

SUBJECT: Authority of RRC to approve cost-of-service adjustments by gas utilities

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 5 ayes — Keffer, Carter, J. Davis, Lozano, Sheffield
2 nays — Crownover, Strama
2 absent — Craddick, C. Howard

WITNESSES: For — Chuck Harder, CenterPoint Energy; (*Registered, but did not testify:*
Thure Cannon, Texas Pipeline Association; Dan Renner, Texas Gas
Association; Grant Ruckel, Oneok; Charles Yarbrough, Atmos Energy
Corporation)
Against — Thomas Brocato, Steering Committee of Cities Served by
Atmos Energy
On — Mark Evarts, Bill Geise, Railroad Commission of Texas

DIGEST: CSHB 2435 would amend the Utilities Code by allowing the Railroad
Commission (RRC) or a municipal regulatory authority to approve a tariff
or rate schedule in which the rate for gas utility service was adjusted based
on changes in the gas utility's revenues, expenses, or investments.
Rates and charges resulting from tariffs or rate schedules established
within a municipality by mutual agreement of the utility and the municipal
regulatory authority would have to be presumed reasonable by the RRC.
This would not change the original or appellate jurisdiction of a municipal
regulatory authority or the RRC.
The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:** CSHB 2435 would address a questionable decision in a lawsuit (*Texas
Coast Utilities Coalition v. Railroad Commission of Texas*, No. D-1-GN-
09-000982; 2010) that the RRC did not have the authority to adopt a cost-
of-service adjustment (COSA). This court decision would reverse a
longstanding practice derived from a broad grant of authority. For
decades, the RRC and municipal regulatory authorities have approved

natural gas utility tariffs containing formulas for adjusting gas utility prices to their customers. These tariff provisions include price adjustments based on the utility's cost of gas and other operating expenses, investments, taxes, and abnormal weather. By including such adjustment provisions in gas tariffs, gas prices to consumers are adjusted up and down to reflect changes in some or all of the utility's costs of providing gas service, without the time and expense associated with a contested rate proceeding.

The bill would confirm prior legislative intent that adjustment provisions may be included in natural gas utility rates and would encourage, but not require, regulatory authorities to incorporate adjustment provisions in gas utility tariffs. This would be beneficial to natural gas customers because it would allow regulatory authorities to continue their efforts to adopt accounting-based approaches to regulation rather than ones driven by expensive litigation. The high cost of litigation-based regulation ultimately is borne by utilities and their customers. An accounting- and audit-based regulatory model would provide more rate stability for consumers and utilities at a much lower cost.

Concerns that CSHB 2435 would reduce regulatory oversight are unfounded. The natural gas utility would continue to be required to gain approval from the regulator to implement a tariff with the adjustment mechanism. The regulator would retain the ability to require the utility to justify its rates through a full and complete rate case with the next filing.

There are also concerns that this bill would allow the RRC to force municipalities into these agreements. However, the decision in *Texas Coast Utilities Coalition v. Railroad Commission of Texas* says that COSAs cannot be imposed upon cities by the RRC. This bill would not change that.

OPPONENTS
SAY:

The authority that CSHB 2435 would grant to natural gas regulators to approve a tariff or rate schedule would amount to the use of a rubber-stamped proceeding for pushing higher gas prices onto consumers.

While a utility still would have to justify its rates through a full and complete rate case with the next filing, several years could pass before this occurred. It could be difficult to examine the rates during the prior period and piece together what was reasonable, especially over a long stretch of time. CSHB 2435 would not provide any safeguards to protect parties and

customers from unverifiable or improper rate increases by a utility. A regular cycle should be implemented to dictate when utilities would have to undergo a full-scale rate case.

CSHB 2435 would expedite reimbursement for the gas utility's revenues, expenses, or investments. It would be better to ensure that there was a lag between each expense and each reimbursement, because then the utility would have incentive to make cost-conscious, prudent, and efficient investments.

The bill could remove cities from the rate process. The bill would allow the RRC *or* a municipal regulatory authority to approve a tariff or rate schedule. This could allow the utility to go straight to the RCC, and bypass the city completely. This bill also could allow the RRC to force municipalities into these agreements.

OTHER
OPPONENTS
SAY:

This bill would affect the outcome of a legal battle, *Texas Coast Utilities Coalition v. Railroad Commission of Texas*. It would not be appropriate for the Legislature to take a side in a disputed legal matter.

NOTES:

According to the fiscal note, CSHB 2435 would not have a significant fiscal implication for the state, but the RRC and municipalities could incur costs associated with additional rate cases. However, those costs are not estimated to be significant.

The companion bill, SB 1309 by Hinojosa, was considered in a public hearing by the Senate Business and Commerce Committee on March 29 and was left pending.