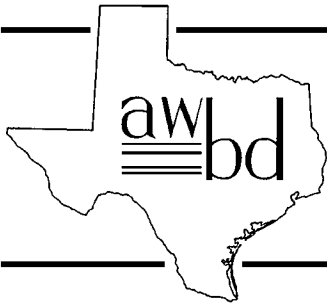




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ASSOCIATION OF WATER BOARD DIRECTORS - TEXAS

"Dedicated to the betterment of Texas water district operation and management through education, unification, and advocacy."

May 19, 2022

The Honorable Commissioners
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

Via electronic submission

Re: Public Utility Commission of Texas ("PUC") Project No. 52405
Proposal for Publication of New 16 TAC §24.173 and New 16 TAC §24.364
as Approved at the April 21, 2022 Open Meeting

Dear Commissioners:

On behalf of the Association of Water Board Directors ("AWBD"), thank you for the opportunity to provide comments to the referenced rule project implementing certain provisions of Senate Bill 3 ("SB 3") from the 87th Texas Legislature, as codified in §13.151 and §13.414 of the Texas Water Code.

AWBD is a statewide organization with approximately 680 water district members and over 960 total members. AWBD's member districts include municipal utility districts, water control and improvement districts, and other water districts that construct, finance, operate, and maintain essential water, sewer, and drainage infrastructure and services to millions of Texans.

Water districts have a long history of working with their customers in unusual situations to provide payment arrangements and other accommodations, including during the COVID-19 pandemic and Winter Storm Uri. AWBD supports the language and intent of SB 3 as it relates to requirements for water service providers. Our comments to the proposed rules are intended to ensure clarity in practice and to avoid unintentional violations due the severity of potential penalties. In summary, our comments are in line with the language and intent of SB 3.

Thank you for your attention to the enclosed comments submitted on behalf of AWBD's members. Please feel free to contact us with any comments or questions.

Very truly yours,

ASSOCIATION OF WATER BOARD
DIRECTORS – TEXAS

By: Ellen Hughes
Ellen Hughes, President

By: Augustus Campbell
Augustus Campbell, Executive Director

1. 16 TAC §24.173(a).

(a) **Applicability.** This section applies to a retail public utility that is required to possess a certificate of convenience and necessity to provide retail water or sewer utility service under §24.225 (relating to Certificate of Convenience and Necessity (CCN) Required) of this chapter, an affiliate of such a retail public utility, and a district or affected county that provides retail water or sewer utility service. ~~[The requirements of this section only apply with regards to customers who receive service in a county affected by an extreme weather emergency.]~~

Explanation: See explanation in comment no. 2 below.

2. 16 TAC §24.173(b)(1).

(b) [...]

(1) **Extreme weather emergency** -- a period when (i) the previous day's highest temperature did not exceed 28 degrees Fahrenheit **at the National Weather Service weather station nearest to the retail service area of an entity to which this section applies, as determined by the entity,** and (ii) the temperature is predicted to remain at or below that level for the next 24 hours according to the National Weather Service ~~[reports for the county where the affected customer receives water or sewer service].~~

*Explanation: The comments to 16 TAC §24.173(a) and 16 TAC §24.173(b)(1) are intended to provide clarity and consistency with SB 3 by removing the reference to location within a county. Many Texas counties cover large geographic areas where weather may vary depending on the location. A county may contain multiple source locations of National Weather Service reports. The 'Location Help' feature on the National Weather Service website provides the following guidance for searching by location: "*Large areas, like counties and ZIP codes, are not recommended. The center of the area may be far from your location and the weather may be very different there."¹*

¹ <https://www.weather.gov/ForecastSearchHelp.html>

3. 16 TAC §24.173(c)(1) and (2).

(c) [...]

(1) imposing a late fee on a **retail water or sewer service** customer for non-payment of bills **that become due** ~~[related to retail water or sewer utility service]~~ during an extreme weather emergency until the extreme weather emergency is over; and

(2) disconnecting a customer's retail water or sewer service for nonpayment of bills **that become due** ~~[related to retail water or sewer utility service]~~ during an extreme weather emergency until the extreme weather emergency is over.

Explanation: Sec. 13.151(b) applies to utility bills that become due during an extreme weather emergency. The language of the proposed rules would change the meaning to apply to bills that become due at a future date. Our comments are intended to return the language to the original wording and intent of the statute, which is also consistent with the language of proposed 16 TAC §24.173(d) and proposed 16 TAC §24.364 tied to the due date.

4. 16 TAC §24.173(d).

(d) [...]

(1) [...]

(2) If a customer requests to establish a payment schedule within **30** ~~[10]~~ days from the date the extreme weather emergency ends, an entity to which this section applies ~~[must]~~ **shall work with the customer to** offer one or more payment schedule options to the requesting customer ~~[within 10 days of receiving the request]~~. ~~[A payment schedule offered under this paragraph must include information on how the customer can request to increase the number of installments for that payment schedule unless the customer is initially offered multiple options for the number of installments.]~~ **An entity to which this section applies shall make information**

available to its customers about the availability of payment schedules authorized by this section.

~~[(3) If a customer requests to establish a payment schedule after 10 days from the date the extreme weather emergency ends, an entity to which this section applies may offer the customer a payment schedule but is not required to do so under this section.]~~

~~[(3) **Content of payment schedule:**~~

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

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

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

Explanation: Proposed 16 TAC §24.173(d) is beyond the requirements enacted by SB 3. There is no statutory requirement for the content, form, or timing of a proposed payment plan. Therefore, there is no statutory support for the PUC to impose these prescriptive requirements. The exact wording of the statute is “shall work with the customer to offer one or more payment schedule options to the requesting customer.” This language is clear and we believe intentional. There is not statutory support to change this wording.

5. 16 TAC §24.364(b).

(b) [...]

(1) [...]

(A) [...]

(B) The following **is a** [are] Class C violation[s]:

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

~~[(ii) failure to include all of the required information on a payment~~
~~schedule.]~~

(2) [...]

(A) [...]

(B) [...]

(i) imposing a late fee on a customer for nonpayment of bills **that**
become due during and extreme weather emergency; **and**

(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) [...]

(A) [...]

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

(4) [...]

Explanation: These comments to 16 TAC §24.364 are conforming changes based on our comments to 16 TAC §24.173.