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OPEN MEETING COVER SHEET

MEMORANDUM AND PROPOSAL FOR PUBLICATION

MEETING DATE:	April 20, 2022
DATE DELIVERED:	April 21, 2022
AGENDA ITEM NO.:	36
CAPTION:	Project No. 52405 – Review of Certain Water Customer Protection Rules
DESCRIPTION:	Memo and Proposal for Publication

Public Utility Commission of Texas

Memorandum

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

FROM: David Smeltzer, Director of Rules and Projects

DATE: April 20, 2022

RE: April 21, 2021 Open Meeting – Agenda Item No. #36
Project No. 52405, *Review of Certain Water Customer Protection Rules*

Please find attached to this memorandum Commission Staff's proposal for publication in the above-referenced project for consideration at the April 21, 2020 open meeting.

Commission Staff's proposal contains two new rules: §24.173, relating to Late Fees and Disconnections for Nonpayment During an Extreme Weather Emergency and §24.364, relating to Civil Penalties for Late Fees and Disconnections for Nonpayment During an Extreme Weather Emergency. These two new rules will implement the requirements of Senate Bill 3 enacted by the 87th Texas Legislature, as codified in §13.151 and §13.414 of the Texas Water Code. Specifically, these new rules will prohibit disconnections and late fees for nonpayment during an extreme weather emergency, require utilities to offer payment schedules for bills due during an extreme weather emergency, and adopt a civil penalty classification system to be used by the courts for violations of the aforementioned requirements.

Commission Staff recommends the Commission approve this proposal for publication in the *Texas Register*.

PROJECT NO. 52405

**REVIEW OF CERTAIN WATER
CUSTOMER PROTECTION RULES**

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PUBLIC UTILITY COMMISSION

OF TEXAS

(STAFF RECOMMENDATION)

**PROPOSAL FOR PUBLICATION OF NEW 16 TAC §24.173 AND NEW 16 TAC §24.364
FOR CONSIDERATION AT THE APRIL 21, 2022 OPEN MEETING**

1 The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative
2 Code (TAC) §24.173, relating to Late Fees and Disconnections for Nonpayment During an
3 Extreme Weather Emergency and §24.364, relating to Civil Penalties for Late Fees and
4 Disconnections for Nonpayment During an Extreme Weather Emergency This proposed
5 amendment will implement requirements of Senate Bill 3 enacted by the 87th Texas Legislature,
6 as codified in §13.151 and §13.414 of the Texas Water Code (TWC). Specifically, these new
7 rules will prohibit disconnections and late fees for nonpayment during an extreme weather
8 emergency, require utilities to offer payment schedules for bills due during an extreme weather
9 emergency, and adopt a civil penalty classification system to be used by the courts for violations
10 of the aforementioned requirements.

11
12 ***Growth Impact Statement***

13 The agency provides the following governmental growth impact statement for the proposed rules,
14 as required by Texas Government Code §2001.0221. The agency has determined that for each
15 year of the first five years that the proposed rules are in effect, the following statements will apply:

(1) the proposed rules will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal an existing regulation;

(7) the proposed rules will change the number of individuals subject to the rules' applicability; and

(8) the proposed rules will not affect this state's economy

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c)

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

1 Tammy Benter, Division Director of Utility Outreach, has determined the first five-year period the
2 proposed rule is in effect, there will be no fiscal implications for the state or for units of local
3 government under Texas Government Code §2001.024(a)(4) as a result of enforcing or
4 administering the sections.

6 ***Public Benefits***

7 Ms. Benter has determined each year of the first five years the rule will be in effect, the anticipated
8 public benefits expected as a result of the adoption of the proposed amendments will be in
9 alignment with commission rules with the requirements of TWC §13.151 and §13.414. Ms. Benter
10 also anticipates the proposed rules will assist individuals with mitigating disconnection of water
11 and sewer services and preventing dire circumstances stemming from disconnection during an
12 extreme weather emergency Ms Benter does not believe there will be any major economic costs
13 to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

15 ***Local Employment Impact Statement***

16 For each year of the first five years the proposed sections are in effect, there should be no effect
17 on a local economy; therefore, no local employment impact statement is required under Texas
18 Government Code §2001.022

20 ***Costs to Regulated Persons***

21 Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission
22 is expressly excluded under subsection §2001.0045(c)(7).

24 ***Public Hearing***

1 The commission staff will conduct a public hearing on this rulemaking if requested in accordance
2 with Texas Government Code §2001.029. The request for a public hearing must be received by
3 June 2, 2022. If no request is received and the commission staff cancels the hearing, a notification
4 of the cancellation will be filed prior to the scheduled hearing date.

6 ***Public Comments***

7 Interested persons may file comments electronically through the interchange on the commission's
8 website. Comments must be filed by May 19, 2022. Reply comments must be filed by June 2,
9 2022. Comments should be organized in a manner consistent with the organization of the proposed
10 rules. The commission invites specific comments regarding the costs associated with, and benefits
11 that will be gained by, implementation of the proposed rule. The commission will consider the
12 costs and benefits in deciding whether to modify the proposed rules on adoption. **Please include**
13 **a bulleted executive summary of any changes to the proposed rule requested to assist the**
14 **commission in reviewing the filed comments in a timely fashion.** All comments should refer to
15 Project Number 52405.

