
15 **§13.151 as closely as possible. The commission modifies the language of this provision to**
16 **clarify that entities are prohibited from imposing late fees or disconnecting the retail water**
17 **or sewer service of an affected customer for nonpayment of a bill *that is due* during an**
18 **extreme weather emergency. The commission declines to use "that become due" as**
19 **recommended by AWBD, SPH, and ABHR, because this is inconsistent with the statute. The**
20 **phrasing of TWC §13.151(b) captures all bills that "are due" during an extreme weather**
21 **emergency, even those that are already delinquent.**

1 TAWC requested clarification on the meaning of “imposing a late fee” in proposed §24.173(c)(1).
2 It noted that the phrase could mean assessing a late fee on a specific date or issuing a bill on a
3 specific date that includes a late fee.
4

5 *Commission Response*

6 **An entity to which this rule applies is prohibited from imposing a late fee on an affected**
7 **customer for nonpayment of a bill that is due during an extreme weather emergency. The**
8 **commission clarifies that this refers to assessing a late fee during an extreme weather**
9 **emergency. If a late fee has already been assessed for prior nonpayment, that late fee is not**
10 **waived. If a customer pays a bill after a due date that occurred during an extreme weather**
11 **emergency but before the entity is permitted to impose late fees, no late fee should be**
12 **assessed.**
13

14 TAWC asked whether, under proposed §24.173, a utility is permitted to disconnect a customer
15 that was sent a disconnection notice prior to the extreme weather emergency but, at the time of the
16 emergency, is not yet disconnected when the extreme weather emergency occurs.
17

18 *Commission Response*

19 **No disconnection is permitted for nonpayment during an extreme weather emergency,**
20 **regardless of whether it has been previously noticed. If a disconnection was properly noticed,**
21 **disconnection may occur once the extreme weather emergency is over, unless a customer**
22 **requests a payment schedule prior to the disconnection taking place.**
23

MSEC noted that the phrase “until the extreme weather emergency is over” in §24.173(c)(2) is ambiguous because how the term “over” is measured is not defined. Specifically, MSEC stated that “over” could mean the exact moment the extreme weather emergency ends or the end of a grace period following the extreme weather emergency. MSEC opined that the prohibition on disconnection is accordingly unclear as §24.173(c)(2) does not specify whether a utility is prohibited from disconnecting on the exact days classified as an extreme weather emergency or for a set period before and after the extreme weather emergencies. MSEC urged the commission to consider the consequences of an extreme weather emergency on a customer’s ability to pay bills after the emergency is over.

Commission Response

In response to MESC’s comments, the commission clarifies the definition of extreme weather emergency such that “an extreme weather emergency is over on the second business day the temperature exceeds 28 degrees Fahrenheit.” This definition incorporates a one-day grace period for a customer to make payments before an entity can impose late fees or disconnect service for nonpayment. The prohibition is lifted for the entire second business day the temperature exceeds 28 degrees. However, to avoid unintentional violations of the rule, retail public utilities may need to wait until the temperature exceeds 28 degrees before resuming disconnections to determine if the temperature standard is met.

Adopted §24.173(d) – One-time Notice

1 For the reasons described in responses to the question for comment above, the commission
2 adds a new subsection requiring entities to issue a one-time written notice to inform
3 customers of the requirements of §24.173 by January 31, 2023.

4
5 *Proposed §24.173(d) – Payment schedule*

6 Proposed §24.173(d), adopted as §24.173(e), enumerates the conditions where a customer of an
7 entity to which §24.173 applies may request to establish a payment schedule for unpaid bills that
8 are due during an extreme weather emergency. Proposed §24.173(d) also prescribes the timeline
9 for response to a request for a payment schedule by a utility and the general content of a payment
10 schedule.

11
12 TRWA, AWBD, SPH, and ABHR contended that “automatic eligibility of payment schedules are
13 [sic] likely to create significant costs to retail public utilities, thereby impacting customers.”

14 TRWA, AWBD, SPH, and ABHR expressed concern that if every customer can request and be
15 granted a payment schedule, that utilities would experience short- and long-term financial issues
16 as a result. Specifically, TRWA, AWBD, SPH, and ABHR emphasized that the disconnection
17 prohibition, in addition to customers “in many cases...continuing to accrue the monthly base rate
18 plus usage fees well beyond the cost of the customer deposit,” jeopardizes the financial stability
19 of utilities via “permanent loss” and ultimately results in other customers bearing such costs.

