

By: Watson

S.B. No. 555

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of propane gas distribution retailers.

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

SECTION 1. Title 3, Utilities Code, is amended by adding Subtitle C to read as follows:

SUBTITLE C. PROPANE GAS DISTRIBUTION SYSTEMS

CHAPTER 141. STANDARDS FOR DISTRIBUTION SYSTEM RETAILERS

Sec. 141.001. DEFINITIONS. In this chapter:

(1) "Distribution system retailer":

(A) means a retail propane dealer that owns or operates for compensation in this state equipment and facilities connected to a contiguous piping system through which propane gas is supplied to at least 10 residential end users and:

(i) has a Class E license issued by the Gas Services Division of the License and Permit Section of the railroad commission or is an active company representative or operations supervisor on file with the section; and

(ii) is a regular supplier or a potential regular supplier of propane to a consumer; and

(B) does not include a person that furnishes propane gas only to the person, to the person's employees, or to the person's tenants as an incident of employment or tenancy, if the service is not resold to commercial customers or other end users.

(2) "Railroad commission" means the Railroad

1 Commission of Texas or the successor agency to that commission.

2 Sec. 141.002. APPLICABILITY. This chapter applies only to
3 a distribution system retailer. This chapter does not apply to a
4 traditional retail liquefied petroleum gas company that provides
5 service in the service area.

6 Sec. 141.003. RATE AND FEE CEILINGS. (a) A distribution
7 system retailer may not charge a customer during any given billing
8 period a rate for gas that exceeds the actual average delivered
9 price charged, excluding price specials and tank rental fees, for
10 propane gas delivered to company-owned, individual propane tanks by
11 traditional retail liquefied petroleum gas companies that provide
12 service in the service area where the distribution system retailer
13 is located. The actual average price must be determined using
14 independent objective market surveys of liquefied petroleum gas
15 prices quoted by traditional liquefied petroleum gas companies and
16 charged in the ordinary course of business during the respective
17 billing period. Each distribution system retailer each quarter
18 shall supply the market surveys and report the gas rates the
19 distribution system retailer charges to the railroad commission.

20 (b) For the following services or occurrences, a
21 distribution system retailer may charge a fee not to exceed:

22 (1) \$12 a month as a recurring monthly fee to maintain
23 an active gas service account with the distribution system retailer
24 to be charged to a customer whose actual gas usage exceeds 99
25 gallons;

26 (2) \$17.50 a month as a recurring monthly fee to
27 maintain an active service account with the distribution system

1 retailer as long as the service address's gas usage history during
2 the preceding 12-month period does not exceed 99 gallons;

3 (3) \$15 for a late payment received by the
4 distribution system retailer, provided the bill was mailed or
5 electronically transmitted 15 days prior to the date payment is
6 due;

7 (4) \$25 to disconnect or terminate service from an
8 active or delinquent account;

9 (5) \$65 for standard next available service for an
10 active or delinquent account;

11 (6) \$125 for accelerated reconnect service;

12 (7) \$30 for a dishonored check that was received for a
13 payment; and

14 (8) \$75 to initiate service to a new customer.

15 (c) The railroad commission by rule annually shall adjust
16 the fee limits described by Subsection (b) upward or downward based
17 on changes in the Consumer Price Index for All Urban Consumers in
18 the State of Texas published by the Bureau of Labor Statistics of
19 the United States Department of Labor each calendar year. The
20 distribution system retailer's adjustment, if required, must be
21 made not later than the later of September or the 45th day after the
22 date the railroad commission gives notice of the change to the
23 distribution system retailer.

24 (d) Nothing in this section limits a distribution system
25 retailer's ability to pass through to a customer a new governmental
26 fee, fee increase, or charge imposed on the retailer after
27 September 1, 2011. Any fee, fee increase, or charge passed through

1 to a customer shall be listed as a separate item on a customer's
2 bill.

