

By: Hegar

S.B. No. 1135

A BILL TO BE ENTITLED

AN ACT

relating to regulation of gas pipelines; providing penalties.

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. GAS PIPELINE REGULATORY ACT

CHAPTER 141. GENERAL PROVISIONS AND OFFICE OF PUBLIC UTILITY

COUNSEL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 141.001. SHORT TITLE. This subtitle may be cited as the Gas Pipeline Regulatory Act.

Sec. 141.002. PURPOSE AND FINDINGS. (a) This subtitle is enacted to protect the public interest inherent in the rates and services of gas pipelines. The purpose of this subtitle is to establish a comprehensive and adequate regulatory system for gas pipelines to assure rates, operations, and services that are just and reasonable to the consumers and to the pipelines.

(b) Gas pipelines are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate pipeline rates, operations, and services as a substitute for competition.

Sec. 141.003. DEFINITIONS. In this subtitle:

(1) "Affected person" means:

1 (A) a gas pipeline affected by an action of the
2 railroad commission;

3 (B) a person whose gas pipeline service or rates
4 are affected by a proceeding before the railroad commission; or

5 (C) a person who:

6 (i) is a competitor of a gas pipeline with
7 respect to a service performed by the pipeline; or

8 (ii) wants to enter into competition with a
9 gas pipeline.

10 (2) "Affiliate" means:

11 (A) a person who directly or indirectly owns or
12 holds at least five percent of the voting securities of a gas
13 pipeline;

14 (B) a person in a chain of successive ownership
15 of at least five percent of the voting securities of a gas pipeline;

16 (C) a corporation that has at least five percent
17 of its voting securities owned or controlled, directly or
18 indirectly, by a gas pipeline;

19 (D) a corporation that has at least five percent
20 of its voting securities owned or controlled, directly or
21 indirectly, by:

22 (i) a person who directly or indirectly
23 owns or controls at least five percent of the voting securities of a
24 gas pipeline; or

25 (ii) a person in a chain of successive
26 ownership of at least five percent of the voting securities of a gas
27 pipeline;

1 (E) a person who is an officer or director of a
2 gas pipeline or of a corporation in a chain of successive ownership
3 of at least five percent of the voting securities of a gas pipeline;
4 or

5 (F) a person determined to be an affiliate under
6 Section 141.004.

7 (3) "Allocation" means the division among
8 municipalities or among municipalities and unincorporated areas of
9 the plant, revenues, expenses, taxes, and reserves of a gas
10 pipeline used to provide gas pipeline service for a municipality
11 and unincorporated areas.

12 (4) "Corporation" means a domestic or foreign
13 corporation, joint-stock company, or association, and each lessee,
14 assignee, trustee, receiver, or other successor in interest of the
15 corporation, company, or association, that has any of the powers or
16 privileges of a corporation not possessed by an individual or
17 partnership. The term does not include a municipal corporation,
18 except as expressly provided by this subtitle.

19 (5) "Counsellor" means the chief executive of the
20 Office of Public Utility Counsel.

21 (6) "Facilities" means all of the plant and equipment
22 of a gas pipeline and includes the tangible and intangible
23 property, without limitation, owned, operated, leased, licensed,
24 used, controlled, or supplied for, by, or in connection with the
25 business of the gas pipeline.

26 (7) "Gas pipeline" includes a person or river
27 authority that owns or operates for compensation in this state

equipment or facilities to transmit or distribute combustible hydrocarbon natural gas or synthetic natural gas for sale or resale in a manner not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. Section 717 et seq.). The term includes a lessee, trustee, or receiver of a gas pipeline. The term does not include:

(A) a municipal corporation;

(B) a person or river authority to the extent the person or river authority:

(i) produces, gathers, transports, or sells natural gas or synthetic natural gas under Section 121.004 or 121.005;

(ii) distributes or sells liquefied petroleum gas; or

(iii) transports, delivers, or sells natural gas for fuel for irrigation wells or any other direct agricultural use;

(C) a person to the extent the person:

(i) sells natural gas for use as vehicle fuel;

(ii) sells natural gas to a person who later sells the natural gas for use as vehicle fuel; or

(iii) owns or operates equipment or facilities to sell or transport natural gas for ultimate use as vehicle fuel;

(D) a person not otherwise a gas pipeline who furnishes gas or gas service only to itself, its employees, or its

1 tenants as an incident of employment or tenancy, if the gas or gas
2 service is not resold to or used by others; or

3 (E) a person excluded from being considered a gas
4 utility under Section 121.007.

5 (8) "Order" means all or a part of a final disposition
6 by the railroad commission in a matter other than rulemaking,
7 without regard to whether the disposition is affirmative or
8 negative or injunctive or declaratory. The term includes the
9 setting of a rate.

10 (9) "Person" includes an individual, a partnership of
11 two or more persons having a joint or common interest, a mutual or
12 cooperative association, a limited liability company, and a
13 corporation.

14 (10) "Proceeding" means a hearing, investigation,
15 inquiry, or other procedure for finding facts or making a decision
16 under this subtitle. The term includes a denial of relief or
17 dismissal of a complaint.

18 (11) "Rate" means:

19 (A) any compensation, tariff, charge, fare,
20 toll, rental, or classification that is directly or indirectly
21 demande, observed, charged, or collected by a gas pipeline for a
22 service, product, or commodity described in the definition of "gas
23 pipeline" in this section; and

24 (B) a rule, regulation, practice, or contract
25 affecting the compensation, tariff, charge, fare, toll, rental, or
26 classification.

27 (12) "Service" has its broadest and most inclusive

meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a gas pipeline in the performance of the pipeline's duties under this subtitle to its patrons, employees, other gas pipelines, and the public. The term also includes the interchange of facilities between two or more gas pipelines.

(13) "State agency" has the meaning assigned by Section 572.002, Government Code, to the extent the state agency must obtain the approval described by Section 31.401(a), Natural Resources Code.

Sec. 141.004. PERSON DETERMINED TO BE AFFILIATE. (a) The railroad commission may determine that a person is an affiliate for purposes of this subtitle if the railroad commission after notice and hearing finds that the person:

(1) actually exercises substantial influence or control over the policies and actions of a gas pipeline;

(2) is a person over which a gas pipeline exercises the control described by Subdivision (1);

(3) is under common control with a gas pipeline; or

(4) actually exercises substantial influence over the policies and actions of a gas pipeline in conjunction with one or more persons with whom the person is related by ownership or blood relationship, or by action in concert, so that together they are affiliated with the gas pipeline within the meaning of this section even though neither person may qualify as an affiliate individually.

(b) For purposes of Subsection (a)(3), "common control with

1 a gas pipeline" means the direct or indirect possession of the power
2 to direct or cause the direction of the management and policies of
3 another, without regard to whether that power is established
4 through ownership or voting of securities or by any other direct or
5 indirect means.

6 Sec. 141.005. ADMINISTRATIVE PROCEDURE. Chapter 2001,
7 Government Code, applies to a proceeding under this subtitle except
8 to the extent inconsistent with this subtitle.

9 Sec. 141.006. CUMULATIVE EFFECT; APPLICATION TO GAS
10 PIPELINES. (a) This subtitle is cumulative of laws existing on
11 September 1, 2011, relating to the jurisdiction, power, or
12 authority of the railroad commission over a gas pipeline, as
13 defined by this subtitle. This subtitle does not limit the
14 jurisdiction, power, and authority of the railroad commission over
15 a gas pipeline.

16 (b) This subtitle applies to all gas pipelines, including a
17 gas pipeline that is under the jurisdiction, power, or authority of
18 the railroad commission under a law other than this subtitle.

19 (c) Subtitle A does not apply to a gas pipeline as defined by
20 this subtitle.

21 Sec. 141.007. LIBERAL CONSTRUCTION. This subtitle shall be
22 construed liberally to promote the effectiveness and efficiency of
23 regulation of gas pipelines to the extent that this construction
24 preserves the validity of this subtitle and its provisions.

25 Sec. 141.008. CONSTRUCTION WITH FEDERAL AUTHORITY. This
26 subtitle shall be construed to apply so as not to conflict with any
27 authority of the United States.

[Sections 141.009-141.050 reserved for expansion]

SUBCHAPTER B. OFFICE OF PUBLIC UTILITY COUNSEL

Sec. 141.051. OFFICE OF PUBLIC UTILITY COUNSEL. The independent office of public utility counsel represents the interests of residential consumers.

Sec. 141.052. OFFICE POWERS AND DUTIES. (a) The office:

(1) may appear or intervene as a party or otherwise represent residential consumers, as a class, in proceedings before the railroad commission under this subtitle only at the written request of an affected municipality's governing body;

(2) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding that involves an action taken by the railroad commission under this subtitle in a proceeding in which the office was a party;

(3) is entitled to the same access as a party, other than railroad commission staff, to records gathered by the railroad commission under Section 142.203;

(4) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the railroad commission;

(5) may represent an individual residential consumer with respect to the consumer's disputed complaint concerning gas pipeline services that is unresolved before the railroad commission; and

(6) may recommend legislation to the legislature that the office determines would positively affect the interests of residential consumers.

1 (b) The office may represent only as a class the residential
2 consumers of a municipality that makes a request under Subsection
3 (a)(1).

4 (c) This section does not limit the authority of the
5 railroad commission to represent residential consumers.

6 (d) The appearance of the counsellor in a proceeding does
7 not preclude the appearance of other parties on behalf of
8 residential consumers. The counsellor may not be grouped with any
9 other party.

10 Sec. 141.053. PROHIBITED ACTS. (a) The counsellor may
11 not:

12 (1) have a direct or indirect interest in a gas
13 pipeline regulated under this subtitle; or

14 (2) provide legal services directly or indirectly to
15 or be employed in any capacity by a gas pipeline regulated under
16 this subtitle, its parent, or its subsidiary companies,
17 corporations, or cooperatives.

18 (b) The prohibition under Subsection (a) applies during the
19 period of the counsellor's service and until the first anniversary
20 of the date the counsellor ceases to serve as counsellor.

21 (c) This section does not prohibit a person from otherwise
22 engaging in the private practice of law after the person ceases to
23 serve as counsellor.

24 Sec. 141.054. PERSONNEL. (a) The counsellor may employ
25 lawyers, economists, engineers, consultants, statisticians,
26 accountants, clerical staff, and other employees as the counsellor
27 determines necessary to carry out this subchapter.

1 (b) An employee receives compensation as prescribed by the
2 legislature from the assessment imposed by Subchapter A, Chapter
3 16.

4 CHAPTER 142. JURISDICTION AND POWERS OF RAILROAD COMMISSION

5 SUBCHAPTER A. GENERAL POWERS OF RAILROAD COMMISSION

6 Sec. 142.001. RAILROAD COMMISSION JURISDICTION. The
7 railroad commission has exclusive original jurisdiction over the
8 rates and services of a gas pipeline that transmits, transports,
9 delivers, or sells natural gas or synthetic natural gas to a gas
10 utility that distributes the gas to the public.

11 Sec. 142.002. RAILROAD COMMISSION POWERS RELATING TO
12 REPORTS. The railroad commission may:

13 (1) require a gas pipeline to report to the railroad
14 commission information relating to the gas pipeline and an
15 affiliate inside or outside this state as useful in administering
16 this subtitle;

17 (2) establish the form for a report;

18 (3) determine the time for a report and the frequency
19 with which the report is to be made;

20 (4) require that a report be made under oath;

21 (5) require the filing with the railroad commission of
22 a copy of:

23 (A) a contract or arrangement between a gas
24 pipeline and an affiliate;

25 (B) a report filed with a federal agency or a
26 governmental agency or body of another state; and

27 (C) an annual report that shows each payment of

compensation, other than salary or wages subject to federal income tax withholding:

- (i) to residents of this state;
 - (ii) with respect to legal, administrative, or legislative matters in this state; or
 - (iii) for representation before the legislature of this state or any governmental agency or body; and
- (6) require that a contract or arrangement described by Subdivision (5)(A) that is not in writing be reduced to writing and filed with the railroad commission.

Sec. 142.003. REPORT OF SUBSTANTIAL INTEREST. The railroad commission may require disclosure of the identity and respective interests of each owner of at least one percent of the voting securities of a gas pipeline or its affiliate.

Sec. 142.004. ADMINISTRATIVE HEARINGS IN CONTESTED CASES.

(a) The railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of the State Office of Administrative Hearings to conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to a railroad commission hearings examiner or to the utility division of the

State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings.

(d) For purposes of judicial review, the final decision of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the railroad commission requests formal review of the decision.

(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.

[Sections 142.005-142.050 reserved for expansion]

SUBCHAPTER B. RESTRICTIONS ON CERTAIN TRANSACTIONS

Sec. 142.051. REPORT OF CERTAIN TRANSACTIONS; RAILROAD COMMISSION CONSIDERATION. (a) Not later than the 60th day after

1 the date the transaction takes effect, a gas pipeline shall report
2 to the railroad commission:

3 (1) a sale, acquisition, or lease of a plant as an
4 operating unit or system in this state for a total consideration of
5 more than \$1 million; or

6 (2) a merger or consolidation with another gas
7 pipeline operating in this state.

8 (b) On the filing of a report with the railroad commission,
9 the railroad commission shall investigate the transaction
10 described by Subsection (a), with or without a public hearing, to
11 determine whether the action is consistent with the public
12 interest. In reaching its determination, the railroad commission
13 shall consider the reasonable value of the property, facilities, or
14 securities to be acquired, disposed of, merged, or consolidated.

15 (c) If the railroad commission finds that a transaction is
16 not in the public interest, the railroad commission shall take the
17 effect of the transaction into consideration in ratemaking
18 proceedings and disallow the effect of the transaction if the
19 transaction will unreasonably affect rates or service.

20 (d) This section does not apply to:

21 (1) the purchase of a unit of property for
22 replacement; or

23 (2) an addition to the facilities of a gas pipeline by
24 construction.

25 Sec. 142.052. REPORT OF PURCHASE OF VOTING STOCK IN GAS
26 PIPELINE. A gas pipeline may not purchase voting stock in another
27 gas pipeline doing business in this state unless the pipeline

1 reports the purchase to the railroad commission.

2 Sec. 142.053. REPORT OF LOAN TO STOCKHOLDERS. A gas
3 pipeline may not loan money, stocks, bonds, notes, or other
4 evidence of indebtedness to a person who directly or indirectly
5 owns or holds any stock of the gas pipeline unless the gas pipeline
6 reports the transaction to the railroad commission within a
7 reasonable time.

8 [Sections 142.054-142.100 reserved for expansion]

9 SUBCHAPTER C. RECORDS

10 Sec. 142.101. RECORDS OF GAS PIPELINE. (a) Each gas
11 pipeline shall keep and provide to the railroad commission, in the
12 manner and form prescribed by the railroad commission, uniform
13 accounts of all business transacted by the gas pipeline.

14 (b) The railroad commission may prescribe the form of books,
15 accounts, records, and memoranda to be kept by a gas pipeline,
16 including:

17 (1) the books, accounts, records, and memoranda of:

18 (A) the provision of and capacity for service;

19 and

20 (B) the receipt and expenditure of money; and

21 (2) any other form, record, and memorandum that the
22 railroad commission considers necessary to carry out this subtitle.

23 (c) For a gas pipeline subject to regulation by a federal
24 regulatory agency, compliance with the system of accounts
25 prescribed for the particular class of pipelines by the federal
26 agency may be considered sufficient compliance with the system
27 prescribed by the railroad commission. The railroad commission may

1 prescribe the form of books, accounts, records, and memoranda
2 covering information in addition to that required by the federal
3 agency. The system of accounts and the form of books, accounts,
4 records, and memoranda prescribed by the railroad commission for a
5 gas pipeline or class of pipelines may not be inconsistent with the
6 systems and forms established by a federal agency for that gas
7 pipeline or class of pipelines.

8 (d) Each gas pipeline shall:

9 (1) keep and provide its books, accounts, records, and
10 memoranda accurately and faithfully in the manner and form
11 prescribed by the railroad commission; and

12 (2) comply with the directions of the railroad
13 commission relating to the books, accounts, records, and memoranda.

14 Sec. 142.102. MAINTENANCE OF OFFICE AND RECORDS IN THIS
15 STATE. (a) Each gas pipeline shall maintain an office in this
16 state in a county in which some part of the pipeline's property is
17 located. The gas pipeline shall keep in this office all books,
18 accounts, records, and memoranda required by the railroad
19 commission to be kept in this state.

20 (b) A book, account, record, or memorandum required by the
21 railroad commission to be kept in this state may not be removed from
22 this state except as prescribed by the railroad commission.

23 Sec. 142.103. COMMUNICATIONS WITH RAILROAD COMMISSION.
24 (a) The railroad commission shall adopt rules governing
25 communications with the railroad commission or a member or employee
26 of the railroad commission by:

27 (1) a gas pipeline;

1 (2) an affiliate; or

2 (3) a representative of a gas pipeline or affiliate.

3 (b) A record of a communication must contain:

4 (1) the name of the person contacting the railroad
5 commission or member or employee of the railroad commission;

6 (2) the name of the business entity represented;

7 (3) a brief description of the subject matter of the
8 communication; and

9 (4) the action, if any, requested by the gas pipeline,
10 affiliate, or representative.

11 (c) Records compiled under Subsection (b) shall be
12 available to the public monthly.

13 Sec. 142.104. JURISDICTION OVER AFFILIATE. The railroad
14 commission has jurisdiction over an affiliate that has a
15 transaction with a gas pipeline under the railroad commission's
16 jurisdiction to the extent of access to an account or a record of
17 the affiliate relating to the transaction, including an account or
18 a record of joint or general expenses, any portion of which may be
19 applicable to the transaction.

20 [Sections 142.105-142.150 reserved for expansion]

21 SUBCHAPTER D. REQUIRED REPORTS AND FILINGS

22 Sec. 142.151. SCHEDULE FILINGS. (a) A gas pipeline shall
23 file with the railroad commission schedules showing all rates that
24 are:

25 (1) subject to the railroad commission's original
26 jurisdiction; and

27 (2) in effect for a gas pipeline service, product, or

commodity offered by the gas pipeline.

(b) The gas pipeline shall file as a part of the schedules required under Subsection (a) each rule or regulation that relates to or affects:

(1) a rate of the gas pipeline; or

(2) a gas pipeline service, product, or commodity furnished by the gas pipeline.

Sec. 142.152. DEPRECIATION ACCOUNT. The railroad commission shall require each gas pipeline to carry a proper and adequate depreciation account in accordance with:

(1) the rates and methods prescribed by the railroad commission under Section 144.054; and

(2) any other rule the railroad commission adopts.

Sec. 142.153. ACCOUNTS OF PROFITS AND LOSSES. A gas pipeline shall keep separate accounts showing profits or losses from the sale or lease of merchandise, including an appliance, a fixture, or equipment.

Sec. 142.154. REPORT OF CERTAIN EXPENSES. The railroad commission may require a gas pipeline to annually report the pipeline's expenditures for:

(1) business gifts and entertainment; and

(2) advertising or public relations, including expenditures for institutional and consumption-inducing purposes.

[Sections 142.155-142.200 reserved for expansion]

SUBCHAPTER E. AUDITS AND INSPECTIONS

Sec. 142.201. INQUIRY INTO MANAGEMENT AND AFFAIRS. The railroad commission may inquire into the management and affairs of

1 each gas pipeline and shall keep itself informed as to the manner
2 and method in which each gas pipeline is managed and its affairs are
3 conducted.

4 Sec. 142.202. AUDIT OF ACCOUNTS. The railroad commission
5 may require the examination and audit of the accounts of a gas
6 pipeline.

7 Sec. 142.203. INSPECTION. At a reasonable time for a
8 reasonable purpose, the railroad commission and, to the extent
9 authorized by the railroad commission, its counsel, agent, or
10 employee may:

11 (1) inspect and obtain copies of the papers, books,
12 accounts, documents, and other business records of a gas pipeline
13 within its jurisdiction; and

14 (2) inspect the plant, equipment, and other property
15 of a gas pipeline within its jurisdiction.

16 Sec. 142.204. EXAMINATIONS UNDER OATH. In connection with
17 an inspection taken under Section 142.203, the railroad commission
18 may:

19 (1) examine under oath an officer, agent, or employee
20 of a gas pipeline; or

21 (2) authorize the person conducting the action to make
22 the examination under oath.

23 Sec. 142.205. ENTERING PREMISES OF GAS PIPELINE. (a) A
24 member, agent, or employee of the railroad commission may enter the
25 premises occupied by a gas pipeline to conduct an inspection,
26 examination, or test or to exercise any other authority provided by
27 this subtitle.

(b) A member, agent, or employee of the railroad commission
may act under this section only during reasonable hours and after
reasonable notice to the gas pipeline.

(c) A gas pipeline is entitled to be represented when an inspection, examination, or test is conducted on its premises. The gas pipeline is entitled to a reasonable time to secure a representative before the inspection, examination, or test begins.

Sec. 142.206. PRODUCTION OF OUT-OF-STATE RECORDS. (a) The railroad commission may require, by order or subpoena served on a gas pipeline, the production, at the time and place in this state that the railroad commission designates, of any books, accounts, papers, or records kept by that gas pipeline outside this state or, if ordered by the railroad commission, verified copies of the books, accounts, papers, or records.

(b) A gas pipeline that fails or refuses to comply with an
order or subpoena under this section violates this subtitle.

[Sections 142.207-142.250 reserved for expansion]

SUBCHAPTER F. GENERAL PROVISIONS RELATING TO PROCEEDINGS BEFORE

RAILROAD COMMISSION

Sec. 142.251. RECORD OF PROCEEDING. The railroad commission shall keep a record of each proceeding before the railroad commission under this subtitle.

Sec. 142.252. RIGHT TO BE HEARD. Each party to a proceeding before the railroad commission is entitled to be heard by attorney or in person.

CHAPTER 143. JURISDICTION AND POWERS OF MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

1 Sec. 143.001. FRANCHISES. (a) This subtitle does not
2 restrict the rights and powers of a municipality to grant or refuse
3 a franchise to use the streets and alleys in the municipality or to
4 make a statutory charge for that use.

5 (b) A municipality that performs a regulatory function
6 under this subtitle may make each charge that is authorized by:

7 (1) this subtitle; or

8 (2) the applicable franchise agreement.

9 (c) A franchise agreement may not limit or interfere with a
10 power conferred on the railroad commission by this subtitle.

11 [Sections 143.002-143.020 reserved for expansion]

12 SUBCHAPTER B. RATE DETERMINATION

13 Sec. 143.021. RATE ASSISTANCE AND COST REIMBURSEMENT.

14 (a) The governing body of a municipality participating in a
15 ratemaking proceeding may engage rate consultants, accountants,
16 auditors, attorneys, and engineers to:

17 (1) conduct investigations, present evidence, and
18 advise and represent the governing body; and

19 (2) assist the governing body with litigation or a gas
20 pipeline ratemaking proceeding before the railroad commission or
21 court.

22 (b) The gas pipeline in the ratemaking proceeding shall
23 reimburse the governing body of the municipality for the reasonable
24 cost of the services of a person engaged under Subsection (a) to the
25 extent the railroad commission determines reasonable.

26 Sec. 143.022. MUNICIPAL STANDING. (a) A municipality has
27 standing in each case before the railroad commission that relates

1 to a gas pipeline's rates and services in the municipality.

2 (b) A municipality's standing is subject to the right of the
3 railroad commission to consolidate that municipality with another
4 party on an issue of common interest.

5 Sec. 143.023. JUDICIAL REVIEW. A municipality is entitled
6 to judicial review of a railroad commission order relating to a gas
7 pipeline's rates and services in a municipality as provided by
8 Section 145.001.

9 CHAPTER 144. RATES AND SERVICES

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 144.001. AUTHORIZATION TO ESTABLISH AND REGULATE
12 RATES. (a) The railroad commission is vested with all the
13 authority and power of this state to ensure compliance with the
14 obligations of gas pipelines in this subtitle.

15 (b) The railroad commission may establish and regulate
16 rates of a gas pipeline and may adopt rules for determining:

17 (1) the classification of customers and services; and

18 (2) the applicability of rates.

19 (c) A rule or order of the railroad commission may not
20 conflict with a ruling of a federal regulatory body.

21 Sec. 144.002. COMPLIANCE WITH SUBTITLE. A gas pipeline may
22 not:

23 (1) charge, collect, or receive a rate for pipeline
24 service except as provided by this subtitle; or

25 (2) impose a rule or regulation except as provided by
26 this subtitle.

27 Sec. 144.003. JUST AND REASONABLE RATES. (a) The railroad

1 commission shall ensure that each rate a gas pipeline or two or more
2 gas pipelines jointly make, demand, or receive is just and
3 reasonable. A rate may not be unreasonably preferential,
4 prejudicial, or discriminatory but must be sufficient, equitable,
5 and consistent in application to each class of consumer. In
6 establishing a gas pipeline's rates, the railroad commission may
7 treat as a single class two or more municipalities that a gas
8 pipeline serves if the railroad commission considers that treatment
9 to be appropriate.

10 (b) A rate for a pipeline-to-pipeline transaction or for a
11 transportation, industrial, or similar large volume contract
12 customer is considered to be just and reasonable and otherwise to
13 comply with this section and shall be approved by the railroad
14 commission if:

15 (1) neither the gas pipeline nor the customer had an
16 unfair advantage during the negotiations;

17 (2) the rate is substantially the same as the rate
18 between the gas pipeline and at least two of those customers under
19 the same or similar conditions of service; or

20 (3) competition does or did exist with another gas
21 pipeline, another supplier of natural gas, or a supplier of an
22 alternative form of energy.

23 (c) Subsection (b) does not apply:

24 (1) if a complaint is filed with the railroad
25 commission by a transmission pipeline purchaser of gas sold or
26 transported under the pipeline-to-pipeline or transportation rate;
27 or

1 (2) to a direct sale for resale to a gas distribution
2 utility at a city gate.

3 (d) The reasonableness of gas purchase costs included in a
4 city gate rate proposed to be charged for a sale for resale to a gas
5 distribution utility at a city gate may be reviewed at a city gate
6 rate proceeding even though the costs have been previously approved
7 as a rate for other parties under Subsection (b).

8 (e) Subsection (b)(1) does not apply to a rate charged or
9 offered to be charged to an affiliated utility.

10 Sec. 144.004. UNREASONABLE PREFERENCE OR PREJUDICE
11 PROHIBITED. A gas pipeline may not:

12 (1) grant an unreasonable preference or advantage
13 concerning rates or services to a person in a classification;

14 (2) subject a person in a classification to an
15 unreasonable prejudice or disadvantage concerning rates or
16 services; or

17 (3) establish or maintain an unreasonable difference
18 concerning rates of services between localities or between classes
19 of service.

20 Sec. 144.005. EQUALITY OF RATES AND SERVICES. (a) A gas
21 pipeline may not directly or indirectly charge, demand, collect, or
22 receive from a person a greater or lesser compensation for a service
23 provided or to be provided by the pipeline than the compensation
24 prescribed by the applicable schedule of rates filed under Section
25 142.151.

26 (b) A person may not knowingly receive or accept a service
27 from a gas pipeline for a compensation greater or less than the

1 compensation prescribed by the schedule of rates filed under
2 Section 142.151. A rate charged and collected by a gas pipeline on
3 September 1, 2011, may be continued until schedules are filed.

4 (c) After notice and hearing, the railroad commission may,
5 in the public interest, order a gas pipeline to refund with interest
6 compensation received in violation of this section.

7 (d) This subtitle does not prevent a cooperative
8 corporation from returning to its members net earnings resulting
9 from its operations in proportion to the members' purchases from or
10 through the corporation.

11 Sec. 144.006. DISCRIMINATION AND RESTRICTION ON
12 COMPETITION. A gas pipeline may not:

13 (1) discriminate against a person who sells or leases
14 equipment or performs services in competition with the gas
15 pipeline; or

16 (2) engage in a practice that tends to restrict or
17 impair that competition.

18 Sec. 144.007. BURDEN OF PROOF. In a proceeding involving a
19 proposed rate change, the gas pipeline has the burden of proving
20 that:

21 (1) the rate change is just and reasonable, if the
22 pipeline proposes the change; or

23 (2) an existing rate is just and reasonable, if the
24 proposal is to reduce the rate.

25 [Sections 144.008-144.050 reserved for expansion]

26 SUBCHAPTER B. COMPUTATION OF RATES

27 Sec. 144.051. ESTABLISHING OVERALL REVENUES. In

1 establishing a gas pipeline's rates, the railroad commission shall
2 establish the gas pipeline's overall revenues at an amount that
3 will permit the gas pipeline a reasonable opportunity to earn a
4 reasonable return on the gas pipeline's invested capital used and
5 useful in providing service to the public in excess of its
6 reasonable and necessary operating expenses.

7 Sec. 144.052. ESTABLISHING FAIR RATE OF RETURN. The
8 railroad commission may not establish a rate that yields more than a
9 fair return on the adjusted value of the invested capital used and
10 useful in providing service to the public.

11 Sec. 144.053. COMPONENTS OF ADJUSTED VALUE OF INVESTED
12 CAPITAL. (a) In this section, "original cost" means the actual
13 money cost or the actual money value of consideration paid other
14 than money.

15 (b) Gas pipeline rates shall be based on the adjusted value
16 of invested capital used and useful to the pipeline in providing
17 service and that adjusted value shall be computed on the basis of a
18 reasonable balance between:

19 (1) original cost, less depreciation; and
20 (2) current cost, less an adjustment for present age
21 and condition.

22 (c) The railroad commission may determine a reasonable
23 balance that reflects:

24 (1) not less than 60 percent nor more than 75 percent
25 of the original cost of the property at the time the property was
26 dedicated to public use, whether by the gas pipeline that is the
27 present owner or by a predecessor, less depreciation; and

1 (2) not less than 25 percent nor more than 40 percent
2 of the current cost less an adjustment for present age and
3 condition.

4 (d) In determining a reasonable balance, the railroad
5 commission may consider inflation, deflation, quality of service
6 being provided, growth rate of the service area, and need for the
7 gas pipeline to attract new capital.

8 (e) Construction work in progress, at cost as recorded on
9 the gas pipeline's books, may be included as part of the adjusted
10 value of invested capital used by and useful to the pipeline in
11 providing service, as necessary to the financial integrity of the
12 pipeline.

13 (f) Costs of facilities, revenues, expenses, taxes, and
14 reserves shall be separated or allocated as prescribed by the
15 railroad commission.

16 Sec. 144.054. DEPRECIATION, AMORTIZATION, AND DEPLETION.

17 (a) The railroad commission shall establish proper and adequate
18 rates and methods of depreciation, amortization, or depletion for
19 each class of property of a gas pipeline.

20 (b) The rates and methods established under this section and
21 the depreciation account required under Section 142.152 shall be
22 used uniformly and consistently throughout rate-setting and appeal
23 proceedings under this subtitle.

24 Sec. 144.055. NET INCOME; ALLOWABLE EXPENSES. (a) Net
25 income shall be used to establish just and reasonable rates. For
26 that purpose, "net income" means the total revenues of the gas
27 pipeline from gas pipeline service less all reasonable and

necessary expenses related to that gas pipeline service. The railroad commission shall determine those revenues and expenses in a manner consistent with this subchapter.

(b) In establishing a gas pipeline's rates, the railroad commission may not allow a gas pipeline's payment to an affiliate for the cost of a service, property, right, or other item or for an interest expense to be included as capital cost or as expense related to gas pipeline service except to the extent that the railroad commission finds the payment is reasonable and necessary for each item or class of items as determined by the railroad commission. That finding must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price to the gas pipeline is not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

(c) If an expense is allowed to be included in gas pipeline rates, or an investment is included in the gas pipeline rate base, the related income tax deduction or benefit shall be included in the computation of income tax expense to reduce the rates. If an expense is disallowed or not included in gas pipeline rates, or an investment is not included in the gas pipeline rate base, the related income tax deduction or benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates.

(d) The railroad commission may adopt reasonable rules

1 complying with this section to include and exclude certain expenses
2 in computing the rates to be established.

3 (e) This section is not intended to increase gas pipeline
4 rates to the customer not caused by gas pipeline service. Gas
5 pipeline rates may include only expenses caused by gas pipeline
6 service.

7 Sec. 144.056. TREATMENT OF CERTAIN TAX BENEFITS. (a) In
8 determining the allocation of tax savings derived from liberalized
9 depreciation and amortization, the investment tax credit, or the
10 application of similar methods, the railroad commission shall:

11 (1) balance equitably the interests of present and
12 future customers; and

13 (2) apportion accordingly the benefits between
14 consumers and the gas pipeline.

15 (b) If a gas pipeline retains a portion of the investment
16 tax credit, that portion shall be deducted from the original cost of
17 the facilities or other addition to the rate base to which the
18 credit applied to the extent allowed by the Internal Revenue Code.

19 Sec. 144.057. CONSIDERATION OF CERTAIN EXPENSES. (a) In
20 establishing a gas pipeline's rates, the railroad commission may
21 not allow as a cost or expense an expenditure:

22 (1) described by Section 142.154 that the railroad
23 commission determines to be not in the public interest; or

24 (2) for legislative advocacy.

25 (b) The railroad commission may allow as a cost or expense
26 reasonable charitable or civic contributions not to exceed the
27 amount approved by the railroad commission.

1 Sec. 144.058. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR
2 LEASE OF MERCHANDISE. In establishing a gas pipeline's rates, the
3 railroad commission may not consider a profit or loss that results
4 from the sale or lease of merchandise, including appliances,
5 fixtures, or equipment, to the extent that merchandise is not
6 integral to providing pipeline service.

7 [Sections 144.059-144.100 reserved for expansion]

8 SUBCHAPTER C. RATE CHANGES PROPOSED BY PIPELINE

9 Sec. 144.101. DEFINITION. In this subchapter, "major
10 change" means an increase in rates that would increase the
11 aggregate revenues of the gas pipeline more than the greater of
12 \$100,000 or 2-1/2 percent. The term does not include an increase in
13 rates that the railroad commission allows to go into effect or the
14 gas pipeline makes under an order of the railroad commission after
15 hearings held with public notice.

16 Sec. 144.102. STATEMENT OF INTENT TO INCREASE RATES.
17 (a) A gas pipeline may not increase its rates unless the gas
18 pipeline files a statement of its intent with the railroad
19 commission at least 35 days before the effective date of the
20 proposed increase.

21 (b) The gas pipeline shall also mail or deliver a copy of the
22 statement of intent to the appropriate officer of each affected
23 municipality.

24 (c) The statement of intent must include:

25 (1) proposed revisions of tariffs and schedules; and

26 (2) a detailed statement of:

27 (A) each proposed increase;

1 (B) the effect the proposed increase is expected
2 to have on the revenues of the gas pipeline;

3 (C) each class and number of utility consumers
4 affected; and

5 (D) any other information required by the
6 railroad commission's rules and regulations.

7 Sec. 144.103. NOTICE OF INTENT TO INCREASE RATES. (a) The
8 gas pipeline shall:

9 (1) publish, in conspicuous form, notice to the public
10 of the proposed rate increase once each week for four successive
11 weeks in a newspaper having general circulation in each county
12 containing territory affected by the proposed increase; and

13 (2) provide notice of the proposed rate increase to
14 any other affected person as required by the railroad commission's
15 rules.

