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GAS UTILITY REGULATORY ACT THE COX ACT

COMMISSION RULES AFFECTING GAS UTILITIES



GAS
UTILITIES
DIVISION

RAILROAD COMMISSION
OF TEXAS

James E. (Jim) Nugent, Chairman
Kent Hance, Commissioner
John Sharp, Commissioner

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Part I

Gas Utility Regulatory Act and the Cox Act

Part II

Special Rules of Practice and Procedure and Substantive Rules



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RAILROAD COMMISSION OF TEXAS

James E. (Jim) Nugent, Chairman
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Gas Utilities Division
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NOTES

THE COX ACT

The Cox Act was originally enacted in 1920. This set of statutory provisions, TEX. REV. CIV. STAT. ANN. arts. 6050 *et seq.* gives the Railroad Commission of Texas broad authority and responsibilities with respect to natural gas utilities in Texas. (Note: The initial decision in current litigation involving Art. 6060, Utility Tax, may significantly alter the impact of the gross receipts tax.)

THE GAS UTILITY REGULATORY ACT

The Gas Utility Regulatory Act (GURA) was originally an integral part of the Public Utility Regulatory Act (PURA), enacted in 1975, as art. 1446c. In 1983, GURA, §1446e, was separated from the PURA. GURA governs natural gas utilities; PURA governs other public utilities, i.e., telephone and electricity.

COMMISSION RULES (affecting gas utilities)

These Commission rules affecting gas utility operations have been extensively revised, including re-numbering. The rules are presently in effect. Also, the Commission has recently reorganized its hearing and legal sections. The Legal Division is responsible for hearings activities and other legal matters.

Recent amendments to Rules 7.2 through 7.27, and 7.44 were effective on September 15, 1987. The amendments to Rules 7.40 through 7.43, and 7.45 through 7.90 were effective on September 25, 1987. Additionally, Rule 7.56 was amended to increase the advertising allowance, effective March 21, 1988.

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CWH—April 1988

Part I

**Gas Utility
Regulatory Act
and the Cox Act**

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GAS UTILITY REGULATORY ACT¹

An act relating to the regulation by the Railroad Commission and municipalities of gas utilities; establishing the Office of Public Utility Counsel; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Sec. 1.01. **SHORT TITLE.** This Act may be referred to as the Gas Utility Regulatory Act.

Sec. 1.02. **LEGISLATIVE POLICY AND PURPOSE.** This Act is enacted to protect the public interest inherent in the rates and services of gas utilities. The legislature finds that gas utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations, and services are regulated by public agencies, with the objective that the regulation shall operate as a substitute for competition. The purpose of this Act is to establish a comprehensive regulatory system that is adequate to the task of regulating gas utilities as defined by this Act, and to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Sec. 1.03. **DEFINITIONS.** In this Act:

(1) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, and corporations, as defined by this Act.

(2) "Municipality" includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(3) "Gas utility" or "utility" includes any person, corporation, river authority, cooperative, corporation, or any combination thereof, other than a municipal corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C.A., Section 717, *et seq.*) provided that the production, gathering, transportation, or sale of natural gas or synthetic gas under Section 4, Article 6050, Revised Statutes, the distribution or sale of liquefied petroleum gas, and the transportation, delivery, or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included. The term "gas utility" or "utility" does not include any person or corporation not otherwise a gas utility that furnishes gas or gas service only to itself, its employees, or tenants as an incident of that employee service or tenancy, when the gas or gas service is not resold to or used by others.

(4) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any gas utility for any service, product, or commodity described in Subdivision (3) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental or classification.

(5) "Railroad commission" or "commission" means the Railroad Commission of Texas.

¹ ART. 1446e, V.A.T.S.

(6) "Regulatory authority" means, in accordance with the context where it is found, either the railroad commission or the governing body of any municipality.

(7) "Affected person" means any gas utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a gas utility with respect to any service performed by the utility or that desires to enter into competition.

(8) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a gas utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a gas utility;

(C) any corporation, five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a gas utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any gas utility or by any person or corporation in any chain of successive ownership of five percent of such securities;

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

(F) any person or corporation that the railroad commission after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a gas utility, or over which a gas utility exercises that control, or that is under common control with a gas utility, that control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the railroad commission, after notice and hearing, determines is actually exercising such substantial influence over the policies and action of the gas utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with the gas utility within the meaning of this section, even though no one of them alone is so affiliated.

(9) "Allocations" means the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, if those items are used for providing gas utility service in a municipality, or for a municipality and unincorporated areas.

(10) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided otherwise in this Act.

(11) "Facilities" means all the plant and equipment of a gas utility, including all tangible and intangible real and personal property without limitation, and any and all means and

instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any gas utility.

(12) "Municipally-owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(13) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rule making but including rate setting.

(14) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.

(15) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by gas utilities in the performance of their duties under this Act to their patrons, employees, other gas utilities, and the public, as well as the interchange of facilities between two or more of them.

(16) "Test year" means the most recent 12 months for which operating data for a gas utility are available and shall commence with a calendar quarter or a fiscal year quarter.

Sec. 1.04. **APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.** The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all procedures under this Act except to the extent inconsistent with this Act.

ARTICLE II. JURISDICTION

Sec. 2.01. **GAS UTILITIES.** (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that the rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

(b) The railroad commission has exclusive appellate jurisdiction to review all orders or ordinances of municipalities as provided in this Act. The railroad commission has exclusive original jurisdiction over the rates and services of gas utilities distributing natural gas or synthetic natural gas in areas outside the limits of municipalities, and it also has exclusive original jurisdiction over the rates and services of gas utilities transmitting, transporting, delivering, or selling natural gas or synthetic natural gas to gas utilities engaged in distributing the gas to the public.

(c) This Act is cumulative of existing laws relating to the jurisdiction, power, or authority of the railroad commission over gas utilities and, except as specifically in conflict with this Act, that jurisdiction, power, and authority is not limited by this Act. Provisions of this Act applicable to gas utilities within the jurisdiction of the railroad commission apply to all gas utilities, including those that are within the jurisdiction, power, or authority of the railroad commission by virtue of laws other than this Act.

Sec. 2.02. **MUNICIPALLY-OWNED GAS UTILITIES.** This article does not confer on the railroad commission power or jurisdiction to regulate or supervise the rates or service of any gas utility owned and operated by any municipality within its boundaries either directly or

through a municipally-owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

ARTICLE III. MUNICIPALITIES

Sec. 3.01. **FRANCHISES.** This Act does not limit the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use, but no provision of any franchise agreement shall limit or interfere with any power conferred on the railroad commission by this Act. If a municipality performs regulatory functions under this Act, it may make charges provided for in the applicable franchise agreement, together with any other charges permitted by this Act.

Sec. 3.02. **RATE DETERMINATION.** Any municipality regulating its gas utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for that determination shall be based on the procedures and requirements of this Act and the municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Sec. 3.03. **AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT.** (a) The governing body of any municipality participating in or conducting rate making proceedings shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation or gas utility rate making proceedings before any regulatory authority or in court. The gas utility engaged in those proceedings shall be required to reimburse the governing body for the reasonable costs of those services to the extent found reasonable by the applicable regulatory authority.

(b) A municipality shall have standing in all cases before the railroad commission, subject to the right of the railroad commission to consolidate that municipality with other parties on issues of common interest, regarding the utility's rates and services within its corporate limits and shall be entitled to judicial review of orders regarding those proceedings in accordance with Section 8.01 of this Act.

Sec. 3.04. **ASSISTANCE BY RAILROAD COMMISSION.** The railroad commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. The assistance may include aid to municipalities in connection with matters pending before the railroad commission, or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence.

Sec. 3.05. **APPEAL.** (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the railroad commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the railroad commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) Ratepayers of a municipally-owned gas utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally-owned gas utility through filing with the railroad commission a petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by the utility outside the municipal limits. For

purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. The petition for review shall be considered properly signed if signed by any person, or spouse of any person, in whose name residential utility service is carried.

(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the railroad commission and the serving of copies on all parties to the original rate proceeding.

(e) The railroad commission shall hear the appeal de novo based on the test year presented to the municipality, adjusted for known changes and conditions that are measurable with reasonable accuracy, and by its final order, which shall be entered not more than 185 days from the date the appeal is perfected, the railroad commission shall fix such rates that the municipality should have fixed in the ordinance from which the appeal was taken. In the event that the railroad commission fails to enter its final order within 185 days from the date the appeal is perfected, the schedule of rates proposed by the utility shall be deemed to have been approved by the commission and effective upon the expiration of the 185-day period. Any rates, whether temporary or permanent, set by the railroad commission shall be prospective and observed from and after the applicable order of the railroad commission, except interim rate orders necessary to provide the utility the opportunity to avoid confiscation during the period beginning on the date of filing of a petition for review with the railroad commission and ending on the date of a final order setting rates.

ARTICLE IV. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

Sec. 4.01. RECORDS OF GAS UTILITY; RATES, METHODS, AND ACCOUNTS. (a) Every gas utility shall keep and render to the regulatory authority in the manner and form prescribed by the railroad commission uniform accounts of all business transacted. The railroad commission may also prescribe forms of books, accounts, records, and memoranda to be kept by gas utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda which in the judgment of the railroad commission may be necessary to carry out any of the provisions of this Act. In the case of a gas utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by the agency may be deemed a sufficient compliance with the system prescribed by the railroad commission; provided, however, that the railroad commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the railroad commission for a gas utility or class of utilities must not conflict nor be inconsistent with the systems and forms established by a federal agency for that gas utility or class of utilities.

(b) The railroad commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each gas utility and shall require every gas utility to carry a proper and adequate depreciation account in accordance with the rates and methods and with such other rules and regulations as the railroad commission prescribes. The rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate setting and appeal proceedings.

(c) Every gas utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. That profit or loss may not be taken into consideration by the regulatory authority in arriving at a rate to be charged for service by a gas utility, to the extent that that merchandise is not integral to the provision of utility service.

(d) Every gas utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the railroad commission, and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of methods such as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion the benefits between consumers and the gas utilities accordingly. If any portion of the investment tax credit has been retained by a gas utility, that same amount 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.

(f) For the purposes of this section, "gas utility" includes "municipally-owned utility."

Sec. 4.02. POWERS OF RAILROAD COMMISSION. The railroad commission shall have the power to:

(1) require that gas utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any gas utility and any affiliated interest be filed with it, and require a contract or arrangement of that type not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

Sec. 4.03. INSPECTIONS; EXAMINATION UNDER OATH; COMPELLING PRODUCTION OF RECORDS; INQUIRY INTO MANAGEMENT AND AFFAIRS. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, is entitled, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any gas utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting the

investigation to examine under oath, any officer, agent, or employee of any gas utility in connection with the investigation. The regulatory authority may require, by order or subpoena served on any gas utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by the gas utility outside the state, or verified copies in lieu thereof if the railroad commission so orders. Any gas utility failing or refusing to comply with the order or subpoena is in violation of this Act.

(b) A member, agent, or employee of the regulatory authority may enter the premises occupied by a gas utility to make inspections, examinations, and tests and to exercise any authority provided by this Act. A member, agent, or employee of the regulatory authority may act under this subsection only during reasonable hours and after giving reasonable notice to the utility. The gas utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all gas utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Sec. 4.04. REPORTING OF ADVERTISING OR PUBLIC RELATIONS EXPENSES. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority may not allow as costs or expenses for rate making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses may not in any case be allowed as costs or expenses for rate making purposes. Reasonable charitable or civic contributions may be allowed, but may not exceed the amount approved by the regulatory authority.

Sec. 4.05. UNLAWFUL RATES, RULES, AND REGULATIONS. It shall be unlawful for any utility to charge, collect, or receive any rate for gas utility service or impose any rule or regulation other than as provided by this Act.

Sec. 4.06. FILING SCHEDULE OF RATES, RULES, AND REGULATIONS. Every gas utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time of any gas utility service, product, or commodity offered by the utility. Every gas utility shall file with, and as a part of those schedules, all rules and regulations relating to or affecting the rates, gas utility service, product, or commodity furnished by the utility.

Sec. 4.07. OFFICE OF GAS UTILITY; RECORDS; REMOVAL FROM STATE. Every gas utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the railroad commission to be kept in the state. Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state except on conditions prescribed by the railroad commission.

Sec. 4.08. COMMUNICATIONS BY GAS UTILITIES WITH REGULATORY AUTHORITY; REGULATIONS AND RECORDS. (a) The regulatory authority shall prescribe regulations governing communications by gas utilities, their affiliates, and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) The record shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the gas utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Sec. 4.09. STANDARDS OF SERVICE. (a) Every gas utility shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing held on its own motion or on complaint, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all gas utilities with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any service of any gas utility.

(c) Any standards, classifications, regulations, or practices observed or followed by any gas utility may be filed by it with the regulatory authority and shall continue in force until amended by the gas utility or until changed by the regulatory authority as provided by this Act.

Sec. 4.10. EXAMINATION AND TEST OF EQUIPMENT. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any gas utility, may enter any premises occupied by any gas utility for the purpose of making the examinations and tests and exercising any power provided for in this Act, and may set up and use on those premises any apparatus and appliances necessary for those purposes. The gas utility is entitled to be represented at the making of the examinations, tests, and inspections. The gas utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the performance of those duties.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing of the meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of this request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE V. PROCEEDINGS BEFORE REGULATORY AUTHORITY

Sec. 5.01. **POWER TO ENSURE COMPLIANCE; RATE REGULATION.** Subject to the provisions of this Act, the railroad commission is hereby vested with all authority and power of the State of Texas to ensure compliance with the obligations of gas utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of gas utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body.

Sec. 5.02. **JUST AND REASONABLE RATES.** (a) It shall be the duty of the regulatory authority to ensure that every rate made, demanded, or received by any gas utility, or by any two or more gas utilities jointly, is just and reasonable. Rates may not be unreasonably preferential, prejudicial, or discriminatory, but must be sufficient, equitable, and consistent in application to each class of consumers. For rate making purposes, the railroad commission may treat two or more municipalities served by a gas utility as a single class if the railroad commission considers that treatment to be appropriate.

(b) Rates charged or offered to be charged by a gas utility for pipeline-to-pipeline transactions and to transportation, industrial, and other similar large volume contract customers, but excluding direct sales-for-resale to gas distribution utilities at city gates, are 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 rates are substantially the same as rates between the gas utility and two or more of those customers under the same or similar conditions of service; or

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

(c) If a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under any such pipeline-to-pipeline or transportation rate, then the provisions of Subsection (b) shall not apply.

(d) Notwithstanding any provision in this Act to the contrary, the regulatory authority may approve administratively any decrease in rates proposed by the applicant and agreed upon by all parties directly affected, unless the regulatory authority finds the proposed decrease not be in the public interest.²

(d) The standard contained in subsection (b)(1) of this section shall not apply to rates charged or offered to be charged to an affiliated pipeline utility. Gas purchase costs included in city gate rates proposed to be charged for sales-for-resale to gas distribution utilities at city gates may be reviewed as to reasonableness in city gate rate proceedings even though they have been previously approved as rates for other parties under subsection (b) of this section.

Sec. 5.03. **FIXING OVERALL REVENUES.** In fixing the rates of a gas utility the regulatory authority shall fix its overall revenues at a level that will permit the utility a reasonable

² The 1985 Legislature passed H.B. 1865 and H.B. 1509, both of which added a new subsection (d) to Section 5.02. These subsections appear in the order in which they were signed into law.

opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above reasonable and necessary operating expenses.

(b) Upon application by a gas utility for a rate reduction, unless such rate reduction is found by the regulatory authority to be not in the public interest, the regulatory authority may administratively approve the proposed lower rates without reference to the cost of service standard of (a) above.³

Sec. 5.04. FAIR RETURN; BURDEN OF PROOF. (a) The regulatory authority may not prescribe any rate that will yield more than a fair return on the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable is on the gas utility.

Sec. 5.05. COMPONENTS OF ADJUSTED VALUE OF INVESTED CAPITAL. (a) The components of adjusted value of invested capital shall be determined in accordance with this section.

(b) Utility rates shall be based on the adjusted value of property used by and useful to the gas utility in providing service including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the book of the utility. The adjusted value of the property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority has discretion to determine a reasonable balance that reflects not less than 60 percent nor more than 75 percent of the original cost (that is, the actual money cost or the actual money value of any consideration paid other than money) of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation, and not less than 25 percent nor more than 40 percent of the current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the gas utility to attract new capital in determining a reasonable balance.

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

Sec. 5.06. COMPONENTS OF NET INCOME. (a) The components of net income shall be determined in accordance with this section. "Net income" means the total revenues of the gas utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with Subsections (b)-(d) of this section.

(b) Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense may not be allowed either as capital costs or as expense except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the railroad commission. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of

³ The 1985 Legislature passed H.B. 1865 which added new subsection (b) to Sec. 5.03; however, the preexisting language was not identified as subsection (a).

items allowed and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations.

(c) If the gas utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the gas utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a gas utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the gas utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.

(d) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for rate making purposes.

Sec. 5.07. UNREASONABLE OR VIOLATIVE EXISTING RATES; INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. (a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any gas utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the gas utility. Those rates shall constitute the legal rates of the gas utility until changed as provided by this Act.