20 TRWA, AWBD, SPH, and ABHR commented that, because of payment schedules, some
21 customers may never be able to pay off the accrued balance, which results in disconnection.

22 TRWA, AWBD, SPH, and ABHR accordingly cautioned the commission to evaluate the benefits
23 the proposed rules create for individual affected customers versus all customers of a utility system
24 that may be adversely impacted through increased costs of implementation.

Commission Response

The commission declines to modify the rule to remove automatic eligibility for payment schedules as requested by TRWA, AWBD, SPH, and ABHR, because such a modification would be inconsistent with statute. Under TWC §13.151(b), entities “shall work with customers that request to establish a payment schedule for unpaid bills that are due during the extreme weather emergency.” The use of the word “shall” makes this requirement mandatory. Further, “work with customers that request to establish a payment schedule” clearly indicates that a payment schedule must be offered if requested by the affected customer. However, the adopted rule provides maximum flexibility regarding the terms of the payment schedule and permits a finance charge to minimize the potential financial burden on retail public utilities.

TRWA, AWBD, SPH, and ABHR argued that proposed §24.173(d), which prescribes the form and content of a payment schedule, is beyond the requirements of SB 3, and that an entity should be able to offer a payment schedule in the manner the entity offers payment plans for non-extreme weather events. TRWA, AWBD, SPH, and ABHR stated that the commission has no statutory support for imposing the prescriptive requirements under proposed §24.173(d)(3) and (4) and noted that TWC §13.151 only states that a utility “shall work with the customer to offer one or more payment schedule options to the requesting customer.” TRWA, AWBD, SPH, and ABHR emphasized that implementing TWC §13.151 is burdensome on a utility by itself and that any additional requirements imposed by the commission would only increase that impact. TRWA, AWBD, SPH, and ABHR offered redline edits that modified §24.173(d)(1) and (2) and struck §24.173(d)(3) and (4) in accordance with their recommendations.

OPUC opposed TRWA, AWBD, SPH, and ABHR's revisions to proposed subsection (d), disagreed that the proposed language is beyond the scope of SB 3, and recommended that the commission reject TRWA, AWBD, SPH, and ABHR's proposal. OPUC observed that the commission frequently prescribes the content of various forms or filings without direct statutory prescription under the commission's broad rulemaking authority. OPUC stated that, as proposed, §24.173(d) only contains timing and informational requirements that benefit customers. OPUC argued that, contrary to TRWA, AWBD, SPH, and ABHR's claims, proposed subsection (d) does not stipulate exact requirements for a payment schedule, nor does it require that payment schedules be structured in a certain manner. Accordingly, OPUC emphasized that the contents and details of a payment schedule are still within the discretion of the utility and that the commission is free to prescribe procedural matters via rule within the scope of a broader statutory grant of authority.

AWBD also offered redline language extending the period of time a customer may request a payment schedule from 10 to 30 days. TRWA, SPH, and ABHR each filed comments generally supporting AWBD's comments.

Commission Response

The commission disagrees with TRWA, AWBD, SPH, and ABHR that the payment schedule requirements under proposed §24.173(d), adopted as §24.173(e), are beyond the scope of SB 3. TWC §13.041 clearly authorizes the commission to “adopt and enforce rules reasonably required in the exercise of [its] powers and jurisdiction.” The commission agrees with OPUC that §24.173(e)(2) only requires a payment schedule to include information necessary to effectively implement §13.151, including basic timelines and customer

1 **protections, such as disclosure requirements, to ensure affected customers receive sufficient**
2 **information about the details of the payment plan. This section also includes a limitation on**
3 **finance charges, but this limitation is consistent with the requirements for deferred payment**
4 **plans under §24.165 (relating to Billing).**

5
6 **However, the commission also modifies this subsection to strike a more appropriate balance**
7 **between customer protections and any burden imposed on the retail public utility.**
8 **Consistent with AWBD's proposed revisions, the commission increases the number of days**
9 **from an extreme weather emergency within which an affected customer can request a**
10 **payment schedule from 10 to 30. The commission also removes the requirement that a**
11 **customer must be either provided multiple payment schedule options or be provided with**
12 **information on how the customer can increase the number of installments for a payment**
13 **schedule. Each entity subject to this rule can determine the form and manner of an offered**
14 **payment schedule and whether the entity will consider a customer's request to renegotiate**
15 **the number of payments or installment amount. These modifications should benefit both**
16 **customers and retail public utilities by providing each affected customer with a longer period**
17 **to contact and make arrangements with its retail public utility, preventing avoidable**
18 **delinquencies, and retail public utilities with more flexibility in designing payment schedules.**

