

UTILITIES CODE

TITLE 3. GAS REGULATION

SUBTITLE A. GAS UTILITY REGULATORY ACT

CHAPTER 102. JURISDICTION AND POWERS OF RAILROAD COMMISSION AND
OTHER REGULATORY AUTHORITIES

SUBCHAPTER A. GENERAL POWERS OF RAILROAD COMMISSION

Sec. 102.001. RAILROAD COMMISSION JURISDICTION. (a) The railroad commission has exclusive original jurisdiction over the rates and services of a gas utility:

(1) that distributes natural gas or synthetic natural gas in:

(A) areas outside a municipality; and

(B) areas inside a municipality that surrenders its jurisdiction to the railroad commission under Section 103.003; and

(2) that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public.

(b) The railroad commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 63, eff. Sept. 1, 2001.

Sec. 102.002. LIMITATION ON RAILROAD COMMISSION JURISDICTION. Except as otherwise provided by this subtitle, this subtitle does not authorize the railroad commission to:

(1) regulate or supervise a rate or service of a municipally owned utility; or

(2) affect the jurisdiction, power, or duty of a municipality that has elected to regulate and supervise a gas utility in the municipality.

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

Sec. 102.003. RAILROAD COMMISSION POWERS RELATING TO REPORTS. The railroad commission may:

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

(2) establish the form for a report;

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

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

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

(A) a contract or arrangement between a gas utility and an affiliate;

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

(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.

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

Sec. 102.004. 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 utility or its affiliate.

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

Sec. 102.005. ASSISTANCE TO MUNICIPALITY. On request of a municipality, the railroad commission may advise and assist the

municipality with respect to a question or proceeding arising under this subtitle. Assistance provided by the railroad commission may include aid to a municipality on a matter pending before the railroad commission, a court, or the municipality's governing body, such as making a staff member available as a witness or otherwise providing evidence.

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

Sec. 102.006. 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 State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or 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 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 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 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 set by the office under Section 2003.024(a), Government Code, for hearings conducted by the office under this section.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 64, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 228 (H.B. 2154), Sec. 25, eff. September 1, 2015.

SUBCHAPTER B. RESTRICTIONS ON CERTAIN TRANSACTIONS

Sec. 102.051. REPORT OF CERTAIN TRANSACTIONS; RAILROAD COMMISSION CONSIDERATION. (a) Not later than the 60th day after the date the transaction takes effect, a gas utility shall report to the railroad commission:

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

(2) a merger or consolidation with another gas utility operating in this state.

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

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

(d) This section does not apply to:

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

(2) an addition to the facilities of a gas utility by construction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 32, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1000 (H.B. 474), Sec. 1, eff. September 1, 2005.

Sec. 102.052. REPORT OF PURCHASE OF VOTING STOCK IN GAS UTILITY. A gas utility may not purchase voting stock in another gas utility doing business in this state unless the utility reports the purchase to the railroad commission.

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

Sec. 102.053. REPORT OF LOAN TO STOCKHOLDERS. A gas utility may not loan money, stocks, bonds, notes, or other evidence of indebtedness to a person who directly or indirectly owns or holds any stock of the gas utility unless the gas utility reports the transaction to the railroad commission within a reasonable time.

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

SUBCHAPTER C. RECORDS

Sec. 102.101. RECORDS OF GAS UTILITY. (a) Each gas utility shall keep and provide to the regulatory authority, in the manner and form prescribed by the railroad commission, uniform accounts of all business transacted by the gas utility.

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

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

(A) the provision of and capacity for service;

and

(B) the receipt and expenditure of money; and

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

(c) For a gas utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by the federal agency may be considered sufficient compliance with the system prescribed by the railroad commission. The railroad commission may prescribe the form of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the form of books, accounts, records, and memoranda prescribed by the railroad commission for a gas utility or class of utilities may not be inconsistent with the systems and forms established by a federal agency for that gas utility or class of utilities.

(d) Each gas utility shall:

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

(2) comply with the directions of the regulatory authority relating to the books, accounts, records, and memoranda.

(e) In this section, "gas utility" includes a municipally owned utility.

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

Sec. 102.102. MAINTENANCE OF OFFICE AND RECORDS IN THIS STATE. (a) Each gas utility shall maintain an office in this state in a county in which some part of the utility's property is located. The gas utility shall keep in this office all books, accounts, records, and memoranda required by the railroad commission to be kept in this state.