(b) If a gas utility does not itself produce that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority has the power and authority to investigate the cost of that production in any investigation of the reasonableness of the rates of the gas utility.

Sec. 5.08. STATEMENT OF INTENT TO INCREASE RATES; MAJOR CHANGES; HEARING; SUSPENSION OF RATE SCHEDULE; DETERMINATION OF RATE LEVEL. (a) No utility may increase its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed increase. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed increase, the effect the proposed increase is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and other information required by the regulatory authority's rules and regulations. A copy of the statement shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and by placing a notice to the public of the proposed increase once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed increase and to such other affected persons as required by the regulatory authority's rules and regulations. However, notwithstanding the above, instead of the publication of newspaper notice contemplated above, a gas utility may provide notice to the public in areas outside the limits of municipalities, and within the limits of municipalities with a population of less than 2,500 according to the most recent federal census by mailing such notice by United States mail, postage prepaid, to the billing

address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow rate increases to take effect prior to the end of the 35-day period under conditions it prescribes, subject to suspension as provided by this Act. All increases of that type shall be indicated immediately on its schedules by the utility. "Major changes" means an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2-1/2 percent, but does not include increases in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held on notice to the public.

(c) If there is filed with the regulatory authority any schedule modifying or resulting in an increase in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when the increase would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of the increase. The regulatory authority shall hold the hearing in every case in which the increase constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the increase has been filed.

(d) Pending the hearing and decision, the local regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 90 days beyond the date on which the schedule of rates would otherwise go into effect, and the railroad commission may suspend the operation of the schedule for a period not to exceed 150 days beyond the date on which the schedule would otherwise go into effect. If the regulatory authority does not make a final determination concerning any schedule of rates prior to expiration of the period or periods of suspension, the schedule is considered to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this subsection. During the suspension by the regulatory authority as provided by this subsection, the rates in force when the suspended schedule was filed continue in force unless the regulatory authority establishes a temporary rate. The regulatory authority shall give preference to the hearing and decision of questions arising under this subsection over all other questions pending before it and shall decide the questions as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed increase otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect on the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned on refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility. Those rates are thereafter to be observed until changed as provided by this Act.

Sec. 5.09. **RATES FOR AREAS NOT WITHIN MUNICIPALITY.** Without railroad commission approval, gas utility rates of areas not within a municipality may not exceed 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Sec. 5.10. **UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES.** No gas utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No gas utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Sec. 5.11. **EQUALITY OF RATES AND SERVICES.** No gas utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the gas utility applicable when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a gas utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a gas utility on September 1, 1983, may be continued until schedules are filed. This Act does not prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Sec. 5.12. **DISCRIMINATION; RESTRICTION ON COMPETITION.** No gas utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the gas utility, nor may any gas utility engage in any other practice that tends to restrict or impair that competition.

Sec. 5.13. **PAYMENTS IN LIEU OF TAXES.** No payments made in lieu of taxes by a gas utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a gas utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the gas utility is owned.

ARTICLE VI. SALE OF PROPERTY AND MERGERS

Sec. 6.01. **REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION.** No gas utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another gas utility operating in this state, unless the gas utility reports the transaction to the railroad commission within a reasonable time. On the filing of a report with the railroad commission, the railroad commission shall investigate the matter, with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the railroad commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the railroad commission finds that the transaction is not in the public interest, the railroad commission shall take the effect of the transaction into consideration in the rate making proceedings and shall disallow the effect of the

transaction if it will unreasonably affect rates or service. The provisions of this section do not apply to the purchase of units of property for replacement or to the addition to the facilities of the gas utility by construction.

Sec. 6.02. PURCHASE OF VOTING STOCK IN ANOTHER GAS UTILITY: REPORT. No gas utility may purchase voting stock in another gas utility doing business in Texas, unless the utility reports the purchase to the railroad commission.

Sec. 6.03. LOANS TO STOCKHOLDERS: REPORT. No gas utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the gas utility unless the gas utility reports the transaction to the railroad commission within a reasonable time.

Sec. 6.04. GAS RESERVE RIGHTS: APPROVAL OF SALE, CONVEYANCE, ETC. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.

ARTICLE VII. RELATIONS WITH AFFILIATED INTERESTS

Sec. 7.01. JURISDICTION OVER AFFILIATED INTERESTS. The railroad commission has jurisdiction over affiliated interests having transactions with gas utilities under the jurisdiction of the railroad commission to the extent of access to all accounts and records of the affiliated interests relating to the transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to the transactions.

Sec. 7.02. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The railroad commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any gas utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE VIII. JUDICIAL REVIEW

Sec. 8.01. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the railroad commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

ARTICLE IX. VIOLATIONS AND ENFORCEMENT

Sec. 9.01. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. If it appears to the railroad commission that any gas utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the railroad commission entered or adopted under the provisions of this Act, or that the gas utility or any other person or corporation is failing to comply with the provisions of this Act or with any of those rules, regulations, or orders, the attorney general on request of the railroad

commission, in addition to any other remedies provided by this Act, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the railroad commission against the gas utility or other person or corporation to enjoin the commencement or continuation of the act, or to require compliance with this Act or the rule, regulation, or order.

Sec. 9.02. PENALTY AGAINST GAS UTILITY OR AFFILIATED INTEREST. (a) Any gas utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the railroad commission or a decree or judgment of a court, is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(b) A gas utility or affiliated interest commits a separate violation for each day a violation described by Subsection (a) of this section continues.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the railroad commission, in a court of competent jurisdiction to recover the penalty under this section.

Sec. 9.03. PERSONAL PENALTY. (a) A person or persons who knowingly violate the provisions of this Act commit an offense. An offense under this subsection is a felony of the third degree.

(b) All penalties accruing under this Act are cumulative and a suit for the recovery of any penalty does not bar or affect the recovery of any other penalty, nor does it bar any criminal prosecution against a gas utility, officer, director, agent, or employee of a gas utility, or any other person.

Sec. 9.04. CONTEMPT PROCEEDINGS. If any person fails to comply with any lawful order of the railroad commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the railroad commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Sec. 9.05. DISPOSITION OF FINES AND PENALTIES. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the railroad commission and paid by the railroad commission to the state treasury to be placed in the general revenue fund.

Sec. 9.06. VENUE. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where the violation is alleged to have occurred, or in the county of residence of any defendant.

Sec. 9.07. PUBLIC UTILITY COUNSEL. (a) The independent Office of Public Utility Counsel is hereby established to represent the interests of residential consumers.

(b) The chief executive of the Office of Public Utility Counsel is the public utility counsel, hereinafter referred to as counsellor. The counsellor is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term.

(c) The counsellor shall employ such lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as he or she deems necessary

to carry out the provisions of this section. All employees shall receive such compensation as is fixed by the legislature from the assessment imposed by Section 78 of the Public Utility Regulatory Act.

(d) The counsellor shall be a resident of Texas and admitted to the practice of law in this state who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and possesses the knowledge and experience necessary to practice effectively in utility proceedings.

(e) During the period of the counsellor's employment and for a period of one year following the termination of employment, it shall be unlawful for any person employed as counsellor to have a direct or indirect interest in any utility company regulated under the Gas Utility Regulatory Act to provide legal services directly or indirectly to or be employed in any capacity by a utility company regulated under the Gas Utility Regulatory Act, its parent, or its subsidiary companies, corporations, or cooperatives; but such person may otherwise engage in the private practice of law after the termination of employment as the counsellor.

(f) The Office of Public Utility Counsel:

(1) may appear or intervene as a party or otherwise represent residential consumers as a class in appeals to the railroad commission only at the written request of an affected municipality's governing body, in which case it will represent the residential consumers of requesting municipalities as a class;

(2) may initiate or intervene as a matter of right or otherwise appear in any judicial proceedings involving or arising out of any action taken by the railroad commission in a proceeding in which the counsel was a party;

(3) may have access as any party, other than staff, to all records gathered by the railroad commission under the authority of Subsection (a), Section 4.03, of the Gas Utility Regulatory Act;

(4) may obtain discovery of any nonprivileged matter which is relevant to the subject matter involved in any proceeding or petition before the commission;

(5) may represent individual residential consumers with respect to their disputed complaints concerning utility services unresolved before the railroad commission; and

(6) may recommend legislation to the legislature which in its judgment would positively affect the interests of residential consumers.

(g) Nothing in this section shall be construed as in any way limiting the authority of the railroad commission to represent residential consumers.

(h) The appearance of the public counsel in any proceeding in no way precludes the appearance of other parties on behalf of residential consumers. The public counsel shall not be grouped with any other parties.

ARTICLE X. MISCELLANEOUS PROVISIONS

Sec. 10.01. **COMPLAINT BY ANY AFFECTED PERSON.** Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any gas utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Sec. 10.02. **RECORD OF PROCEEDINGS; RIGHT TO HEARING.** A record shall be kept of all proceedings had before the regulatory authority, and all the parties are entitled to be heard in person or by attorney.

Sec. 10.03. **JUDICIAL STAY OR SUSPENSION OF ORDER, RULING, OR DECISION.** During the pendency of an appeal, the district court, the court of appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and, in granting or refusing a stay or suspension, the court shall act in accordance with the practice of courts exercising equity jurisdiction.

Sec. 10.04. **LIBERAL CONSTRUCTION.** This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of gas utilities to the extent that construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

COX ACT NATURAL GAS

Art. 6050. CLASSIFICATION.

Sec. 1. In this article, "person" means an individual, company, or private corporation, or their lessees, trustees, and receivers. In Articles 6050-6066, Revised Civil Statutes of Texas, 1925, as amended, "gas utility," "public utility," or "utility" means a person owning, managing, operating, leasing or controlling within this State any pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

(a) Transporting, conveying, distributing or delivering natural gas: (1) for public use or service for compensation; (2) for sale to municipalities or persons or companies, in those cases referred to in Subsection (c) hereof, engaged in distributing or selling natural gas to the public; (3) for sale or delivery of natural gas to any person operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (4) for sale or delivery of natural gas to the public for domestic or other use.

(b) Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or is hereafter acquired by the exercise of the right of eminent domain.

(c) Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

(d) No person shall be deemed to be a "gas utility," "public utility," or "utility" solely because such person is an affiliate of such an entity.

(e) Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein.

Sec. 2. Provided, however, that the act or acts of transporting, delivering, selling or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or the sale, transportation or delivery of natural gas for any other direct use in agricultural activities shall not be construed within the terms of this law as constituting any person as a "gas utility," "public utility," or "utility" as hereinabove defined so as to make such person subject to the jurisdiction, control and regulation of the Commission as a gas utility.

Sec. 3. The natural gas made available under the provisions of this Act shall be used exclusively for pumping water for farm and other agricultural purposes in order for the person furnishing such natural gas to qualify for the exemption provided by Section 2 of this article. The provisions of this Act shall be considered only as cumulative of other laws and shall not have the effect of repealing or amending any substantive or statutory law except as herein specifically provided.

Sec. 4. (a) Except as provided by Section 1(b) of this article, the terms "gas utility," "public

utility," and "utility" do not include a person who certifies to the Commission that the person transports natural or synthetic gas, whether for sale, for hire, or otherwise, solely from in or within the vicinity of the field or fields where produced:

(1) to a gas processing plant or treating facility, or from the outlet of such plant or treating facility to:

(A) a person at or within the vicinity of such plant or treating facility; or

(B) anyone described in (2) or (3);

(2) to another person for transportation or sale in interstate commerce; or

(3) to another person in or within the vicinity of the field or fields where produced for transportation or sale in intrastate commerce.

(b) A person who makes deliveries or sales for lease use, compressor fuel, processing plant fuel, or similar uses; deliveries or sales pursuant to lease or right-of-way agreements; or deliveries or sales in or within the vicinity of the field where produced or at a processing plant outlet does not become a "gas utility," "public utility," or "utility" by virtue of such transaction. However, the terms "gas utility," "public utility," and "utility" include a pipeline which transmits or distributes to other end users of gas, or which makes city-gate deliveries for local distribution, but does not include a person that qualifies for the exemption provided by Section 2 of this article.

Art. 6051. MAY ENJOIN GAS PIPE LINE.

The operation of gas pipe lines for buying, selling, transporting, producing or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred upon the Commission. The Attorney General shall enforce this provision by injunction or other remedy.

Art. 6052. UTILITY OFFICE.

Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe.

Art. 6053. REGULATION OF UTILITIES.

Rates; rules and regulations

Sec. 1. (a) The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control

of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioners precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any County or District Attorney in any county wherein such business or any part thereof may be carried on.

(b) If any transportation, industrial, or other similar large-volume contract customer who is an end-use customer of a gas utility (i) reduces or ceases purchases of natural gas or of natural gas service from the gas utility and (ii) purchases natural gas or natural gas service from another supplier or purchases an alternate form of energy, then the gas utility thereafter shall have no obligation to serve or to maintain the gas supply or the physical capacity to serve such customer, except to the extent that such customer continues to purchase natural gas or natural gas service of any class from the gas utility or to the extent the gas utility has a written contract to provide natural gas or natural gas service of any class to the customer. Nothing herein shall prevent the Railroad Commission from requiring that utilities comply with all orders of the Railroad Commission in apportioning gas under curtailment plans and orders.

Submetering in mobile home parks and apartment houses

Sec. 1a. (a) In this section:

(1) "Apartment house" means a building or buildings containing more than five dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

(2) "Apartment unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

(b) Notwithstanding any law to the contrary, the commission shall promulgate rules, regulations, and standards under which any owner, operator, or manager of a mobile home park or apartment house may purchase natural gas through a master meter for delivery from such master meter to mobile home units within the mobile home park or to apartment units within the apartment house through individual submeters at each mobile home unit or apartment dwelling unit for the purpose of fairly allocating the cost of each unit's gas consumption. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (1) that the owner, operator, or manager of a mobile home park or apartment house shall not deliver natural gas for sale or resale for profit and (2) that such owner, operator, or manager shall maintain adequate records in connection with such submetering and shall make the records available for inspection by the mobile home park resident or apartment unit resident during reasonable business hours.

Malodorants, investigation and regulation

Sec. 2. In addition to the duties and powers of the Commission hereinabove set forth, it is empowered and it shall be its duty to investigate the use of malodorants by persons, firms, or corporations engaged in the business of handling, storing, selling, or distributing natural and liquefied petroleum gases, including butane and other odorless gases, for private or commercial uses, or supplying the same by pipe lines or otherwise, to any public building or

buildings, or to the general public, and the Commission is empowered to require such persons, firms, or corporations to odorize such gas by the use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas; such malodorant agent so required to be used, however, shall be non-toxic and non-corrosive and not harmful to leather diaphragms in gas equipment, the method of its use and containers and equipment to be used in connection therewith to be under the direction of and as approved by the Railroad Commission of Texas; the Commission having full power and authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this Act. Nothing herein contained shall apply to gas transported out of the State of Texas.

Art. 6053-1. TRANSPORTATION OF GAS AND GAS PIPELINE FACILITIES; SAFETY STANDARDS.

(A) For the purpose of providing state control over safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within the borders of this state to the maximum degree permissible under the federal Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A. § 1671 *et seq.*), the Railroad Commission of Texas is hereby expressly granted the power to describe or adopt by regulation safety standards for all such transportation of gas and gas pipeline facilities which are not subject to exclusive federal control, to require record maintenance and reports and to inspect records and facilities to determine compliance with such safety standards, and, from time to time, to make certifications and reports and to take any other requisite action in accordance with Section 5(a) of the Natural Gas Pipeline Safety Act of 1968.

(B) All terms employed in this Article which are defined in the Natural Gas Pipeline Safety Act of 1968 shall have the definition prescribed therein.

(C) The Attorney General is authorized, on behalf of the Railroad Commission, to enforce said safety standards by injunction restraining violations thereof (including the restraint of transportation of gas or the operation of a pipeline facility). Any violation of such safety standards shall further be subject to a civil penalty, payable to the State of Texas, in an amount not to exceed \$1,000 for each such violation for each day that such violation persists, except that the maximum civil penalty shall not exceed \$200,000 for any related series of violations. Any such civil penalty may be compromised by the Attorney General in consideration of the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of violation.

(D) Nothing in this Article shall be construed to reduce, limit or impair any power heretofore vested by law in any incorporated city, town or village.

Art. 6053-2. ADMINISTRATIVE PENALTY.

(a) A person who violates Article 6053 1, Revised Statutes, or safety standards or regulations relating to transportation of gas and gas pipeline facilities adopted under that article may be assessed a civil penalty by the Railroad Commission of Texas.

(b) The penalty may not exceed \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the railroad commission shall consider the person's history of previous violations of this article, the seriousness of the violation, and any hazard to the health or safety of the public.

(d) A civil penalty may be assessed only after the person charged with a violation described under Section (a) of this article has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the railroad commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the railroad commission shall consolidate the hearings with other proceedings under this article.

(g) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the railroad commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(h) The railroad commission shall then issue an order requiring that the penalty be paid.

(i) On the issuance of an order finding that a violation of this article has occurred, the railroad commission shall inform the person who is found in violation of the amount of the penalty within 30 days.

(j) Within the 30-day period immediately following the day on which the decision or order is final as provided in Section 16(c), Administrative Procedure and Texas Register Act (Article 6252 13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty, such bond to be effective until all judicial review of the order or decision is final.

