

Amend SB 742 (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 104.301, Utilities Code, is amended to read as follows:

Sec. 104.301. INTERIM ADJUSTMENT FOR ELIGIBLE INFRASTRUCTURE INVESTMENTS [~~CHANGES IN INVESTMENT~~]. (a) The purpose of this subchapter is to provide an incentive to gas utilities to promptly replace aging portions of the gas delivery system, to encourage investment, and to enhance reliability, public safety, and service without triggering the need for a ratemaking proceeding to recover the utility's return on, and associated increases in, invested capital.

(b) In this section, "eligible infrastructure investment" means the difference between the value of the invested capital of a gas utility for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year. The value of the invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment. The term does not include:

(1) changes in invested capital resulting from allocations of invested capital to the utility from an affiliate or an operating division of the utility not subject to this title other than allocations of net investment in computer equipment, software, communications, and metering; or

(2) classifications of investment that were not included in the utility's invested capital in the utility's most recent ratemaking proceeding.

(c) A gas utility that has filed a rate case under Subchapter C within the preceding two years may file with each [the] regulatory authority an application for a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of an eligible infrastructure investment [~~changes in the investment in service for gas utility services~~]. The adjustment, if granted, shall be allocated among the gas utility's classes of customers in the same manner as the cost of service was allocated among classes

of customers in the utility's latest effective rates for the area in which the tariff or rate schedule is implemented.

(d) The gas utility shall file the application for the tariff, ~~[or]~~ rate schedule, or interim ~~[the annual]~~ adjustment ~~[under Subsection (c)],~~ with each ~~[the]~~ regulatory authority for the area in which the tariff or rate schedule will be implemented at least 60 days before the proposed implementation date of the tariff, rate schedule, or interim ~~[annual]~~ adjustment. The gas utility shall provide notice of the application for the tariff, rate schedule, or interim ~~[annual]~~ adjustment to affected customers by bill insert or direct mail not later than the 45th day after the date the utility files the application for the tariff, rate schedule, or interim ~~[annual]~~ adjustment with the regulatory authorities ~~[authority]~~.

(e) During the 60-day period, the regulatory authorities ~~[authority]~~ may act to suspend the implementation of the tariff, rate schedule, or interim ~~[annual]~~ adjustment for up to 45 days. The regulatory authority may approve, approve in part, or deny the application for the tariff, rate schedule, or interim adjustment filed by the gas utility with the regulatory authority. An approval, approval in part, or denial of a tariff, rate schedule, or interim adjustment by a municipality in its capacity as a regulatory authority may be appealed by the gas utility to the railroad commission as provided by Section 102.001(b). In deciding to approve, approve in part, or deny an application, the commission shall consider comments submitted by a regulatory authority. After the issuance of a final order or decision by the ~~[a]~~ regulatory authorities ~~[authority]~~ in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an interim adjustment in accordance with the tariff or rate schedule under this section shall no longer be subject to subsequent review for reasonableness or prudence. Until the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, all amounts collected under the tariff or rate schedule before the filing of the rate case are subject to refund. The gas

utility shall maintain complete records in accordance with commission rules sufficient to identify the specific items and amounts included in the interim adjustment and to support the inclusion of those items and amounts in the interim adjustment.

~~(f) [(b) The amount the gas utility shall adjust the utility's rates upward or downward under the tariff or rate schedule each calendar year is based on the difference between the value of the invested capital for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year. The value of the invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment.]~~

~~[(c)]~~ The interim adjustment shall be recalculated on an annual basis ~~[in accordance with the requirements of Subsection (b)]~~. The gas utility may file a request with a ~~[the]~~ regulatory authority to suspend the operation of the tariff or rate schedule for any year. The request must be in writing and state the reasons why the suspension is justified. The regulatory authority may grant the suspension on a showing by the utility of reasonable justification.

(g) ~~[(d)]~~ A gas utility may only adjust the utility's rates under the tariff or rate schedule for the return on investment, depreciation expense, ad valorem taxes, revenue related taxes, and incremental federal income taxes related to the eligible infrastructure investment ~~[difference in the value of the invested capital]~~ as determined under Subsection (b). The return on investment, depreciation, and incremental federal income tax factors used in the computation must be the same as the factors reflected in the final order issued by or settlement agreement approved by the regulatory authorities ~~[authority]~~ establishing the gas utility's latest effective rates for the area in which the tariff or rate schedule is implemented.

(h) ~~[(e)]~~ A gas utility that implements a tariff or rate schedule under this section shall file with the regulatory authorities ~~[authority]~~ an annual report describing the elements of each eligible infrastructure investment ~~[projects]~~ completed and

placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year. The annual report shall also state the cost, need, and customers benefited by each eligible infrastructure ~~[the change in]~~ investment.

(i) ~~[(f)]~~ In addition to the report required under Subsection (h) ~~[(e)]~~, the gas utility shall file with the regulatory authorities ~~[authority]~~ an annual earnings monitoring report in a form established by the railroad commission and demonstrating the utility's earnings during the preceding calendar year.

(j) ~~[(g)]~~ If the gas utility is earning a return on invested capital, as demonstrated by the report filed under Subsection (i) ~~[(f)]~~, of more than 75 basis points above the return established in the latest effective rates approved by a regulatory authority for the area in which the tariff or rate schedule is implemented under this section, the gas utility shall file a statement with that report stating the reasons why the rates are not unreasonable or in violation of law.

(k) ~~[(h)]~~ If a gas utility that implements a tariff or rate schedule under this section does not file a rate case under Subchapter C before the fifth anniversary of the date on which the tariff or rate schedule takes effect, the gas utility shall file a rate case under that subchapter not later than the 180th day after that anniversary in relation to any rates subject to the tariff or rate schedule.

(l) ~~[(i)]~~ This section does not limit the power of ~~[a]~~ regulatory authorities otherwise provided by this code ~~[authority under Section 104.151]~~.

(m) ~~[(j)]~~ A gas utility implementing a tariff or rate schedule under this section shall reimburse the railroad commission the utility's proportionate share of the railroad commission's costs related to the administration of the interim rate adjustment mechanism provided by this section.

(n) A gas utility implementing a tariff or rate schedule under this section shall reimburse a municipality or coalition of municipalities for the municipality's or coalition's reasonable

costs of consultants, accountants, auditors, attorneys, and engineers engaged to review the interim rate adjustment. The amount that a utility is obligated to reimburse a municipality or a coalition of municipalities under this subsection may not exceed an amount equal to two percent of the expected annual increase in revenue that the utility will derive from the interim rate adjustment in the area subject to the original jurisdiction of the municipality or, with respect to a coalition of municipalities, the area subject to the original jurisdiction of the municipalities participating in the coalition.

(o) The exclusion of a portion of the gas utility's invested capital under Subsection (b) does not preclude the utility from requesting that amount in its invested capital in a general rate case brought under Subchapter C.

SECTION 2. This Act applies only to an application for a tariff or rate schedule in relation to which a regulatory authority has not issued a final order on the effective date of this Act. An application in relation to which a regulatory authority has issued a final order before the effective date of this Act is governed by the law in effect on the date the final order is issued, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2007.