

By: Armbrister

S.B. No. 1169

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority and financing of the Railroad Commission
3 of Texas in relation to gas utilities.

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

5 SECTION 1. Section 102.001(a), Utilities Code, is amended
6 to read as follows:

7 (a) The railroad commission has exclusive original
8 jurisdiction over the rates and services of a gas utility:

9 (1) that distributes natural gas or synthetic natural
10 gas in:

11 (A) areas outside a municipality; ~~and~~

12 (B) areas inside a municipality that surrenders
13 its jurisdiction to the railroad commission under Section 103.003;
14 and

15 (C) areas inside a municipality to the extent the
16 gas utility has established a purchased gas adjustment clause under
17 Section 104.059; and

18 (2) that transmits, transports, delivers, or sells
19 natural gas or synthetic natural gas to a gas utility that
20 distributes the gas to the public.

21 SECTION 2. Chapter 102, Utilities Code, is amended by
22 adding Subchapter G to read as follows:

23 SUBCHAPTER G. REGULATORY FEES

24 Sec. 102.301. GAS UTILITY REGULATORY FEE IMPOSED. (a) A

1 regulatory fee is imposed on each investor-owned gas utility and
2 each natural gas master meter operator subject to this subtitle.

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

5 Sec. 102.302. PAYMENT OF FEE. On or before the last day of
6 the month following the end of each calendar quarter, each
7 investor-owned gas utility and each natural gas master meter
8 operator shall send to the comptroller the amount of fees collected
9 under this subchapter for the preceding calendar quarter.

10 Sec. 102.303. REPORTS. (a) On or before the last day of the
11 month following the end of each calendar quarter, each
12 investor-owned gas utility and each natural gas master meter
13 operator shall file with the comptroller and the railroad
14 commission a report stating the number of customer bills rendered
15 during the preceding calendar quarter.

16 (b) The investor-owned gas utility and the natural gas
17 master meter operator shall file the report required by this
18 section using forms prescribed by the comptroller.

19 Sec. 102.304. RECOVERY OF FEE. An investor-owned gas
20 utility and a natural gas master meter operator shall recover the
21 fee by adding the fee as a surcharge to its existing rates.

22 Sec. 102.305. FEE EXCLUDED IN DETERMINING CERTAIN OTHER
23 PAYMENTS. (a) The amount of a fee collected under this subchapter
24 may not be included in the revenue or gross receipts of an
25 investor-owned gas utility or natural gas master meter operator for
26 the purpose of computing:

27 (1) a municipal franchise fee; or

1 (2) a tax imposed under Subchapter B, Chapter 182, Tax
2 Code, or under Chapter 122 of this code.

3 (b) The amount of a fee collected under this subchapter is
4 not subject to a sales and use tax imposed by Chapter 151, Tax Code,
5 or Subtitle C, Title 3, Tax Code.

6 Sec. 102.306. PENALTY. Sections 182.102 and 182.103, Tax
7 Code, apply to the fee imposed under this subchapter.

8 Sec. 102.307. ALLOCATION OF REVENUE. A fee collected under
9 this subchapter shall be deposited to the credit of the general
10 revenue fund and may be appropriated only to the railroad
11 commission for use in regulating gas utilities subject to this
12 subtitle.

13 SECTION 3. Subchapter B, Chapter 104, Utilities Code, is
14 amended by adding Sections 104.059 and 104.060 to read as follows:

15 Sec. 104.059. RECOVERY OF COST OF PURCHASED GAS BY GAS
16 DISTRIBUTION UTILITIES. (a) In this chapter, "cost of purchased
17 gas" includes the cost of natural gas or synthetic natural gas, and
18 the associated costs of transportation, fuel, and storage, other
19 costs required to deliver the gas to the distribution utility, and
20 the cost of natural gas or synthetic gas purchased for company use.
21 The term includes gas that is lost or for which the utility cannot
22 account. The term may include the cost of financial hedging
23 transactions, associated taxes, handling charges, and other
24 expenses associated with the acquisition and delivery of natural
25 gas to the distribution utility, and the cost of recovering bad debt
26 expenses relating to the cost of purchased gas.

