

UTILITIES CODE

TITLE 3. GAS REGULATION

SUBTITLE C. PROPANE GAS DISTRIBUTION SYSTEMS

CHAPTER 141. STANDARDS FOR DISTRIBUTION SYSTEM RETAILERS

Sec. 141.001. DEFINITIONS. In this chapter:

(1) "Allowable markup" means the two-calendar-year rolling average of the differences between the monthly E.I.A. retail prices per gallon reported during the two calendar years immediately preceding the calendar year in which a billing month occurs and the corresponding spot prices per gallon reported for the same month an E.I.A. retail price was reported during those two calendar years. As an example of the calculated allowable markup, for 2013, the allowable markup is \$1.48 per gallon.

(2) "Allowable spot price" means the average of the spot prices for the two months preceding the billing month. As an example of the calculated allowable spot price, for the billing month of January 2013, the allowable spot price was \$0.844 per gallon. The commission shall identify the allowable spot price each month and publish that price on the commission's website.

(3) "Commission" means the Railroad Commission of Texas or its successor agency.

(4) "Customer" means a retail customer of propane gas purchased from and delivered by a distribution system retailer through a propane gas system.

(5) "Distribution system retailer":

(A) means a retail propane dealer that:

(i) owns or operates for compensation in this state a propane gas system; and

(ii) has a Category E or K license issued by the applicable license and permit section of the commission; and

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

(6) "E.I.A. retail price" means the monthly U.S. Propane Residential Price as reported by the United States Energy

Information Administration or its successor agency in dollars per gallon. As an example of the calculated E.I.A. retail price, for January 2013, the E.I.A. retail price was \$2.449 per gallon.

(7) "Propane gas" means a normally gaseous hydrocarbon defined as propane by the United States Energy Information Administration or its successor agency.

(8) "Propane gas system" means one or more propane storage containers, equipment, and facilities connected to a contiguous piping system through which propane gas is supplied by a distribution system retailer to at least 10 customers.

(9) "Rate" means the price per cubic foot of gas passing through the meter levied, charged, or collected by a distribution system retailer from a customer for propane gas provided through a propane gas system to the customer exclusive of any fees, taxes, or other charges. A conversion factor of 36.4 cubic feet of propane gas per gallon shall be used for purposes of determining a rate.

(10) "Spot price" means the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon as reported by the United States Energy Information Administration or its successor agency in dollars per gallon. In January 2013, the spot price was \$0.838 per gallon.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. [2532](#)), Sec. 1, eff. September 1, 2013.

Sec. 141.002. APPLICABILITY. This chapter applies only to the retail sale of propane gas made by a distribution system retailer through a propane gas system. This chapter does not apply to any other retail or wholesale sale of propane gas.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. [2532](#)), Sec. 1, eff. September 1, 2013.

Sec. 141.003. RATE AND FEE CEILINGS. (a) In each billing month, a distribution system retailer shall charge a customer a just and reasonable rate for propane gas provided through a propane gas system to the customer. For the purposes of this section, a just and reasonable rate charged monthly for propane gas is a rate for

propane gas provided through a propane gas system to the customer if it is less than or equal to the allowable spot price plus the allowable markup. For a customer's bill that contains days in more than one month, the month with the most days covered by the bill shall be considered the billing month. The price per gallon shall be converted to the cubic foot rate by dividing the price per gallon by 36.4.

(b) In addition to the rate authorized by Subsection (a), a distribution system retailer may charge customers special fees for services, including a connection fee, a disconnection fee, a monthly account fee to maintain an active account, a late payment fee, a disconnect or termination fee, a reconnection fee, an accelerated reconnection fee, a dishonored or canceled payment fee, a service initiation fee, and a tampering fee or an unauthorized gas consumption or diversion fee, if the fees are reasonable and customary. For purposes of this section, the fees described above that were charged or adopted by a distribution system retailer as of January 1, 2013, as adjusted pursuant to Subsection (c), are deemed reasonable and customary for that distribution system retailer and its successors regarding any systems owned or operated currently or in the future.

(c) The distribution system retailer may adjust the fees described by Subsection (b) up or down based on the 12-month changes in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, CPI-U, Not Seasonally Adjusted, published by the Bureau of Labor Statistics of the United States Department of Labor or a similar index if that index is unavailable. For calculation purposes, the beginning base month is December 2012.

(d) Nothing in this section limits a distribution system retailer's ability to pass through to a customer as a separate charge on a pro rata actual-cost basis:

(1) a tax, other than a tax assessed on the basis of income, gross income, property, or margins;

(2) an assessment, surcharge, levy, fee, or other charge imposed by a governmental entity, any one of which begins or is increased on or after January 1, 2013, either:

(A) directly on a propane gas system or any

portion; or

(B) on a distribution system retailer by virtue of its ownership or operation of a propane gas system; or

(3) a sales tax or franchise fee.

(e) A fee passed through to a customer under Subsection (d) shall be:

(1) passed through without any additional markup; and

(2) identified as a separate item on a customer's bill.

(f) Notwithstanding any other provision in this section, this subtitle does not apply to a new gas line construction charge, a gas line repair charge, or an appliance repair charge.

(g) In the event either or both the E.I.A. retail price or the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon cease to be available, the commission shall designate a reasonably similar available substitute index or indices as necessary for purposes of calculation of the rate deemed just and reasonable for purposes of this section. Until the commission publishes an order designating the substitute index or indices, distribution system retailers shall charge a rate not to exceed the most recent available allowable markup plus the most recent available Mont Belvieu, TX monthly Propane Spot Price FOB per gallon. If the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon is not available from the United States Energy Information Administration, the distribution system retailer, for the purpose of defining the spot price, may identify and use the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon as reported by an alternative publicly available published source.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. [2532](#)), Sec. 1, eff. September 1, 2013.

Sec. 141.0031. DAYS IN BILLING MONTH. (a) A customer's bill may not include charges for a period of more than:

(1) 32 days for a billing month in which the majority of days in the billing month occur in December, January, or February; or

(2) 31 days for a billing month in which the majority of days in the billing month occur in any other month.

(b) If an extreme condition occurs or continues on or after the 29th day of a billing month described by Subsection (a)(1), the billing month may be extended by the number of days the extreme condition occurs. Extreme conditions include:

(1) iced, flooded, closed, or otherwise impassable roads in the county in which the customer resides;

(2) a natural disaster, including an earthquake, a hurricane, a tornado, or winds of more than 60 miles per hour; and

(3) civil disruption, including war, riot, or labor disruption or stoppage.

Added by Acts 2015, 84th Leg., R.S., Ch. 783 (H.B. 2558), Sec. 1, eff. September 1, 2015.

Sec. 141.004. DISCONNECTION OF PROPANE GAS SERVICE. (a) A distribution system retailer may not disconnect propane gas service to a residential customer on a weekend day or holiday officially observed by the State of Texas unless personnel of the distribution system retailer are available on that day to receive payments and reconnect service.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

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

(b) Excluding service interruptions under Section 141.006, a distribution system retailer shall keep complete records of all emergency and scheduled service interruptions lasting more than six

hours and affecting more than two customers. The records must describe the cause, date, length, and location of each interruption, the approximate number of customers affected by the interruption, and, in the case of an emergency interruption, the remedy and steps taken to prevent a recurrence, if applicable. The distribution system retailer shall submit copies of the service interruption records to the commission quarterly.

(c) The distribution system retailer shall notify the commission in writing not later than 48 hours after an interruption in service that affects the entire propane gas system, lasts more than four hours, represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous. The notice shall include the distribution system report of a service interruption. A written report of a service interruption in another form, including a part of a safety report, is sufficient to comply with this subsection.

(d) The commission shall establish and maintain a toll-free telephone number to enable a customer to notify the commission of a service interruption that does not involve a refusal to serve under Section 141.006. The commission shall immediately investigate the notification. A distribution system retailer shall notify the customer of the commission phone number on each billing statement.

(e) To restore and maintain service, the commission may assume temporary operational control of a propane gas system that experiences a service interruption that affects the entire propane gas system and that:

(1) continues to affect the entire propane gas system after the distribution system retailer has had direct access to and control of the system for more than 48 hours after the service interruption began;

(2) occurs more than three times in one month; or

(3) is the result of the distribution system retailer's failure or refusal to replenish the primary propane tank for a reason other than a general local market disruption, a restriction on wholesale propane supplies, mechanical failure, criminal activity, or an act of God.

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

(g) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a distribution system retailer that:

(1) has abandoned operation of its facilities;

(2) informs the commission that the owner is abandoning the system; or

(3) experiences a service interruption as described under Subsection (e).

(h) The court shall appoint a receiver if an appointment is necessary to guarantee:

(1) the collection of assessments, fees, penalties, or interest; or

(2) continuous and adequate service to the customers of the utility.

(i) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(j) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(k) On a showing of good cause by the distribution system retailer, the court may dissolve the receivership and order the assets and control of the business returned to the distribution system retailer.

(l) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek commission approval to acquire the distribution system retailer's facilities.

(m) Subject to the approval of the court and after giving notice to all interested parties, the receiver may sell or

otherwise dispose of all or part of the real or personal property of a propane gas system against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

(1) payment of fees to the receiver for the receiver's services;

(2) payment of fees to attorneys, accountants, engineers, or any other persons or entities that provide goods or services necessary to the operation of the receivership; and

(3) payment of costs incurred ensuring that any property owned or controlled by a distribution system retailer is not used in violation of a final order of the court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. [2532](#)), Sec. 1, eff. September 1, 2013.

Sec. 141.006. GROUNDS FOR REFUSAL TO SERVE. (a) A distribution system retailer may refuse service to an applicant for new service or to an existing customer for continued service or reconnection if:

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

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

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

(4) an applicant, customer, or service location owner is delinquent in payment for services provided by a distribution system retailer service location owner; or

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

(b) The right to refuse service ends when the cause for the

refusal to serve is corrected.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.008. CUSTOMER COMPLAINTS. (a) A distribution system retailer that receives a written complaint shall promptly and suitably investigate the complaint and advise the complainant of the results of the investigation. A distribution system retailer shall keep for at least three years after the final disposition of each complaint a record that includes each complainant's name and address, the date and nature of the complaint, and the adjustment or disposition of the complaint. A distribution system retailer is not required to keep a record of a complaint that does not require the distribution system retailer to take specific further action. A distribution system retailer shall notify each complainant of the right to file a complaint with the commission if the complainant is not satisfied by the distribution system retailer's resolution of the matter.

(b) On receipt of a written complaint from the commission on behalf of a customer, a distribution system retailer promptly and suitably shall investigate and notify the commission and complainant of the results of the investigation. An initial response must be made not later than the third business day after the date the distribution system retailer receives the complaint electronically delivered to a minimum of two electronic addresses designated by the distribution system retailer. A distribution system retailer shall send a final and complete response to the commission and complainant not later than the 15th day after the

date the complaint was received, unless the commission grants additional time before the expiration of the 15-day period.

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

(1) adopting an order requiring a distribution system retailer to refund the amounts of any overcharges to the distribution system retailer's customers;

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

(3) adopting an order setting rates and fees for the distribution system retailer in accordance with Section 141.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.009. PERFORMANCE GUARANTEE. A distribution system retailer shall post, in favor of the commission, financial surety in the form of a letter of credit, bond, or other acceptable form of financial surety with the commission in an amount equal to the lesser of \$3 multiplied by the number of gallons of aggregate storage capacity in all of the propane gas systems operated by the distribution system retailer or \$50,000. The issuer of the financial surety used to meet this requirement shall honor the financial surety if the issuer receives from the commission notice that the financial surety is due and payable. The commission may draw down all or a portion of the financial surety. The distribution system retailer shall provide the commission with verification of the adequacy of the financial surety, and the commission may order the distribution system retailer to adjust the amount of the financial surety annually.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.010. DISCLOSURE TO HOMEOWNERS. (a) A

distribution system retailer shall record in the real property records of each county in which the distribution system retailer owns or operates a propane gas system a notice of disclosure of the existence of the propane gas system and the service the retailer provides. The notice shall include:

(1) a service map reflecting the location of the subdivisions or areas the distribution system retailer serves in the county;

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

(3) for development agreements entered into after September 1, 2013, a statement disclosing the existence of any financial interest held by a homeowners' association, municipal utility district, or developer in the propane gas system.

(b) If a person proposes to sell or convey real property located in a propane gas system service area owned by a distribution system retailer, the person must give to the purchaser written notice as prescribed by this subsection. The notice must include a copy of the notice recorded in the real property records as required by Subsection (a), must be executed by the seller, and must read as follows: "The real property, described below, that you are about to purchase may be located in a propane gas system service area, which is authorized by law to provide propane gas service to the properties in the area pursuant to Chapter 141, Utilities Code. If your property is located in a propane gas system service area, there may be special costs or charges that you will be required to pay before you can receive propane gas service. There may be a period required to construct lines or other facilities necessary to provide propane gas service to your property. You are advised to determine if the property is in a propane gas system service area and contact the distribution system retailer to determine the cost that you will be required to pay and the period, if any, that is required to provide propane gas service to your property.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property.

Date

Signature of Purchaser"

(c) Each county shall accept and record in its real property records a distribution system retailer's service map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the later of January 1, 2014, or the 90th day after the date a distribution system retailer completes construction of a new propane gas system in the county. Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. [2532](#)), Sec. 1, eff. September 1, 2013.