(k) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the commission shall, within the 30 day period immediately following that determination, if the penalty has been paid to the commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the commission shall execute a release of such bond.

(l) Failure to forward the money to the railroad commission or post bond within the time provided by Section (j) of this article results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(m) Civil penalties owed under this article may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

Art. 6054. ORDERS, ETC., REVIEWED.

All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected.

Art. 6055. TO REFUND EXCESS CHARGES.

If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Commission from and after the date of the filing of such complaint.

Art. 6056. OPERATOR'S REPORTS.

The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent.

Art. 6057. DISCRIMINATION.

No such pipe line public utility shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine.

Art. 6057a. DISCRIMINATION.

No pipe line public utility, as such utility is defined in the laws of this State governing the production and delivery of natural gas, shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Railroad Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes or to prescribe rates and regulations for service from or to other or different places, as it may determine.

Art. 6057b. PENALTY FOR VIOLATION OF LAW.

Any owner, officer, director, agent or employee of any person, firm or corporation owning, operating or controlling gas pipe lines of such utility mentioned in the preceding article, who shall willfully violate any provision of the statutes of this State governing such utility, including the preceding article, shall be fined not less than fifty nor more than one thousand dollars, and may in addition thereto be imprisoned in jail not less than ten days nor more than six months.

Art. 6058. APPEAL FROM CITY CONTROL.

When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal *de novo*. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission.

Art. 6059. APPEAL FROM ORDERS.

If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall be tried and determined as other civil causes in said court. Either party to said action may have the right to appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

Art. 6060. UTILITY TAX.

Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner of one of them if an individual or copartnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter.

Art. 6061. REPORT TO GOVERNOR.

The Commission shall on December 1st of each year make a full detailed report to the Governor, who shall transmit the same to the next succeeding session of the Legislature, showing:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.
2. The receipts of gross income taxes from all sources, indicating the sources.
3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision with statement of traveling and other expenses incurred by each of said persons and approved by the Commission.

Art. 6062. PENALTIES.

Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the Commission when not stayed or suspended by order of the court, shall be subject to a penalty payable to the State of not less than one hundred nor more than one thousand dollars for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved.

Art. 6062A. ADMINISTRATIVE PENALTY.

(a) If a public utility as defined by Article 6050, Revised Statutes, violates this subdivision and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the public utility may be assessed a civil penalty by the railroad commission. For purposes of this article, a public utility is considered to have violated this subdivision if it fails to perform a duty imposed by this subdivision, or fails to comply with a valid order of the Railroad Commission of Texas.

(b) The penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the railroad commission shall consider the public utility's history of previous violations of this subdivision, the seriousness of the violation, and any hazard to the health or safety of the public.

(d) A civil penalty may be assessed only after the public utility charged with a violation described under Section (a) of this article has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the railroad commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the commission shall consolidate the hearings with other proceedings under this chapter.

(g) If the public utility charged with the violation fails to avail itself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(h) The commission shall then issue an order requiring that the penalty be paid.

(i) On the issuance of an order finding that a violation has occurred, the commission shall inform the public utility charged within 30 days of the amount of the penalty.

(j) Within the 30 day period immediately following the day on which the decision or order is final as provided in Section 16(c), Administrative Procedure and Texas Register Act (Article 6252 13a, Vernon's Texas Civil Statutes), the public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the public utility seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the railroad commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post a supersedeas bond with the railroad commission under the following conditions. If the decision or order being appealed is the first final railroad commission decision or order assessing any administrative penalty against the public utility, the railroad commission shall accept a supersedeas bond. In the case of appeal of any subsequent decision or order assessing any administrative penalty against the public utility, regardless of the finality of judicial review of any previous decision or order, the railroad commission may accept a supersedeas bond. Each supersedeas bond shall be for the amount of the penalty and in a form approved by the railroad commission and shall stay the collection of the penalty until all judicial review of the decision or order is final.

(k) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the railroad commission shall, within the 30 day period immediately following the determination, if the penalty has been paid to the railroad commission, remit the appropriate amount to the public utility, with accrued interest, or where a supersedeas bond has been posted, the railroad commission shall execute a release of such bond.

(l) Failure to forward the money to the commission within the time provided by Section (j) of this article results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(m) Civil penalties owed under this article may be recovered in a civil action brought by the attorney general at the request of the commission.

(n) Judicial review of the order or decision of the railroad commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with the district court of Travis County, Texas, and not elsewhere, as provided for in Section 19, Administrative Procedure and Texas Register Act (Article 6252 13a, Vernon's Texas Civil Statutes).

Art. 6063. RECEIVER.

Whenever any person, firm or corporation, owning, operating or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law.

Art. 6064. DUTIES OF PIPE LINE EXPERT.

The supervisor shall likewise assist the Commission in the performance of its duties under this subdivision under the direction of the Commission, under such rules and regulations as it may prescribe.

Art. 6065. EMPLOYEES OF COMMISSION.

The Commission may employ and appoint, from time to time, such experts, assistants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix.

Art. 6066. EXPENDITURES.

The salary and expenses of the expert and his assistant and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage incurred by/or under authority of the Commission or a Commissioner in administering and enforcing the provisions of this subdivision or in exercising any power or authority hereunder, shall be paid out of the General Revenue Fund by the State Treasurer on warrants of the Comptroller on orders or vouchers approved by the Commission or Chairman thereof. The entire amount derived from the tax imposed by Article 6060, as amended, shall be deposited to the General Revenue Fund.

Art. 6066f. NATURAL GAS SUPPLIES FOR AGRICULTURAL PURPOSES.

Except to the extent that natural gas supplies are required to maintain natural gas service to residential users or hospitals and similar uses vital to public health and safety, no person, firm, corporation, partnership, association, or cooperative which sells natural gas for irrigation and also sells and distributes natural gas within the limits of any municipality or delivers gas to the boundary of any municipality for resale in the municipality shall curtail the supply of natural gas for agricultural purposes, including but not limited to irrigation pumping and crop drying.

Art. 6066g. AGRICULTURE GAS USERS ACT OF 1985.

Sec. 1. This Act shall be known as the Agriculture Gas Users Act of 1985.

Sec. 2. In this Act:

(1) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, and corporations as defined in this Act.

(2) "Supplier" means any person who furnishes natural gas to agriculture energy users.

(3) "Agriculture energy user" means any person who purchases or utilizes natural gas for fuel for irrigation wells.

(4) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in

interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, including, for purposes of this Act, the Agriculture Energy Users Association, Incorporated.

Sec. 3. (a) Prices and other terms of service for the furnishing of natural gas under this Act may be established pursuant to a contract between a supplier and agriculture energy user, and any such contract shall be valid and binding for all purposes, provided that it is negotiated in good faith and is the result of arms-length bargaining between the parties.

(b) The parties shall each provide such information and keep such records as are reasonably necessary for contracting purposes.

(c) Prices charged to an agriculture energy user pursuant to this section shall not exceed the prices charged to a majority of the supplier's commercial or other similar large-volume users.

Sec. 4. When the supplier does not deliver gas to a municipality, this Act does not apply unless the supplier and the agriculture energy user both agree it shall apply to their transaction and it is so stated in their contract.

MISCELLANEOUS PROVISIONS

Art. 1440a. DEPOSIT FOR INSTALLING SERVICE.

Every person, firm, company, corporation, receiver, or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing any such service, shall pay interest on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid annually on demand, or sooner if such service be discontinued. The rate of interest for each calendar year shall be established by the Public Utility Commission of Texas on December 1, or the next regular work day if December 1 falls on a Saturday, Sunday, or legal holiday, of the preceding year at a rate not to exceed eighty-five percent (85%) of the average rate paid over the previous 12-month period on United States Treasury bills with a 12-month maturity date; provided, in no event shall the rate of interest set by the commission be less than six percent (6%) per annum or greater than twelve per cent (12%) per annum. When such service is discontinued, such deposit, together with any unpaid interest not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. Whoever violates any provision of this Article shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), or be confined in jail not less than six (6) months nor more than one year, or both.

**Special Rules of
Practice and Procedure
and
Substantive Rules**

Part II

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SPECIAL RULES OF PRACTICE AND PROCEDURE

These rules are promulgated under the authority of TEX. REV. CIV. STAT. ANN. arts. 1446e and 6050 *et seq.*

Section 1. Rates — General — Filing Requirements

§7.1. DEFINITIONS.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Bulletin—A division publication printed twice monthly containing information about the Division such as Notices of Hearings, Final Orders and decisions, rules, and other information of general interest to the public. It shall be sent to all persons and agencies requesting to be put on the Bulletin mailing list and paying the applicable fee.

Gas Utilities Division—That administrative unit of the Commission responsible for the regulation of the natural gas utility industry in Texas.

Gas utility—See definition in the *Gas Utility Act* (Cox Act), *Texas Civil Statutes* article 6050 and the *Public Utilities Regulatory Act* (GURA), article 1446e.

Municipality—A city, incorporated village or town, existing, created, or organized under the general, homerule, or special laws of the state.

§7.2. FILING OF DOCUMENTS; OFFICE HOURS AND ADDRESS.

The office hours of the Gas Utilities Division are from 8 a.m. to 5 p.m. Monday through Friday. Offices are closed on Saturdays and Sundays and on certain state-observed holidays. All written communications may be mailed to: Director, Gas Utilities Division, Railroad Commission of Texas, P. O. Drawer 12967, Austin, Texas 78711-2967, or delivered to the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701.

§7.3. COMMUNICATION BY GAS UTILITIES WITH MEMBERS OR EMPLOYEES OF THE RAILROAD COMMISSION.

(a) There shall be maintained accurate logs of all personal contacts and telephone communications between gas utilities or their representatives and members of the Commission or employees of the Gas Utilities Division. This log shall be open for inspection by any member of the public during normal office hours. This log shall contain:

- (1) the date of the communication;
- (2) whether the communication was by telephone or personal contact;
- (3) the name of the person communicated with and the gas utility represented;
- (4) the subject matter of the communication; and
- (5) a statement of any action requested by a gas utility.

(b) There shall be maintained copies of all written correspondence between members of the Commission or employees of the Gas Utilities Division and gas utilities or their representatives. These copies shall be open to the public for inspection during normal office hours.

(c) Unless required for the disposition of *ex parte* matters authorized by law, members of the Commission or employees of the Gas Utilities Division assigned to render a decision or make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, except on notice and opportunity for all parties to participate.

(d) A form for recording personal contacts and telephone communications is provided by the Gas Utilities Division.

§7.10. FORM AND CONTENT OF PLEADINGS.

(a) **Contents of Statements of Intent to increase rates and petitions for review of action by municipality.** All Statements of Intent to increase rates and Petitions for Review of Action by Municipality shall contain the following:

- (1) The proposed revisions of rates and schedules;
- (2) A statement specifying in detail each proposed change;
- (3) The effect the proposed change is expected to have on the revenues of the applicant; and
- (4) The classes and numbers of utility customers affected.

(b) Compliance.

The Commission may reject any filing under this section which does not substantially comply with the requirements stated in this section at the time of filing or a reasonable time therefrom. A Statement of Intent shall not be deemed filed until all items listed in subsection (a) of this section have been filed with the Gas Utilities Division.

§7.11. FILING OF DOCUMENTS; PLEADINGS.

Three copies of all pleadings except briefs, exceptions to examiner's reports and proposals for decision, and replies to these exceptions, shall be filed. Five copies shall be filed of all briefs, exceptions to examiner's reports and proposals for decision, and replies to these exceptions. Unless directed otherwise by the Commission, pleadings shall include a certification that copies have been served on all parties of record stating the names of the persons served, together with the date and manner of service.

§7.12. ESTABLISHING AND INCREASING RESIDENTIAL AND COMMERCIAL RATES — STATEMENTS OF INTENT.

(a) Contents.

The following information shall be sworn to and contained in each Statement of Intent to increase residential and commercial rates within the original jurisdiction of the Commission. The Commission may require the submission of any additional information necessary to evaluate the Statement of Intent:

- (1) The proposed revisions of rates and schedules.
- (2) Statements specifying in detail each proposed change.
- (3) The effect the proposed change is expected to have on the revenues of the company from the area covered by the Statement of Intent.

(4) The classes and numbers of utility customers affected within the area covered by the Statement of Intent.

(5) A statement as to whether the proposed rates will or will not exceed 115% of the average of all rates for similar services of all municipalities served by the same utility within the same county.

(6) A statement as to whether or not the proposed change will result in a "major change," as that term is defined in *Texas Civil Statutes* article 1446e, §5.08(b).

(b) Filing.

The Statement of Intent to increase rates within the original jurisdiction of the Commission shall be filed with the Director of the Gas Utilities Division.

(c) Requirement of additional information for automatic cost of service increases. If the proposed rate change for residential and commercial rates within the original jurisdiction of the Commission is the result of an automatic cost of service adjustment as defined in subsection (d) of this section in the adjacent municipality, the gas utility shall file with the Commission, in addition to the information listed in subsection (a) of this section, the following information:

- (1) All calculations used to derive the cost of service adjustment;
- (2) The effect of the proposed rates on each affected customer class; and
- (3) A copy of the cost of service clause in effect in the adjacent municipality.

(d) Definition of Cost of Service Adjustment Clause: Any rate provision other than a purchased gas adjustment clause provided for in §7.55 of this title (relating to gas cost recovery), which operates to automatically increase or decrease without prior consent or authority of the appropriate regulatory authority.

§7.13. PROCEDURE TO ESTABLISH AND INCREASE RESIDENTIAL AND COMMERCIAL RATES IN UNINCORPORATED AREAS.

(a) Definitions.

For purposes of this section, residential and commercial rates subject to the Commission's original jurisdiction shall be classified as either "environs rates" or "special rates."

(1) *Environs rates*—Residential and commercial rates for a gas utility applicable to natural gas sales and service in unincorporated areas adjacent to or near incorporated cities and towns, aside from "special rates" as defined in paragraph (2) of this subsection.

(2) *Special rates*—Residential and commercial rates established pursuant to Commission orders applicable only to service by a given utility within a specified area and not specifically keyed to the rates charged in any incorporated area.

(b) Levels of environs rates.

(1) The environs rates may be the same rate as that in effect in the nearest incorporated area in Texas served by the same utility where gas is obtained from at least one common pipeline supplier or transmission system. The Commission, on application by a utility, on complaint by any affected person, or on its own motion

may review the rate in, or boundaries of, a given environs area and may consent to or direct an adjustment where appropriate.

(2) Notwithstanding subsection (a)(1) of this section and paragraph (1) of this subsection, environs rates shall include any quality of service rules adopted by the Commission, such as §7.45 of this title (relating to Quality of Service). Such quality of service rules shall apply to environs areas and become part of environs rates regardless of whether the same quality of service rules are in effect in the related incorporated areas.

(c) Rate increases for environs rates.

Rate increases in environs areas shall be made in accordance with the following procedures:

(1) When residential or commercial rates for an environs area are to be changed at the same time and to the same extent as the related incorporated area (city) rate and the proposed change does not constitute a "major change," the Statement of Intent and publication shall be made as otherwise required and, in addition, the Statement of Intent to increase such environs rates shall include (in completed form) the following legend:

This is a Statement of Intent to increase environs rates for the unincorporated areas in the vicinity of _____ (city) _____, and contains rates identical with and to become effective upon the same date as rates contained in a similar Statement of Intent filed on or about this date by this utility with said city. This Statement of Intent is intended to produce the same residential and commercial rates as finally approved for the City of _____ and applies to the rates set out herein or any lower rates finally approved for the City of _____ . Any rate changes pursuant to this Statement of Intent will not become effective until identical changes have become effective within the City of _____ .

(2) The utility shall give notice of the filing of a Statement of Intent to increase environs rates as required by *Texas Civil Statutes* article 1446e, §5.08(a), and in addition shall give written notice to the customers in each affected environs area containing the following information within 35 days of the filing of the Statement of Intent: the date of the filing of the Statement of Intent, a statement as to whether or not the proposed rates constitute a "major change," a statement that the proposed change in rates will not become effective until similar changes have become effective within the nearest incorporated city, the location where information concerning the proposed change may be obtained, and a statement that any affected person may file in writing comments or a protest concerning the proposed change in the environs rates with the Director of the Gas Utilities Division, Railroad Commission of Texas, P. O. Drawer 12967, Capitol Station, Austin, Texas 78711-2967, at any time within 15 days following the date on which such notice is postmarked. Such notice shall be printed in type large enough for easy reading and shall be the only information contained on the piece of paper whereon it is written. It shall be proper for the utility to give the aforesaid notice by mailing or otherwise delivering the same in accordance with its customary billing procedures.

(3) Upon request, the environs rates may become effective upon the same date as the rates become effective in the municipality, upon a showing of good cause pursuant to *Texas Civil Statutes* article 1446e, §5.08(b). In no event may environs rates become effective earlier than the initial filing date with the Railroad Commission of Texas. If an appeal should be taken from the city to the Railroad Commission and the Railroad Commission establishes rates the same as or less than those in the environs Statement of Intent, the rates established by the Commission in the city may become simultaneously effective in the environs area. If that appeal should be dismissed, any rates which have been established in the city may become effective in the environs area at the time of dismissal, provided that the rates established in the city are the same as or less than those in the environs Statement of Intent.

