

By: Eltife

S.B. No. 742

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a gas utility to receive an interim adjustment for certain infrastructure projects.

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

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

1 an operating division of the utility not subject to this title other  
2 than allocations of net investment in computer equipment, software,  
3 communications, and metering; or

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

7 (c) A gas utility that has filed a rate case under  
8 Subchapter C within the preceding two years may file with each ~~the~~  
9 regulatory authority an application for a tariff or rate schedule  
10 that provides for an interim adjustment in the utility's monthly  
11 customer charge or initial block rate to recover the cost of an  
12 eligible infrastructure investment ~~[changes in the investment in~~  
13 ~~service for gas utility services]~~. The adjustment, if granted,  
14 shall be allocated among the gas utility's classes of customers in  
15 the same manner as the cost of service was allocated among classes  
16 of customers in the utility's latest effective rates for the area in  
17 which the tariff or rate schedule is implemented.

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

1 schedule, or interim [~~annual~~] adjustment with the regulatory  
2 authorities [~~authority~~].

3 (e) During the 60-day period, the regulatory authorities  
4 [~~authority~~] may act to suspend the implementation of the tariff,  
5 rate schedule, or interim [~~annual~~] adjustment for up to 45 days.  
6 The regulatory authority may approve, approve in part, or deny the  
7 application for the tariff, rate schedule, or interim adjustment  
8 filed by the gas utility with the regulatory authority. An  
9 approval, approval in part, or denial of a tariff, rate schedule, or  
10 interim adjustment by a municipality in its capacity as a  
11 regulatory authority may be appealed by the gas utility to the  
12 railroad commission as provided by Section 102.001(b). In deciding  
13 to approve, approve in part, or deny an application, the commission  
14 shall consider comments submitted by a regulatory authority. After  
15 the issuance of a final order or decision by the [~~a~~] regulatory  
16 authorities [~~authority~~] in a rate case that is filed after the  
17 implementation of a tariff or rate schedule under this section, any  
18 change in investment that has been included in an interim  
19 adjustment in accordance with the tariff or rate schedule under  
20 this section shall no longer be subject to subsequent review for  
21 reasonableness or prudence. Until the issuance of a final order or  
22 decision by a regulatory authority in a rate case that is filed  
23 after the implementation of a tariff or rate schedule under this  
24 section, all amounts collected under the tariff or rate schedule  
25 before the filing of the rate case are subject to refund. The gas  
26 utility shall maintain complete records in accordance with  
27 commission rules sufficient to identify the specific items and

1 amounts included in the interim adjustment and to support the  
2 inclusion of those items and amounts in the interim adjustment.

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

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

20 (g) [~~(d)~~] A gas utility may only adjust the utility's rates  
21 under the tariff or rate schedule for the return on investment,  
22 depreciation expense, ad valorem taxes, revenue related taxes, and  
23 incremental federal income taxes related to the eligible  
24 infrastructure investment [~~difference in the value of the invested~~  
25 ~~capital~~] as determined under Subsection (b). The return on  
26 investment, depreciation, and incremental federal income tax  
27 factors used in the computation must be the same as the factors

1 reflected in the final order issued by or settlement agreement  
2 approved by the regulatory authorities [~~authority~~] establishing  
3 the gas utility's latest effective rates for the area in which the  
4 tariff or rate schedule is implemented.

5 (h) [~~(e)~~] A gas utility that implements a tariff or rate  
6 schedule under this section shall file with the regulatory  
7 authorities [~~authority~~] an annual report describing the elements of  
8 each eligible infrastructure investment [~~projects~~] completed and  
9 placed in service during the preceding calendar year and the  
10 investments retired or abandoned during the preceding calendar  
11 year. The annual report shall also state the cost, need, and  
12 customers benefited by each eligible infrastructure [~~the change in~~]  
13 investment.

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

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

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

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

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

16           (n) A gas utility implementing a tariff or rate schedule  
17 under this section shall reimburse a municipality or coalition of  
18 municipalities for the municipality's or coalition's reasonable  
19 costs of consultants, accountants, auditors, attorneys, and  
20 engineers engaged to review the interim rate adjustment. The  
21 amount that a utility is obligated to reimburse a municipality or a  
22 coalition of municipalities under this subsection may not exceed an  
23 amount equal to two percent of the expected annual increase in  
24 revenue that the utility will derive from the interim rate  
25 adjustment in the area subject to the original jurisdiction of the  
26 municipality or, with respect to a coalition of municipalities, the  
27 area subject to the original jurisdiction of the municipalities

1 participating in the coalition.

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

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

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