17 ***Statutory Authority***

18 These amendments and new rules are proposed under TWC §13.041(b), which provides the
19 commission with the authority to make and enforce rules reasonably required in the exercise of its
20 powers and jurisdiction; Texas Water Code (TWC) §13 151 prohibits any retail public utility
21 required to possess a certificate of public convenience and necessity or a district or affected county
22 that furnishes retail water or sewer utility service from imposing late fees or disconnecting service
23 for nonpayment of bills during an extreme weather emergency and requires such entities to work
24 with customers requesting a payment schedule for unpaid bills due during the extreme weather

1 emergency; TWC §13.414, the enforcement statute for TWC of Chapter 13, which establishes
2 criteria for imposing, recommending, or determining penalties. Specifically, under TWC
3 §13.414(a-1), any retail public utility or affiliated interest that violates TWC §13.151 is subject to
4 civil penalties of not less than \$100 nor more than \$50,000 for each violation and requires the
5 commission to establish a classification system to be used by a court for violations based on
6 aggravating and mitigating factors.

7 Cross reference to statutes: TWC §13.041(b), §13.151, §13.414

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

2 **Emergency**

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 (relating to Certificate of Convenience and Necessity (CCN) Required) of
6 this chapter, an affiliate of such a retail public utility, and a district or affected county that
7 provides retail water or sewer utility service. The requirements of this section only apply
8 with regards to customers who receive service in a county affected by an extreme weather
9 emergency.

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

13 (1) **Extreme weather emergency** -- a period when the previous day's highest
14 temperature did not exceed 28 degrees Fahrenheit and the temperature is predicted
15 to remain at or below that level for the next 24 hours according to the National
16 Weather Service reports for the county where the affected customer receives water
17 or sewer service.

18 (2) **Payment schedule** -- any arrangement or agreement between an entity to which
19 this section applies and a customer in which an outstanding bill will be paid in
20 installments

21
22 (c) **Prohibited actions.** An entity to which this section applies is prohibited from:

1	(1)	imposing a late fee on a customer for non-payment of bills related to retail water or sewer utility service during an extreme weather emergency until the extreme
2		sewer utility service during an extreme weather emergency until the extreme
3		weather emergency is over, and
4	(2)	disconnecting a customer's retail water or sewer service for nonpayment of bills
5		related to retail water or sewer utility service during an extreme weather emergency
6		until the extreme weather emergency is over.
7		
8	(d)	Payment schedule.
9	(1)	A customer of an entity to which this section applies may request to establish a
10		payment schedule for unpaid bills that are due during an extreme weather
11		emergency.
12	(2)	If a customer requests to establish a payment schedule within 10 days from the date
13		the extreme weather emergency ends, an entity to which this section applies must
14		offer one or more payment schedule options to the requesting customer within 10
15		days of receiving the request. A payment schedule offered under this paragraph
16		must include information on how the customer can request to increase the number
17		of installments for that payment schedule unless the customer is initially offered
18		multiple options for the number of installments
19	(3)	If a customer requests to establish a payment schedule after 10 days from the date
20		the extreme weather emergency ends, an entity to which this section applies may
21		offer the customer a payment schedule but is not required to do so under this
22		section
23	(3)	Content of payment schedule.

1 (A) A payment schedule offered under this subsection must identify the due date
2 and amount of each installment.

3 (B) A payment schedule offered under this subsection may include a finance
4 charge that must not exceed an annual rate of 10 percent simple interest.
5 Any finance charges must be stated on the payment schedule.

6 (C) A payment schedule offered under this subsection must identify the dates
7 the extreme weather emergency occurred, and the due dates and amounts
8 owed of any bills due during the extreme weather emergency.

9
10 (e) **Enforcement.** An entity that violates this section may be subject to civil penalties under
11 §24.364 (relating to Civil Penalties for Late Fees and Disconnections for Nonpayment
12 During an Extreme Weather Emergency) of this chapter and any other enforcement actions
13 permitted by law.

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

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 (relating to Late Fees and Disconnections for
5 Nonpayment During an Extreme Weather Emergency) of this chapter. Any definitions
6 contained in §24.173 of this chapter apply to this section. This section does not apply to
7 other enforcement actions that may be undertaken by the commission or commission staff
8 for violations of §24.173 of this chapter.

9
10 (b) **Classification system.**

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

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

14 (B) The following are Class C violations:

15 (i) failure to timely offer a payment schedule as required by §24.173 of
16 this chapter; and

17 (ii) failure to include all of the required information on a payment
18 schedule.

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

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

22 (B) The following are Class B violations:

23 (i) imposing a late fee on a customer for nonpayment of bills during an
24 extreme weather emergency;

(ii) failure to offer a payment schedule as required by §24.173 of this chapter; and

(iii) any other violations not specifically enumerated as Class A or Class C violations.

(3) Class A violations.

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

(B) Disconnection of a customer's water or sewer service for nonpayment of bills that are due during an extreme weather emergency is a Class A violation.

(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:

(i) the duration of the disconnection, both during the extreme weather emergency and afterwards;

1 (ii) the impact of the disconnection on the health and finances of the
2 customer,

3 (iii) the bill amount and number of bills issued to the customer, if
4 improper billing occurred, and

5 (F) for violations by an investor-owned utility, any other matter that justice may
6 require, including:

7 (i) whether the disconnection was prohibited under §24.167(c) or (f)
8 (relating to Discontinuation of Service) of this chapter; and

9 (iii) whether the customer was provided proper notice of the
10 disconnection under §24 167(a) of this chapter.

11
ISSUED IN AUSTIN, TEXAS ON THE __TH DAY OF _____ BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