3 Sec. 141.004. DISCONNECTION OF PROPANE GAS SERVICE. (a) A
4 distribution system retailer may not disconnect propane gas service
5 to a residential customer on a weekend day unless personnel of the
6 distribution system retailer are available on that day to take
7 payments and reconnect service.

8 (b) A distribution system retailer may not disconnect
9 propane gas service to a residential customer during an extreme
10 weather emergency, as defined by Section 104.258. The distribution
11 system retailer shall defer collection of the full payment of bills
12 that are due during an extreme weather emergency, as defined by
13 Section 104.258, until after the emergency is over.

14 Sec. 141.005. CONTINUITY OF SERVICE. (a) A distribution
15 system retailer shall make all reasonable efforts to prevent
16 interruptions of service. When an interruption occurs, the
17 distribution system retailer shall reestablish service within the
18 shortest possible time consistent with prudent operating
19 principles so that the smallest number of customers are affected.

20 (b) Excluding service interruptions for nonpayment, a
21 distribution system retailer shall keep complete records of all
22 emergency and scheduled service interruptions lasting greater than
23 four hours in duration and affecting more than two customers. The
24 records must describe the cause of each interruption, the date,
25 length, location, approximate number of customers affected by the
26 interruption, and, in the case of an emergency interruption, the
27 remedy and steps taken to prevent a recurrence, if applicable. The

1 distribution system retailer shall submit copies of the records to
2 the railroad commission quarterly.

3 (c) The distribution system retailer shall notify the
4 railroad commission in writing not later than 48 hours after an
5 interruption in service that affects the entire system and lasts
6 more than four hours caused by a Grade I leak that represents an
7 existing or probable hazard to persons or property and requires
8 immediate repair or continuous action until the conditions are no
9 longer hazardous. The notice shall include the distribution system
10 retailer's assessment of the cause of the interruption. A written
11 report of a service interruption in another form, including a part
12 of a safety report, is sufficient to comply with this subsection.

13 (d) The railroad commission shall establish a toll-free
14 number to enable a customer of a distribution system retailer to
15 notify the railroad commission of a service interruption that does
16 not involve a refusal to serve under Section 141.006. The railroad
17 commission shall immediately investigate the cause of the service
18 interruption.

19 (e) To restore and maintain service, the railroad
20 commission may assume temporary receivership of a system that
21 experiences a service interruption that affects the entire system:

22 (1) exceeding 48 hours in duration;
23 (2) more than three times in one month; or
24 (3) that is the result of the distribution system
25 retailer's failure to replenish the primary propane tank that is
26 not caused by a general local market disruption or a restriction on
27 wholesale propane supplies.

1 (f) The railroad commission may draw down all or part of the
2 financial surety posted under Section 141.009, as required, to
3 restore and maintain service under Subsection (e).

4 (g) If the railroad commission assumes temporary
5 receivership of a system under Subsection (e), it shall notify the
6 distribution system retailer and provide the distribution system
7 retailer 72 hours to prepare and submit a plan to avoid continuing
8 receivership.

9 (h) If a distribution system retailer's inability to
10 fulfill its financial obligations is the cause of a service
11 interruption described by Subsection (e), the railroad commission
12 may delegate the operation of the system to a homeowners'
13 association or municipal utility district until another
14 distribution system retailer can assume control over the system or
15 until a court in bankruptcy proceedings instructs otherwise.

16 Sec. 141.006. GROUNDS FOR REFUSAL TO SERVE. (a) A
17 distribution system retailer may refuse service to an applicant if:

18 (1) an applicant fails to pay fees, advances,
19 contributions, or deposits required for service under the
20 distribution system retailer's policies;

21 (2) an applicant fails to furnish a service or meter
22 location specified for service by the distribution system retailer;

23 (3) the existence or repeated creation of an unsafe
24 condition, such as impaired meter access or a leak in the
25 applicant's piping system, may potentially endanger life or
26 property in the distribution system retailer's opinion;

27 (4) an applicant or service location owner is

1 delinquent in payment for services provided by a distribution
2 system retailer service location owner;

3 (5) another current resident of the premises to
4 receive service is delinquent in payment for services provided by a
5 distribution system retailer; or

6 (6) an applicant fails to adhere to an agreed payment
7 plan.

