To the PUC . . . And Beyond!
GFOAT Fall Conference | Houston, Texas

Presented by:
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Agenda

1. Regulatory Developments
2. Legislative Developments
3. Texas Groundwater Regulation / Groundwater Conservation Districts
4. Developments outside of Texas
5. SWIFT and Other Available Funding
Key Players in Water and Wastewater Regulation

- Public Utility Commission of Texas
- Texas Water Development Board/Water Planning Regions
- Texas Commission on Environmental Quality
- Groundwater Conservation Districts
- Municipal Utility
What Am I?

• Public Water System (TCEQ Rule – 30 TAC 290.38)
  – Serves 15 or more connections
  – 25 individuals at least 60 days out of the year

• Public Utility (PUC Rule – 16 TAC 24.3)
  – See Water or Sewer Utility
  – Water or Sewer Utility – Does not include municipalities

• Retail Public Utility (PUC Rule – 16 TAC 24.3)
  – Does include municipalities unless specifically exempted
Regulatory Transition

• HB 1600, SB 567 – 83rd Legislative Session
  – Transfer of Economic Regulation of Water and Sewer Utilities from Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission (PUC)

• Both TCEQ and PUC have roles to play in water and wastewater regulation
## Regulatory Responsibilities

### PUC Responsibilities
- Rate/Tariff Changes, Rate Appeals
- CCN Related Applications
- Sale, Transfer, and Merger Applications
- WSC Investigations
- Assistance to Cities (Financial, Managerial, and Technical)
- Drainage Fee Appeals
- Multi-Family Billing

### TCEQ Responsibilities
- Construction and Design Standards
- Operational Standards
- Groundwater Rules
- Operator Licensing
- Water Rights Permitting
- District Elections/Conversions
- Drought Contingency Plans
- Enforcement / Penalties
Regulatory Transition – Rulemaking Projects

- PUC conducting numerous rule-makings to address past issues
  - PUC Docket No. 43871 – Changes to Chapters 22 and 24 Substantive Rules
  - PUC Docket No. 43876 – Class A Rate Filing Package
  - PUC Docket No. 43967 – Class B Rate Filing Package
  - PUC Docket No. 43968 – Additional Water Forms
  - PUC Docket No. 44462 – Class C Rate Filing Package
  - PUC Docket No. 44706 – Annual Report Forms and Rate Filing Notices
Regulatory Transition – Rulemaking Projects

- Upcoming projects include Certificate of Convenience and Necessity rules review.
- Change has minimal impact on municipalities as original rate jurisdiction remains with City Council. Larger impact for:
  - Wholesale Suppliers
  - Cities that Supply Districts
  - Cities that have Investor-Owned Utility (IOU) within their Municipal Limits
Original vs Appellate Rate Jurisdiction

• **Original Jurisdiction**
  – Entity with power to initially set rates

• **Appellate Jurisdiction**
  – The power to review the initial rate action and change or overturn adopted rates
Does the PUC Regulate My Rates?

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<th>Original Jurisdiction</th>
<th>Appellate Jurisdiction</th>
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Outside City Customer Rate Notice Requirements

• Texas Water Code (TWC) 13.043(i) states the following:

  “The governing body of a municipally owned utility or a political subdivision, within 60 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained”

• Not to be confused with IOU notice requirements
Regulatory Transition – Municipal Highlights

- Wholesale Contractual Service
- Rate Challenge By Districts
- Financial Assurance for CCN Procurement/Expansion
- IOU Rate Appeals
Regulatory Transition – Municipal Highlights

- Wholesale Contractual Service
  - Public Interest Rule – (16 TAC 24.128)
  - If a rate is charged pursuant to a written contract
  - Two-step process for a wholesale rate protest under a contract

1. Public Interest Hearing
2. Cost of Service Hearing
Regulatory Transition – Municipal Highlights

• Public Interest Determination (16 TAC 24.133)

1. Impairs the seller’s ability to continue to provide service, based on the seller’s financial integrity and operational capability;

2. 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. Evidences the seller’s abuse of monopoly power in its provision of water or sewer service to the purchaser (detailed requirements);

4. Rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.

• 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.
Rate Challenge by a District (16 TAC 24.45)

• A district . . . located within the corporate limits or the extraterritorial jurisdiction of a municipality and which receives water or sewer service or whose residents receive water or sewer service from the municipality may . . . appeal the rates charged by the municipality if the resolution, ordinance, or agreement of the municipality consenting to the creation of the district required the district to purchase water or sewer service from the municipality.