(4) Prior to final Commission approval of the proposed environs rates, the utility shall furnish a copy of any action taken by the city with respect to the related Statement of Intent, the form of written notice mailed to affected environs area customers, and an affidavit of publication from the newspaper in which notice by publication was made, or an affidavit stating the manner in which notice was otherwise given pursuant to *Texas Civil Statutes* article 1446e, §5.08(a). Nothing herein shall restrict the Commission's power and duty on its own motion or upon complaint from any affected person at any time within 30 days from the date when such change would otherwise have become effective to undertake such investigation and hearing as provided in *Texas Civil Statutes* article 1446e, §5.08(c), as may appear appropriate under the circumstances to determine fair and reasonable rates for the environs area in question.

(d) Rate increases proposed pursuant to cost of service adjustments.

The Commission shall review a cost of service adjustment, as defined in §7.12(d) of this title (regarding establishing and increasing residential and commercial rates—Statement of Intent), for a proposed environs rate on a cost of service basis. The cost of service adjustment clause in effect in the adjacent municipality shall not be applicable or put into effect for the affected environs area, although the utility may request the same rates that are in effect in the adjacent municipality for the environs area. The review of the proposed rate increases pursuant to these clauses may be conducted on an informal basis and will not require a formal hearing unless a complaint is received pursuant to subsection (c)(4) of this section or the Commission elects to conduct a formal hearing.

(e) Other rate changes.

This section shall not apply to major rate changes or to changes in special area rates.

§7.14. PROCEDURE FOR ABANDONMENT OR DISCONTINUANCE OF SERVICE.

(a) Discontinuance of service by a gas utility to any city gate or local distribution company shall require prior written Commission approval. Except in emergency situations, an application to abandon or discontinue service shall be filed with the Gas Utilities Division at least 60 days prior to the proposed effective date of the proposed abandonment or discontinuance of service, stating the following:

- (1) The number of directly affected customers in each class;
- (2) The names and addresses of all directly affected customers;
- (3) The specific reasons for the proposed abandonment;

- (4) The alternative energy sources available to the directly affected customers; and
- (5) Any previous notice provided by the utility to the directly affected customers.

(b) A copy of the application shall be sent to all directly affected customers by the gas utility simultaneously with the filing of the application to abandon service with the Commission. If a Statement of Intent to Participate or Motion to Intervene is filed within 30 days from the date of the filing of the Statement of Intent, a formal hearing shall be held. If no intervention pleading is filed, then the matter may be handled on an informal administrative basis.

(c) In emergency situations, the gas utility shall file an application to abandon or discontinue service at the earliest possible time after the utility becomes aware that abandonment or discontinuance is necessary. Emergency procedures may be set up by the Gas Utilities Division to handle these emergency situations.

§7.15. DEADLINE FOR THE FILING OF PREPARED TESTIMONY AND EXHIBITS BY A UTILITY SEEKING APPELLATE REVIEW OF MUNICIPAL ACTION AND STATEMENTS OF INTENT TO INCREASE CITY GATE RATE.

(a) Petitions for Review.

Any utility filing a petition for review appealing the decision of the governing body of a municipality to the Commission shall file its direct evidence to support its proposed rate increase, including those items required pursuant to §7.50 of this title (relating to Certain Matters to be Submitted in Rate Hearings) and prepared testimony of all of its witnesses and exhibits with the Commission on the same date it files its petition for review. A copy of the petition for review shall be served by the utility on the affected municipality on the same date the petition for review is filed. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the Commission, to the intervenor within five days from the date the Motion to Intervene is granted. Service to the municipality and all parties at the municipal level may be made by depositing the petition for review in the U.S. mail with a certificate of service attesting that said mailing was made on the same day as the filing of the petition for review with the Commission.

(b) Statements of Intent to increase city gate rates.

Any utility filing a Statement of Intent to increase a city gate rate which is subject to the original jurisdiction of the Commission shall file its direct evidence to support its proposed rate increase, including those items required pursuant to §7.50 of this title (relating to Certain Matters to be Submitted in Rate Hearings), and prepared testimony of all of its witnesses and exhibits with the Commission on the same date it files its Statement of Intent. A copy of the Statement of Intent shall be served by the utility on the directly affected customers on the same date the Statement of Intent is filed. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the Commission to the intervenor within five days from the date the Motion to Intervene is granted. Service to each directly affected utility may be made by depositing the Statement of Intent as required in the U.S. mail with a certificate of service attesting that said mailing was made on the same day as the filing for the Statement of Intent with the Commission.

§7.20 CONTENTS OF NOTICE.

Rate setting notice.

In all proceedings involving rate setting, the notice shall include the following information:

- (1) The proposed revision of rates and schedules.
- (2) A statement specifying in detail each proposed change.
- (3) The effect the proposed change is expected to have on the revenues of the company.
- (4) The classes and numbers of utility customers affected.
- (5) Any other information required by the Commission.

§7.21. PUBLICATION AND SERVICE OF NOTICE.

(a) Service of notice in all proceedings.

For purposes of computing the 10-day minimum for Notice of Hearing, three days shall be added to that period when the notice is served on the parties by mail. The Notice of Hearing must be mailed by regular mail and addressed to the party's last known mailing address. Upon order by the Commission or the Examiner, the utility must send a copy of the Notice of Hearing by certified mail, prepaid, addressed to the party's last mailing address. There shall be a presumption of receipt of the mailed notice, provided, however, that the party may offer proof of failure to receive notice within the allowed three-day period. The minimum 10-day period shall begin on the fourth day after mailing and end on the 14th day after mailing.

(b) Rate-setting proceedings.

(1) In all rate proceedings, whether the Commission has original or appellate jurisdiction, notice shall be given in the following ways:

(A) Publication of the Notice of Hearing in the next Gas Utilities Division Bulletin published after the date of issuance of the Notice of Hearing.

(B) Service on the parties by mail as provided in subsection (a) of this section.

(2) In addition to the notice required in paragraph (1) of this subsection, notice shall be given in rate proceedings involving only the Commission's original jurisdiction in the following ways:

(A) When the applicant furnishes a copy of its Statement of Intent to increase rates with the Gas Utilities Division, it shall also publish notice of the filing of the Statement of Intent to increase rates in a conspicuous form and place once each week for four consecutive weeks in a newspaper having general circulation in each county containing territory affected by the proposed increase. The Statement of Intent shall conform to the requirements of §7.12 of this title (relating to Establishing and Increasing Residential Rates) regarding the form and contents of the Statement of Intent.

(B) The applicant shall mail or deliver a copy of the proposed rate schedule to the appropriate officer of each affected municipality. The Gas Utilities Division may also require that notice be mailed or delivered to other affected persons or agencies.

(3) In addition to the notice required in paragraph (1) of this subsection, notice shall also be given in rate proceedings involving only the Commission appellate jurisdiction by serving all parties in the original rate proceeding.

(c) Rulemaking proceedings.

In rule making proceedings, notice shall be given in the following ways:

(1) Prior to the adoption of a proposed rule, 30 days' notice of intended action on the proposed rule shall be given by publication in the *Texas Register* pursuant to *Texas Civil Statutes* article 6252-13a, §5. Such notice shall be deemed to put interested parties on notice to inquire as to the hearing date on the proposed rule, if any, and to request being placed on the service list for any hearing which may be called in connection with the proposed rule.

(2) The Gas Utilities Division shall mail notice to all persons who have made timely written requests of the Commission for advance notice of its rulemaking proceedings pursuant to *Texas Civil Statutes* article 6252-13a, §4B.

(3) Publication of the Notice of Hearing in the next Gas Utilities Bulletin published after the date of issuance of the Notice of Hearing.

(4) The Gas Utilities Division may require the applicant to mail or deliver notice to other affected persons or agencies.

(d) Proceedings other than ratesetting or rulemaking proceedings.

In proceedings other than ratesetting or rulemaking, notice shall be given in the following ways:

(1) Publication of the Notice of Hearing shall be in the next Gas Utilities Bulletin published after the date of issuance of the Notice of Hearing.

(2) The Gas Utilities Division may require the applicant to mail or deliver notice to other affected persons or agencies.

§7.22. STATEMENT OF INTENT TO PARTICIPATE.

In the event that the Director of Gas Utilities receives a letter or other communication concerning a Statement of Intent filed pursuant to *Texas Civil Statutes* article 1446e, §5.08(c), the Director shall, within a reasonable time thereafter, forward to such affected person a Complaint and Statement of Intent to Participate. The Complaint and Statement of Intent to Participate must be signed, sworn to, and acknowledged before a notary public by the affected person. The Complaint and Statement of Intent to Participate shall state the complainant's name, address, the rate increase about which he complains, and a statement that the complainant or his representative will appear and participate through the presentation of evidence and arguments should a hearing be called by the Commission to consider the rate increase. If the Complaint and Statement of Intent to Participate is not properly executed and returned to the Director of Gas Utilities within 14 days after the mailing by the Director, then it will not be considered to be a proper "complaint by any affected person," pursuant to *Texas Civil Statutes* article 1446e, §5.08(c), requiring a hearing on the Statement of Intent. In the event that the initial complaint is received before the deadline contained in *Texas Civil Statutes* article 1446e, §5.08(c), and the Complaint and Statement of Intent to Participate is received after that date, it shall be deemed to relate back to the filing of the original complaint.

§7.25. PROPOSAL FOR DECISION.

If in a contested case a majority of the Commissioners has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the Commission itself, may not be made until a Proposal for Decision is served on the parties, and an opportunity is afforded each party adversely affected to file exceptions and present briefs to the Commission. The Proposal for Decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section. When a Proposal for Decision is prepared, a copy of the Proposal for Decision shall be promptly served by the Examiner on each party of record.

§7.26. FILING OF EXCEPTIONS AND REPLIES.

(a) Any party of record may, within 15 days after the date of service of a proposal for decision, file exceptions to the proposal for decision. Replies to such exceptions may be filed within 10 days after the date for filing of such exceptions. Copies of exceptions and replies shall be served on all parties of record.

(b) A request for extension of time within which to file exceptions or replies shall be filed with the Director, and a copy thereof shall be served on all other parties of record by the party making such request. The Examiner shall promptly notify the parties of any action upon the same and shall allow additional time only where the interests of justice so require.

(c) Upon the expiration of the time for filing exceptions or replies, or after the exceptions and replies have actually been filed (if filed before the period allowed for filing has expired), the proposal for decision may be adopted by written order of the Commission.

§7.27. FINAL DECISIONS AND ORDERS.

All final decisions and orders of the Commission shall be in writing and signed by a majority of the Commissioners. A final decision or order adverse to a party in a contested case shall include findings of fact and conclusions of law, separately stated. In a final decision or order adverse to a party in a contested case, the Commission may adopt by reference the findings of fact and conclusions of law contained in a proposal for decision which has been served on all parties pursuant to §7.25 of this title (relating to Proposal for Decision). Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and that party's attorney of record.

§7.35. CONSTRUCTION WORK IN PROGRESS AND ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Construction work in progress* (or *CWIP*)—Funds expended by a gas utility which are irrevocably committed to construction projects not yet completed or placed into service.

(2) *Allowance for funds used during construction (or AFC)*—The net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, until included in the rate base.

(b) A utility may be permitted, subject to any revenue adjustment required, to include AFC related to a project in its rate base in a rate proceeding after completion of the project. If, pursuant to this rule, a utility is permitted to include CWIP related to a project in its rate base, only that AFC accruing prior to such inclusion shall be permitted.

(c) A utility may be permitted to include CWIP in its rate base only where necessary to the financial integrity of the utility. CWIP shall be deemed necessary to the financial integrity of a utility only where shown by clear and convincing evidence that its inclusion is necessary in order to maintain a sufficient financial liquidity so as to meet all capital obligations and to allow the utility to raise needed capital or is necessary to prevent the impairment of a utility's service. A mere averment or demonstration that exclusion of CWIP would result in an increase in the cost of funds to the utility or general assertions that the financial integrity of the utility would be impaired shall not be deemed sufficient to permit such inclusions.

(d) A utility permitted to include CWIP pursuant to this section shall utilize as a rate base amount the expenditures for such projects as are reflected on its books as of the test year. The amount shall be determined in a manner consistent with the calculation of other rate base information to reflect a uniform treatment of the test year items.

Section II. Utility Accounts, Reports, and Services

§7.40. ANNUAL REPORT.

(a) Each "gas utility," "public utility," or "utility" under the jurisdiction of the Railroad Commission of Texas except as hereinafter provided shall file with the Commission each year a general annual report showing that information required by the Commission to enable it to properly regulate natural gas utilities within the state. This general annual report shall be made on a form approved by the Gas Utilities Division, printed and distributed to all gas utilities by the division. The general annual report or gathering annual report as described hereinafter shall be made on a calendar year basis with the reports being due not later than 90 days after December 31 of each calendar year.

(b) Any utility under the regulation of the Federal Energy Regulatory Commission (FERC) alleging that it makes no intrastate sales and engages in no intrastate transportation may file a copy of its FERC Form 2 or such other annual report as may be required by that agency in lieu of the annual report form prescribed by the Gas Utilities Division. Such report shall be accompanied by a sworn statement that the foregoing criteria have been met and shall be accompanied or supplemented by such other information as the Gas Utilities Division may require. If, upon examination, the Gas Utilities Division determines that a utility filing under this section should properly have filed an annual report on the form prescribed by the division, the utility shall be notified and required to file the appropriate report.

(c) Each "gas-gathering utility," as hereinafter defined, shall file a gathering annual report on a special form approved by the Gas Utilities Division, printed and distributed to such "gas-gathering utilities" by the division. Those "gas utilities," "public utilities," or "utilities" under the jurisdiction of the Railroad Commission of Texas which are engaged in jurisdictional activities other than gathering shall be required to file the General Annual Report form.

(d) A "gas-gathering utility" shall be defined as a gas utility or public utility which employs a pipeline or pipelines and ancillary facilities thereto in the first taking or the first retaining of possession of gas produced by others which extends from any point where such gas is produced, purchased, or received to the trunk line or main line of transportation where such gas is sold or delivered, without regard to the size, the length, or the amount of such gas carried through such pipeline or pipelines to the trunk line or main line of transportation, thus having as its primary function the collecting or collecting and processing of gas produced by others as a preliminary incident to the transportation after it has been severed from the earth by production.

(e) The definition of the "gas-gathering utility" system described herein shall apply regardless of whether a gas plant is located on the pipeline or pipelines comprising a "gas-gathering utility" system and regardless of ownership of any such gas plant.

(f) In determining the applicability of the above definition, the Commission shall determine if the primary function of the pipeline or pipelines is "gathering" rather than relying solely on the configuration or location of the facilities comprising the system.

(g) This section is made to comply with the orders issued in Gas Utilities Docket Numbers 1, 2, 5, and 6, which orders are hereby incorporated into this section.

§7.41. CURTAILMENT PROGRAM FOR NATURAL GAS TRANSPORTED AND SOLD WITHIN THE STATE.

(a) Curtailment programs for all gas utilities within the state shall be filed with the Railroad Commission of Texas. Curtailment programs shall be made to comply with the order issued in Gas Utilities Docket Number 489, and that order is hereby incorporated into this section, or the applicable curtailment order by the Commission for a specific gas utility.

(b) The following category shall be included as the lowest priority category on all curtailment plans of public utilities subject to the jurisdiction of the Railroad Commission of Texas: deliveries of natural gas or sales of natural gas to the interstate market under the provisions of sections 311(b) and 312 of the *Natural Gas Policy Act*, and 18 C.F.R. §284.200.

(1) No sales pursuant to section 311(b) shall be made unless a public utility is able to provide adequate service to all of its existing intrastate customers. "Adequate service" includes all requirements of existing customers, notwithstanding contractual limitations, and gas needed to fill storage reservoirs for anticipated peak usage or to build up "line pack" to fill expected customer requirements.

(2) No deliveries of natural gas which have been determined to be surplus pursuant to section 312 shall be made except to the extent a public utility continues to comply with the requirements, including service to existing customers, imposed in the Commission Order determining the amount of the surplus or in the contract of assignment of gas reserves from which the deliveries are being made.

(3) No sales of natural gas pursuant to 18 C.F.R. §284.200 shall be made except to the extent a public utility continues to comply with the requirements, including service to existing customers, contained in the contract under which deliveries are being made or in any report required to be filed with the Commission.

§7.42. GROSS RECEIPTS TAX.

(a) Every "gas utility" under the jurisdiction of the Railroad Commission of Texas pursuant to *Texas Civil Statutes* articles 6050 and 1446e, shall, on or before 30 days after the first day of January, April, July, and October, make and file with the Commission a report, under oath, showing its gross receipts from all business done by it within this state, as defined in subsection (b) of this section and as required by *Texas Civil Statutes* article 6060, for the preceding quarter. Every gas utility shall also pay into the Treasury of the State of Texas, as gross receipts tax, a sum of money equal to $\frac{1}{4}$ of 1.0% of its gross receipts from all business done by it within this state as required by *Texas Civil Statutes* article 6060, stipulating in the voucher covering the payment the purpose for which it is paid. The gross receipts tax report shall be of a form and content as established by the Gas Utilities Division and shall be completed in all detail as requested.

(b) Definition of gross receipts.

For purposes of this section, gross receipts means all income from intrastate utility-related activities, including, but not limited to the following items:

(1) Revenues received from natural gas sales for resale (including intracompany transactions, which are transactions between related companies of the same corporate family except as provided in subsection (c)(1) or (c)(2) of this section.)