19
20 **The commission modifies the rule to clarify that retail public utilities are prohibited from**
21 **disconnecting for nonpayment a customer that has requested a payment schedule unless the**
22 **customer does not accept the offered schedule or violates its terms. The commission also**
23 **modifies the rule to clarify that properly issued disconnection notices are suspended upon**
24 **the request for a payment schedule, but if the customer does not accept the offered payment**

1 **schedule or violates its terms, the retail public utility can disconnect service without**
2 **providing another disconnection notice. Conversely, if a customer violates the terms of the**
3 **payment schedule and a disconnection notice has not yet been issued, the retail public utility**
4 **must issue a disconnection notice prior to disconnecting service.**

5
6 **The commission also adds language to allow a payment schedule to be established in person,**
7 **by telephone, or online. Finally, all payment schedules must be reduced to writing and**
8 **provided to the customer, with a statement providing contact information in case the**
9 **payment schedule does not reflect the customer's understanding of the agreement.**

10
11 ***Proposed §24.364(a) – Scope***

12 Proposed §24.364(a) establishes a classification system to be used by a court to impose civil
13 penalties for violations of §24.173.

14 **The commission modifies this subsection by removing proposed language that the section**
15 **does not apply to other enforcement actions taken by commission staff, because this language**
16 **is superfluous.**

17 ***Proposed §24.364(b) – Classification system***

18 Proposed §24.364(b) classifies violations of PURA and commission rules into Class C, B, and A
19 violations, in increasing order of severity and maximum assignable administrative penalty
20 amounts.

1 TRWA, AWBD, SPH, and ABHR requested that the commission implement conforming revisions
2 of §24.364(b) in accordance with their recommendations for §24.173 and offered redline edits
3 relating to the same.

4
5 *Commission Response*

6 **The commission agrees with TRWA, AWBD, SPH, and ABHR that §24.364 should be revised**
7 **to conform to any changes made to §24.173. Substantively, the commission removes “failure**
8 **to timely offer a payment schedule” from the list of Class C violations, because the**
9 **commission removed the corresponding deadline from §24.173. The commission adds**
10 **“failure to provide a customer with a one-time notice” to the list of Class C violations to**
11 **correspond to the new one-time notice requirements of §24.173 and added “including an**
12 **undisclosed or noncompliant finance charge on a payment schedule” to the list of Class B**
13 **violations.**

14
15 **The commission declines to strike §24.364(b)(1)(B)(ii), regarding failure to include the**
16 **proper content of a payment schedule, as recommended by TRWA, AWBD, SPH, and**
17 **ABHR, for the reasons discussed under the discussion of proposed §24.173(d). For the same**
18 **reasons, the commission declines to strike §24.364(b)(2)(B)(ii), regarding failure to offer a**
19 **payment schedule under §24.173. The commission declines to use the phrase “that become**
20 **due” in §24.364(b)(2)(B) and (b)(3)(B), regarding Class B and Class A violations,**
21 **respectively, as recommended by TRWA, AWBD, SPH, and ABHR, and instead revises those**
22 **provisions to refer to bills “that are due” during an extreme weather emergency to conform**
23 **with the prohibition under TWC §13.151(b).**

MSEC recommended revising §24.364(b) for clarity as certain provisions such as the Class B catch-all provision under §24.364(b)(2)(B)(iii) and dollar amount factor under §24.364(b)(4)(E)(iii) may be ambiguous.

Commission Response

The commission disagrees with MSEC that §24.364(b)(2)(B)(iii) is ambiguous. If a violation is not explicitly classified in this classification system, it is a Class B violation.

The commission agrees with MSEC that §24.364(b) should be revised for clarity. Specifically, the commission revises §24.364(b)(4)(E)(iii) to refer to the dollar amount of late fees issued to the affected customer.