• The commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable.
Rate Challenge by a District (16 TAC 24.45)

• After the commission establishes just and reasonable rates, the municipality may not increase those rates without approval of the commission. A municipality desiring to increase rates must provide the commission with updated information in a format specified in the current rate data package developed by the Rates Section.

• Recent Example – PUC Docket No. 42857
  – Wholesale Customers vs. City of Austin
Financial Assurance (16 TAC 24.11)

• To prove financial ability to provide service when obtaining new, or expanding an existing CCN, a City must provide:

  – the city or district may substantiate financial capability with a letter from the city’s or district’s financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.

  – (B)(i) - the owner or operator’s independently audited year-end financial statements for the most recent fiscal year including the “unqualified opinion” of the auditor.
IOU Changes

• IOUs are now classified into three levels based on active taps and connections:

  **Class A**
  
  10,000
  
  • Must file full rate application
  • File Testimony in Support of Application

  **Class B**
  
  500 – 10,000
  
  • Can file limited rate application
  • Rate of Return based on Formula

  **Class C**
  
  Fewer than 500
  
  • Rates adjusted annually based on price index adjustment
  • File as Class B after 5 years
**Legislative Developments**

**S.B. 1148 (84th Leg)**

- A municipally owned water and sewer utility must disclose the number of ratepayers who reside outside the city limits to any person that requests the information, unless the ratepayer has requested that this information be kept confidential.

**H.B. 1662 (84th Leg)**

- Allows a city to exempt property used for cemetery purposes from drainage charges if the cemetery is closed to new interments and does not accept new burials.

**H.B. 2788 (84th Leg)**

- A retail public utility, which includes a municipally owned utility, to require the operator of a correctional facility that receives water or sewer service from the utility to comply with water conservation measures adopted by the utility.
HB 857 (83rd Leg)
• “A retail public utility providing potable water shall perform and file with the [TWDB] an annual water audit computing the utility’s system water loss during the preceding year”
• Exempts utilities with less than 3,300 connections is not receiving financial assistance

HB 1461 (83rd Leg)
• “The Commission by rule shall require a retail public utility that files a water audit . . . to notify each of the utility’s customers of the water loss reported in the water audit.”
• Done either through Consumer Confidence Report or Bill Insert

H.B. 949 (84th Leg)
• Allows the TWDB to waive the requirement that a retail public utility that receives a loan from the board use a portion of the financial assistance to mitigate the utility’s system water loss, if the board finds that the utility is addressing the system’s water loss
Certificates of Convenience and Necessity

• CCN – Certificate of Convenience and Necessity
  – A municipality is not required to have a CCN within its municipal boundaries
  – Might be a good idea to have one anyway to protect from encroachment

• CCN Requirements – Financial, Managerial, and Technical Capabilities
  (16 TAC 24.102)

• Texas Water Code Applicability
  – 13.254 – Revocation or Amendment/Expedited Release
  – 13.255 – Single Certification in Incorporated or Annexed Area
TWC 13.254 – Expedited Release

• Applicable to a landowner with 50 acres or more, that is not in a platted subdivision or receiving service. Must demonstrate that:
  – A written request for service has been submitted
  – The existing certificate holder has been allowed 90 days to review the request
  – The existing certificate holder has:
    • Refused service
    • Not capable of providing service within the timeframe or at the approximate cost of an alternative provider
TWC 13.254 – Limited Alternative to Expedited Release

- As an alternative, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is:
  - Located in a county with a population of at least one million,
  - A county adjacent to a county with a population of at least one million, or
  - A county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.
TWC 13.255 Overview

- If an area is incorporated or annexed, the municipality and the entity providing service can agree that all or part of the area can be served by the municipality.

- The agreement can allow for:
  - single certification
  - dual certification
  - the purchase of facilities or property
  - other terms that the parties may agree on.