8 (b) The right to refuse service ends when the cause for the
9 refusal to serve is corrected.

10 Sec. 141.007. REASONABLE TIME TO BEGIN SERVICE. A
11 distribution system retailer may delay providing service following
12 an application or execution of an agreement for service for a
13 reasonable amount of time considering required approvals or
14 permits, the extent of the facilities to be built, and the
15 distribution system retailer's workload at the time.

16 Sec. 141.008. CUSTOMER COMPLAINTS. (a) A distribution
17 system retailer that receives a written complaint promptly and
18 suitably shall investigate the complaint and advise the complainant
19 of the results of the investigation. A distribution system
20 retailer shall keep for at least three years after the final
21 disposition of each complaint a record that includes each
22 complainant's name and address, the date and nature of the
23 complaint, and the adjustment or disposition of the complaint. A
24 distribution system retailer is not required to keep a record of a
25 complaint that does not require the distribution system retailer to
26 take specific further action. A distribution system retailer shall
27 notify each complainant of the right to file a complaint with the

1 railroad commission if the complainant is not satisfied by the
2 distribution system retailer's resolution of the matter.

3 (b) On receipt of a complaint from the railroad commission
4 on behalf of a customer, a distribution system retailer promptly
5 and suitably shall investigate and notify the railroad commission
6 and complainant of the results of the investigation. An initial
7 response must be made not later than the third business day after
8 the date the distribution system retailer receives the complaint
9 electronically to up to two electronic addresses designated by the
10 distribution system retailer. A distribution system retailer shall
11 send a final and complete response to the railroad commission and
12 complainant not later than the 15th day after the date the complaint
13 was received, unless the railroad commission grants additional time
14 before the expiration of the 15-day period.

15 (c) The railroad commission may impose sanctions on a
16 distribution system retailer if, after an investigation, the
17 railroad commission determines that the distribution system
18 retailer has violated Section 141.003. Sanctions may include:

19 (1) ordering a distribution system retailer to refund
20 the amounts of any overcharges to the distribution system
21 retailer's customers; or

22 (2) drawing all or a portion of the financial surety
23 for the purpose of refunding the amounts of any overcharges to the
24 distribution system retailer's customers not refunded before the
25 61st day after the date the railroad commission orders a refund.

26 Sec. 141.009. PERFORMANCE GUARANTEE. (a) A distribution
27 system retailer shall post, in favor of the railroad commission,

financial surety in the form of a letter of credit or cash deposited with the railroad commission in an amount equal to the lesser of \$3 multiplied by the number of gallons of storage capacity in all of the systems operated by the distribution system retailer or \$100,000. The issuer of a letter of credit used to meet this requirement shall honor the letter of credit if the issuer receives from the railroad commission notice that the letter of credit is due and payable. The railroad commission may draw all or a portion of the financial surety.

(b) A distribution system retailer is exempt from posting the financial surety if, during the most recent five years:

(1) the distribution system retailer continuously has met the definition of distribution system retailer under Section 141.001;

(2) the distribution system retailer has not experienced a service interruption that would have allowed the railroad commission to place any system operated by the distribution system retailer in temporary receivership under Section 141.005(e) if that subsection had been in effect during that period; and

(3) the distribution system retailer has maintained the same or substantially similar ownership.