16 (b) Instead of publishing newspaper notice, a gas pipeline
17 may provide notice to the public in an area outside the affected
18 municipality or in a municipality with a population of less than
19 2,500 by:

20 (1) mailing the notice by United States mail, postage
21 prepaid, to the billing address of each directly affected customer;
22 or

23 (2) including the notice, in conspicuous form, in the
24 bill of each directly affected customer.

25 Sec. 144.104. EARLY EFFECTIVE DATE OF RATE INCREASE.

26 (a) For good cause shown, the railroad commission may allow a rate
27 increase, other than a major change, to take effect:

1 (1) before the end of the 35-day period prescribed by
2 Section 144.102; and

3 (2) under conditions the railroad commission
4 prescribes, subject to suspension as provided by this subchapter.

5 (b) The gas pipeline shall immediately revise its schedules
6 to include the early increase.

7 Sec. 144.105. DETERMINATION OF PROPRIETY OF RATE CHANGE;
8 HEARING. (a) If a schedule modifying or increasing rates is filed
9 with the railroad commission, the railroad commission shall, on
10 complaint by an affected person, or may, on its own motion, not
11 later than the 30th day after the effective date of the increase,
12 enter on a hearing to determine the propriety of the increase.

13 (b) The railroad commission shall hold a hearing in every
14 case in which the increase constitutes a major change. The railroad
15 commission may, however, use an informal proceeding if the railroad
16 commission does not receive a complaint before the expiration of 45
17 days after the date notice of the increase is filed.

18 (c) The railroad commission shall give reasonable notice of
19 the hearing, including notice to the governing body of each
20 affected municipality and county. The gas pipeline is not required
21 to provide a formal answer or file any other formal pleading in
22 response to the notice, and the absence of an answer does not affect
23 an order for a hearing.

24 Sec. 144.106. PREFERENCE TO HEARING. The railroad
25 commission shall:

26 (1) give preference to the hearing under this
27 subchapter and to deciding questions arising under this subchapter

1 over any other question pending before it; and

2 (2) decide the questions as quickly as possible.

3 Sec. 144.107. RATE SUSPENSION; DEADLINE. (a) Pending the
4 hearing and a decision, the railroad commission may suspend the
5 operation of the schedule for not longer than 150 days after the
6 date the schedule would otherwise be effective.

7 (b) The 150-day period prescribed by Subsection (a) shall be
8 extended for two days for each day the actual hearing on the merits
9 of the case exceeds 15 days.

10 (c) If the railroad commission does not make a final
11 determination concerning a schedule of rates before expiration of
12 the applicable suspension period, the railroad commission is
13 considered to have approved the schedule. This approval is subject
14 to the authority of the railroad commission to continue a hearing in
15 progress.

16 Sec. 144.108. TEMPORARY RATES. (a) The railroad
17 commission may establish temporary rates to be in effect during the
18 applicable suspension period under Section 144.107.

19 (b) If the railroad commission does not establish temporary
20 rates, the rates in effect when the suspended schedule was filed
21 continue in effect during the suspension period.

22 Sec. 144.109. BONDED RATES. (a) A gas pipeline may put a
23 changed rate into effect by filing a bond with the railroad
24 commission if the railroad commission fails to make a final
25 determination within 90 days from the date the proposed increase
26 would otherwise be effective.

27 (b) The bonded rate may not exceed the proposed rate.

1 (c) The bond must be:

2 (1) payable to the railroad commission in an amount,
3 in a form, and with a surety approved by the railroad commission;
4 and

5 (2) conditioned on refund.

6 (d) The gas pipeline shall refund or credit against future
7 bills:

8 (1) money collected under the bonded rates in excess
9 of the rate finally ordered; and

10 (2) interest on that money, at the current interest
11 rate as determined by the railroad commission.

12 Sec. 144.110. ESTABLISHMENT OF FINAL RATES. (a) If, after
13 hearing, the railroad commission finds the rates are unreasonable
14 or in violation of law, the railroad commission shall:

15 (1) enter an order establishing the rates the gas
16 pipeline shall charge or apply for the service in question; and

17 (2) serve a copy of the order on the gas pipeline.

18 (b) The rates established in the order shall be observed
19 thereafter until changed as provided by this subtitle.

20 Sec. 144.111. APPROVAL OF DECREASE IN RATES.
21 Notwithstanding any other provision in this subtitle, the railroad
22 commission may, without reference to the rate standard prescribed
23 by Section 144.051, administratively approve a decrease in rates
24 proposed by the gas pipeline and agreed on by each party directly
25 affected unless the railroad commission determines that the
26 proposed decrease is not in the public interest.

27 Sec. 144.112. SURCHARGE TO RECOVER RELOCATION COSTS.

1 (a) This section applies to a gas pipeline's costs of relocating a
2 facility to accommodate construction or improvement of a highway,
3 road, street, public way, or other public work by or on behalf of
4 the United States, this state, a political subdivision of this
5 state, or another entity having the power of eminent domain that is
6 not reimbursed by a source other than as provided by this section.

7 (b) A gas pipeline may recover its relocation costs to which
8 this section applies through a surcharge on gas volumes sold and
9 transported to customers in the service area where the relocation
10 occurred by applying to the railroad commission for a new rate
11 schedule or tariff. The gas pipeline is not required to file a
12 statement of intent to increase rates to institute the surcharge,
13 and the other provisions of this subchapter, other than appeal
14 rights, do not apply to institution of the surcharge.

15 (c) An application under Subsection (b) must include
16 sufficient documentation to demonstrate:

17 (1) the requirement for each relocation;
18 (2) the entity requiring the relocation;
19 (3) costs incurred for relocation of comparable
20 facilities;
21 (4) surcharge computations; and
22 (5) that reasonable efforts have been made to receive
23 reimbursement from the entity requiring the relocation, if
24 applicable.

25 (d) Not later than the 35th day after the date an
26 application under Subsection (b) is received, the railroad
27 commission shall administratively grant or deny the application.

Denial of the application must be based on a finding that:

(1) the relocation was not necessary or required;

(2) the costs of the relocation were excessive or not supported;

(3) the gas pipeline did not pursue reimbursement from the entity requiring the relocation, if applicable;

(4) the surcharge is unduly discriminatory among customers or classes of customers located in the service area; or

(5) the period over which the relocation costs are designed to be recovered is less than one or more than three years.

(e) If the railroad commission does not make a decision before the deadline prescribed by Subsection (d), the application is approved.

[Sections 144.113-144.150 reserved for expansion]

SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

Sec. 144.151. UNREASONABLE OR VIOLATIVE EXISTING RATES.

(a) If the railroad commission, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a gas pipeline for a service are unreasonable or in violation of law, the railroad commission shall:

(1) enter an order establishing just and reasonable rates for that gas pipeline, including maximum or minimum rates; and

(2) serve a copy of the order on the gas pipeline.

(b) The rates set under Subsection (a) constitute the legal rates of the gas pipeline until changed as provided by this subtitle.

1 Sec. 144.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM
2 ANOTHER SOURCE. If a gas pipeline does not produce the service that
3 it distributes, transmits, or furnishes to the public for
4 compensation but obtains the service from another source, the
5 railroad commission may investigate the cost of that production in
6 an investigation of the reasonableness of the gas pipeline's rates.