- The executed agreement must be filed with the PUC.
13.255 Overview

• If no agreement, and City provides written intent to provide service, the City files application with PUC

• After receiving application, the PUC shall grant single certification to the municipality and determine if granting would result in property of a retail public utility being rendered *useless or valueless* to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property

• If the City has requested the transfer of specified property of the utility to the municipality, the PUC shall also determine the adequate and just compensation to be paid for such property including an award for damages to property remaining in the ownership of the retail public utility after single certification
13.255 Overview

• City must provide notice to each customer of the retail public utility being acquired an within 60 days after the effective date for the transfer

• The notice must contain:
  – the new service provider
  – the reason for the transfer
  – the rates to be charged by the new service provider
  – effective date of those rates.
Determination of Monetary Compensation (TWC 13.254 and TWC 13.255)

- Value of Real Property (Chapter 21, Property Code)
- The amount of debt allocable for service to the area in question;
- The value of the service facilities located within the area in question;
- The amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question;
- The amount of contractual obligations allocable to the area in question;
- Any demonstrated impairment of service or increase of cost to consumers remaining after the decertification;
- The impact on future revenues lost from existing customers;
- Necessary and reasonable legal expenses and professional fees; and
- Other relevant factors.
Water Law in Texas

- **Groundwater** – Belongs to landowner and governed by Rule of Capture
  - Private property of the owner overlaying the land
  - Rule of Capture – “Law of the Biggest Pump”

- **Surface Water** – Belongs to the State and can only be used with the State’s permission
  - Prior Appropriation Doctrine – “First in Time, First in Right”
Groundwater Conservation Districts

• “Local Unit of Government authorized by the Texas Legislature and ratified at the local level to manage and protect groundwater”
  – First authorized in 1949
  – Responsible for developing and implementing plans management plans to preserve and protect groundwater
    • GMPs – Groundwater Management Plan
    • MAG – Modeled Available Groundwater
    • DFCs – Desired Future Conditions

Created Through

- Action of the Legislature
- Property Owner Petition
- TCEQ Creation
- Adding territory to existing district
Groundwater Conservation Districts

• GCD Regulation of Municipal Wells
  – Municipal Wells are generally treated the same as other large wells in the GCD
  – A GCD can set production limits and charge administration, production, and/or export fees to a municipality

• Municipalities need to be involved with their local GCD, as applicable, to ensure the long-term availability of their water supply
Current Groundwater Conservation Districts
Developments Outside of Texas

- San Juan Capistrano, California
  - Adopted tiered water rates violated Prop 218
  - Prop 218 requires rates be based on “cost of service” principles
  - Rates, as adopted, were arbitrary as tiers were arbitrary
  - No administrative record provided

**KEY POINT – Tiered water rates are legal, but they must be based on cost of service principles**
Developments Outside of Texas

- **EPA Affordability Matrix**
  - Originally adopted in 1997
  - Used to assess the affordability of compliance with Clean Water Act/Safe Drinking Water Act Standards
  - Affordability based on Median Household Income
    - Water Service affordable at 2.5% of MHI, Combined Water and Wastewater at 4.5% of MHI
  - EPA now considering more indicators in assessing affordability
EPA Affordability Metrics

New Metrics
1. The Community’s Bond Rating
2. The overall net debt as a percentage of full market property value
3. The Community’s unemployment rate
4. The current property tax collection rate
5. The level of property taxes as a percentage of full market property value

Additional Supplemental Information
1. Income distribution
2. Adopted life-line rate structures
3. Poverty rates and trends
4. Projected, current, and historic fees as a percentage of income
5. Water and wastewater usage by customer classes
6. Population trends
7. Financial planning models and rate studies
8. Data or trends on late payments, disconnections, and uncollectible accounts
State Water Implementation Fund for Texas (SWIFT)

- Created by Legislature, Approved by Voters to provide state financial assistance for projects
- Eligibility:
  - Any political subdivision with a project included in the adopted regional water plan
  - Eligible projects must be a recommended water strategy in the adopted regional plan
- Funding features:
  - TWDB subsidized interest rates
  - Up to 30-year repayment
  - Flexible financing terms (low interest, deferred loans, TWDB participation)
- Abridged applications due February 5, 2016
Texas Water Infrastructure Coordination Committee

- Collaborative effort of government agencies and technical organizations to encourage financial, managerial, and technical assistance to service providers
- Promote efficient process for funding
- To request assistance, simply submit project profile form
- TWICC will match you with appropriate funding or regulatory program
- Contact
  - [http://www.twicc.org/index.html](http://www.twicc.org/index.html)
  - TWICC@twdb.texas.gov
  - Stacy Barna - (512) 475-2086
Questions?

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