

AN ACT

relating to the requirement that certain water service providers ensure emergency operations during an extended power outage.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 13, Water Code, is amended by adding Sections 13.1395 and 13.1396 to read as follows:

Sec. 13.1395. STANDARDS OF EMERGENCY OPERATIONS. (a) In this section:

(1) "Affected utility" means a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more; or

(B) in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more.

(2) "Emergency operations" means the operation of a water system during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(3) "Extended power outage" means a power outage lasting for more than 24 hours.

(b) An affected utility shall:

(1) ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster; and

1 (2) adopt and submit to the commission for its
2 approval an emergency preparedness plan that demonstrates the
3 utility's ability to provide emergency operations.

4 (c) The commission shall review an emergency preparedness
5 plan submitted under Subsection (b). If the commission determines
6 that the plan is not acceptable, the commission shall recommend
7 changes to the plan. The commission must make its recommendations
8 on or before the 90th day after the commission receives the plan.
9 In accordance with commission rules, an emergency preparedness plan
10 shall provide for one of the following:

11 (1) the maintenance of automatically starting
12 auxiliary generators;

13 (2) the sharing of auxiliary generator capacity with
14 one or more affected utilities;

15 (3) the negotiation of leasing and contracting
16 agreements, including emergency mutual aid agreements with other
17 retail public utilities, exempt utilities, or providers or
18 conveyors of potable or raw water service, if the agreements
19 provide for coordination with the division of emergency management
20 in the governor's office;

21 (4) the use of portable generators capable of serving
22 multiple facilities equipped with quick-connect systems;

23 (5) the use of on-site electrical generation or
24 distributed generation facilities;

25 (6) hardening the electric transmission and
26 distribution system serving the water system;

27 (7) for existing facilities, the maintenance of direct

1 engine or right angle drives; or

2 (8) any other alternative determined by the commission
3 to be acceptable.

4 (d) Each affected utility that supplies, provides, or
5 conveys surface water shall include in its emergency preparedness
6 plan under Subsection (b) provisions for the actual installation
7 and maintenance of automatically starting auxiliary generators or
8 distributive generation facilities for each raw water intake pump
9 station, water treatment plant, pump station, and pressure facility
10 necessary to provide water to its wholesale customers.

11 (e) The commission shall adopt rules to implement this
12 section as an alternative to any rule requiring elevated storage.

13 (f) The commission shall provide an affected utility with
14 access to the commission's financial, managerial, and technical
15 contractors to assist the utility in complying with the applicable
16 emergency preparedness plan submission deadline.

17 (g) The commission by rule shall create an emergency
18 preparedness plan template for use by an affected utility when
19 submitting a plan under this section. The emergency preparedness
20 plan template shall contain:

21 (1) a list and explanation of the preparations an
22 affected utility may make under Subsection (c) for the commission
23 to approve the utility's emergency preparedness plan; and

24 (2) a list of all commission rules and standards
25 pertaining to emergency preparedness plans.

26 (h) An emergency generator used as part of an approved
27 emergency preparedness plan under Subsection (c) must be operated

1 and maintained according to the manufacturer's specifications.

2 (i) The commission shall inspect each utility to ensure that
3 the utility complies with the approved plan.

4 (j) The commission may grant a waiver of the requirements of
5 this section to an affected utility if the commission determines
6 that compliance with this section will cause a significant
7 financial burden on customers of the affected utility.

8 (k) An affected utility may adopt and enforce limitations on
9 water use while the utility is providing emergency operations.

10 (l) Except as specifically required by this section,
11 information provided by an affected utility under this section is
12 confidential and is not subject to disclosure under Chapter 552,
13 Government Code.

14 Sec. 13.1396. COORDINATION OF EMERGENCY OPERATIONS.

15 (a) In this section:

16 (1) "Affected utility" has the meaning assigned by
17 Section 13.1395.

18 (2) "County judge" means a county judge or the person
19 designated by a county judge.

20 (3) "Electric utility" means the electric
21 transmission and distribution utility providing electric service
22 to the water and wastewater facilities of an affected utility.

23 (4) "Retail electric provider" has the meaning
24 assigned by Section 31.002, Utilities Code.