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

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

Sec. 102.103. COMMUNICATIONS WITH REGULATORY AUTHORITY.

(a) The regulatory authority shall adopt rules governing

communications with the regulatory authority or a member or employee of the regulatory authority by:

- (1) a gas utility;
- (2) an affiliate; or
- (3) a representative of a gas utility or affiliate.

(b) A record of a communication must contain:

- (1) the name of the person contacting the regulatory authority or member or employee of the regulatory authority;
- (2) the name of the business entity represented;
- (3) a brief description of the subject matter of the communication; and
- (4) the action, if any, requested by the gas utility, affiliate, or representative.

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

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

Sec. 102.104. JURISDICTION OVER AFFILIATE. The railroad commission has jurisdiction over an affiliate that has a transaction with a gas utility under the railroad commission's jurisdiction to the extent of access to an account or a record of the affiliate relating to the transaction, including an account or a record of joint or general expenses, any portion of which may be applicable to the transaction.

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

SUBCHAPTER D. REQUIRED REPORTS AND FILINGS

Sec. 102.151. SCHEDULE FILINGS. (a) A gas utility shall file with each regulatory authority schedules showing all rates that are:

- (1) subject to the regulatory authority's original or appellate jurisdiction; and
- (2) in effect for a gas utility service, product, or commodity offered by the gas utility.

(b) The gas utility 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 utility; or
- (2) a gas utility service, product, or commodity furnished by the gas utility.

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

Sec. 102.152. DEPRECIATION ACCOUNT. The railroad commission shall require each gas utility or municipally owned utility to carry a proper and adequate depreciation account in accordance with:

- (1) the rates and methods prescribed by the railroad commission under Section 104.054; and
- (2) any other rule the railroad commission adopts.

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

Sec. 102.153. ACCOUNTS OF PROFITS AND LOSSES. A gas utility or municipally owned utility shall keep separate accounts showing profits or losses from the sale or lease of merchandise, including an appliance, a fixture, or equipment.

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

Sec. 102.154. REPORT OF CERTAIN EXPENSES. A regulatory authority may require a gas utility to annually report the utility's expenditures for:

- (1) business gifts and entertainment; and
- (2) advertising or public relations, including expenditures for institutional and consumption-inducing purposes.

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

SUBCHAPTER E. AUDITS AND INSPECTIONS

Sec. 102.201. INQUIRY INTO MANAGEMENT AND AFFAIRS. A regulatory authority may inquire into the management and affairs of each gas utility and shall keep itself informed as to the manner and method in which each gas utility is managed and its affairs are conducted.

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

Sec. 102.202. AUDIT OF ACCOUNTS. A regulatory authority may require the examination and audit of the accounts of a gas or municipally owned utility.

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

Sec. 102.203. INSPECTION. At a reasonable time for a reasonable purpose, a regulatory authority and, to the extent authorized by the regulatory authority, its counsel, agent, or employee may:

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

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

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

Sec. 102.204. EXAMINATIONS UNDER OATH. In connection with an investigation taken under Section [102.203](#), the regulatory authority may:

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

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

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

Sec. 102.205. ENTERING PREMISES OF GAS UTILITY. (a) A member, agent, or employee of a regulatory authority may enter the premises occupied by a gas utility to conduct an inspection, examination, or test or to exercise any other authority provided by this subtitle.

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

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

representative before the inspection, examination, or test begins.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.206. PRODUCTION OF OUT-OF-STATE RECORDS. (a) A regulatory authority may require, by order or subpoena served on a gas utility, the production, at the time and place in this state that the regulatory authority designates, of any books, accounts, papers, or records kept by that gas utility outside this state or, if ordered by the railroad commission, verified copies of the books, accounts, papers, or records.

(b) A gas utility that fails or refuses to comply with an order or subpoena under this section violates this subtitle.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. GENERAL PROVISIONS RELATING TO PROCEEDINGS BEFORE
REGULATORY AUTHORITY

Sec. 102.251. RECORD OF PROCEEDING. The regulatory authority shall keep a record of each proceeding before the authority.

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

Sec. 102.252. RIGHT TO BE HEARD. Each party to a proceeding before a regulatory authority is entitled to be heard by attorney or in person.

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