

UTILITIES CODE

TITLE 3. GAS REGULATION

SUBTITLE A. GAS UTILITY REGULATORY ACT

CHAPTER 101. GENERAL PROVISIONS AND OFFICE OF PUBLIC UTILITY

COUNSEL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. SHORT TITLE. This subtitle may be cited as the Gas Utility Regulatory Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.002. PURPOSE AND FINDINGS. (a) This subtitle is enacted to protect the public interest inherent in the rates and services of gas utilities. The purpose of this subtitle is to establish a comprehensive and adequate regulatory system for gas utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

(b) Gas utilities 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 utility rates, operations, and services as a substitute for competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.003. DEFINITIONS. In this subtitle:

(1) "Affected person" means:

(A) a gas utility affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

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

(ii) wants to enter into competition with a gas utility.

(2) "Affiliate" means:

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

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

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

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

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

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a gas utility;

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

(F) a person determined to be an affiliate under Section [101.004](#).

(3) "Allocation" means the division among municipalities or among municipalities and unincorporated areas of the plant, revenues, expenses, taxes, and reserves of a gas utility used to provide gas utility service in a municipality or for a municipality and unincorporated areas.

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

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

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

(7) "Gas utility" includes a person or river 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 utility. 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 utility who furnishes gas or gas service only to itself, its employees, or its tenants as an incident of employment or tenancy, if the gas or gas service is not resold to or used by others;

(E) a person excluded from being considered a gas

utility under Section 121.007; or

(F) an electric cooperative, as that term is defined by Section 11.003, or its subsidiary, that is excluded from regulation as a gas utility by Section 121.008.

(8) "Municipally owned utility" means a utility owned, operated, and controlled by a municipality or by a nonprofit corporation the directors of which are appointed by one or more municipalities.

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

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

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

(12) "Rate" means:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a gas utility for a service, product, or commodity described in the definition of gas utility in this section; and

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

(13) "Regulatory authority" means either the railroad commission or the governing body of a municipality, in accordance with the context.

(14) "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 utility in the performance of the utility's duties under this subtitle to its

patrons, employees, other gas utilities, and the public. The term also includes the interchange of facilities between two or more gas utilities.

(15) "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.

(16) "Test year" means the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a gas utility are available.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 11, Sec. 1, eff. May 3, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 709 (H.B. 2174), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 1, eff. April 21, 2011.

Sec. 101.004. 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 utility;

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

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

(4) actually exercises substantial influence over the policies and actions of a gas utility in conjunction with one or more persons with whom the person is related by ownership or blood relationship, or by action in concert, that together they are affiliated with the gas utility 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 a gas utility" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of

another, without regard to whether that power is established through ownership or voting of securities or by any other direct or indirect means.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.005. ADMINISTRATIVE PROCEDURE. Chapter 2001, Government Code, applies to a proceeding under this subtitle except to the extent inconsistent with this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.006. CUMULATIVE EFFECT; APPLICATION TO GAS UTILITIES. (a) This subtitle is cumulative of laws existing on September 1, 1983, relating to the jurisdiction, power, or authority of the railroad commission over a gas utility, and, except as specifically in conflict with this subtitle, that jurisdiction, power, and authority are not limited by this subtitle.

(b) This subtitle applies to all gas utilities, including a gas utility that is under the jurisdiction, power, or authority of the railroad commission in accordance with a law other than this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.007. LIBERAL CONSTRUCTION. This subtitle shall be construed liberally to promote the effectiveness and efficiency of regulation of gas utilities to the extent that this construction preserves the validity of this subtitle and its provisions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.008. CONSTRUCTION WITH FEDERAL AUTHORITY. This subtitle shall be construed to apply so as not to conflict with any authority of the United States.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.009. STATE AUTHORITY TO SELL OR CONVEY NATURAL GAS.

(a) In this section:

(1) "Commissioner" means the commissioner of the

General Land Office.

(2) "Public retail customer" means a retail customer that is an agency of this state, a state institution of higher education, a public school district, a political subdivision of this state, a military installation of the United States, or a United States Department of Veterans Affairs facility.

(b) The commissioner, acting on behalf of the state, may sell or otherwise convey natural gas generated from royalties taken in kind as provided by Sections 52.133(f), 53.026, and 53.077, Natural Resources Code, directly to a public retail customer.

(c) To ensure that the state receives the maximum benefit from the sale of natural gas generated from royalties taken in kind, the commissioner shall use all feasible means to sell that natural gas first to public retail customers that are military installations of the United States, agencies of this state, institutions of higher education, or public school districts. The remainder of the natural gas, if any, may be sold to public retail customers that are political subdivisions of this state or to a United States Department of Veterans Affairs facility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 149, Sec. 20, eff. May 27, 2003.

Transferred, redesignated and amended from Utilities Code, Section 35.102 by Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 5, eff. May 17, 2019.

#### SUBCHAPTER B. OFFICE OF PUBLIC UTILITY COUNSEL

Sec. 101.051. OFFICE OF PUBLIC UTILITY COUNSEL. The independent office of public utility counsel represents the interests of residential consumers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.052. OFFICE POWERS AND DUTIES. (a) The office:

(1) may appear or intervene as a party or otherwise represent residential consumers, as a class, in appeals to the railroad commission 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 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 102.203;

(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 utility 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.

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

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.053. PROHIBITED ACTS. (a) The counsellor may not:

(1) have a direct or indirect interest in a gas utility company regulated under this subtitle; or

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

(b) The prohibition under Subsection (a) applies during the



period of the counsellor's service and until the first anniversary of the date the counsellor ceases to serve as counsellor.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.054. PERSONNEL. (a) The counsellor may employ lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as the counsellor determines necessary to carry out this subchapter.

(b) An employee receives compensation as prescribed by the legislature from the assessment imposed by Subchapter [A](#), Chapter [16](#).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.