TAWC requested clarification as to whether the maximum amounts for all classes of violation under §24.364(b) are assessed per day, per violation, towards each individual customer, or on a per day, per utility basis. TAWC requested that the commission clarify violations under §24.364 as “per utility,” as otherwise violations could “unnecessarily bankrupt water and sewer utilities” given how broadly proposed §24.364 is stated and because such a result would be unreasonable.

Commission Response

Violations under §24.364 are per day, per incident, per customer. TWC §13.414(a-1) explicitly states that civil penalties apply to “each violation,” and, for example, improperly disconnecting or issuing a late fee to a single customer is a violation of §24.173.

1 **§24.173. Late Fees and Disconnections During an Extreme Weather Emergency for**

2 **Nonpayment.**

3 (a) **Applicability.** This section applies to a retail public utility that is required to possess a
4 certificate of convenience and necessity to provide retail water or sewer utility service
5 under §24.225 of this title, (relating to Certificate of Convenience and Necessity (CCN)
6 Required) an affiliate of such a retail public utility, and a district or affected county that
7 provides retail water or sewer utility service.

8
9 (b) **Definitions.** The following words and terms, when used in this section, have the following
10 meanings, unless the context indicates otherwise:

11 (1) **Affected customer** -- a customer of an entity to which this section applies that
12 receives retail water or sewer service from that entity in an area experiencing an
13 extreme weather emergency and has a bill due during the extreme weather
14 emergency.

15 (2) **Extreme weather emergency** -- a period beginning when the previous day's
16 highest temperature in an area did not exceed 28 degrees Fahrenheit and the
17 temperature is predicted to remain at or below that level for the next 24 hours
18 according to the nearest National Weather Service reports for that area. For
19 purposes of this section, an extreme weather emergency is over on the second
20 business day the temperature exceeds 28 degrees Fahrenheit.

21 (3) **Payment schedule** -- an agreement between an entity to which this section applies
22 and an affected customer that allows the customer to pay, in one or more
23 installments, an unpaid bill due during an extreme weather emergency after its due
24 date.

(c) **Prohibited actions.** An entity to which this section applies is prohibited from imposing a late fee on, or disconnecting the retail water or sewer service of, an affected customer for nonpayment of a bill that is due during an extreme weather emergency until after the extreme weather emergency is over.

(d) **One-time notice.** On or before January 31, 2023, an entity to which this section applies must provide to each water or sewer customer a one-time written notice of the requirements of this section.

(1) The written notice must be in plain English and Spanish and inform the customer that its retail water or sewer service provider is:

(A) prohibited from imposing late fees or disconnecting retail water or sewer service for nonpayment of bills that are due during an extreme weather emergency until after the emergency is over;

(B) required to offer a payment schedule to a requesting affected customer for unpaid bills due during an extreme weather emergency; and

(C) prohibited from disconnecting the retail water or sewer service for nonpayment of bills due during an extreme weather emergency of an affected customer that has requested a payment schedule until after the payment schedule has been offered and the affected customer has either declined to accept the payment schedule in a timely fashion or violated the terms of the payment schedule.

(2) The written notice may be provided as a billing insert or a separate communication, and must be delivered by first class mail, hand delivered, or provided electronically to affected customers that have agreed to receive communications electronically.

(3) Commission staff may develop standard notice language in English and Spanish and post the standard notice language on the commission's website. An entity may use this standard notice language as part of its written notice to comply with paragraph (1) of this subsection.

(e) **Payment schedule.** An affected customer may request to establish a payment schedule for unpaid bills that are due during an extreme weather emergency. An entity to which this section applies that receives such a request within 30 days from the date the extreme weather emergency ends must offer the requesting affected customer a payment schedule and a deadline for accepting the payment schedule. A payment schedule may be established in person, by telephone, or online, but all payment schedules must be reduced to writing and provided to the customer.

(1) A payment schedule offered under this subsection may:

(A) include a finance charge, conspicuously stated on the payment schedule, for late fees on the payment schedule not to exceed an annual rate of 10 percent simple interest; and

(B) require payment in one or more installments.

(2) A payment schedule offered under this subsection must:

(A) be written in plain language in English and, if requested, Spanish;

(B) identify the total amount due, and, if payment is to be made in multiple installments, the number of installments and the amount of each installment;

(C) the deadline for payment, or if payment is to be made in multiple installments, the deadline for each installment;

(D) identify the dates the extreme weather event occurred, and the due dates and amounts owed of any bills that were due during the extreme weather event; and

(E) include a statement, in a clear and conspicuous type, that states “If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name and contact information of service provider).”