Sec. 141.010. MARKET SURVEY RULES. (a) The market survey described by Section 141.003(a) shall be conducted according to rules developed by the railroad commission under this chapter. The railroad commission, by rule, shall:

(1) limit the survey pool to traditional retail

1 liquefied petroleum gas companies that provide service to an area
2 not more than 10 miles from the distribution system retailer's
3 system;

4 (2) determine the geographic area of the survey area
5 where surveyed companies may be located in the event that fewer than
6 six companies provide service to the service area;

7 (3) determine the appropriate survey sample size in
8 the event that fewer than six companies provide service to an area;

9 (4) allow the distribution system retailer to
10 determine the survey sample size provided the sample size includes
11 a minimum of six companies;

12 (5) provide that the railroad commission and the
13 distribution system retailer may each select half of the companies
14 to be included in the survey and, if necessary, alternates to be
15 included in the survey;

16 (6) require a survey to be conducted twice a month
17 during the period from November to April and once a month during the
18 period from May to October;

19 (7) require the survey quotes to include delivery
20 amounts to be more than 100 gallons and not greater than 500 gallons
21 during the period from November to April and less than 100 gallons
22 during the period from May to October;

23 (8) prohibit a company from being surveyed twice in a
24 seven-day period; and

25 (9) require a survey company retained by a
26 distribution system retailer to be a disinterested third party.

27 (b) A survey company shall conduct a survey once during each

1 half of the month during the period from November to April. A
2 survey company shall have discretion when to conduct a survey
3 during that period.

4 (c) The railroad commission by rule may require an officer
5 of the survey company and a distribution system retailer to provide
6 a signed sworn statement attesting to the survey company's
7 disinterested third-party status and disclosing compensation the
8 survey company received. The railroad commission shall qualify a
9 company that meets these requirements unless the railroad
10 commission shows the company is not capable of performing the
11 survey or is not a disinterested third party.

12 (d) Except for the information described in Subsection (b),
13 the railroad commission may not require a survey company:

14 (1) to disclose:

15 (A) private financial information;

16 (B) a list of employees or contractors; or

17 (C) proprietary methodology; or

18 (2) to provide information or perform an activity that
19 violates the survey company's industry standards or that increases
20 the cost of the survey.

21 (e) The railroad commission shall maintain a list of two or
22 more qualified survey companies that a distribution system retailer
23 may select and provide 30-day advance notice to affected
24 distribution system retailers when a qualified surveyor's
25 qualification is terminated.

26 Sec. 141.011. RULES. (a) The railroad commission shall
27 adopt rules implementing this chapter, including rules that

establish procedures for:

(1) calculating gas rate ceilings;

(2) reporting market surveys and gas rates to the railroad commission;

(3) addressing unresolved complaints from a customer of a distribution system retailer; and

(4) establishing rates to apply to a retailer whose rates are based on flawed market surveys.

(b) The procedure the railroad commission adopts for calculating a gas rate ceiling based on information from a survey of six or more companies must provide for using the average of surveyed prices, excluding a single highest and a single lowest quote.

(c) The railroad commission may institute nonfinancial resolutions of complaints under this chapter.

(d) The railroad commission may institute financial resolutions only for violations of this chapter.

Sec. 141.012. DISCLOSURE TO HOMEOWNERS. (a) A distribution system retailer shall provide to a homeowners' association or municipal utility district with jurisdiction over property that receives service from a distribution system retailer, or to the distribution system retailer's customers if there is no homeowners' association or municipal utility district, a disclosure that includes:

(1) the general methodology used to determine the distribution system retailer's gas rates;

(2) a copy of this chapter or a summary of the customers' rights under this chapter; and

1 (3) for development agreements entered into after
2 September 1, 2011, a statement disclosing the existence of a
3 financial interest a homeowners' association, municipal utility
4 district, or developer holds in the gas system.

5 (b) A homeowners' association or municipal utility district
6 that has jurisdiction over real property that receives service from
7 a distribution system retailer shall provide the disclosure
8 described by Subsection (a) to all homeowners along with a list of
9 the homeowners' covenants and deed restrictions. The homeowners'
10 association or municipal utility district shall post the
11 information required to be disclosed under this subsection on the
12 homeowners' association or municipal utility district website.

13 SECTION 2. This Act takes effect September 1, 2011.