(2) Revenues received from natural gas sales to end-use customers, except as provided in subsection (c)(1) or (c)(2), when the gas utility making the end-use sale has not previously paid the gross receipts tax on the gas which is sold to an end-use customer. If an allocation of costs is made to the transmission function, and approved by the Commission, upon which the gross receipts tax is paid by a gas utility which engages in both transmission and distribution of natural gas, then no additional gross receipts tax as provided herein shall be paid on the distribution function. If, however, no such allocation is made, then such gas utility shall be required to pay gross receipts tax on sales to end-use customers. A properly authorized gate rate shall be deemed to constitute a sufficient allocation of transmission costs;

(3) Revenues received from the transportation and/or compression of natural gas;

(4) Revenues received from the sale of products extracted from natural gas;

(5) Revenues received for natural gas processed by others;

(6) Revenues received from the rental of pipelines and/or other facilities to others for the carriage of natural gas; and

(7) Revenues received by a gas utility as brokerage fees and/or brokerage type sales of natural gas.

(c) Exemptions.

(1) No sale of natural gas as described herein shall be taxable if it involves the first sale of the gas by the producer thereof exclusively. If the sale by a producer of gas includes both produced and purchased gas, then an allocable portion of the total revenues, based on the percentage of produced gas in the sale, shall not be taxable.

(2) Burnertip sales by a gas utility engaged solely in retail gas distribution shall not be taxable.

(3) Interstate transactions or sales of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C.A., section 717, *et seq.*) shall not be taxable.

(d) Taxable revenues.

Consideration in the form of cash, negotiable instruments, intracompany credits, or other compensation shall be considered as taxable gross revenues.

§7.43. SYSTEM OF ACCOUNTS.

Except as provided below, each gas utility, as defined by *Texas Civil Statutes* articles 6050 and 1446e shall use the *National Association of Regulatory Utility Commissioners'* (NARUC) Uniform System of Accounts for Class A and B Utilities (1976 edition or as subsequently amended) for all operating and reporting purposes. However, a utility also required to report to the Federal Energy Regulatory Commission under that agency's system of accounts may limit the use of the NARUC accounts to any reporting or audit requirements of the Railroad Commission of Texas. Any utility operating under the FERC account system pursuant to this provision shall maintain a readily accessible cross-reference system between that system and the NARUC account system. Such accounts shall be used regardless of any conflicting classification of such utility by virtue of its annual gas-operating revenues. Further, those "gas-gathering utilities," as defined in §7.40 of this title (relating to Annual Report), shall not be required to operate under the National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts for Class A and B Utilities (1976 edition or as subsequently amended), but shall be required to report under those accounts for annual report purposes pursuant to §7.40 of this title. This uniform system of accounts shall be applicable to all gas utility and gas utility related operations regardless of location, except for those utilities permitted to file a FERC Form 2 in lieu of an annual report required by §7.40 of this title or those "gas-gathering utilities" as described herein.

§7.44. FILING OF TARIFFS.

(a) General filing requirements.

Every gas utility shall file with the Commission a tariff complying with minimum requirements as defined in subsections (c) and (d) of this section for all rates which are within the original or appellate jurisdiction of the Commission and which are currently in force for any gas utility service, product, or commodity. If the rate charged is based on a formula or requires a calculation to determine the unit cost to be charged, the tariff filing shall identify and report all components used in the calculation of the unit cost, including each component of the cost of gas. Each utility providing gas distribution system service or sales shall file, as a part of the rates, all rules and regulations relating to or affecting rates, utility service, products, or commodities furnished by the gas utility.

(b) Filing requirements for changes in rates or services.

Whenever there is a change in any of the matters required to be filed by subsection (a) of this section, except adjustments pursuant to escalation provisions or formula-based rates, there shall be filed appropriate revised tariffs containing minimum requirements as defined in subsections (c) and (d) of this section. If the amount charged is adjusted pursuant to an escalation provision or formula, the utility shall only file an escalator report which reflects the current amount and the methods of calculation. All tariff filings shall be filed with the Gas Utilities Division within 30 days of the effective date of the change.

(c) Contents of tariffs.

Each tariff filed as required herein shall contain the following items:

- (1) Company name;
- (2) Customer name, customer identification number as established by the Gas Utilities Division, or affected city/area/environs;
- (3) Type of service provided;
- (4) Date of original contract or initial service;
- (5) Date of current amendment;
- (6) Current rate, effective date, and a listing of all components used in the calculation of the subject rate;
- (7) Rate adjustment provisions;
- (8) Reason(s) for filing; and
- (9) Name, title, address, and phone number of the person or persons who will respond to inquiries.

(d) Additional requirements for specific types of tariffs.

In addition to the requirements of subsection (c) of this section, these items shall be required for the following specific tariffs:

- (1) Gas utility distribution system service or sales.
 - (A) Rate schedules;
 - (B) Definitions of jurisdictional service charges; and
 - (C) The current service charges in the affected city/area/environs.
- (2) Transportation and exchange service or rates.
 - (A) Type of customer for whom gas is delivered;
 - (B) Customer name or customer identification number as established by Gas Utilities Division for whom gas is delivered;
 - (C) Contractual point(s) of redelivery or customer identification as established by the Gas Utilities Division; and
 - (D) Requirements of subsection (d)(4) of this section, if applicable.
- (3) Utility service or sales, other than distribution system service or sales or transportation and exchange service or rates.
 - (A) Expiration date of contract;
 - (B) Contractual point(s) of redelivery or customer identification as established by the Gas Utilities Division;
 - (C) Contract pressure base; and
 - (D) Requirements of subsection (d)(4) of this section, if applicable.

(4) §5.02(b) Tariff filings. If a tariff is filed which reflects transactions described in *Texas Civil Statutes* article 1446e, §5.02(b), an additional statement must be provided as part of the tariff which indicates the following:

- (A) Facts supporting the applicability of §5.02(b) to the transaction;
- (B) Affirmation that the transaction is not a direct sale-for-resale to a gas utility at a city gate;
- (C) Whether the transaction is between affiliates; and
- (D) A signed statement affirming that a true and correct copy of the tariff has been sent to the customer.

(e) Compliance.

Each tariff filing shall be subject to review by the Gas Utilities Division. A filing is deemed accepted 30 days from the date of filing if no action is taken by the Division. A filing which is not brought into compliance with the requirements of this section at the time of filing or within a reasonable time therefrom may be rejected as a tariff filing by the Division. A rejected tariff may be accepted as a Statement of Intent under *Texas Civil Statutes* article 1446e, §5.08, at the request of the filing utility, or docketed on the Commission's own motion pursuant to *Texas Civil Statutes* article 1446e, §5.07.

§7.45. QUALITY OF SERVICE.

For gas utility service to residential and small commercial customers, the following minimum service standards shall be applicable in unincorporated areas. In addition, each gas distribution utility is ordered to amend its service rules to include said minimum service standards within the utility service rules applicable to residential and small commercial customers within incorporated areas, but only to the extent that said minimum service standards do not conflict with service standards lawfully established within a particular municipality for a gas distribution utility. Said gas distribution utility shall file service rules incorporating said minimum service standards with the Railroad Commission and with the municipalities in the manner prescribed by law.

(1) Continuity of service.

(A) Service interruptions.

(i) Every gas utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time consistent with prudent operating principles so that the smallest number of customers are affected.

(ii) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of an emergency in order to prevent or mitigate interruption or impairment of service.

(iii) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(B) Record of interruption. Except for momentary interruptions which do not cause a major disruption of service, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause of interruptions, date, time duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(C) Report to Commission. The Commission shall be notified in writing within 48 hours of interruptions in service affecting the entire system or any major division thereof lasting more than four hours. The notice shall also state the cause of such interruptions. If any service interruption is otherwise reported to the Commission (for example, as a curtailment report or safety report), such other report is sufficient to comply with the terms of this paragraph.

(2) Customer relations.

(A) Information to customers. Each utility shall:

(i) maintain a current set of maps showing the physical locations of its facilities. All distribution facilities shall be labeled to indicate the size and any pertinent information which will accurately describe the utility's facilities. These maps, or such other maps as may be required by the regulatory authority, shall be kept by the utility in a central location and will be available for inspection by the regulatory authority during normal working hours. Each business office or service center shall have available up-to-date maps, or records of its immediate area, with other such information as may be necessary to enable the utility to advise applicants and others entitled to the information as to the facilities available for serving that locality;

(ii) assist the customer or applicant in selecting the most economical rate schedule;

(iii) in compliance with applicable law or regulations, notify customers affected by a change in rates or schedule or classification;

(iv) post a notice in a conspicuous place in each business office of the utility where applications for service are received informing the public that copies of the rate schedules and rules relating to the service of the utility as filed with the Commission are available for inspection;

(v) upon request, inform its customers as to the method of reading meters.

(vi) Provide to new customers, at the time service is initiated or as an insert in the first billing, a pamphlet or information packet containing the following information. This information shall be provided in English and Spanish as necessary to adequately inform the customers; provided, however, the regulatory authority upon application and a showing of good cause may exempt the utility from the requirement that the information be provided in Spanish:

(I) The customer's right to information concerning rates and services and the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(II) The customer's right to have his or her meter checked without charge under §7.45(7) of this Rule (relating to meters), if applicable;

(III) The time allowed to pay outstanding bills;

(IV) Grounds for termination of service;

(V) The steps the utility must take before terminating service;

(VI) How the customer can resolve billing disputes with the utility and how disputes and health emergencies may affect termination of service;

(VII) Information on alternative payment plans offered by the utility;

(VIII) The steps necessary to have service reconnected after involuntary termination;

(IX) The appropriate regulatory authority with whom to register a complaint and how to contact such authority;

(X) The hours, addresses, and telephone numbers of utility offices where bills may be paid and information may be obtained; and

(XI) The customer's right to be instructed by the utility how to read his or her meter.

(vii) At least once each calendar year, notify each customer that information is available upon request, at no charge to the customer, concerning the items listed in paragraph (vi) (I-IX) of this subsection. This notice may be accomplished by use of a billing insert or a printed statement upon the bill itself.

(B) Customer complaints. Upon complaint to the utility by residential or small commercial customers either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof. It shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of one year subsequent to the final disposition of the complaint.

(C) Utility response. Upon receipt of a complaint, either by letter or by telephone, from the regulatory authority on behalf of a customer, the utility shall make a suitable investigation and advise the regulatory authority and complainant of the results thereof. An initial response must be made by the next working day. The utility must make a final and complete response within 15 days from the date of the complaint, unless additional time is granted within the 15-day period. The Commission encourages all customer complaints to be made in writing to assist the regulatory authority in maintaining records of the quality of service of each utility; however, telephone communications will be acceptable.

(D) Deferred payment plan. The utility is encouraged to offer a deferred payment plan for delinquent residential accounts. If such a plan is offered, it shall conform to the following guidelines:

(i) Every deferred payment plan entered into due to the customer's inability to pay the outstanding bill in full must provide that service will not be discontinued if the customer pays current bills and a reasonable amount of the outstanding bill and agrees to pay the balance in reasonable installments until the bill is paid.

(ii) For purposes of determining reasonableness under these rules, the following shall be considered: size of delinquent account; customer's ability to pay; customer's payment history; time that the debt has been outstanding; reasons why debt has been outstanding; and other relevant factors concerning the circumstances of the customer.

(iii) A deferred payment plan, if reduced to writing, offered by a utility shall state, immediately preceding the space provided for the customer's signature and in bold-face print at least two sizes larger than any other used, that: "If you are not satisfied with this agreement, do not sign. If you are satisfied with this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement."

(iv) A deferred payment plan may include a one-time 5.0% penalty for late payment on the original amount of the outstanding bill with no prompt payment discount allowed except in cases where the outstanding bill is unusually high as a result of the utility's error (such as an inaccurately estimated bill or an incorrectly read meter). A deferred payment plan shall not include a finance charge.

(v) If a customer for utility service has not fulfilled terms of a deferred payment agreement or refuses to sign the same if it is reduced to writing, the utility shall have the right to disconnect pursuant to disconnection rules herein, and under such circumstances, it shall not be required to offer a subsequent negotiation of a deferred payment agreement prior to disconnection.

(vi) Any utility which institutes a deferred payment plan shall not refuse a customer participation in such a program on the basis of race, color, creed, sex, marital status, age, or any other form of discrimination as prohibited by law.

(3) Refusal of service.

(A) **Compliance by applicant.** Any utility may decline to serve an applicant for whom service is available from previously installed facilities until such applicant has complied with the state and municipal regulations and approved rules and regulations of the utility on file with the Commission governing the service applied for or for any of the following reasons:

(i) **Applicant's facilities inadequate.** If the applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.

(ii) **For indebtedness.** If the applicant is indebted to any utility for the same kind of service as that applied for; provided, however, that in the event the indebtedness of the applicant for service is in dispute, the

applicant shall be served upon complying with the applicable deposit requirement.

(iii) **Refusal to make deposit.** For refusal to make a deposit if applicant is required to make a deposit under these rules.

(B) **Applicant's recourse.** In the event that the utility shall refuse to serve an applicant under the provisions of these rules, the utility must inform the applicant of the basis of its refusal and that the applicant may file a complaint with the municipal regulatory authority or Commission, whichever is appropriate.

(C) **Insufficient grounds for refusal to serve.** The following shall not constitute sufficient cause for refusal of service to a present customer or applicant:

(i) Delinquency in payment for service by a previous occupant of the premises to be served.

(ii) Failure to pay for merchandise or charges for non-utility service purchased from the utility.

(iii) Failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application.

(iv) Violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interfere with the service of others unless the customer has first been notified and been afforded reasonable opportunity to comply with these rules.

(v) Failure to pay a bill of another customer as guarantor thereof unless the guaranty was made in writing to the utility as a condition precedent to service.

(vi) Failure to pay the bill of another customer at the same address except where the change of customer identity is made to avoid or evade payment of a utility bill.

(4) **Discontinuance of service.**

(A) The due date of the bill for utility service shall not be less than 15 days after issuance, or such other period of time as may be provided by order of the regulatory authority. A bill for utility service is delinquent if unpaid by the due date.

(B) A utility may offer an inducement for prompt payment of bills by allowing a discount in the amount of five percent for payment of bills within 10 days after their issuance. This provision shall not apply where it conflicts with existing orders or ordinances of the appropriate regulatory authority.

(C) A customer's utility service may be disconnected if the bill has not been paid or a deferred payment plan pursuant to (2)(D) above has not been entered into within five working days after the bill has become delinquent and proper notice has been given. Proper notice consists of a deposit in the United States mail, postage prepaid, or hand delivery to the customer at least five working days prior to the stated date of disconnection, with the words "Termination Notice"

or similar language prominently displayed on the notice. The notice shall be provided in English and Spanish as necessary to adequately inform the customer, and shall include the date of termination, the hours, address, and telephone number where payment may be made, and a statement that if a health or other emergency exists, the utility may be contacted concerning the nature of the emergency and the relief available, if any, to meet such emergency.

(D) Utility service may be disconnected for any of the following reasons:

(i) Failure to pay a delinquent account or failure to comply with the terms of a deferred payment plan for installment payment of a delinquent account.

(ii) Violation of the utility's rules pertaining to the use of service in a manner which interfered with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation.

(iii) Failure to comply with deposit or guarantee arrangements required by paragraph (5) of this subsection.

(iv) Without notice where a known dangerous condition exists, for as long as the condition exists.

(v) Tampering with the utility's meter or equipment or bypassing the same.

(E) Utility service may not be disconnected for any of the following reasons:

(i) Delinquency in payment for service by a previous occupant of the premises.

(ii) Failure to pay for merchandise or charges for nonutility service by the utility.

(iii) Failure to pay for a different type or class of utility service unless fee for such service is included on the same bill.

(iv) Failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service.

(v) Failure to pay charges arising from an underbilling occurring due to any misapplication of rates more than six months prior to the current billings.

(vi) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due.

(vii) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

(F) Unless a dangerous condition exists, or unless the customer requests disconnection, service shall not be disconnected on a day, or on a day

immediately preceding a day, when personnel of the utility are not available to the public for the purpose of making collections and reconnecting service.

(G) No utility may abandon a customer without written approval from the regulatory authority.

(H) No utility may discontinue service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill if service is discontinued. Any customer seeking to avoid termination of service under this section must make a written request supported by a written statement from a licensed physician. Both the request and the statement must be received by the utility not more than five working days after the date of delinquency of the bill. The prohibition against service termination provided by this section shall last twenty days from the date of receipt by the utility of the request and statement or such lesser period as may be agreed upon by the utility and the customer. The customer who makes such request shall sign an installment agreement which provides for such service along with timely payments for subsequent monthly billings.

(5) Applicant deposit.

(A) **Establishment of credit for residential applicants.** Each utility may require a residential applicant for service to satisfactorily establish credit but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills. Subject to these rules, a residential applicant shall not be required to pay a deposit:

(i) if the residential applicant has been a customer of any utility for the same kind of service within the last two years and is not delinquent in payment of any such utility service account and during the last 12 consecutive months of service did not have more than one occasion in which a bill for such utility service was paid after becoming delinquent and never had service disconnected for nonpayment;

(ii) if the residential applicant furnishes in writing a satisfactory guarantee to secure payment of bills for the service required; or

(iii) if the residential applicant furnishes in writing a satisfactory credit rating by appropriate means, including but not limited to the production of generally acceptable credit cards, letters of credit reference, the names of credit references which may be quickly and inexpensively contacted by the utility, or ownership of substantial equity.