25 (b) An affected utility shall submit to the county judge,
26 the office of emergency management of each county in which the
27 utility has more than one customer, the Public Utility Commission

1 of Texas, and the office of emergency management of the governor, a
2 copy of:

3 (1) the affected utility's emergency preparedness plan
4 approved under Section 13.1395; and

5 (2) the commission's notification to the affected
6 utility that the plan is accepted.

7 (c) Each affected utility shall submit to the county judge
8 and the office of emergency management of each county in which the
9 utility has water and wastewater facilities that qualify for
10 critical load status under rules adopted by the Public Utility
11 Commission of Texas, and to the Public Utility Commission of Texas
12 and the division of emergency management of the governor:

13 (1) information identifying the location and
14 providing a general description of all water and wastewater
15 facilities that qualify for critical load status; and

16 (2) emergency contact information for the affected
17 utility, including:

18 (A) the person who will serve as a point of
19 contact and the person's telephone number;

20 (B) the person who will serve as an alternative
21 point of contact and the person's telephone number; and

22 (C) the affected utility's mailing address.

23 (d) An affected utility shall immediately update the
24 information provided under Subsection (c) as changes to the
25 information occur.

26 (e) Not later than February 1 of each year, the county judge
27 of each county that receives the information required by

1 Subsections (c) and (d) shall:

2 (1) submit the information for each affected utility
3 to each retail electric provider that sells electric power to an
4 affected utility and each electric utility that provides
5 transmission and distribution service to an affected utility; and

6 (2) in cooperation with the affected utility, submit
7 for each affected utility any forms reasonably required by an
8 electric utility or retail electric provider for determining
9 critical load status, including a critical care eligibility
10 determination form or similar form.

11 (f) Not later than May 1 of each year, each electric utility
12 and each retail electric provider shall determine whether the
13 facilities of the affected utility qualify for critical load status
14 under rules adopted by the Public Utility Commission of Texas.

15 (g) If an electric utility determines that an affected
16 utility's facilities do not qualify for critical load status, the
17 electric utility and the retail electric provider, not later than
18 the 30th day after the date the electric utility or retail electric
19 provider receives the information required by Subsections (c) and
20 (d), shall provide a detailed explanation of the electric utility's
21 determination to each county judge that submitted the information.

22 SECTION 2. (a) Not later than December 1, 2009, the Texas
23 Commission on Environmental Quality shall adopt standards as
24 required by Section 13.1395, Water Code, as added by this Act. As
25 part of the rulemaking process, the commission shall conduct at
26 least two public hearings in Harris County. The commission shall
27 issue a report to the governor, lieutenant governor, and speaker of

1 the house of representatives if the commission is unable to adopt
2 the standards by the time provided by this subsection.

3 (b) Not later than November 1, 2009, each affected utility
4 shall submit the information required by Section 13.1396, Water
5 Code, as added by this Act, to:

6 (1) each appropriate county judge and office of
7 emergency management;

8 (2) the Public Utility Commission of Texas; and

9 (3) the office of emergency management of the
10 governor.

11 (c) Not later than March 1, 2010, each affected utility
12 shall submit to the Texas Commission on Environmental Quality the
13 emergency preparedness plan required by Section 13.1395, Water
14 Code, as added by this Act.

15 (d) Not later than July 1, 2010, each affected utility shall
16 implement the emergency preparedness plan approved by the Texas
17 Commission on Environmental Quality under Section 13.1395, Water
18 Code, as added by this Act.

19 (e) An affected utility may file with the Texas Commission
20 on Environmental Quality a written request for an extension, not to
21 exceed 90 days, of the date by which the affected utility is
22 required under Subsection (c) of this section to submit the
23 affected utility's emergency preparedness plan or of the date by
24 which the affected utility is required under Subsection (d) of this
25 section to implement the affected utility's emergency preparedness
26 plan. The Texas Commission on Environmental Quality shall approve
27 the requested extension for good cause shown.

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 361 passed the Senate on April 8, 2009, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendments on May 30, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 361 passed the House, with amendments, on May 26, 2009, by the following vote: Yeas 146, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor