

UTILITIES CODE

TITLE 3. GAS REGULATION

SUBTITLE A. GAS UTILITY REGULATORY ACT

CHAPTER 104. RATES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 104.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES. (a) The railroad commission is vested with all the authority and power of this state to ensure compliance with the obligations of gas utilities in this subtitle.

(b) The regulatory authority may establish and regulate rates of a gas utility and may adopt rules for determining:

- (1) the classification of customers and services; and
- (2) the applicability of rates.

(c) A rule or order of the regulatory authority may not conflict with a ruling of a federal regulatory body.

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

Sec. 104.002. COMPLIANCE WITH SUBTITLE. A gas utility may not:

- (1) charge, collect, or receive a rate for utility service except as provided by this subtitle; or
- (2) impose a rule or regulation except as provided by this subtitle.

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

Sec. 104.003. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that each rate a gas utility or two or more gas utilities jointly make, demand, or receive is just and reasonable. A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer. In establishing a gas utility's rates, the railroad commission may treat as a single class two or more municipalities that a gas utility serves if the commission considers that treatment to be appropriate.

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

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations;

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

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

(c) Subsection (b) does not apply:

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

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

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

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

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

Sec. 104.004. UNREASONABLE PREFERENCE OR PREJUDICE PROHIBITED. A gas utility may not:

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

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

(3) establish or maintain an unreasonable difference

concerning rates of services between localities or between classes of service.

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

Sec. 104.005. EQUALITY OF RATES AND SERVICES. (a) A gas utility may not directly or indirectly charge, demand, collect, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates filed under Section [102.151](#).

(b) A person may not knowingly receive or accept a service from a gas utility for a compensation greater or less than the compensation prescribed by the schedules. A rate charged and collected by a gas utility on September 1, 1983, may be continued until schedules are filed.

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

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

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

Sec. 104.006. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the railroad commission, a gas utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

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

Sec. 104.007. DISCRIMINATION AND RESTRICTION ON COMPETITION. A gas utility may not:

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

(2) engage in a practice that tends to restrict or

impair that competition.

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

Sec. 104.008. BURDEN OF PROOF. In a proceeding involving a proposed rate change, the gas utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility proposes the change; or

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

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

SUBCHAPTER B. COMPUTATION OF RATES

Sec. 104.051. ESTABLISHING OVERALL REVENUES. In establishing a gas utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.

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

Sec. 104.052. ESTABLISHING FAIR RATE OF RETURN. The regulatory authority may not establish a rate that yields more than a fair return on the adjusted value of the invested capital used and useful in providing service to the public.

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

Sec. 104.053. COMPONENTS OF ADJUSTED VALUE OF INVESTED CAPITAL. (a) Gas utility rates shall be based on the adjusted value of invested capital used and useful to the utility in providing service and that adjusted value shall be computed on the basis of a reasonable balance between:

(1) original cost, less depreciation; and

(2) current cost, less an adjustment for present age and condition.

(b) The regulatory authority may determine a reasonable balance that reflects:

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

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

(c) In determining a reasonable balance, the regulatory authority may consider inflation, deflation, quality of service being provided, growth rate of the service area, and need for the gas utility to attract new capital.

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

(e) Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(f) In this section, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

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

Sec. 104.054. DEPRECIATION, AMORTIZATION, AND DEPLETION.

(a) The railroad commission shall establish proper and adequate rates and methods of depreciation, amortization, or depletion for each class of property of a gas utility or municipally owned utility.

(b) The rates and methods established under this section and the depreciation account required under Section [102.152](#) shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

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

Sec. 104.055. NET INCOME; ALLOWABLE EXPENSES. (a) Net income shall be used to establish just and reasonable rates. For that purpose, "net income" means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service. The regulatory authority shall determine those revenues and expenses in a manner consistent with this subchapter.

(b) In establishing a gas utility's rates, the regulatory authority may not allow a gas utility'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 utility service except to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the regulatory authority. 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 utility 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 utility rates, or an investment is included in the utility 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 utility rates, or an investment is not included in the utility 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 regulatory authority may adopt reasonable rules complying with this section with respect to including and excluding certain expenses in computing the rates to be established.

(e) This section is not intended to increase gas utility rates to the customer not caused by utility service. Utility rates may include only expenses caused by utility service.

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

Sec. 104.056. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the regulatory authority shall:

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

(2) apportion accordingly the benefits between consumers and the gas utility or municipally owned utility.

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

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

Sec. 104.057. CONSIDERATION OF CERTAIN EXPENSES. (a) In establishing a gas utility's rates, the regulatory authority may not allow as a cost or expense an expenditure:

(1) described by Section [102.154](#) that the regulatory authority determines to be not in the public interest; or

(2) for legislative advocacy.

(b) The regulatory authority may allow as a cost or expense reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority.

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

Sec. 104.058. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing a gas utility's or municipally owned utility's rates, the regulatory authority may not consider a profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

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

Sec. 104.059. PENSION AND OTHER POSTEMPLOYMENT BENEFITS.

(a) In establishing a gas utility's rates, the regulatory authority shall allow recovery of the gas utility's costs of pensions and other postemployment benefits, as determined by actuarial or other similar studies in accordance with generally accepted accounting principles, in amounts the regulatory authority finds reasonable and necessary.

(b) If a gas utility establishes one or more reserve accounts for the purpose of tracking changes in the costs of pensions and other postemployment benefits, the gas utility shall periodically record in a reserve account any difference between:

(1) the annual amount of pension and other postemployment benefits approved and included in the gas utility's then current rates or, if that annual amount cannot be determined from the regulatory authority's order, the amount recorded for pension and other postemployment benefits under generally accepted accounting principles during the first year that rates from the gas utility's last general rate proceeding were in effect; and

(2) the annual amount of costs of pensions and other postemployment benefits as determined by actuarial or other similar studies that would otherwise be recorded by the gas utility were this provision not applicable.

(c) The gas utility must:

(1) establish separate reserve accounts for pensions and for other postemployment benefits; and

(2) apply the same methodology to allocate pension and other postemployment benefits between capital and expense as in the gas utility's last rate case.

(d) A surplus in a reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is greater than the amount determined under Subsection (b)(2). A shortage in a reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is less than the amount determined under Subsection (b)(2).

(e) If the gas utility establishes reserve accounts for the costs of pensions and other postemployment benefits, the regulatory authority at a subsequent general rate proceeding shall:

(1) review the amounts recorded to each reserve

account to determine whether the amounts are reasonable and necessary;

(2) determine in accordance with Subsection (d) whether each reserve account has a surplus or shortage; and

(3) subtract any surplus from or add any shortage to the gas utility's rate base, with the surplus or shortage amortized over a reasonable time.