(B) **Reestablishment of credit.** Every applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills shall be required before service is rendered to pay all amounts owed to the utility by the customer or execute a written deferred payment agreement, if offered, and reestablish credit as provided in subparagraph (A) of this part.

(C) **Amount of deposit and interest for residential service, and exemption from deposit.**

(i) The required deposit shall not exceed an amount equivalent to 1/6 of

the estimated annual billings. If actual use is at least twice the amount of the estimated billings, a new deposit requirement may be calculated and an additional deposit may be required within two days. If such additional deposit is not made, the utility may disconnect service under the standard disconnection procedure for failure to comply with deposit requirements.

(ii) All applicants for residential service who are 65 years of age or older will be considered as having established credit if such applicant does not have an outstanding account balance with the utility or another utility for the same utility service which accrued within the last two years. No cash deposit shall be required of such applicant under these conditions.

(iii) Each utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits according to the rate as established by law. If refund of deposit is made within 30 days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(I) Payment of interest to the customer shall be annually or at the time the deposit is returned or credited to the customer's account.

(II) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(D) Deposits for temporary or seasonal service and for weekend or seasonal residences.

The utility may require a deposit sufficient to reasonably protect it against the assumed risk, provided such a policy is applied in a uniform and nondiscriminatory manner.

(E) Records of deposits.

(i) The utility shall keep records to show:

(I) the name and address of each depositor;

(II) the amount and date of the deposit; and

(III) each transaction concerning the deposit.

(ii) The utility shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.

(iii) A record of each unclaimed deposit must be maintained for at least four years, during which time the utility shall make a reasonable effort to return the deposit.

(F) Refund of deposit.

(i) If service is not connected or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection

within the meaning of these rules, and no additional deposit may be demanded unless permitted by these rules.

(ii) When the customer has paid bills for service for 12 consecutive residential bills without having service disconnected for nonpayment of bill and without having more than two occasions in which a bill was delinquent and when the customer is not delinquent in the payment of the current bills, the utility shall promptly and automatically refund the deposit plus accrued interest to the customer in the form of cash or credit to a customer's account.

(G) **Upon sale or transfer of utility or company.** Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the Commission under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit thereof who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon.

(H) **Complaint by applicant or customer.** Each utility shall direct its personnel engaged in initial contact with an applicant or customer for service seeking to establish or reestablish credit under the provisions of these rules to inform the customer, if dissatisfaction is expressed with the utility's decision, of the customer's right to file a complaint with the regulatory authority.

(6) Billing.

(A) Bills for gas service shall be rendered monthly, unless otherwise authorized or unless service is rendered for a period less than a month. Bills shall be rendered as promptly as possible following the reading of meters.

(B) The customer's bill must show all the following information. The information must be arranged and displayed in such a manner as to allow the customer to compute his bill with the applicable rate schedule. The applicable rate schedule must be mailed to the customer on request of the customer. A utility may exhaust its present stock of nonconforming bill forms before compliance is required by this section:

(i) If the meter is read by the utility, the date and reading of the meter at the beginning and end of the period for which rendered.

(ii) The number and kind of units billed.

(iii) The applicable rate schedule title or code.

(iv) The total base bill.

(v) The total of any adjustments to the base bill and the amount of adjustments per billing unit.

(vi) The date by which the customer must pay the bill to get prompt payment discount.

(vii) The total amount due before and after any discount for prompt payment within a designated period.

(viii) A distinct marking to identify an estimated bill.

(C) Where there is good reason for doing so, estimated bills may be submitted, provided that an actual meter reading is taken at least every six months. For the second consecutive month in which the meter reader is unable to gain access to the premises to read the meter on regular meter reading trips, or in months where meters are not read otherwise, the utility must provide the customer with a postcard and request that the customer read the meter and return the card to the utility if the meter is of a type that can be read by the customer without significant inconvenience or special tools or equipment. If such a postcard is not received by the utility in time for billing, the utility may estimate the meter reading and render the bill accordingly.

(D) Disputed bills.

(i) In the event of a dispute between the customer and the utility regarding the bill, the utility must forthwith make such investigation as is required by the particular case and report the results to the customer. If the customer wishes to obtain the benefits of subsection (ii) hereunder, notification of the dispute must be given to the utility prior to the date the bill becomes delinquent. In the event the dispute is not resolved, the utility shall inform the customer of the complaint procedures of the appropriate regulatory authority.

(ii) Notwithstanding any other subsection of this section, the customer shall not be required to pay the disputed portion of the bill which exceeds the amount of that customer's average usage for the billing period at current rates until the earlier of the following: (1) resolution of the dispute, (2) the expiration of the sixty day period beginning on the day the disputed bill is issued. For purposes of this section only, the customer's average usage for the billing period shall be the average of the customer's usage for the same billing period during the preceding two years. Where no previous usage history exists, the average usage shall be estimated on the basis of usage levels of similar customers and under similar conditions.

(7) Meters.

(A) Meter requirements.

(i) **Use of meter.** All gas sold by a utility must be charged for by meter measurements, except where otherwise provided for by applicable law, regulation of the regulatory authority, or tariff.

(ii) **Installation by utility.** Unless otherwise authorized by the regulatory authority, each utility must provide and install and will continue to own and maintain all meters necessary for measurement of gas delivered to its customers.

(iii) **Standard type.** No utility may furnish, set up, or put in use any meter which is not reliable and of a standard type which meets generally accepted industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation, testing, or experimental purposes.

(iv) **Access to premises.** The utility's representatives shall have the right at all reasonable hours to enter upon the premises and property of a customer to read the meter, to remove, to inspect, or to make necessary repairs and adjustments to, or replacements of, service lines, meter loop, and any property of the utility located thereon, and for any other purpose connected with the utility's operation. The utility's representative shall have the right at all times to enter upon the premises and property of the customer in emergencies pertaining to the company's service. All animals which might hinder the performance of such operations on the customer's property shall be kept away from such operations by the customer upon notice by the company's representatives of their intention to enter upon the customer's premises.

(B) **Meter records.** Each utility must keep the following records:

(i) **Meter equipment records.** Each utility must keep a record of all of its meters, showing the customer's address and date of the last test.

(ii) **Records of meter tests.** All meter tests must be properly referenced to the meter record provided for therein. The record of each test made on request of a customer must show the identifying number and constants of the meter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy) at each load tested, and sufficient data to permit verification of all calculations.

(iii) **Meter units of service.** In general, each meter must indicate clearly the units of service for which charge is made to the customer.

(iv) **Meter tests on request of customer.**

(I) Each utility must, upon request of a customer, make a test of the accuracy of the meter serving that customer. The utility must inform the customer of the time and place of the test and permit the customer or his authorized representative to be present if the customer so desires. If no such test has been performed within the previous four years for the same customer at the same location, the test is to be performed without charge. If such a test has been performed for the same customer at the same location within the previous four years, the utility is entitled to charge a fee for the test not to exceed \$15 or such other fee for the testing of meters as may be set forth in the utility's tariff properly on file with the regulatory authority. The customer must be properly informed of the result of any test on a meter that serves him.

(II) Notwithstanding subclause (I) of this clause, if the meter is found to be more than nominally defective, to either the customer's or the utility's disadvantage, any fee charged for a meter test must be refunded to the customer. More than nominally defective means a deviation of more than 2.0% from accurate registration.

(v) **Bill adjustments due to meter error.**

(I) If any meter test reveals a meter to be more than nominally

defective, the utility must correct previous readings consistent with the inaccuracy found in the meter for the period of either:

(a) the last six months; or

(b) the time since the last test of the meter, whichever is shorter. Any resulting underbillings or overbillings are to be corrected in subsequent bills, unless service is terminated, in which event a monetary adjustment is to be made. This requirement for a correction may be foregone by the utility if the error is to the utility's disadvantage.

(II) If a meter is found not to register for any period of time, the utility may make a charge for units used but not metered for a period not to exceed three months previous to the time the meter is found not to be registering. The determination of amounts used but not metered is to be based on consumption during other like periods by the same customer at the same location, when available, and on consumption under similar conditions at the same location or of other similarly situated customers, when not available.

(8) New construction.

(A) **Standards of construction.** Each utility is to construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with the provisions of such codes and standards as are generally accepted by the industry, as modified by rule or regulation of the regulatory authority or otherwise by law and in such manner to best accommodate the public and to prevent interference with service furnished by other public utilities insofar as practical.

(B) **Line extension and construction charges.** Every utility must file its extension policy. The policy must be consistent and nondiscriminatory, and is subject to the approval of the regulatory authority. No contribution in aid of construction may be required of any customer except as provided for in the extension policy.

(C) **Response to request for service.** Every gas utility must serve each qualified applicant for service within its service area as rapidly as practical. As a general policy, those applications not involving line extensions or new facilities should be filled within seven working days. Those applications for individual residential service requiring line extensions should be filled within 90 days unless unavailability of materials or other causes beyond the control of the utility result in unavoidable delays. In the event that residential service is delayed in excess of 90 days after an applicant has met credit requirements and made satisfactory arrangements for payment of any required construction charges, a report must be made to the regulatory authority listing the name of the applicant, location, and cause for delay. Unless such delays are due to causes which are reasonably beyond the control of the utility, a delay in excess of 90 days may be found to constitute a refusal to serve.

§7.46. GAS DISTRIBUTION IN MOBILE HOME PARKS, APARTMENT HOUSES, AND APARTMENT UNITS.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:

(1) *Domestic use*—The use of natural gas for cooking, clothes drying, space heating, water heating, or any other residential purpose.

(2) *Master meter*—A single large volume gas measurement device by which gas is metered and sold to a single purchaser who distributes the gas either through a submeter or who redelivers gas by other means to one or more additional persons downstream from that meter.

(3) *Mobile home*—A structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(4) *Mobile home or apartment resident*—An occupant of a mobile home in a mobile home park or an occupant in an apartment house or apartment unit who is responsible for the payment of rentals and receives gas through a submeter.

(5) *Submeter*—A single gas measurement device by which gas is metered to a mobile home unit, apartment house, or apartment unit downstream of a master meter.

(6) *Apartment house*—A building or buildings containing more than five dwelling units, all of which are rented or available to be rented primarily for nontransient use, with rentals paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

(7) *Apartment unit*—A room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

(b) **Prohibition.** An owner, operator, or manager of a mobile home park, apartment house or apartment unit may purchase natural gas through a master meter and thereafter deliver that gas through a submeter to an individual mobile home or homes in the park or to apartment units within the apartment house for domestic use by the residents or occupants for the purpose of fairly allocating the cost of each unit's gas consumption. The natural gas shall not be delivered, sold, or resold to a resident or occupant at a profit. An owner, operator, or manager of a mobile home park, apartment house, or apartment unit may not allocate or charge a resident for common areas, such as laundry or recreational areas, unless the resident's or occupant's unit rate is calculated based on the amount of total gas through the master meter.

(c) **Charges.** Any sale or resale made by such owner, operator, or manager shall be based solely on the monthly average cost of gas on a volumetric basis to the owner, operator, or manager and on the amount of usage by the mobile home resident or apartment house or apartment unit occupant, plus a submeter fee or surcharge for each bill rendered, not to exceed \$3.00 per month. The computation of the average cost of gas shall not include any penalties charged to the owner, operator, or manager for late payment. No other charges shall be made to the mobile home resident, apartment house, or apartment unit occupant in connection with the delivery of natural gas to a submeter. The owner, operator, or

manager must prepare and deliver or send a bill to each mobile home resident, apartment house, or apartment unit occupant. The owner, operator, or manager, by contractual agreement only, may collect reasonable deposits for gas service, returned check fees, and late charges from its tenants. Any change in the initial deposit, fees, or charges must be approved by the Railroad Commission of Texas.

(d) **Record keeping.** Adequate records shall be kept by the owner, operator, or manager in connection with sales or resales of natural gas to mobile home residents, apartment house, or apartment unit residents. These records shall be made available to the resident at the mobile home park, apartment house, or apartment unit by the owner, operator, or manager during normal business hours. Such records shall include the following:

(1) The billings from the supplier of the gas to the owner, operator, or manager of the mobile home park for the current month and the twelve (12) preceding months;

(2) The computation of the average cost of gas per month to the owner, operator, or manager for the current month and the twelve (12) preceding months;

(3) All submeter readings and mobile home park residents, apartment house residents, or apartment unit residents billings for the current month and the twelve (12) preceding months.

(e) **Billings.** The mobile home park resident's, apartment house resident's, or apartment unit resident's bill shall show all of the following information:

(1) The date of submeter readings and the reading on the resident's submeter at the beginning and at the end of the period for which the bill is rendered;

(2) The number and kind of units billed;

(3) The computed rate per unit billed;

(4) The total amount due for gas used;

(5) Any surcharge, clearly identified;

(6) The name and address of the resident to whom the bill is applicable; and

(7) The date by which the resident must pay the bill.

(f) **Enforcement.** The records specified herein shall be subject to inspection and audit by the Railroad Commission of Texas or its agents. Violations shall be subject to enforcement pursuant to TEX. REV. CIV. STAT. ANN. arts. 6062 and 6063.

(g) **Applicability.** This rule shall not apply to any mobile home park, apartment house, or apartment unit within a municipality that has a municipal ordinance, charter, franchise agreement, or service rule in substantial compliance with the provisions of this rule. Such ordinance, charter, franchise agreement, or service rule shall be subject to review by the Railroad Commission of Texas upon written complaint by an owner, operator, manager, mobile home park resident, or resident of an apartment house or unit, that it does not substantially comply with the provisions of this section.

Section III. Rates — Specific Adjustment Factors

§7.47. RECOVERY OF THE BTU MEASUREMENT ADJUSTMENTS BY INTRASTATE PIPELINES, LOCAL DISTRIBUTION COMPANIES, AND CUSTOMERS.

(a) **Purpose.** The purpose of this rule is to require all intrastate pipelines and local

distribution companies that receive Btu adjustment refunds to make subsequent refunds to their customers. The Btu refunds are authorized in 49 Fed. Reg. 37735 (Sept. 26, 1984) (hereinafter "Order No. 399"), and resulted from adjustments of the calculation of energy content of natural gas sold pursuant to the Natural Gas Policy Act of 1978. All intrastate pipelines and local distribution companies shall pursue all reasonable, prudent, and necessary steps to collect the Btu refunds owed to them as provided for in Order No. 399. The objectives of this rule are to ensure that the ultimate consumers receive the refunds due and to ensure that the refund methodologies are equitable and in compliance with the intent of Order No. 399. This rule should be construed in such a manner as to comply with the stated objective of this rule.

(b) Definitions.

(1) *Btu*—British Thermal Units.

(2) *Btu refund*—Those monies held in escrow accounts or elsewhere and those monies received by an intrastate pipeline or local distribution company which are attributable to refunds and interest accrued thereon due in accordance with the August 8, 1983, Court of Appeals decision in *Intrastate Natural Gas Association of America vs. Federal Energy Regulatory Commission*, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984).

(3) *Commission*—The Railroad Commission of Texas.

(4) *Intrastate pipeline and local distribution company*—Any person or entity subject to the jurisdiction of the Commission, as defined in *Texas Civil Statutes* article 1446e, §§1.03(1) and (3), 2.01, and 2.02.

(c) Recovery of the Btu measurement adjustments.

(1) An intrastate pipeline or local distribution company which receives Btu refunds pursuant to Order 399 shall make refunds to its customers in accordance with the provisions of this rule, notwithstanding any pipeline tariff provisions to the contrary.

(2) An intrastate pipeline or local distribution company shall make Btu refunds in accordance with the following:

(A) All intrastate pipelines and local distribution companies receiving or making the Btu refunds shall file a refund procedure report which has been or will be implemented to ensure that the Btu refunds are received by its customers. This report shall include the following information:

(i) The methodology and procedure used to implement the Btu refunds to its customers; and

(ii) The date of implementation.

(B) The refund procedure report will be reviewed by the Gas Utilities Division. Within thirty (30) days of the date of filing of the report, the Division will either approve the report or inform the company of any necessary modifications. If a complaint is received concerning a company's refund report, the complaint will be processed with the review of the report, and the time period for review will be suspended.

(C) The method and procedure of refund may be chosen by the company, subject to the approval of the Commission, and may include, but not be limited to, lump sum payments, credits, or flow-through of the refund in the company's

weighted average cost of gas. The procedure of refunds established by the pipeline or local distribution company shall be applied uniformly to all customers. The refund methodology used by a utility should ensure that the overcharges and interest actually charged are refunded in an appropriate fashion.

(D) If a pipeline or local distribution company fails to refund the Btu refunds within 30 days after receipt from a first seller or supplying pipeline, interest shall be computed from the date of receipt of the overcharged amount by the pipeline or local distribution company to the date the amount is disbursed to its customers. If refunds have been held in an escrow account, the interest obligation will be limited to the rate earned while in the escrow account, but will be calculated from the date of receipt. Interest rates for all other refunds shall be computed in accordance with 18 C.F.R. §154.67(c).