7 [Sections 144.153-144.200 reserved for expansion]

8 SUBCHAPTER E. RATES FOR GOVERNMENTAL ENTITIES

9 Sec. 144.201. TRANSPORTATION RATES BETWEEN GAS PIPELINE AND
10 STATE AGENCY. (a) Notwithstanding Section 144.003(b), absent a
11 contract for transportation service between a state agency and a
12 gas pipeline, the railroad commission, not later than the 210th day
13 after the date either party files a request to set a transportation
14 rate, shall establish the transportation rate for the state agency.
15 The railroad commission has exclusive original jurisdiction to
16 establish a transportation rate for a state agency under this
17 section.

18 (b) The railroad commission shall base its determination of
19 the transportation rate under Subsection (a) on the cost of
20 providing the transportation service for both the distribution
21 system and the transmission system, as applicable, of the gas
22 pipeline.

23 (c) The railroad commission may order temporary rates under
24 Subsection (a) as provided by Section 144.108.

25 Sec. 144.202. EXCLUDED EXPENSES. (a) The rates that a gas
26 pipeline charges a state agency may not include an amount
27 representing a gross receipts assessment, regulatory assessment,

1 or similar expense of the gas pipeline.

2 (b) An expense under Subsection (a) that is reasonable and
3 is not recovered from a state agency under this section may be
4 recovered from other customers of the gas pipeline.

5 (c) A gross receipts assessment, regulatory assessment, or
6 similar expense of the gas pipeline does not include a payment to a
7 municipality under a contract, franchise, or other agreement.

8 [Sections 144.203-144.250 reserved for expansion]

9 SUBCHAPTER F. SERVICES

10 Sec. 144.251. GENERAL STANDARD. A gas pipeline shall
11 furnish service, instrumentalities, and facilities that are safe,
12 adequate, efficient, and reasonable.

13 Sec. 144.252. AUTHORITY OF RAILROAD COMMISSION CONCERNING
14 STANDARDS. The railroad commission, on its own motion or on
15 complaint and after reasonable notice and hearing, may:

16 (1) adopt just and reasonable standards,
17 classifications, regulations, or practices a gas pipeline must
18 follow in furnishing a service;

19 (2) adopt adequate and reasonable standards for
20 measuring a condition, including quantity, quality, and pressure
21 relating to the furnishing of a service;

22 (3) adopt reasonable regulations for examining,
23 testing, and measuring a service; and

24 (4) adopt or approve reasonable rules, regulations,
25 specifications, and standards to ensure the accuracy of equipment,
26 including meters and instruments, used to measure a service.

27 Sec. 144.253. RULE OR STANDARD. (a) A gas pipeline may

1 file with the railroad commission a standard, classification,
2 regulation, or practice the gas pipeline follows.

3 (b) A standard, classification, regulation, or practice
4 filed by the gas pipeline continues in force until:

5 (1) amended by the gas pipeline; or

6 (2) changed by the railroad commission as provided by
7 this subtitle.

8 Sec. 144.254. SERVICE TO STATE AGENCIES. A gas pipeline may
9 not refuse to provide service to a state agency if the gas
10 pipeline's existing facilities have capacity available.

11 Sec. 144.255. REQUIRED SERVICE TO PUBLIC RETAIL CUSTOMER.

12 (a) In this section, "service site" means facilities or buildings
13 operated by a public retail customer or a group of adjacent
14 facilities or buildings operated by a public retail customer within
15 one contiguous geographical area.

16 (b) Unless the gas pipeline is prohibited by other law from
17 providing the service and if sufficient pipeline capacity is
18 available on an existing facility of the pipeline to provide the
19 service, a gas pipeline may not refuse to provide to a public retail
20 customer at a service site, at rates established as provided by
21 Subsection (c), the following services:

22 (1) the sale of gas;

23 (2) the transportation of an annual average of 25
24 million British thermal units or more each day of gas that is:

25 (A) taken as a royalty in kind; and

26 (B) owned by the state or managed by a marketing
27 program operated by the state or by a state agency; or

1 (3) a combination of the services described by
2 Subdivisions (1) and (2).

3 (c) A gas pipeline shall provide a service described by
4 Subsection (b) at rates provided by a written contract negotiated
5 between the pipeline and the state or a state agency. If the
6 pipeline and the state or state agency are not able to agree to a
7 contract rate, a fair and reasonable rate may be determined for the
8 public retail customer, as a rate for a separate class of service,
9 by the railroad commission.

10 (d) In this section, "public retail customer" has the
11 meaning assigned by Section 35.101.

12 Sec. 144.256. BILLING. (a) A gas pipeline may not bill or
13 otherwise require the state or a state agency or institution to pay
14 for service before the service is provided.

15 (b) The railroad commission shall adopt rules concerning
16 payment of bills by the state or a state agency to a gas pipeline.
17 The rules must be consistent with Chapter 2251, Government Code.

18 (c) This subtitle does not prohibit a gas pipeline from
19 entering into an agreement with the state or a state agency to
20 establish a level or average monthly service billing plan. An
21 agreement under this subsection must require quarterly
22 reconciliation of the leveled or equalized bills.

23 Sec. 144.257. ELECTRONIC BILLING. On request of a customer
24 of a gas pipeline, the gas pipeline may transmit the pipeline's bill
25 for services through the Internet or by other electronic means
26 instead of through the United States mail.

27 Sec. 144.258. EXAMINATION AND TEST OF INSTRUMENT OR

1 EQUIPMENT; INSPECTION. (a) The railroad commission may:

2 (1) examine and test equipment, including meters and
3 instruments, used to measure service of a gas pipeline; and

4 (2) set up and use on the premises occupied by a gas
5 pipeline an apparatus or appliance necessary for the examination or
6 test.

7 (b) The gas pipeline is entitled to be represented at an
8 examination, test, or inspection made under this section.

9 (c) The gas pipeline and its officers and employees shall
10 facilitate the examination, test, or inspection by giving
11 reasonable aid to the railroad commission and to any person
12 designated by the railroad commission for the performance of those
13 duties.

14 [Sections 144.259-144.300 reserved for expansion]

15 SUBCHAPTER G. INTERIM COST RECOVERY AND RATE ADJUSTMENT

16 Sec. 144.301. INTERIM ADJUSTMENT FOR CHANGES IN INVESTMENT.

17 (a) A gas pipeline that has filed a rate case under Subchapter C
18 within the preceding two years may file with the railroad
19 commission a tariff or rate schedule that provides for an interim
20 adjustment in the gas pipeline's monthly customer charge or initial
21 block rate to recover the cost of changes in the investment in
22 service for gas pipeline services. The adjustment shall be
23 allocated among the gas pipeline's classes of customers in the same
24 manner as the cost of service was allocated among classes of
25 customers in the gas pipeline's latest effective rates for the area
26 in which the tariff or rate schedule is implemented. The gas
27 pipeline shall file the tariff or rate schedule, or the annual

1 adjustment under Subsection (c), with the railroad commission at
2 least 60 days before the proposed implementation date of the
3 tariff, rate schedule, or annual adjustment. The gas pipeline
4 shall provide notice of the tariff, rate schedule, or annual
5 adjustment to affected customers by bill insert or direct mail not
6 later than the 45th day after the date the gas pipeline files the
7 tariff, rate schedule, or annual adjustment with the railroad
8 commission. During the 60-day period, the railroad commission may
9 act to suspend the implementation of the tariff, rate schedule, or
10 annual adjustment for up to 45 days. After the issuance of a final
11 order or decision by the railroad commission in a rate case that is
12 filed after the implementation of a tariff or rate schedule under
13 this section, any change in investment that has been included in an
14 interim adjustment in accordance with the tariff or rate schedule
15 under this section shall no longer be subject to subsequent review
16 for reasonableness or prudence. Until the issuance of a final order
17 or decision by the railroad commission in a rate case that is filed
18 after the implementation of a tariff or rate schedule under this
19 section, all amounts collected under the tariff or rate schedule
20 before the filing of the rate case are subject to refund.