Added by Acts 2011, 82nd Leg., R.S., Ch. 172 (S.B. 403), Sec. 1, eff. May 28, 2011.

Sec. 104.060. CONSIDERATION OF COMPENSATION AND BENEFIT EXPENSES. (a) In this section, "employee compensation and benefits" includes base salaries, wages, incentive compensation, and benefits. The term does not include:

(1) pension or other postemployment benefits; and

(2) incentive compensation related to attaining financial metrics for an executive officer whose compensation is required to be disclosed under 17 C.F.R. Section 229.402(a).

(b) When establishing a gas utility's rates, the regulatory authority shall presume that employee compensation and benefits expenses are reasonable and necessary if the expenses are consistent with market compensation studies issued not earlier than three years before the initiation of the proceeding to establish the rates.

Added by Acts 2019, 86th Leg., R.S., Ch. 1362 (H.B. 1767), Sec. 1, eff. June 15, 2019.

SUBCHAPTER C. RATE CHANGES PROPOSED BY UTILITY

Sec. 104.101. DEFINITION. In this subchapter, "major change" means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2-1/2 percent. The term does not include an increase in rates that the regulatory authority allows to go into effect or the gas utility makes under an order of the regulatory authority after hearings held with public notice.

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

Sec. 104.102. STATEMENT OF INTENT TO INCREASE RATES. (a) A gas utility may not increase its rates unless the utility files a statement of its intent with the regulatory authority that has original jurisdiction over those rates at least 35 days before the effective date of the proposed increase.

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

(c) The statement of intent must include:

- (1) proposed revisions of tariffs and schedules; and
- (2) a detailed statement of:
 - (A) each proposed increase;
 - (B) the effect the proposed increase is expected to have on the revenues of the utility;
 - (C) each class and number of utility consumers affected; and
 - (D) any other information required by the regulatory authority's rules and regulations.

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

Sec. 104.103. NOTICE OF INTENT TO INCREASE RATES. (a) The gas utility shall:

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

(2) provide notice of the proposed increase to any other affected person as required by the regulatory authority's rules.

(b) Instead of publishing newspaper notice, a gas utility may provide notice by:

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

(2) including the notice, in conspicuous form, in the bill of each directly affected customer; or

(3) sending the notice by e-mail to each directly

affected customer if that address is available to the utility.

(c) A gas utility may provide a customer with notice of the utility's intent to increase rates by e-mail as described by Subsection (b)(3) only if the customer has consented in writing to the use of the customer's e-mail address for that purpose.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 103 (S.B. 885), Sec. 1, eff. September 1, 2013.

Sec. 104.104. EARLY EFFECTIVE DATE OF RATE INCREASE. (a) For good cause shown, the regulatory authority may allow a rate increase, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 104.102; and

(2) under conditions the regulatory authority prescribes, subject to suspension as provided by this subchapter.

(b) The gas utility shall immediately revise its schedules to include the increase.

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

Sec. 104.105. DETERMINATION OF PROPRIETY OF RATE CHANGE; HEARING. (a) If a schedule modifying or increasing rates is filed with a regulatory authority, the regulatory authority shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the increase, enter on a hearing to determine the propriety of the increase.

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

(c) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The gas utility is not required to provide a formal answer or file any other formal pleading in

response to the notice, and the absence of an answer does not affect an order for a hearing.

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

Sec. 104.106. PREFERENCE TO HEARING. The regulatory authority shall:

(1) give preference to the hearing under this subchapter and to deciding questions arising under this subchapter over any other question pending before it; and

(2) decide the questions as quickly as possible.

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

Sec. 104.107. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision:

(1) the local regulatory authority, after delivering to the gas utility a written statement of the regulatory authority's reasons, may suspend the operation of the schedule for not longer than 90 days after the date the schedule would otherwise be effective; and

(2) the railroad commission may suspend the operation of the schedule for not longer than 150 days after the date the schedule would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended for two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a schedule of rates before expiration of the applicable suspension period, the regulatory authority is considered to have approved the schedule. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 67, eff. Sept. 1, 2001.

Sec. 104.108. TEMPORARY RATES. (a) The regulatory authority may establish temporary rates to be in effect during the applicable suspension period under Section [104.107](#).

(b) If the regulatory authority does not establish temporary rates, the rates in effect when the suspended schedule was filed continue in effect during the suspension period.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.109. BONDED RATES. (a) A gas utility may put a changed rate into effect by filing a bond with the regulatory authority if the regulatory authority fails to make a final determination within 90 days from the date the proposed increase would otherwise be effective.

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

(c) The bond must be:

(1) payable to the regulatory authority in an amount, in a form, and with a surety approved by the regulatory authority; and

(2) conditioned on refund.

(d) The gas utility shall refund or credit against future bills:

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

(2) interest on that money, at the current interest rate as determined by the regulatory authority.

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

Sec. 104.110. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the regulatory authority finds the rates are unreasonable or in violation of law, the regulatory authority shall:

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

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

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

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

Sec. 104.111. APPROVAL OF DECREASE IN RATES. Notwithstanding any other provision in this subtitle, the regulatory authority may, without reference to the cost of service

standard prescribed by Section 104.051, administratively approve a decrease in rates proposed by the applicant and agreed on by each party directly affected unless the regulatory authority determines that the proposed decrease is not in the public interest.

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

Sec. 104.112. SURCHARGE TO RECOVER RELOCATION COSTS. (a) This section applies to a gas utility's costs of relocating a facility to accommodate construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain that are not reimbursed by a source other than as provided by this section.

(b) A gas utility may recover its relocation costs to which this section applies through a surcharge on gas volumes sold and transported to customers in the service area where the relocation occurred by applying to each appropriate regulatory authority for a new rate schedule or tariff. The gas utility is not required to file a statement of intent to increase rates to institute the surcharge, and the other provisions of this subchapter, other than appeal rights, do not apply to institution of the surcharge.

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

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

(d) Not later than the 35th day after the date an application under Subsection (b) is received, the regulatory authority 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 utility 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 regulating authority does not make a decision before the deadline prescribed by Subsection (d), the application is approved.

Added by Acts 1999, 76th Leg., ch. 219, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 662, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

Sec. 104.151. UNREASONABLE OR VIOLATIVE EXISTING RATES.

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

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

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

(b) The rates set under Subsection (a) constitute the legal rates of the gas utility until changed as provided by this subtitle. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. If a gas utility does not produce the service that it distributes, transmits, or furnishes to the public for compensation but obtains the service from another source, the regulatory authority may investigate the cost of that production in an investigation of the reasonableness of the gas utility's rates. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. RATES FOR GOVERNMENTAL ENTITIES

Sec. 104.201. TRANSPORTATION RATES BETWEEN GAS UTILITY OR MUNICIPALLY OWNED UTILITY AND STATE AGENCY. (a) Notwithstanding Section 104.003(b), absent a contract for transportation service between a state agency and a gas utility or municipally owned utility, the railroad commission, not later than the 210th day after the date either party files a request to set a transportation rate, shall establish the transportation rate for the state agency. The commission has exclusive original jurisdiction to establish a transportation rate for a state agency under this section.

(b) The railroad commission shall base its determination of the transportation rate under Subsection (a) on the cost of providing the transportation service for both the distribution system and the transmission system, as applicable, of the gas utility or municipally owned utility.

(c) The railroad commission may order temporary rates under Subsection (a) as provided for under the commission's appellate jurisdiction.

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

Sec. 104.202. EXCLUDED EXPENSES. (a) The rates that a gas utility or municipally owned utility charges a state agency may not include an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility.

(b) An expense under Subsection (a) that is reasonable and is not recovered from a state agency under this section may be recovered from other customers of the gas utility or municipally owned utility.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1326, Sec. 1, eff. June 18, 1999.

Sec. 104.203. PAYMENT IN LIEU OF TAX. (a) A payment made in

lieu of a tax by a municipally owned utility to the municipality by which the utility is owned may not be considered an expense of operation in establishing the utility's rate for providing utility service to a school district or hospital district.

(b) A rate a municipally owned utility receives from a school district or hospital district may not be used to make or to cover the cost of making payments in lieu of taxes to the municipality that owns the utility.

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

SUBCHAPTER F. SERVICES

Sec. 104.251. GENERAL STANDARD. A gas utility shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

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

Sec. 104.252. AUTHORITY OF REGULATORY AUTHORITY CONCERNING STANDARDS. A regulatory authority, on its own motion or on complaint and after reasonable notice and hearing, may:

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

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

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

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

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

Sec. 104.253. RULE OR STANDARD. (a) A gas utility may file with the regulatory authority a standard, classification, regulation, or practice the utility follows.

(b) The standard, classification, regulation, or practice

continues in force until:

(1) amended by the utility; or

(2) changed by the regulatory authority as provided by this subtitle.

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

Sec. 104.254. SERVICE. A gas utility or municipally owned utility may not refuse to provide service to a state agency if pipeline capacity is available on an existing facility of the utility.

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

Sec. 104.2545. REQUIRED SERVICE TO PUBLIC RETAIL CUSTOMER.

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

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

(1) the sale of gas;

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

(A) taken as a royalty in kind; and

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

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

(c) A utility shall provide a service described by Subsection (b) at rates provided by a written contract negotiated between the utility and the state or a state agency. If the utility and the state or state agency are not able to agree to a contract rate, a fair and reasonable rate may be determined for the public

retail customer, as a rate for a separate class of service, by the railroad commission or, for municipally owned gas utilities, by the relevant regulatory body under this chapter.

(d) In this section, "public retail customer" has the meaning assigned by Section [101.009](#).

Added by Acts 1999, 76th Leg., ch. 300, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 563, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. [2263](#)), Sec. 6, eff. May 17, 2019.

Sec. 104.255. BILLING. (a) A gas utility or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is provided.

(b) The railroad commission shall adopt rules concerning payment of bills by the state or a state agency to a gas utility or municipally owned utility. The rules must be consistent with Chapter [2251](#), Government Code.

(c) This subtitle does not prohibit a gas utility or municipally owned utility from entering into an agreement with the state or a state agency to establish a level or average monthly service billing plan. An agreement under this subsection must require reconciliation of the leveled or equalized bills quarterly. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.2551. ELECTRONIC BILLING. A gas utility or municipally owned utility may transmit the utility's bill for services through the Internet or by other electronic means instead of through the United States mail on the request of a customer of the gas utility or municipally owned utility.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 68, eff. Sept. 1, 2001.

Sec. 104.256. EXAMINATION AND TEST OF INSTRUMENT OR EQUIPMENT; INSPECTION. (a) A regulatory authority may:

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

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

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

(c) The gas utility and its officers and employees shall facilitate the examination, test, or inspection by giving reasonable aid to the regulatory authority and to any person designated by the regulatory authority for the performance of those duties.

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

Sec. 104.257. INSPECTION FOR CONSUMER. (a) A consumer may have a meter or other measuring device tested by a gas utility:

(1) once without charge, after a reasonable period of presumed accuracy that the regulatory authority establishes by rule; and

(2) at a shorter interval on payment of a reasonable fee established by the regulatory authority.

(b) The regulatory authority shall establish reasonable fees to be paid for other examining or testing of a measuring device on the request of a consumer.

(c) If the consumer requests the test under Subsection (a)(2) and the measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer, the fee the consumer paid at the time of the request shall be refunded.

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

Sec. 104.258. DISCONNECTION OF GAS SERVICE. (a) In this section:

(1) "Extreme weather emergency" means a period during which the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

(2) "Provider" means:

(A) a gas utility, as defined by Sections 101.003 and 121.001; and

(B) an owner, operator, or manager of a mobile home park or apartment who purchases natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house under Chapter 124.

(b) A provider may not disconnect natural gas service to a residential customer on a weekend day unless personnel of the provider are available on that day to take payments and reconnect service.

(c) A provider may not disconnect natural gas service to a residential customer during an extreme weather emergency. The provider shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills.

Added by Acts 2001, 77th Leg., ch. 1149, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. INTERIM COST RECOVERY AND RATE ADJUSTMENT

Sec. 104.301. INTERIM ADJUSTMENT FOR CHANGES IN INVESTMENT.

(a) A gas utility that has filed a rate case under Subchapter C within the preceding two years may file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in service for gas utility services. The adjustment shall be allocated among the gas utility's classes of customers in the same manner as the cost of service was allocated among classes of customers in the utility's latest effective rates for the area in which the tariff or rate schedule is implemented. The gas utility shall file the tariff or rate schedule, or the annual adjustment under Subsection (c), with the regulatory authority at least 60 days before the proposed implementation date of the tariff, rate schedule, or annual adjustment. The gas utility shall provide notice of the tariff, rate schedule, or annual adjustment to

affected customers by bill insert or direct mail not later than the 45th day after the date the utility files the tariff, rate schedule, or annual adjustment with the regulatory authority. During the 60-day period, the regulatory authority may act to suspend the implementation of the tariff, rate schedule, or annual adjustment for up to 45 days. After the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an interim adjustment in accordance with the tariff or rate schedule under this section shall no longer be subject to subsequent review for reasonableness or prudence. Until the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, all amounts collected under the tariff or rate schedule before the filing of the rate case are subject to refund.