(E) All refunds must be completed by January 31, 1987. A pipeline or local distribution company may not hold Btu refunds more than 120 days from the receipt of the refund. All refunds made within 60 days of the adoption of this rule will be considered timely.

(d) Refund reporting.

(1) All intrastate pipelines shall file refund reports on the dates listed in paragraph (3) of this subsection with the Gas Utilities Division. These reports shall contain the following information:

(A) Identification of first sellers that have made refunds and the amounts received by the pipeline by separately stating the principal and interest received from each first seller;

(B) Identification of first sellers that have not made the refund, and the refund amount that has not been received by the pipeline by separately stating the principal and interest due from each first seller, and the reasons for such nonreceipt of those refunds; and

(C) Identification of the refunds made by the pipeline, including the following information:

(i) The total amount of Btu refunds received;

(ii) The total amount of interest received;

(iii) The date(s) the refund(s) were received by the pipeline;

(iv) The total amount of refunds paid each month;

(v) The total amount of interest paid each month; and

(vi) The date(s) of payment(s) or credit(s).

(2) All local distribution companies shall file refund reports on the dates listed in paragraph (3) of this subsection with the Gas Utilities Division. These reports shall contain the following information:

(A) Identification of pipelines or suppliers which have made refunds and the amounts received by the local distribution company by separately stating the principal and interest received.

(B) Identification of pipelines and suppliers which have not made the refunds, and the refund amount that has not been received by separately stating the principal and interest due from each pipeline or supplier, and the reasons for such non-receipt of those refunds; and

(C) Identification of the refunds made by the local distribution company, including the following information:

(i) The total amount of Btu refunds received by month;

(ii) The total amount of interest received by month;

(iii) The date(s) the refund(s) were received;

(iv) The total amount of principal and interest refunded by month from the date of implementation;

(v) Any amount of refunds that have not been refunded and the reason for withholding the refunds.

(3) The reports shall be filed on or before the following dates:

(A) First Report — January 1, 1986;

(B) Second Report — May 1, 1986;

(C) Third Report — January 1, 1987; and

(E) Fourth Report — September 1, 1987.

§7.50. CERTAIN MATTERS TO BE SUBMITTED IN RATE HEARINGS.

In any rate setting hearing not expressly limited to the consideration of certain issues, the gas utility shall present at the time of filing its direct evidence to support its rate case, and, in addition to any other matters required or permitted to be presented, evidence on the following:

(a) All profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise; and the extent, if any, to which the profit or loss on such merchandise is integral to the provision of natural gas and natural gas service.

(b) The amount of any income tax savings or deferrals derived from the application of such methods as liberalized depreciation or amortization.

(c) The amount of any investment tax credit taken since 1971 on the property in question in the proceeding, stated according to the year in which it was taken; the original cost and depreciable life of any property on which any investment tax credit was taken, stated according to the year of acquisition; and whether the utility has made an election pursuant to 26 U.S.C. §46(e)(1).

(d) A statement of all payments of compensation (other than salary or wages subject to withholding of federal income tax) to residents of Texas, or with respect to legal or administrative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body. This statement shall include the actual expense for the test year, with any adjustments for known changes, and the actual expenses for the last odd-numbered calendar year.

(e) A statement of the total amount expended during the test year for legislative

advocacy, with any adjustments for known changes, and the actual amount of any such expenses for the last odd-numbered year.

(f) The amounts expended during the test year, with the corresponding amount for each, for business gifts, entertainment, charitable or civic contributions; institutional advertising; conservational advertising; consumption-inducing advertising; and other advertising.

§7.51. DEPRECIATION AND ALLOCATIONS.

(a) Book depreciation and amortization for ratemaking purposes shall be computed on a straight-line basis over the useful life expectancy of the item of property or facility in question.

(b) In any rate proceeding where items of plant, revenues, expenses, taxes, or reserves are shared by or are common to the service area in question and any other service area, these items shall be allocated to fairly and justly apportion them between the area in question and any other service area of the utility.

(c) In any rate proceeding involving a gas utility that engages in both utility and nonutility activities, all items of plant, revenues, expenses, taxes, and reserves shall be allocated to fairly and justly apportion them between the utility operations and the nonutility operations. No items of plant, revenues, expenses, taxes, or reserves allocable to nonutility operations shall be included in any figures used to arrive at any rate to be charged by a gas utility for utility service, unless clearly shown to be integral to utility operations.

§7.52. LOST AND UNACCOUNTED FOR GAS.

For the purpose of determining the amount of expenses to be allowed for lost and unaccounted for gas in all ratemaking proceedings before the Gas Utilities Division, the following definitions and procedures shall be utilized:

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Lost and unaccounted for gas*—The difference between the amount of gas metered into a distribution or transmission system and the amount metered out.

(2) *Lost gas*—The amount of gas which physically escapes into the ground or atmosphere from a distribution or transmission system, except for that gas which escapes as a part of an intentional testing procedure or purging operation performed during maintenance or construction activities.

(3) *Unaccounted for gas*—Lost and unaccounted for gas less lost gas.

(b) All lost and unaccounted for gas is presumed to be lost gas unless the portion represented by unaccounted for gas, including but not limited to losses to company used gas, liquids extraction, and meter errors due to inaccurate calibration or temperature and pressure fluctuations, is proven by a preponderance of the evidence in a given ratemaking proceeding.

(c) All expenses for lost gas in excess of the maximum allowable shall be disallowed for ratemaking purposes.

(1) The maximum allowable for a distribution system is five percent of the amount metered in and the maximum allowable for a transmission system is three percent of the amount metered in, except as provided in part (a) of this subsection.

(2) The calculation of the percentage of lost and unaccounted for gas shall be based on an annual period. Notwithstanding the choice of test year for other aspects of ratemaking and unless a more appropriate period can be demonstrated by a preponderance of the evidence in a given ratemaking proceeding, the annual period ends June 30, and is the most recent such period for which data is available.

(d) The Commission may allow a greater percentage of lost gas than that specified in part (c) of this subsection based on special facts and circumstances including, where appropriate, the cost of effecting a reduction of the actual amount of lost gas, as may be demonstrated in a given ratemaking proceeding.

(e) Nothing in this section shall be construed to limit the Commission's authority to evaluate the reasonableness of gas expense figures, including those for unaccounted for gas, and incorporating that evaluation into its ratesetting orders.

§7.54. EFFECTIVE DATE OF ORDERS: INTEREST ON DEFERRED FUNDS.

The Commission may provide that an order in a rate proceeding be effective from some date after Commission jurisdiction has attached. When the effective date of an order is prior to the date of issuance, the Commission may permit a utility to recover or require a utility to refund an amount equal to any revenue granted in the order that differs from that actually collected for the period from the effective date of the order to the date of issuance. Interest on the revenues so collected or refunded shall be allowed at a rate equivalent to that established by statute for the courts of the state for judgements wherein the rate of interest is not established by an underlying contract. All amounts recovered by the utility under this section shall be collected by way of a surcharge to the normal customer bill.

§7.55. GAS COST RECOVERY.

(a) Each gas utility subject to the original jurisdiction or which becomes subject to the appellate jurisdiction of the Railroad Commission of Texas may be permitted to include a purchased gas adjustment clause in its rates to provide for the flow through of part or all of its gas costs above or below the cost of gas contained in its rates, subject to proof, by a preponderance of the evidence, of certain criteria. Criteria to be used by the Railroad Commission of Texas in determining whether or not to grant a gas utility a purchased gas recovery clause as well as the percentage thereof, shall include but not be limited to:

- (1) ability of the gas utility to control prices for gas purchased as affected by competition and relative competitive advantage;
- (2) probability of continued frequent price changes; and
- (3) availability of alternate gas supply sources.

(b) This section shall be applied prospectively only to rate cases filed after its effective date and only after notice and hearing pursuant to the *Gas Utility Regulatory Act*. The gas utility involved shall have the burden of proof regarding the necessity, if any, of a purchased gas adjustment clause and the amount of adjustment thereunder. The

provisions of this section shall not be operative so as to impair the rights of existing contract gas customers in any manner whatsoever except as otherwise provided by law.

(c) The Commission shall determine in each case the necessary reporting, filing, and other procedures to be followed by a gas utility in implementing a purchased gas adjustment clause, if any, as well as other items of expense that fluctuate with gas costs which may be included in such a clause.

§7.56. ADVERTISING, CONTRIBUTIONS AND DONATIONS.

(a) Actual expenditures for advertising will be allowed as a cost of service for ratemaking purposes provided that the total sum of such expenditures shall not exceed 1/2 of 1.0% of the gross receipts of the utility for utility services rendered to the public except as hereinafter provided.

(b) No expenditure shall be allowed as a cost of service for ratemaking purposes for the following special items:

(1) Funds spent for advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance, including funds spent to mail any such information.

(2) Funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations.

(3) Funds expended for contributions and donations to charitable, religious, or other nonprofit organizations or institutions.

(c) The limitations set forth in subsections (a) and (b) of this section shall not limit the following:

(1) Advertising which informs natural gas consumers how they can conserve natural gas or can reduce peak demand for natural gas.

(2) Advertising required by law or regulation, including advertising required under Part 1 of *Title II of the National Energy Conservation Policy Act*.

(3) Advertising regarding service interruptions, safety measures, or emergency conditions.

(4) Advertising concerning employment opportunities with such utility.

(5) Any explanation of existing or proposed rate schedules, or notifications of hearings thereon.

§7.57. ALLOWABLE RATE CASE EXPENSES.

In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to TEX. REV. CIV. STAT. ANN. art. 1446e (Vernon Supp. 1987), shall have the burden to prove the reasonableness of such rate case expense by a preponderance of the evidence. Each claimant shall detail and itemize all rate case expenses and allocations, and shall, in addition, provide evidence showing the reasonableness of the cost of all professional services, including, but not limited to: the amount of work done, the time and labor required to accomplish the work, the hourly charge or other compensation paid for the work, the nature, extent and difficulty of the work done, the originality of the work, the charges by others for work of the same or similar

nature, and any other factors taken into account in setting the amount of the compensation. In determining the reasonableness of the rate case expenses, the Commission will consider all relevant factors, including but not limited to those set out above, and will also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought, as well as the amount of any increase granted.

Section IV. Pipeline Safety

§7.70. NATURAL GAS PIPELINE SAFETY—GENERAL AND DEFINITIONS.

(a) **Minimum safety standards.** All gas pipeline facilities and the transportation of gas within this state, except those facilities and that transportation of gas which are subject to exclusive federal jurisdiction under the Natural Gas Pipeline Safety Act of 1986, shall be designed, constructed, maintained, and operated in accordance with the Minimum Safety Standards, 49 C.F.R. Part 192, with amendments, and with the additional regulations set out in this section.

(b) **Definitions.** The following words and terms, when used in this section and §7.71 of this title (relating to Odorization Equipment, Odorization of Natural Gas and Odorant Concentration Tests), shall have the following meanings, unless the context clearly indicates otherwise.

(1) *Person*—Any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(2) *Gas*—Natural gas, flammable gas, or other gas which is toxic or corrosive.

(3) *Transportation of gas*—The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas; except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary of Transportation may define as a nonrural area.

(4) *Pipeline facilities*—Facilities which include, but are not limited to, new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation.

(5) *Gas company*—Any person who owns or operates pipeline facilities used for the transportation of gas.

(6) *Commission*—The Railroad Commission of Texas.

(7) *Pipeline Safety Section*—The Pipeline Safety Section of the Gas Utilities Division of the Railroad Commission of Texas.

(c) **Applicability.** All gas pipeline facilities and facilities used in the transportation of natural gas shall be subject to the minimum safety standards, as amended, except for those facilities and transportation services subject to the jurisdiction of the Federal Energy Regulatory Commission pursuant to 15 U.S.C. §717 *et seq.*

(d) Minimum standards only. The minimum safety standards adopted in subsection (a) of this section establish minimum standards of accepted good practice. Nothing contained in this section shall prevent the Commission, after an appropriate public hearing or investigation, from prescribing more stringent permanent standards in individual situations.

(e) Special circumstances.

(1) In the event any gas company cannot determine to its satisfaction the standards applicable to special circumstances, it may, by written application, request the Commission for advice and recommendations, and in a special case, the Commission may authorize exemption from, or modification, or temporary suspension of any of the provisions of the minimum safety standards.

(2) If a gas company operates pipeline facilities and/or transports gas which are in part subject to the jurisdiction of this Commission and in part subject to the Department of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968, it may request in writing to the Commission that all of its pipeline facilities and transportation of gas be subject to the exclusive jurisdiction of the Department of Transportation. If the gas company files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with the Commission's safety rules and regulations.

(f) Retroactivity. Nothing in these rules and regulations provided shall be applied retroactively to any existing installations insofar as its design, fabrication, installation, or established operating pressure is concerned, except as required by regulations of the Office of Pipeline Safety, Department of Transportation.

(g) Reports and reporting.

(1) Reporting of accident, leaks, or incidents.

(A) At the earliest practical moment following discovery, each gas company shall notify the Pipeline Safety Section by telephone of any event that involves a release of gas from its pipeline(s) which:

- (i) Caused a death or any personal injury requiring hospitalization; or
- (ii) Required taking any segment of a transmission line out of service; or
- (iii) Resulted in gas igniting; or
- (iv) Caused estimated damage to the property of the operator, or others, or both (including gas loss), totaling \$5,000 or more; or
- (v) Could reasonably be judged as significant because of location, rerouting of traffic, evacuation of building(s), media interest, etc., even though it does not meet clauses (i), (ii), (iii), or (iv), of this subparagraph..

(B) A telephonic report is not required of a leak or incident which meets only subparagraph (A)(ii) of this paragraph, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(C) The telephonic notice required by this paragraph shall be made to the Pipeline Safety Section at (512) 447-2171, and shall include the following:

- (i) Company/operator name;

- (ii) Location of leak or incident;
- (iii) Time of accident/incident;
- (iv) Fatalities and/or personal injuries;
- (v) Phone number of operator; and
- (vi) Other significant facts relevant to the accident or incident.

(D) Except as provided in subparagraph (E) of this paragraph, each gas company shall report, in writing, a summary of each accident or incident, under subparagraph (A) of this paragraph which involved property damage (including cost of gas lost) of the gas company or others or both, of \$5,000 or more. The report shall be submitted to the Pipeline Safety Section as soon as practicable, but not more than 30 days after detection, on forms supplied by the Department of Transportation. This report is to be submitted in duplicate. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(E) The accident or incident report required by subparagraph (D) of this paragraph need not be submitted with respect to master meter systems.

(F) Notwithstanding the exceptions in subparagraphs (D) and (E) of this paragraph, the Commission may require that a written report be submitted for any accident or incident.

(2) Pipeline Safety Annual Reports.

(A) Except as provided in subparagraph (B) of this paragraph, each gas company shall submit an annual report for its system(s) in the same manner as required by 49 C.F.R. Part 191. The report shall be submitted to the Pipeline Safety Section in duplicate on forms supplied by the Department of Transportation, not later than March 15, for the preceding calendar year. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(B) The annual report required by subparagraph (A) of this paragraph need not be submitted with respect to (i) petroleum gas systems which serve less than 100 customers from a single source or (ii) master meter systems.

(h) **Records.** From the effective date of these sections, each gas company operating gas facilities subject to the safety jurisdiction of this Commission shall comply with the provisions of the minimum safety standards as amended, with respect to records required. Each gas company shall maintain records as the Commission may require which are adequate to show compliance or noncompliance with such rules. All such records shall be kept open and readily available to the Commission and/or its representatives at reasonable times.

(i) **Inspection and maintenance plans.** Each gas company operating a gas facility subject to the safety jurisdiction of this Commission shall file with the Commission a plan for inspection and maintenance of its facilities. If the Commission finds the plan is inadequate to achieve safe operation, it shall require the plan to be revised. Thereafter, any and all changes in such plan of inspection and maintenance shall be filed with the Commission 20 days before it becomes effective.

(j) Enforcement.

(1) The Pipeline Safety Section shall have responsibility for the enforcement of the provisions of these sections. To this end, it shall formulate a plan or program for periodic evaluation of the books, records, and facilities of gas companies operating in Texas on a sampling basis, in order to satisfy the Commission that gas companies are in compliance with the provisions of such rules.

(2) In the matter of the enforcement of the provisions of these sections, each gas company operating in Texas, and its officers and employees, shall make readily available any of its files, records, other documents, the plant, property, and facilities to the Commission or its representatives, in the administration and enforcement of these sections.

(3) Each gas company shall provide to the Commission or its representatives such reports, supplemental data, and information as the Commission shall from time to time reasonably require, in the administration and enforcement of these sections.

(k) Revisions of the minimum safety standards. Amendments, changes, and revisions of 49 C.F.R. Part 192, known as the minimum safety standards, shall be effective as a rule or regulation of this Commission unless specifically rejected by the Commission.

(l) Supplemental regulations. The following provisions supplement the regulations appearing in 49 C.F.R. Part 192, adopted under subsection (a) of this section.

(1) Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.

(2) Section 192.455(b) is supplemented by the following language after the first sentence: Tests, investigation, or experience must be backed by documented proof to substantiate results and determinations.

(3) Section 192.457 is supplemented:

(A) by the following language in subsection (b)(3): (3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating corrosion and leak results and determinations; and

(B) by the following subsection: (d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the effects of the corrosion prior to its becoming a public hazard or endangering public safety.

