

BILL ANALYSIS

Senate Research Center
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S.B. 1169
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Natural Resources
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, gas utilities are prohibited by law from marking up the cost of gas. Prior to the restructuring of the transmission pipeline industry in the 1980s and 1990s, the Railroad Commission of Texas (railroad commission) and the Federal Energy Regulatory Commission had jurisdiction over the allocation and pricing of natural gas sold to local distribution companies. This bill reestablishes the primacy of the railroad commission over a utility's gas purchases.

As proposed, S.B. 1169 encourages gas utilities to purchase natural gas produced in Texas and gives the railroad commission the resources and authority needed to engage in "real time" regulation of gas purchases by utilities.

S.B. 1169 takes away city jurisdiction to review and set the cost of gas component in the rates and gives it to the railroad commission. In order to fund this new regulation, a twenty cent fee will be added to each monthly customer bill to fund the railroad commission's activities.

This bill sets in statute the components of the purchased gas clause to include not only the cost of gas and the related transportation and storage, but also the "lost and unaccounted for" line losses, the cost of financial hedging transactions, associated taxes, and handling charges, and the cost of recovering bad debt expenses relating to the cost of purchased gas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 3 (Section 104.060, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 102.001(a), Utilities Code, to include areas inside a municipality to the extent the gas utility has established a purchased gas adjustment clause under Section 104.059 as areas over which the Railroad Commission of Texas (commission) has exclusive original jurisdiction regarding the rates and services of a gas utility.

SECTION 2. Amends Chapter 102, Utilities Code, by adding Subchapter G, as follows:

SUBCHAPTER G. REGULATORY FEES

Sec. 102.301. GAS UTILITY REGULATORY FEE IMPOSED. (a) Provides that a regulatory fee is imposed on each investor-owned gas utility and each natural gas master meter operator subject to this subtitle.

(b) Provides that the fee is equal to 20 cents for each customer bill rendered by the utility or operator.

Sec. 102.302. PAYMENT OF FEE. Requires each investor-owned gas utility and each natural gas master meter operator, on or before the last day of the month following the end of each calendar quarter, to send to the comptroller of public accounts (comptroller) the amount of fees collected under this subchapter for the preceding calendar quarter.

Sec. 102.303. REPORTS. (a) Requires each investor-owned gas utility and each natural gas master meter operator, on or before the last day of the month following each calendar quarter, to file with the comptroller and the commission a report stating the number of customer bills rendered during the preceding calendar quarter.

(b) Requires the investor-owned gas utility and the natural gas master meter operator to file the report required by this section forms prescribed by the comptroller.

Sec. 102.304. RECOVERY OF FEE. Requires an investor-owned gas utility and a natural gas meter operator to recover the fee by adding the fee as a surcharge to its existing rates.

Sec. 102.305. FEE EXCLUDED IN DETERMINING CERTAIN OTHER PAYMENTS.

(a) Prohibits the amount of a fee collected under this subchapter from being included in the revenue or gross receipts of an investor-owned gas utility or natural gas master meter operator for the purpose of computing certain costs.

(b) Provides that the amount of a fee collected under this subchapter is not subject to a sales and use tax imposed by Chapter 151 (Limited Sales, Excise, and Use Tax), Tax Code, or Subtitle C (Local Sales and Use Taxes), Title 3, Tax Code.

Sec. 102.306. PENALTY. Provides that Sections 182.102 (Penalty for Failure to File Report or Pay Tax) and 182.103 (Payment of Tax if Business Begun After Beginning of Quarter), Tax Code, apply to the fee imposed under this subchapter.

Sec. 102.307. ALLOCATION OF REVENUE. Requires a fee collected under this subchapter to be deposited to the credit of the general revenue fund and authorizes it to be appropriated only to the commission for use in regulating gas utilities subject to this subtitle.

SECTION 3. Amends Subchapter B, Chapter 104, Utilities Code, by adding Sections 104.059 and 104.060, as follows:

Sec. 104.059. RECOVERY OF COST OF PURCHASED GAS BY GAS DISTRIBUTION FACILITIES. (a) Defines "cost of purchased gas."

(b) Provides that the commission has exclusive jurisdiction over the recovery by a gas distribution utility of the utility's cost of purchased gas and all related taxes and fees. Requires the commission to provide for that recovery through a purchased gas adjustment clause in the utility's tariffs.

(c) Requires the commission to ensure that the purchased gas adjustment clause is designed and administered to permit full recovery of those costs to the extent they are reasonable and necessary.

Sec. 104.060. ESTABLISHMENT AND ADMINISTRATION OF PURCHASED GAS ADJUSTMENT CLAUSES IN RATES. (a) Requires each gas distribution utility requesting or maintaining a purchased gas adjustment clause in the utility's rate schedule to file with the commission an annual gas purchase plan and any supporting information that the commission is authorized to require by rule. Requires the commission, for each gas distribution utility, accept, reject, or require modification of each annual gas purchase plan with or without a hearing. Requires the commission, if the commission accepts a plan, with or without modification, to take certain actions regarding purchased gas.

(b) Requires the commission to adopt rules to protect confidential business information, including gas contracts, internal strategies for purchasing gas, prices paid for specific purchases from specific suppliers, and other information that the commission determines might put a gas distribution utility at a competitive disadvantage if the information is made available to competitors or suppliers.

Authorizes access to that confidential information to be restricted to the extent consistent with Chapter 552 (Public Information), Government Code, and by protective orders in any regulatory proceeding in which that information is found to be relevant.

(c) Requires the commission to determine the reasonableness and necessity of a gas distribution utility's cost of purchased gas in accordance with the utility's annual gas purchase plan. Provides that a gas distribution utility has the burden of proof regarding those matters in any hearing, investigation, or audit by the commission.

(d) Requires the commission by rule to prescribe the necessary reporting, filing, and other procedures to be followed by a gas distribution utility with regard to the utility's purchased gas adjustment clause.

(e) Authorizes the commission on its own motion to institute an audit or investigation of a gas distribution utility's gas purchase plan and purchased gas adjustment clause. Authorizes the commission, if the commission decides a hearing is necessary and appropriate in conjunction with an investigation or audit, to convene, after notice, a hearing to address any cost of purchased gas issues and to receive any evidence that the commission considers appropriate.

(f) Requires the commission to render a timely decision in relation to an investigation or audit of an annual gas purchase plan and to require any modifications the commission considers just, reasonable, and necessary to achieve the purposes of this chapter. Provides that a modification required in an annual gas purchase plan or in an associated purchased gas adjustment clause takes effect on the date the final order in the investigation or audit takes effect. Authorizes the modification to apply only in a prospective manner.

(g) Authorizes a finding required by Section 104.055(b) (relating to establishing gas purchasing rates) regarding a transaction with an affiliate to be made either in a proceeding under this section or in a rate case filed under another provision of this chapter.

(h) Prohibits this section from being construed to impair in any manner the rights of a gas customer under an existing contract except as otherwise provided by law.

(i) Provides that a proceeding under this section is not a ratemaking proceeding for purposes of Section 103.022 (Rate Assistance and Cost Reimbursement).

SECTION 4. Repealer: Section 104.202 (Excluded Expenses), Utilities Code.

SECTION 5. (a) Requires the commission to establish a schedule for submitting annual gas purchase plans as required by Section 104.060, Utilities Code, as added by this Act, so that the first plans are submitted on or after July 1, 2006.

(b) Provides that a purchased gas adjustment clause included in a gas distribution utility rate schedule that is in effect on the effective date of this Act remains in effect until the commission establishes initial levels of gas costs and purchased gas adjustment clauses for the utility under Section 104.060, Utilities Code, as added by this Act.

SECTION 6. Effective date: September 1, 2005.