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

(c) The interim adjustment shall be recalculated on an annual basis in accordance with the requirements of Subsection (b). The gas utility may file a request with the regulatory authority 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 regulatory authority may grant the suspension on a showing by the utility of reasonable justification.

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

(e) A gas utility that implements a tariff or rate schedule under this section shall file with the regulatory authority 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 customers benefited by the change in investment.

(f) In addition to the report required under Subsection (e), the gas utility shall file with the regulatory authority an annual earnings monitoring report demonstrating the utility's earnings during the preceding calendar year.

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

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

(i) This section does not limit the power of a regulatory authority under Section [104.151](#).

(j) A gas utility implementing a tariff or rate schedule under this section shall reimburse the railroad commission the utility's proportionate share of the railroad commission's costs

related to the administration of the interim rate adjustment mechanism provided by this section.

Added by Acts 2003, 78th Leg., ch. 938, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 948 (H.B. 872), Sec. 1, eff. September 1, 2005.

SUBCHAPTER H. PROTECTION AGAINST UTILITY SERVICE DISCONNECTION

Sec. 104.351. DEFINITIONS. In this subchapter:

(1) "Customer" means any person in whose name gas utility service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for gas service.

(2) "Gas utility" has the meaning assigned by Section 181.021 but does not include a municipally owned utility or gas utility owned by an electric cooperative.

(3) "Nonsubmetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive gas utility service that is master metered but not submetered.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

Sec. 104.352. NOTICE OF DISCONNECTION TO MUNICIPALITIES FOR NONSUBMETERED MASTER METERED MULTIFAMILY PROPERTIES. (a) A gas utility shall send a written notice of service disconnection to a municipality before the gas utility disconnects service to a nonsubmetered master metered multifamily property for nonpayment if:

(1) the property is located in the municipality; and

(2) the municipality establishes an authorized representative to receive the notice as described by Section 104.353(c).

(b) The gas utility shall send the notice required by this section not later than the 10th day before the date gas utility

service is scheduled for disconnection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

Sec. 104.353. ADDITIONAL SAFEGUARDS. (a) The customer safeguards provided by this subchapter are in addition to safeguards provided by other law or agency rules.

(b) This subchapter does not prohibit a municipality or the regulatory authority from adopting customer safeguards that exceed the safeguards provided by this chapter.

(c) The regulatory authority by rule shall develop a mechanism by which a municipality may provide the regulatory authority with the contact information of the municipality's authorized representative to whom the notice required by Section 104.352 must be sent. The regulatory authority shall make the contact information available to the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

SUBCHAPTER I. CUSTOMER RATE RELIEF BONDS

Sec. 104.361. PURPOSE; RAILROAD COMMISSION DUTY. (a) The purpose of this subchapter is to reduce the cost that customers would otherwise experience because of extraordinary costs that gas utilities incurred to secure gas supply and provide service during Winter Storm Uri, and to restore gas utility systems after that event, by providing securitization financing for gas utilities to recover those costs. The securitization financing mechanism authorized by this subchapter will:

(1) provide rate relief to customers by extending the period during which the costs described by this subsection are recovered from customers; and

(2) support the financial strength and stability of gas utility companies.

(b) The railroad commission shall ensure that securitization provides tangible and quantifiable benefits to customers, greater than would have been achieved absent the

issuance of customer rate relief bonds.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.362. DEFINITIONS. In this subchapter:

(1) "Ancillary agreement" means a financial arrangement entered into in connection with the issuance or payment of customer rate relief bonds that enhances the marketability, security, or creditworthiness of customer rate relief bonds, including a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate or currency swap arrangement, interest rate lock agreement, forward payment conversion agreement, credit agreement, other hedging arrangement, or liquidity or credit support arrangement.

(2) "Authority" means the Texas Public Finance Authority.

(3) "Bond administrative expenses" means all costs and expenses incurred by the railroad commission, the authority, or any issuing financing entity to evaluate, issue, and administer customer rate relief bonds issued under this subchapter, including fees and expenses of the authority, any bond administrator, and the issuing financing entity, fees for paying agents, trustees, and attorneys, and fees for paying for other consulting and professional services necessary to ensure compliance with this subchapter, applicable state or federal law, and the terms of the financing order.

(4) "Bond obligations" means the principal of a customer rate relief bond and any premium and interest on a customer rate relief bond issued under this subchapter, together with any amount owed under a related ancillary agreement or credit agreement.

(5) "Credit agreement" has the meaning assigned by Section [1371.001](#), Government Code.

(6) "Customer rate relief bonds" means bonds, notes, certificates, or other evidence of indebtedness or ownership the proceeds of which are used directly or indirectly to recover, finance, or refinance regulatory assets approved by the railroad

commission, including extraordinary costs and related financing costs, and that are:

(A) issued by an issuing financing entity under a financing order; and

(B) payable from and secured by customer rate relief property and amounts on deposit in any trust accounts established for the benefit of the customer rate relief bondholders as approved by the applicable financing order.

(7) "Customer rate relief charges" means the amounts authorized by the railroad commission as nonbypassable charges to repay, finance, or refinance regulatory assets, including extraordinary costs, financing costs, bond administrative expenses, and other costs authorized by the financing order:

(A) imposed on and included in customer bills of a gas utility that has received a regulatory asset determination under Section [104.365](#);

(B) collected in full by a gas utility that has received a regulatory asset determination under Section [104.365](#), or its successors or assignees, or a collection agent, as servicer, separate and apart from the gas utility's base rates; and

(C) paid by all existing or future customers receiving service from a gas utility that has received a regulatory asset determination under Section [104.365](#) or its successors or assignees, even if a customer elects to purchase gas from an alternative gas supplier.

(8) "Customer rate relief property" means:

(A) all rights and interests of an issuing financing entity or any successor under a financing order, including the right to impose, bill, collect, and receive customer rate relief charges authorized in the financing order and to obtain periodic adjustments to those customer rate relief charges as provided in the financing order and in accordance with Section [104.370](#); and

(B) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified by Paragraph (A), regardless of whether the revenues, collections, claims, rights to payments, payments,

money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payments, payments, money, or proceeds.