27 (b) The railroad commission has exclusive jurisdiction over

1 the recovery by a gas distribution utility of the utility's cost of
2 purchased gas and all related taxes and fees. The railroad
3 commission shall provide for that recovery through a purchased gas
4 adjustment clause in the utility's tariffs.

5 (c) The railroad commission shall ensure that the purchased
6 gas adjustment clause is designed and administered to permit full
7 recovery of those costs to the extent they are reasonable and
8 necessary.

9 Sec. 104.060. ESTABLISHMENT AND ADMINISTRATION OF
10 PURCHASED GAS ADJUSTMENT CLAUSES IN RATES. (a) Each gas
11 distribution utility requesting or maintaining a purchased gas
12 adjustment clause in the utility's rate schedule shall file with
13 the commission an annual gas purchase plan and any supporting
14 information that the commission may require by rule. The
15 commission shall, for each gas distribution utility, accept,
16 reject, or require modification of each annual gas purchase plan
17 with or without a hearing. If the railroad commission accepts a
18 plan, with or without modification, the railroad commission shall:

19 (1) establish a purchased gas adjustment clause;
20 (2) establish the level of the cost of purchased gas;
21 and

22 (3) use that level as the basis for evaluating
23 subsequent changes to the level of the cost of purchased gas.

24 (b) The railroad commission shall adopt rules to protect
25 confidential business information, including gas contracts,
26 internal strategies for purchasing gas, prices paid for specific
27 purchases from specific suppliers, and other information that the

1 railroad commission determines might put a gas distribution utility
2 at a competitive disadvantage if the information is made available
3 to competitors or suppliers. Access to that confidential
4 information may be restricted to the extent consistent with Chapter
5 552, Government Code, and by protective orders in any regulatory
6 proceeding in which that information is found to be relevant.

7 (c) The railroad commission shall determine the
8 reasonableness and necessity of a gas distribution utility's cost
9 of purchased gas in accordance with the utility's annual gas
10 purchase plan. A gas distribution utility has the burden of proof
11 regarding those matters in any hearing, investigation, or audit by
12 the commission.

13 (d) The railroad commission by rule shall prescribe the
14 necessary reporting, filing, and other procedures to be followed by
15 a gas distribution utility with regard to the utility's purchased
16 gas adjustment clause.

17 (e) The railroad commission on its own motion may institute
18 an audit or investigation of a gas distribution utility's gas
19 purchase plan and purchased gas adjustment clause. If the railroad
20 commission decides a hearing is necessary and appropriate in
21 conjunction with an investigation or audit, the railroad commission
22 may, after notice, convene a hearing to address any cost of
23 purchased gas issues and to receive any evidence that the railroad
24 commission considers appropriate.

25 (f) The railroad commission shall render a timely decision
26 in relation to an investigation or audit of an annual gas purchase
27 plan and may require any modifications the commission considers

1 just, reasonable, and necessary to achieve the purposes of this
2 chapter. A modification required in an annual gas purchase plan or
3 in an associated purchased gas adjustment clause takes effect on
4 the date the final order in the investigation or audit takes effect.
5 The modification may apply only in a prospective manner.

6 (g) A finding required by Section 104.055(b) regarding a
7 transaction with an affiliate may be made either in a proceeding
8 under this section or in a rate case filed under another provision
9 of this chapter.

10 (h) This section may not be construed to impair in any
11 manner the rights of a gas customer under an existing contract
12 except as otherwise provided by law.

13 (i) A proceeding under this section is not a ratemaking
14 proceeding for purposes of Section 103.022.

15 SECTION 4. Section 104.202, Utilities Code, is repealed.

16 SECTION 5. (a) The Railroad Commission of Texas shall
17 establish a schedule for submitting annual gas purchase plans as
18 required by Section 104.060, Utilities Code, as added by this Act,
19 so that the first plans are submitted on or after July 1, 2006.

20 (b) A purchased gas adjustment clause included in a gas
21 distribution utility rate schedule that is in effect on the
22 effective date of this Act remains in effect until the Railroad
23 Commission of Texas establishes initial levels of gas costs and
24 purchased gas adjustment clauses for the utility under Section
25 104.060, Utilities Code, as added by this Act.

26 SECTION 6. This Act takes effect September 1, 2005.