(3) An entity to which this section applies is prohibited from disconnecting the retail water or sewer service for nonpayment of bills due during an extreme weather emergency of an affected customer that has requested a payment schedule until after the payment schedule has been offered and the customer has either declined to accept the payment schedule in a timely fashion or violated the terms of the payment schedule. Any preexisting disconnection notices issued to an affected customer for nonpayment of a bill due during an extreme weather emergency are suspended upon the timely request for a payment schedule under this subsection. If the affected customer does not timely accept the offered payment schedule or violates the terms of the payment schedule, any suspended disconnection notices are reinstated, and the entity may renegotiate the terms of the payment schedule or disconnect service on or after the disconnection date listed on the disconnection notice. If the affected customer does not timely accept the offered payment schedule or violates the terms of the payment schedule and there is not a preexisting disconnection notice, the entity must issue a disconnection notice under §24.167 of

1 this title (related to Discontinuance of Service) prior to disconnecting the water or
2 sewer service of the affected customer.

3
4 (f) **Enforcement.** An entity that violates this section may be subject to civil penalties under
5 §24.364 of this title (relating to Civil Penalties for Late Fees and Disconnections During
6 an Extreme Weather Emergency for Nonpayment) and any other enforcement actions
7 permitted by law.

1 **§24.364. Civil Penalties for Late Fees and Disconnections During an Extreme Weather**

2 **Emergency for Nonpayment**

3 (a) **Scope.** This section establishes a classification system to be used by a court to impose civil
4 penalties for violations of §24.173 of this title (relating to Late Fees and Disconnections
5 During an Extreme Weather Emergency for Nonpayment). Definitions contained in
6 §24.173 of this title apply to this section.

7
8 (b) **Classification system.**

9 (1) **Class C violations.**

10 (A) Civil penalties for a Class C violation may not exceed \$1,000 per violation
11 per day.

12 (B) The following are Class C violations:

13 (i) failure to timely provide a customer with a one-time notice that
14 complies with §24.173 of this title;

15 (ii) failure to include all of the required information on a payment
16 arrangement offered under §24.173 of this title.

17 (2) **Class B violations.**

18 (A) Civil penalties for a Class B violation may not exceed \$5,000 per violation
19 per day.

20 (B) The following are Class B violations:

21 (i) imposing a late fee on an affected customer for nonpayment of bills
22 that are due during an extreme weather emergency in a manner that
23 violates §24.173 of this title;

(ii) including an undisclosed or noncompliant finance charge on a payment schedule issued to an affected customer under §24.173 of this title;

(iii) failure to offer a payment schedule to an affected customer as required by §24.173 of this title; and

(iv) any other violation of §24.173 of this title not specifically enumerated as a Class A or Class C violation.

(3) Class A violations.

(A) Penalties for a Class A violation may not exceed \$50,000 per violation per day.

(B) It is a Class A violation to disconnect an affected customer's water or sewer service in a manner that violates §24.173 of this title.

(4) The civil penalty for each separate violation must be in an amount not to exceed the maximum penalty established in paragraphs (1)-(3) of this subsection and not less than \$100. The amount of a civil penalty must also be based on:

(A) the seriousness of the violation, including:

(i) the nature, circumstances, extent, and gravity of the prohibited act;
and

(ii) the hazard or potential hazard created to the health, safety, or economic welfare of the public.

(B) the history of previous violations;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation;

(E) any other matter that justice may require, including as applicable:

- 1 (i) the duration of the disconnection, both during the extreme weather
2 emergency and afterwards;
- 3 (ii) the impact of the disconnection on the health and finances of the
4 affected customer; and
- 5 (iii) the dollar amount of late fees issued to the affected customer, if late
6 fees were improperly charged.
- 7 (F) for violations by an investor-owned utility, any other matter that justice may
8 require, including:
- 9 (i) whether the disconnection was prohibited under §24.167(c) or (f) of
10 this title (relating to Discontinuance of Service); and
- 11 (ii) whether the affected customer was provided proper notice of the
12 disconnection under §24.167 of this title.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §24.173, relating to Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment and §24.364, relating to Civil Penalties for Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment, are hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the ____ day of ____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER