HOUSE
RESEARCH
ORGANIZATION bill analysis 3/29/2005

HB 474
West

SUBJECT: Reporting gas utility transactions to Railroad Commission

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 6 ayes — West, Farabee, Crownover, Corte, Gonzalez Toureilles, Howard

0 nays

1 absent — Crabb

WITNESSES: For — James Mann, Texas Pipeline Association; (*Registered but did not testify*: Patrick Nugent, Texas Pipeline Association)

Against — Betsy Todd, Coalition of Cities served by Atmos

BACKGROUND: Under Utilities Code, sec. 102.051(a), a gas utility may not:

- sell, acquire, or lease a plant as an operating unit or system in the state for a total consideration of more than $1 million or
- merge or consolidate with another gas utility operating in the state,

unless it has reported the transaction to the Railroad Commission (RRC) within a "reasonable time."

To investigate whether a transaction is consistent with the public interest, section 102.051(b) requires a gas utility to file a report of the transaction with the RRC. The RRC may consider the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or consolidated. If the RRC finds that a transaction is not in the public interest, it must take the effect of the transaction into consideration in ratemaking proceedings and disallow the result of the transaction if it unreasonably would affect rates or service.

A gas utility does not have to report transactions involving the purchase of a unit of property for replacement or an addition to its facilities by construction.

DIGEST: HB 474 would remove the "reasonable time" reporting condition on sales, acquisitions, leases, mergers, and consolidations by gas utilities in sec.

102.051(a) and replace it with the requirement that a gas utility report the transaction not later than the 60th day after the date the transaction takes effect.

The bill would take effect September 1, 2005.

SUPPORTERS SAY:

HB 474 would define clearly the time limit for gas utilities to report certain transactions to the RRC. The 60-day deadline would allow for more effective and timely review of the transactions. The vagueness of the term "reasonable time" makes it difficult for the RRC to manage and maintain adequate records of the transactions.

With no definable time limit, reviews of transactions by RRC staff, including opening of a docket, requests to gas utilities for more information, and opportunities for hearings, might not be timely. Under the "reasonable time" standard, many gas utilities are reporting transactions more than 60 days after they occur, with some utilities reporting more than 180 days after transactions. The 60-day reporting deadline would help prevent abuses of the "reasonable time" standard.

Reporting the transactions listed in section 102.051(a) is important because the RRC determines utility rates based on the utility's total assets. For gas utilities, assets are determined by the total value of the utility's pipeline system. It is easier for the RRC to determine future rates if it has current information about a utility's assets. As a result, transaction reporting is a vital part of RRC rate determination. The new deadline would help the RRC determine future utility rates more promptly and efficiently.

OPPONENTS SAY:

The new language in section 102.051(a) would do more than just change the gas utility transaction report filing deadline from a "reasonable time" to 60 days. Under current law, the utility is prohibited from completing the action "unless" it reports the transaction to the RRC. By changing reporting to the RRC from a condition for the transaction to a requirement to be completed within 60 days of the transaction, the new language effectively would eliminate the prohibition against transactions if a report were not filed.

As changed by HB 474, the provision would not be as effective because it would leave room for abuse by gas utilities. With no penalty applied to a gas utility for failure to comply with the 60-day reporting deadline, a utility could fail to meet the deadline and suffer no negative consequences. This effectively would negate the time limit and result in continued belated reporting.