21 (b) The amount the gas pipeline shall adjust the gas
22 pipeline's rates upward or downward under the tariff or rate
23 schedule each calendar year is based on the difference between the
24 value of the invested capital for the preceding calendar year and
25 the value of the invested capital for the calendar year preceding
26 that calendar year. The value of the invested capital is equal to
27 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 pipeline may file a request with the railroad commission 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 railroad commission may grant the suspension on a showing by the gas pipeline of reasonable justification.

(d) A gas pipeline may only adjust the gas pipeline'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 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 railroad commission establishing the gas pipeline's latest effective rates for the area in which the tariff or rate schedule is implemented.

(e) A gas pipeline that implements a tariff or rate schedule under this section shall file with the railroad commission an annual report describing the 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

1 customers benefited by the change in investment.

2 (f) In addition to the report required under Subsection (e),
3 the gas pipeline shall file with the railroad commission an annual
4 earnings monitoring report demonstrating the gas pipeline's
5 earnings during the preceding calendar year.

6 (g) If the gas pipeline is earning a return on invested
7 capital, as demonstrated by the report filed under Subsection (f),
8 of more than 75 basis points above the return established in the
9 latest effective rates approved by the railroad commission for the
10 area in which the tariff or rate schedule is implemented under this
11 section, the gas pipeline shall file a statement with that report
12 stating the reasons why the rates are not unreasonable or in
13 violation of law.

14 (h) If a gas pipeline that implements a tariff or rate
15 schedule under this section does not file a rate case under
16 Subchapter C before the fifth anniversary of the date on which the
17 tariff or rate schedule takes effect, the gas pipeline shall file a
18 rate case under that subchapter not later than the 180th day after
19 that anniversary in relation to any rates subject to the tariff or
20 rate schedule.

21 (i) This section does not limit the power of the railroad
22 commission under Section 144.151.

23 (j) A gas pipeline implementing a tariff or rate schedule
24 under this section shall reimburse the railroad commission for the
25 gas pipeline's proportionate share of the railroad commission's
26 costs related to the administration of the interim rate adjustment
27 mechanism provided by this section.

1 CHAPTER 145. JUDICIAL REVIEW; ENFORCEMENT AND PENALTIES

2 SUBCHAPTER A. JUDICIAL REVIEW

3 Sec. 145.001. RIGHT TO JUDICIAL REVIEW. (a) Any party to a
4 proceeding before the railroad commission under this subtitle is
5 entitled to judicial review under the substantial evidence rule.

6 (b) In a proceeding under this subtitle, the issue of
7 confiscation is determined by a preponderance of the evidence.

8 Sec. 145.002. JUDICIAL STAY OR SUSPENSION. While an appeal
9 of an order, ruling, or decision of the railroad commission under
10 this subtitle is pending, the district court, court of appeals, or
11 supreme court, as appropriate, may stay or suspend all or part of
12 the operation of the order, ruling, or decision. In granting or
13 refusing a stay or suspension, the court shall act in accordance
14 with the practice of a court exercising equity jurisdiction.

15 [Sections 145.003-145.020 reserved for expansion]

16 SUBCHAPTER B. ENFORCEMENT AND PENALTIES

17 Sec. 145.021. ACTION TO ENJOIN OR REQUIRE COMPLIANCE.

18 (a) The attorney general, on the request of the railroad
19 commission, shall apply in the name of the railroad commission for
20 an order under Subsection (b) if the railroad commission determines
21 that a gas pipeline or other person is:

22 (1) engaging in or about to engage in an act that
23 violates this subtitle or an order or rule of the railroad
24 commission entered or adopted under this subtitle; or

25 (2) failing to comply with the requirements of this
26 subtitle or a rule or order of the railroad commission.

27 (b) A court, in an action under this section, may:

1 (1) prohibit the commencement or continuation of an
2 act that violates this subtitle or an order or rule of the railroad
3 commission entered or adopted under this subtitle; or

4 (2) require compliance with a provision of this
5 subtitle or an order or rule of the railroad commission.

6 (c) The remedy under this section is in addition to any
7 other remedy provided under this subtitle.

8 Sec. 145.022. CONTEMPT. The railroad commission may file
9 an action for contempt against a person who:

10 (1) fails to comply with a lawful order of the railroad
11 commission;

12 (2) fails to comply with a subpoena or subpoena duces
13 tecum; or

14 (3) refuses to testify about a matter on which the
15 person may be lawfully interrogated.

16 Sec. 145.023. CIVIL PENALTY AGAINST GAS PIPELINE OR
17 AFFILIATE. (a) A gas pipeline or affiliate is subject to a civil
18 penalty if the gas pipeline or affiliate knowingly violates this
19 subtitle, fails to perform a duty imposed on it, or fails, neglects,
20 or refuses to obey an order, rule, direction, or requirement of the
21 railroad commission or a decree or judgment of a court.

22 (b) A civil penalty under this section shall be in an amount
23 of not less than \$1,000 and not more than \$5,000 for each violation.

24 (c) A gas pipeline or affiliate commits a separate violation
25 each day it continues to violate Subsection (a).

26 (d) The attorney general shall file in the name of the
27 railroad commission a suit on the attorney general's own initiative

1 or at the request of the railroad commission to recover the civil
2 penalty under this section.

3 Sec. 145.024. OFFENSE. (a) A person commits an offense if
4 the person knowingly violates this subtitle.

5 (b) An offense under this section is a felony of the third
6 degree.

7 Sec. 145.025. PLACE FOR SUIT. A suit for an injunction or a
8 penalty under this subtitle may be brought in:

9 (1) Travis County;

10 (2) a county in which the violation is alleged to have
11 occurred; or

12 (3) a county in which a defendant resides.

13 Sec. 145.026. PENALTIES CUMULATIVE. (a) A penalty that
14 accrues under this subtitle is cumulative of any other penalty.

15 (b) A suit for the recovery of a penalty does not bar or
16 affect the recovery of any other penalty or bar a criminal
17 prosecution against any person, including a gas pipeline or
18 officer, director, agent, or employee of a gas pipeline.

19 Sec. 145.027. DISPOSITION OF FINES AND PENALTIES. A fine or
20 penalty collected under this subtitle, other than a fine or penalty
21 collected in a criminal proceeding, shall be paid to the railroad
22 commission.

23 [Sections 145.028-145.050 reserved for expansion]

24 SUBCHAPTER C. COMPLAINTS

25 Sec. 145.051. COMPLAINT BY AFFECTED PERSON. An affected
26 person may complain to the railroad commission in writing setting
27 forth an act or omission by a gas pipeline that the person claims

1 violates a law that the railroad commission has jurisdiction to
2 administer or an order, ordinance, or rule of the railroad
3 commission.

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