(9) "Financing costs" means any of the following:

(A) interest and acquisition, defeasance, or redemption premiums that are payable on customer rate relief bonds;

(B) a payment required under an ancillary agreement or credit agreement or an amount required to fund or replenish reserve or other accounts established under the terms of an indenture, ancillary agreement, or other financing document pertaining to customer rate relief bonds;

(C) issuance costs or ongoing costs related to supporting, repaying, servicing, or refunding customer rate relief bonds, including servicing fees, accounting or auditing fees, trustee fees, legal fees or expenses, consulting fees, administrative fees, printing fees, financial advisor fees or expenses, Securities and Exchange Commission registration fees, issuer fees, bond administrative expenses, placement and underwriting fees, capitalized interest, overcollateralization funding requirements including amounts to fund or replenish any reserve established for a series of customer rate relief bonds, rating agency fees, stock exchange listing and compliance fees, filing fees, and any other bond administrative expenses; and

(D) the costs to the railroad commission of acquiring professional or consulting services for the purpose of evaluating extraordinary costs under this subchapter.

(10) "Financing order" means an order adopted under Section [104.366](#) approving the issuance of customer rate relief bonds and the creation of customer rate relief property and associated customer rate relief charges for the recovery of regulatory assets, including extraordinary costs, related financing costs, and other costs authorized by the financing order.

(11) "Financing party" means a holder of customer rate relief bonds, including a trustee, a pledgee, a collateral agent, any party under an ancillary agreement, or other person acting for the holder's benefit.

(12) "Gas utility" means:

(A) an operator of natural gas distribution pipelines that delivers and sells natural gas to the public and that is subject to the railroad commission's jurisdiction under Section [102.001](#); or

(B) an operator that transmits, transports, delivers, or sells natural gas or synthetic natural gas to operators of natural gas distribution pipelines and whose rates for those services are established by the railroad commission in a rate proceeding filed under this chapter.

(13) "Issuing financing entity" means a special purpose nonmember, nonstock, nonprofit public corporation established by the authority under Section [1232.1072](#), Government Code.

(14) "Nonbypassable" means a charge that:

(A) must be paid by all existing or future customers receiving service from a gas utility that has received a regulatory asset determination under Section [104.365](#) or the gas utility's successors or assignees, even if a customer elects to purchase gas from an alternative gas supplier; and

(B) may not be offset by any credit.

(15) "Normalized market pricing" means the average monthly pricing at the Henry Hub for the three months immediately preceding the month during which extraordinary costs were incurred, plus contractual adders to the index price and other non-indexed gas procurement costs.

(16) "Regulatory asset" includes extraordinary costs:

(A) recorded by a gas utility in the utility's books and records in accordance with the uniform system of accounts prescribed for natural gas companies subject to the provisions of the Natural Gas Act (15 U.S.C. Section 717 et seq.) by the Federal Energy Regulatory Commission and generally accepted accounting principles; or

(B) classified as a receivable or financial asset under international financial reporting standards under the railroad commission's authorization in the Notice of Authorization for Regulatory Asset Accounting for Local Distribution Companies Affected by the February 2021 Winter Weather Event issued February

13, 2021.

(17) "Servicer" means, with respect to each issuance of customer rate relief bonds, the entity identified by the railroad commission in the financing order as servicer responsible for collecting customer rate relief charges from participating gas utilities, remitting all collected funds to the applicable issuing financing entity or the bond trustee, calculating true-up adjustments, and performing any other duties as specified in the financing order.

(18) "Winter Storm Uri" means the North American winter storm that occurred in February 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.363. EXTRAORDINARY COSTS. For the purposes of this subchapter, extraordinary costs are the reasonable and necessary costs related to Winter Storm Uri, including carrying costs, placed in a regulatory asset and approved by the railroad commission in a regulatory asset determination under Section [104.365](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.364. JURISDICTION AND POWERS OF RAILROAD COMMISSION AND OTHER REGULATORY AUTHORITIES. (a) The railroad commission may authorize the issuance of customer rate relief bonds if the requirements of Section [104.366](#) are met.

(b) The railroad commission may assess to a gas utility costs associated with administering this subchapter. Assessments must be recovered from rate-regulated customers as part of gas cost.

(c) The railroad commission has exclusive, original jurisdiction to issue financing orders that authorize the creation of customer rate relief property. Customer rate relief property must be created and vested in an issuing financing entity and does not constitute property of the railroad commission or any gas utility.

(d) Except as provided by Subsection (c), this subchapter does not limit or impair a regulatory authority's plenary jurisdiction over the rates, charges, and services rendered by gas utilities in this state under Chapter 102.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.365. REGULATORY ASSET DETERMINATION. (a) The railroad commission, on application of a gas utility to recover a regulatory asset, shall determine the regulatory asset amount to be recovered by the gas utility. A gas utility may request recovery of a regulatory asset under this subchapter only if the regulatory asset is related to Winter Storm Uri.

(b) A gas utility desiring to participate in the customer rate relief bond process under a financing order by requesting recovery of a regulatory asset must file an application with the railroad commission on or before the 60th day after the effective date of the Act enacting this subchapter.

(c) If the railroad commission does not make a final determination regarding the regulatory asset amount to be recovered by a gas utility before the 151st day after the gas utility files the application, the railroad commission is considered to have approved the regulatory asset amount requested by the gas utility.

(d) The regulatory asset determination is not subject to reduction, impairment, or adjustment by further action of the railroad commission, except as authorized by Section 104.370.

(e) The regulatory asset determination is not subject to rehearing by the railroad commission and may be appealed only to a Travis County district court by a party to the proceeding. The appeal must be filed not later than the 15th day after the date the order is signed by the railroad commission.

(f) The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas. The appeal must be filed not later than the 15th day after the date of entry of judgment.

(g) All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as

possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the railroad commission and briefs to the court and limited to whether the financing order:

(1) complies with the constitution and laws of this state and the United States; and

(2) is within the authority of the railroad commission to issue under this subchapter.

(h) The railroad commission shall establish a schedule, filing requirements, and a procedure for determining the prudence of the costs included in a gas utility's regulatory asset.

(i) To the extent a gas utility subject to this subchapter receives insurance proceeds, governmental grants, or other sources of funding that compensate or otherwise reimburse or indemnify the gas utility for extraordinary costs following the issuance of customer rate relief bonds, the gas utility may record the amount in a regulatory liability account and that amount shall be reviewed in a future proceeding. If an audit conducted under a valid gas purchase agreement identifies a change of greater than five percent to the total amount of the gas supply costs incurred during the event for which regulatory asset recovery was approved, the gas utility may record the amount in a regulatory asset or regulatory liability account and that amount shall be reviewed for recovery in a future proceeding.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.366. FINANCING ORDERS AND ISSUANCE OF CUSTOMER RATE RELIEF BONDS. (a) If the railroad commission determines that customer rate relief bond financing for extraordinary costs is the most cost-effective method of funding regulatory asset reimbursements to be made to gas utilities, the railroad commission, after the final resolution of all applications filed under Section [104.365](#), may request the authority to direct an issuing financing entity to issue customer rate relief bonds. Before making the request, the railroad commission must issue a financing order that complies with this section.

(b) To make the determination described by Subsection (a), the railroad commission must find that the proposed structuring, expected pricing, and proposed financing costs of the customer rate relief bonds are reasonably expected to provide benefits to customers by:

(1) considering customer affordability; and

(2) comparing:

(A) the estimated monthly costs to customers resulting from the issuance of customer rate relief bonds; and

(B) the estimated monthly costs to customers that would result from the application of conventional recovery methods.

(c) The financing order must:

(1) include a finding that the use of the securitization financing mechanism is in the public interest and consistent with the purposes of this subchapter;

(2) detail the total amount of the regulatory asset determinations to be included in the customer rate relief bond issuance;

(3) authorize the recovery of any tax obligation of the gas utilities arising or resulting from:

(A) receipt of customer rate relief bond proceeds; or

(B) collection or remittance of customer rate relief charges through the gas utilities' gas cost recovery mechanism or other means that the railroad commission determines reasonable;

(4) authorize the issuance of customer rate relief bonds through an issuing financing entity;

(5) include a statement of:

(A) the aggregated regulatory asset determination to be included in the principal amount of the customer rate relief bonds, not to exceed \$10 billion for any separate bond issue;

(B) the maximum scheduled final maturity of the customer rate relief bonds, not to exceed 30 years, except that the legal final maturity may be longer based on rating agency and market considerations; and

(C) the maximum interest rate that the customer rate relief bonds may bear, not to exceed the maximum net effective interest rate allowed by law;

(6) provide for the imposition, collection, and mandatory periodic formulaic adjustment of customer rate relief charges in accordance with Section 104.370 by all gas utilities and successors of gas utilities for which a regulatory asset determination has been made under Section 104.365 to ensure that the customer rate relief bonds and all related financing costs will be paid in full and on a timely basis by customer rate relief charges;

(7) authorize the creation of customer rate relief property in favor of the issuing financing entity and pledge of customer rate relief property to the payment of the customer rate relief bonds;

(8) direct the issuing financing entity to disperse the proceeds of customer rate relief bonds, net of bond issuance costs, reserves, and any capitalized interest, to gas utilities for which a regulatory asset determination has been made under Section 104.365 and include the amounts to be distributed to each participating gas utility;

(9) provide that customer rate relief charges be collected and allocated among customers of each gas utility for which a regulatory determination has been made under Section 104.365 through uniform monthly volumetric charges to be paid by customers as a component of the gas utility's gas cost or in another manner that the railroad commission determines reasonable; and

(10) reflect the commitment made by a gas utility receiving proceeds that the proceeds are in lieu of recovery of those costs through the regular ratemaking process or other mechanism to the extent the costs are reimbursed to the gas utility by customer rate relief bond financing proceeds.

(d) The financing order may provide for a centralized servicer to coordinate with participating gas utilities who bill and collect customer rate relief charges and to provide certain collection and forecast data required for calculating true-up adjustments. The financing order may not provide for the railroad

commission, the authority, the issuing financing entity, or a participating utility to act as servicer.

(e) The principal amount determined by the railroad commission must be increased to include an amount sufficient to:

(1) pay the financing costs associated with the issuance, including all bond administrative expenses to be paid from the proceeds of the bonds;

(2) reimburse the authority and the railroad commission for any costs incurred for the issuance of the customer rate relief bonds and related bond administrative expenses;

(3) provide for any applicable bond reserve fund; and

(4) capitalize interest for the period determined necessary by the railroad commission.

(f) The authority, consistent with this subchapter and the terms of the financing order, shall:

(1) direct an issuing financing entity to issue customer rate relief bonds at the railroad commission's request, in accordance with the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to bond issuance by a state agency;

(2) determine the methods of sale, types of bonds, bond forms, interest rates, principal amortization, amount of reserves or capitalized interest, and other terms of the customer rate relief bonds that in the authority's judgment best achieve the economic goals of the financing order and effect the financing at the lowest practicable cost; and

(3) reimburse the railroad commission, the authority, or any issuing financing entity for bond administrative expenses and other costs authorized under this subchapter.

(g) To the extent authorized in the applicable financing order, an issuing financing entity may enter into credit agreements or ancillary agreements in connection with the issuance of customer rate relief bonds.

(h) The financing order becomes effective in accordance with its terms. The financing order, together with the customer rate relief property and the customer rate relief charges authorized by the financing order, is irrevocable and not subject

to reduction, impairment, or adjustment by further action of the railroad commission, except as provided under Subsection (j) and authorized by Section 104.370.

(i) The railroad commission shall issue a financing order under this section not later than the 90th day following the date of the conclusion of all proceedings filed under Section 104.365.

(j) A financing order is not subject to rehearing by the railroad commission. A financing order may be appealed only to a Travis County district court by a party to the proceeding. The appeal must be filed not later than the 15th day after the date the financing order is signed by the railroad commission.

(k) The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas. The appeal must be filed not later than the 15th day after the date of entry of judgment.

(l) All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the railroad commission and briefs to the court and is limited to whether the financing order:

(1) complies with the constitution and laws of this state and the United States; and

(2) is within the authority of the railroad commission to issue under this subchapter.

(m) The railroad commission shall transmit a financing order to the authority after all appeals under this section have been exhausted.

(n) The authority shall direct an issuing financing entity to issue customer rate relief bonds as soon as practicable and not later than the 180th day after receipt of a financing order issued under this section, except that the authority may cause the issuance after the 180th day if necessary based on bond market conditions, the receipt of necessary approvals, and the timely receipt of necessary financial disclosure information from each participating gas utility.

(o) The issuing financing entity shall deliver customer

rate relief bond proceeds net of upfront financing costs in accordance with the applicable financing order.

(p) For the benefit of the authority, the issuing financing entity, holders of customer rate relief bonds, and all other financing parties, the railroad commission shall guarantee in a financing order that the railroad commission will take all actions in the railroad commission's powers to enforce the provisions of the financing order to ensure that customer rate relief charge revenues are sufficient to pay on a timely basis scheduled principal and interest on the customer rate relief bonds and all related financing costs and bond administrative expenses.

(q) The railroad commission shall make periodic reports to the public regarding each financing.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.367. PROPERTY RIGHTS. (a) Customer rate relief bonds are the limited obligation solely of the issuing financing entity and are not a debt of a gas utility or a debt or a pledge of the faith and credit of this state or any political subdivision of this state.

(b) Customer rate relief bonds are nonrecourse to the credit or any assets of this state or the authority. A trust fund created in connection with the issuance of customer rate relief bonds is not subject to Subtitle B, Title 9, Property Code.

(c) The rights and interests of an issuing financing entity or the successor under a financing order, including the right to receive customer rate relief charges authorized in the financing order, are only contract rights until pledged in connection with the issuance of the customer rate relief bonds, at which time the rights and interests become customer rate relief property.

(d) Customer rate relief property created under a financing order is vested ab initio in the issuing financing entity. Customer rate relief property constitutes a present property right for purposes of contracts concerning the sale or pledge of property, notwithstanding that the imposition and collection of customer rate relief charges depends on further acts

of the gas utility or others that have not yet occurred. The financing order remains in effect, and the customer rate relief property continues to exist, for the same period as the pledge of the state described by Section 104.374.

(e) All revenue and collections resulting from customer rate relief charges constitute proceeds only of a property right arising from the financing order.

(f) An amount owed by an issuing financing entity under an ancillary agreement or a credit agreement is payable from and secured by a pledge and interest in the customer rate relief property to the extent provided in the documents evidencing the ancillary agreement or credit agreement.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.368. PROPERTY INTEREST NOT SUBJECT TO SETOFF, COUNTERCLAIM, SURCHARGE, OR DEFENSE. The interest of an issuing financing entity or pledgee in customer rate relief property, including the revenue and collections arising from customer rate relief charges, is not subject to setoff, counterclaim, surcharge, or defense by the gas utility or any other person or in connection with the bankruptcy of the gas utility, the authority, or any other entity. A financing order remains in effect and unabated notwithstanding the bankruptcy of the gas utility, the authority, an issuing financing entity, or any successor or assignee of the gas utility, authority, or issuing financing entity.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.369. CUSTOMER RATE RELIEF CHARGES NONBYPASSABLE. A financing order must include terms ensuring that the imposition and collection of the customer rate relief charges authorized in the order are nonbypassable.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.370. TRUE-UP MECHANISM. (a) A financing order

must include a formulaic true-up charge adjustment mechanism that requires that the customer rate relief charges be reviewed and adjusted at least annually by the servicer or replacement servicer, including a subservicer or replacement subservicer, at time periods and frequencies provided in the financing order, to:

(1) correct any overcollections or undercollections of the preceding 12 months; and

(2) ensure the expected recovery of amounts sufficient to provide for the timely payment of customer rate relief bond principal and interest payments and other financing costs.

(b) True-up charge adjustments must become effective not later than the 30th day after the date the railroad commission receives a true-up charge adjustment letter from the servicer or replacement servicer notifying the railroad commission of the pending adjustment.

(c) Any administrative review of true-up charge adjustments must be limited to notifying the servicer of mathematical or clerical errors in the calculation. The servicer may correct the error and refile a true-up charge adjustment letter, with the adjustment becoming effective as soon as practicable but not later than the 30th day after the date the railroad commission receives the refiled letter.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.371. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. (a) Customer rate relief property does not constitute an account or general intangible under Section [9.106](#), Business & Commerce Code. The creation, granting, perfection, and enforcement of liens and security interests in customer rate relief property that secures customer rate relief bonds are governed by Chapter [1208](#), Government Code.

(b) The priority of a lien and security interest perfected under this section is not impaired by any later adjustment of customer rate relief charges under a mechanism adopted under Section [104.370](#) or by the commingling of funds arising from customer rate relief charges with other funds. Any other security

interest that may apply to those funds is terminated when the funds are transferred to a segregated account for the issuing financing entity or a financing party. If customer rate relief property has been transferred to a trustee or another pledgee of the issuing financing entity, any proceeds of that property must be held in trust for the financing party.

(c) If a default or termination occurs under the customer rate relief bonds, a district court of Travis County, on application by or on behalf of the financing parties, shall order the sequestration and payment to the financing parties of revenue arising from the customer rate relief charges.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.372. BOND PROCEEDS IN TRUST. (a) The issuing financing entity may deposit proceeds of customer rate relief bonds issued by the issuing financing entity under this subchapter with a trustee selected by the issuing financing entity or the proceeds may be held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.

(b) Bond proceeds, net of the financing costs and reserves described by Subdivisions (2) and (3), including investment income, must be held in trust for the exclusive benefit of the railroad commission's policy of reimbursing gas utility costs and applied in accordance with the financing order. The issuing financing entity shall deliver the net proceeds, as provided in the applicable financing order, to:

(1) reimburse each gas utility the regulatory asset amount determined to be reasonable for that gas utility in the financing order;

(2) pay the financing costs of issuing the bonds; and

(3) provide bond reserves or fund any capitalized interest, as applicable.

(c) On full payment of the customer rate relief bonds and any related financing costs, any customer rate relief charges or other amounts held as security for the bonds shall be used to provide credits to gas utility customers as provided in the

financing order.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.373. REPAYMENT OF CUSTOMER RATE RELIEF BONDS.

(a) As long as any customer rate relief bonds or related financing costs remain outstanding, uniform monthly volumetric customer rate relief charges must be paid by all current and future customers that receive service from a gas utility for which a regulatory asset determination has been made under Section 104.365. A gas utility and its successors, assignees, or replacements shall continue to bill and collect customer rate relief charges from the gas utility's current and future customers until all customer rate relief bonds and financing costs are paid in full.

(b) The authority shall report to the railroad commission the amount of the outstanding customer rate relief bonds issued by the issuing financing entity under this subchapter and the estimated amount of annual bond administrative expenses.

(c) All revenue collected from the customer rate relief charges shall be remitted promptly by the applicable servicers to the issuing financing entity or the bond trustee for the customer rate relief bonds to pay bond obligations and ongoing financing costs, including bond administrative expenses, to ensure timely payment of bond obligations and financing costs.

(d) Customer rate relief property, including customer rate relief charges, may be applied only as provided by this subchapter.

(e) Bond obligations are payable only from sources provided for payment by this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.374. PLEDGE OF STATE. (a) Customer rate relief bonds issued under this subchapter and any related ancillary agreements or credit agreements are not a debt or pledge of the faith and credit of this state or a state agency or political subdivision of this state. A customer rate relief bond, ancillary agreement, or credit agreement is payable solely from customer rate

relief charges as provided by this subchapter.

(b) Notwithstanding Subsection (a), this state, including the railroad commission and the authority, pledges for the benefit and protection of the financing parties and the gas utility that this state will not take or permit any action that would impair the value of customer rate relief property, or, except as permitted by Section 104.370, reduce, alter, or impair the customer rate relief charges to be imposed, collected, and remitted to financing parties until the principal, interest and premium, and contracts to be performed in connection with the related customer rate relief bonds and financing costs have been paid and performed in full. Each issuing financing entity shall include this pledge in any documentation relating to customer rate relief bonds.

(c) Before the date that is two years and one day after the date that an issuing financing entity no longer has any payment obligation with respect to customer rate relief bonds, the issuing financing entity may not wind up or dissolve the financing entity's operations, may not file a voluntary petition under federal bankruptcy law, and neither the board of the issuing financing entity nor any public official nor any organization, entity, or other person may authorize the issuing financing entity to be or to become a debtor under federal bankruptcy law during that period. The state covenants that it will not limit or alter the denial of authority under this subsection, and the provisions of this subsection are hereby made a part of the contractual obligation that is subject to the state pledge made in this section. Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. 1520), Sec. 5, eff. June 16, 2021.

Sec. 104.375. TAX EXEMPTION. (a) The sale or purchase of or revenue derived from services performed in the issuance or transfer of customer rate relief bonds issued under this subchapter is exempt from taxation by this state or a political subdivision of this state.

(b) A gas utility's receipt of customer rate relief charges is exempt from state and local sales and use taxes and utility gross receipts taxes and assessments, and is excluded from revenue for

purposes of franchise tax under Section [171.1011](#), Tax Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.376. RECOVERABLE TAX EXPENSE. A tax obligation of the gas utility arising from receipt of customer rate relief bond proceeds or from the collection or remittance of customer rate relief charges is an allowable expense under Section [104.055](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.377. ISSUING FINANCING ENTITY OR FINANCING PARTY NOT PUBLIC UTILITY. An issuing financing entity or financing party may not be considered to be a public utility or person providing natural gas service solely by virtue of the transactions described by this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.378. NO PERSONAL LIABILITY. A commissioner of the railroad commission, a railroad commission employee, a member of the board of directors of the authority, an employee of the authority, or a director, officer, or employee of any issuing financing entity is not personally liable for a result of an exercise of a duty or responsibility established under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

Sec. 104.380. SEVERABILITY. After the date customer rate relief bonds are issued under this subchapter, if any provision in this title or portion of this title or related provisions in Title 9, Government Code, are held to be invalid or are invalidated, superseded, replaced, repealed, or expire for any reason, that occurrence does not affect the validity or continuation of this subchapter or any other provision of this title or related provisions in Title 9, Government Code, that are relevant to the

issuance, administration, payment, retirement, or refunding of customer rate relief bonds or to any actions of a gas utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

Added by Acts 2021, 87th Leg., R.S., Ch. 805 (H.B. [1520](#)), Sec. 5, eff. June 16, 2021.

SUBCHAPTER J. NATURAL GAS ENERGY CONSERVATION PROGRAMS

Sec. 104.401. DEFINITIONS. In this subchapter:

(1) "Energy conservation program" means a program that promotes energy conservation or energy efficiency.

(2) "Local distribution company" means a gas utility that operates a retail gas distribution system.

Added by Acts 2023, 88th Leg., R.S., Ch. 710 (H.B. [2263](#)), Sec. 1, eff. June 12, 2023.

Sec. 104.402. ENERGY CONSERVATION PROGRAM AUTHORITY.

(a) A local distribution company may offer to customers and prospective customers and provide to customers an energy conservation program in the manner provided by this subchapter.

(b) The railroad commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies.

(c) A political subdivision served by a local distribution company that implements an energy conservation program approved by the railroad commission under this subchapter may not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type or source of energy delivered to the customer.

Added by Acts 2023, 88th Leg., R.S., Ch. 710 (H.B. [2263](#)), Sec. 1, eff. June 12, 2023.

Sec. 104.403. ENERGY CONSERVATION PROGRAM COST RECOVERY.

(a) A local distribution company may recover costs of energy conservation programs implemented under this subchapter if approved by the railroad commission in the manner provided by this

subchapter. A local distribution company seeking to recover the costs must apply to the railroad commission before beginning recovery of the costs and at least once every three years after the date the company first applies for the cost recovery.

(b) If the railroad commission approves the local distribution company's application or approves the application with modifications, the company may recover costs prudently incurred to implement the energy conservation programs, including costs incurred to design, market, implement, administer, and deliver an energy conservation program.

(c) If the local distribution company provides an earnings monitoring report for the preceding calendar year demonstrating that the company did not earn above the rate of return established in the latest effective rates approved by the railroad commission for the company, the railroad commission may allow the company to recover an amount equal to the reduction in the company's marginal revenues due to lower sales or demand resulting from the energy conservation program.

(d) The railroad commission by rule shall require a local distribution company that implements an energy conservation program under this subchapter to submit to the railroad commission an annual report on:

(1) the performance of the company's energy conservation programs for the preceding year; and

(2) the company's planned energy conservation programs for the upcoming year.

(e) An application for cost recovery under Subsection (a) must include:

(1) a summary of and objectives for the local distribution company's energy conservation programs;

(2) a description of each program;

(3) a proposed budget for each program;

(4) the projected consumption reduction or cost savings for each program; and

(5) any public input compiled by the local distribution company on the proposed programs as required by the railroad commission.

(f) The railroad commission by rule may:

(1) determine a cost recovery mechanism for timely recovery of costs described by Subsection (a); and

(2) ensure that costs described by Subsection (a) are allocated to the customer classes eligible for participation in the energy conservation program.

(g) Energy conservation programs proposed under this section may be combined in a portfolio to provide incentives and services to encourage energy conservation. The portfolio:

(1) must be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes and be designed to change customer behavior as necessary; and

(2) may include measures such as:

(A) direct financial incentives;

(B) technical assistance and information, including building energy performance analyses performed by the local distribution company or a third party approved by the company;

(C) discounts or rebates for products; and

(D) weatherization for low-income customers.

(h) A proceeding filed under this section is not a ratemaking proceeding for the purposes of Section [103.022](#).

(i) A local distribution company implementing an energy conservation program under this subchapter shall reimburse the railroad commission for the utility's proportionate share of the railroad commission's costs related to administration of reviewing and approving or denying cost recovery applications under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 710 (H.B. [2263](#)), Sec. 1, eff. June 12, 2023.