(4) Section 192.465 is supplemented:

(A) by the following language after the first sentence of subsection (a): Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings;

(B) by the following language in subsection (e): (e) After the initial evaluation required by paragraphs (b) and (c) of section 192.455 and paragraph (b) of

section 192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations; and

(C) by the following subsection: (f) When leak detection surveys are used to determine areas of active corrosion, the survey frequency must be increased to monitor the corrosion rate and control the condition. The detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use.

(5) Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material.

(6) Section 192.479 is supplemented by the following subsection: (c) "Atmospheric corrosion" means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, which produces a deterioration of the material.

§7.71. ODORIZATION EQUIPMENT, ODORIZATION OF NATURAL GAS AND ODORANT CONCENTRATION TESTS.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Gas company*—Means and includes every person, firm, corporation, or government entity, including but not limited to a municipal corporation, gas utility as defined in *Texas Civil Statutes* article 6050, *et seq.*; and gas utility as defined in *Texas Civil Statutes* article 1446e, §1.03(3), engaged in the activity of:

(A) Handling, storing, selling, or distributing for direct use by the ultimate consumer, gas for private or commercial uses;

(B) Supplying gas by pipelines, or otherwise, for direct consumption in any public building or buildings, or by the general public; or

(C) Operating a transmission line under the circumstances described in Title 49 CFR Part 192.625 (b), and amendments thereto.

(2) *Farm tap odorizer*—A wick-type odorizer serving a consumer or consumers from any pipeline other than that classified as distribution as defined in 49 C.F.R. Part 192.3, which uses not more than 10 Mcf on an average day in any month.

(3) *All other applicable definitions are found in §7.70(b) of this title (relating to Pipeline Safety).*

(b) Odorization of gas.

(1) Every gas company shall continuously odorize gas by the use of a malodorant agent in accordance with the requirements set out in this section unless the gas contains a natural malodor or is odorized in accordance with these requirements prior to delivery by a supplier, as described in this section.

(2) Except to the extent required by Title 49 Code of Federal Regulations, Part 192.625(b), odorization is not required for gas in:

(A) underground or other storage;

(B) gas used or sold primarily for use in natural gasoline extraction plants, recycling plants, chemical plants, carbon black plants, industrial plants, irrigation pumps; or

(C) gas used in lease and field operation or development or in repressuring wells.

(3) If gas is delivered for use primarily in one of the above-exempted activities or facilities and is also used in one of those activities for space heating, refrigeration, water heating, cooking, and other domestic uses, or if such gas is used for furnishing heat or air conditioning for office or living quarters, such latter gas shall be odorized in accordance with these rules by the user.

(c) General.

(1) The rules In Re: Odorization of Natural Gas or Liquefied Petroleum Gases, and Specifications for Design, Construction, and Operation of Containers for Transporting, Storing, or Dispensing Liquefied Petroleum Gases, Texas Railroad Commission, Gas Utilities Division Docket No. 122 (July 27, 1937), Rules 5, 6, and 7, and In Re: Odorization of Natural Gas, Texas Railroad Commission, Gas Utilities Docket No. 183 (July 28, 1958), and all amendments thereto are hereby repealed as of the effective date of this section.

(2) All reports and certificates filings under this section shall be subject to the penalties provided in the *Natural Resources Code*, §91.143 (two to five years in the penitentiary and \$10,000 fine or both).

(d) Odorization equipment. All gas companies shall utilize odorization equipment approved by the Commission as follows:

(1) Commercial manufacturers of equipment used for introducing malodorant required in this section may submit plans and specifications of such equipment to the Pipeline Safety Section with Form PS-25, for approval of standardized models and designs if the equipment is of a type commercially manufactured under accepted rules and practices of the industry. Commission approved odorization equipment will be placed on a list of acceptable commercially available equipment. Gas companies may install and use this equipment without further approval from the Commission.

(2) All gas companies shall, before the installation of shop-made or other odorization equipment not approved according to paragraph (1) of this subsection, submit to the Pipeline Safety Section plans and specifications with the odorization equipment approval Form PS-25 describing the equipment to be used for introducing the malodorant required by this section. The Commission shall indicate its approval or disapproval of such plans by written notification.

(3) Any odorization equipment previously approved for use need not be reapproved under the terms of the section.

(e) Malodorants. The Pipeline Safety Section shall maintain and promulgate a list of approved malodorants which shall meet the following criteria:

(1) The malodorant, when blended with gas in the amount specified for adequate odorization of such gas shall not be deleterious to humans or to the materials present in a gas system, and shall not be soluble in water to a greater extent than 2½ parts, by weight, of malodorant to 100 parts by weight, of water.

(2) The products of combustion from the malodorant shall be nontoxic to humans breathing air containing the products of combustion, and the products of combustion shall not be corrosive or harmful to the material to which such products of combustion would ordinarily come in contact.

(3) The malodorant agent introduced into the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas, shall have a distinctive malodor so that when gas is present in air at a concentration of one percent or less by volume, the malodor is readily detectable by a person with a normal sense of smell.

(4) Injection of approved malodorant or the natural malodor must be at rates sufficient to achieve the requirement of paragraph (3) of this subsection.

(f) Malodorant injection reports.

(1) Each gas company shall record, as frequently as necessary to maintain adequate odorization, but not less than once each quarter, the following malodorant information for all odorization equipment, except farm tap odorizers. The required information shall be recorded and retained in the company's files:

- (A) Odorizer location;
- (B) Brand name and model of odorizer;
- (C) Name of malodorant, concentrate, or dilute;
- (D) Quantity of malodorant at beginning of month/quarter;
- (E) Amount added during month/quarter;
- (F) Quantity at end of month/quarter;
- (G) MMcf of gas purchased during month/quarter; and
- (H) Injection rate per MMcf.

(2) Farm tap odorizers shall be checked, tested, and serviced at least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Pipeline Safety Section. Each company shall maintain records to reflect the date of service and maintenance on file for at least two (2) years.

(g) Malodorant tests and reports.

(1) The following concentration tests, conducted in accordance with the requirements and procedures heretofore promulgated by the Commission, shall be conducted by every gas company of the gas supplied through its facilities and required to be odorized. Other tests conducted in accordance with procedures approved by the Pipeline Safety Section may be substituted for the following room and malodorant concentration test meter methods. Test points shall be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests shall be performed at least once each calendar year, or at such other times as

the Pipeline Safety Staff may reasonably require. The results of these tests shall be recorded on the approved odorant concentration test Form PS-6 or equivalent and retained in each company's files for at least two (2) years.

(A) Room test—test results recorded on Form PS-6 or equivalent shall contain the following:

- (i) Odorizer name and location;
- (ii) Date test performed, test time, location of test, and distance from odorizer, if applicable;
- (iii) Percent gas in air when malodor is readily detectable; and
- (iv) Signature of witnesses and supervisor.

(B) Malodorant concentration test meter—Test results recorded on Form PS-6 or equivalent shall contain the following:

- (i) Odorizer name and location;
- (ii) Malodorant concentration meter make, model, and serial number;
- (iii) Date test performed, test time, odorizer tested and distance from odorizer, if applicable;
- (iv) Test results indicating percent gas in air when malodor is readily detectable; and
- (v) Signature of person performing the test.

(2) Farm tap odorizers shall be exempt from the odorization testing requirements of paragraph (1) of this subsection.

(3) Gas companies which obtain gas into which malodorant previously has been injected or gas which is considered to have a natural malodor and therefore do not odorize the gas themselves shall be required to conduct quarterly malodorant concentration tests and retain records for a period of two (2) years.

§7.72. WRITTEN PROCEDURE FOR REPORTING NATURAL GAS LEAK COMPLAINTS.

Each distribution company shall have written procedures which shall include as a minimum the following:

- (a) Provision for receiving leak complaints and/or reports on a 24-hour, seven day per week basis.
- (b) Provision requiring written record of all calls received and actions taken.
- (c) Provision requiring supervisory personnel to review calls received and actions taken to insure no hazardous conditions exist at the close of the work day.
- (d) Provision for training and equipping personnel used in the investigation of leak complaints and/or reports.
- (e) Provision for locating source of leak and determining degree of hazard involved.
- (f) Chain of command for service personnel to follow if assistance is required in determining degree of hazard.

(g) Instructions to be issued by service personnel to the customer and/or the public as necessary after leak is located and degree of hazard determined.

§7.80. HAZARDOUS LIQUIDS PIPELINE SAFETY — DEFINITIONS.

The following words and terms, when used in §§7.80-7.87 of this title (relating to Substantive Rules), shall have the following meanings, unless the context clearly indicates otherwise. In addition to the following defined terms, definitions given in 49 C.F.R. Part 195, including any amendments thereto, are hereby adopted as definitions for purposes of this section.

(a) *Commission*—The Railroad Commission of Texas.

(b) *Hazardous liquid*—Petroleum or any petroleum product, and any substance or material which is in liquid state, excluding liquefied natural gas, when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities.

(c) *Intrastate pipeline facilities*—Pipeline facilities located within the State of Texas which are not used for the transportation of hazardous liquids in interstate or foreign commerce.

(d) *Operator*—A person who owns or operates on his own behalf, or is an agent designated by the owner to operate, intrastate pipeline facilities.

(e) *Person*—Any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, including any trustee, receiver, assignee, or personal representative thereof.

(f) *Pipeline facilities*—New and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids.

(g) *Pipeline Safety Section*—The Pipeline Safety Section of the Gas Utilities Division, Railroad Commission of Texas.

(h) *Transportation of hazardous liquids*—The movement of hazardous liquids by pipeline, or their storage incidental to movement, except that it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

§7.81. SAFETY REGULATIONS ADOPTED.

The Commission adopts by specific reference the provisions (except as modified herein or hereafter) established by the United States Secretary of Transportation under the Pipeline Safety Act of 1979 (Public Law 96-129), and set forth in 49 C.F.R. Part 195. Amendments, changes and revisions of 49 C.F.R. Part 195 shall be effective as a rule of the Commission unless specifically rejected by the Commission. Nothing in this rule shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in individual situations. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

§7.82. JURISDICTION.

The Commission has authority to exercise jurisdiction over the intrastate pipeline transportation of hazardous liquids and over all intrastate pipeline facilities as provided in the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129), and the *Texas Natural Resources Code*, §117.011.

§7.83. RETROACTIVITY.

Nothing in §§7.80-7.87 of this title (relating to Substantive Rules) shall be applied retroactively to existing intrastate pipeline facilities concerning design, fabrication, or installation, but all intrastate pipelines shall be subject to the other safety requirements of these sections.

§7.84. REQUIRED RECORDS AND REPORTING.

(a) **Accident reporting.** In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid is released, if the failure or accident is required to be reported by the Code of Federal Regulations, Title 49, Part 195, or if the failure or accident results in the release of hazardous liquid into any river, lake, or stream in Texas, and is required to be reported pursuant to §3.20(a) and (b) of this title (relating to Notification of Fire, Breaks, Leaks, or Blow-Outs) or §3.66(19) of this title (relating to Pipeline Tariffs), the operator shall report to the Commission as follows:

(1) **Incidents involving crude oil.** In the event of an incident involving crude oil, the operator shall:

(A) Notify, by telephone, the Oil and Gas Division of the Commission at the earliest practicable moment following discovery of the incident; and

(B) Within 30 days of discovery of the incident, submit a completed Form H-8 (available from the Commission) to the Oil and Gas Division of the Commission. In situations specified in the Code of Federal Regulations, Title 49, Part 195, the operator must also file duplicate copies of the required Department of Transportation form with the Pipeline Safety Section.

(2) **Hazardous liquids other than crude oil.** For incidents involving hazardous liquids other than crude oil, the operator shall:

(A) Notify the Pipeline Safety Section of such incident by telephone at the earliest practicable moment following discovery; and

(B) Within 30 days of discovery of the incident, file in duplicate with the Pipeline Safety Section a written report using the appropriate Department of Transportation form (as required by the Code of Federal Regulations, Title 49, Part 195) or a facsimile.

(b) **Annual report.** Each operator shall file with the Commission an annual report listing line sizes and lengths, hazardous liquids being transported, and accident/failure data. The report must be filed with the Commission on or before February 15 following the calendar year reported. An operator need only file additions or changes made to a pipeline system(s) following the first year filing. Reporting forms may be obtained from the Pipeline Safety Section.

(c) **New construction report.** Each operator shall file with the Commission, at least 30

days prior to commencement of construction, the proposed location, path, size and type of pipe to be used, intended use, design pressure, and length of the proposed line.

(d) **Operations and maintenance manual.** Each operator shall prepare a manual outlining normal operating, maintenance and emergency procedures for the facility as required by 49 C.F.R., Part 195, or §7.84(a) of this title (relating to Substantive Rules), and shall file a copy of said manual with the Director of the Pipeline Safety Section for review. Copies of changes or additions to the manual shall be filed for review at least 20 days prior to the date on which they are scheduled to become effective.

(e) **Records.** Each operator shall maintain and have available for inspection the same documents and records required of interstate operators by the Code of Federal Regulations, Title 49, Part 195, and such additional records as the Commission from time to time may require. These documents and records shall be retained for the period established for interstate operators by the Code of Federal Regulations, Title 49, Part 195, or for a period of not less than five years if no such federal requirement has been established. These records shall include, but not be limited to, the following:

(1) Records of all design and installation of new and used pipe including design pressure calculations, pipeline specifications, specified minimum yield strength and wall thickness calculations, each valve, fitting, fabricated branch connection, closure, flange connection, station piping, fabricated assembly, and aboveground breakout tank.

(2) Records of all pipeline construction, procedures, training, and inspection pertaining to welding, nondestructive testing, and cathodic protection.

(3) Records of all hydrostatic testing performed on all pipeline segments, components, and tie-ins.

(4) Records involved in the performance of the procedures outlined in the Operations and Maintenance Procedure Manual.

§7.85. INTRASTATE PIPELINE FACILITY CONSTRUCTION.

Pipelines must be constructed of steel pipe and placed in accordance with the requirements of the Code of Federal Regulations, Title 49, Part 195, except that pipelines other than steel may be granted special exceptions by following the filing procedures outlined in the Code of Federal Regulations, Title 49, Part 195, and submitting them to the Commission for approval.

§7.86. CORROSION CONTROL REQUIREMENTS.

The following requirements are applicable to the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

(1) **Atmospheric corrosion control.** Each aboveground pipeline or portion of pipeline exposed to the atmosphere must be cleaned and coated or jacketed with material suitable for the prevention of atmospheric corrosion. For onshore pipelines, the intervals between inspections shall not exceed five years; for offshore pipelines, re-evaluations are required at least once each calendar year, with intervals not to exceed 15 months.

(2) **Coatings.** All coated pipe used for the transport of hazardous liquids shall be electrically inspected prior to placement, using coating deficiency (holiday) detectors

to check for any faults not observable by visual examination. The holiday detector shall be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested.

(3) **Installation.** Joints, fittings, and tie-ins shall be coated with material(s) compatible with the coating(s) on the pipe.

(4) **Cathodic protection test stations.** Each cathodically protected pipeline must have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations shall include, but are not limited to, pipe casing installations and/or foreign metallic structure crossings. Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected to give representative pipe-to-soil readings. Readings taken at test stations (electrode locations) over or near one or more anodes shall not, by themselves, be considered representative.

(A) All test lead wire attachments and bared test lead wires shall be coated with an electrically insulating material. Where the pipe is coated, the insulation of the test lead wire material should be compatible with the pipe coating and wire insulation.

(B) Cathodic protection systems must meet or exceed the minimum criteria set forth in "Criteria for Cathodic Protection" of the most current edition of the National Association of Corrosion Engineers (NACE) Standard RP-01-69.

(5) **Monitoring and inspection.**

(A) Each cathodic protection rectifier or impressed current power source must be inspected at least six times each calendar year, with intervals not to exceed 2½ months, to ensure that it is operating properly.

(B) Each reverse current switch, diode, and interference bond whose failure would jeopardize structure protection must be checked electrically for proper performance six times each calendar year, with intervals not to exceed 2½ months. Each remaining interference bond must be checked at least once each calendar year, with intervals not to exceed 15 months.

(C) Each operator shall utilize right-of-way inspections to determine areas where interfering currents are suspected. In the course of these inspections, personnel should be alert for electrical or physical conditions which could indicate interference from a neighboring source. Whenever suspected areas are identified, the operator must conduct appropriate electrical tests within six months to determine the extent of interference and take appropriate action.

(6) **Remedial action.** Each operator shall take prompt remedial action to correct any deficiencies observed during monitoring.

§7.87. ENFORCEMENT.

Following reasonable notice, the Pipeline Safety Section may inspect the books and records of each operator at any reasonable time to ensure compliance with the provisions of these Hazardous Liquids Pipeline Safety Rules.

(1) Each operator or its officers, employees or representatives shall make readily available to the authorized representative of the Pipeline Safety Section all files, records and other documents required to be maintained by the Hazardous Liquids

Pipeline Safety Rules and/or the Code of Federal Regulations, Title 49, Part 195, in addition to other documents which reasonably may be required to determine compliance with the provisions of these Hazardous Liquids Pipeline Safety Rules or aid in the investigation of any accident or incident involving hazardous liquids.

(2) The plant, property and facilities of each operator shall be made readily accessible to the authorized representative of the Pipeline Safety Section in the administration and enforcement of these Hazardous Liquids Pipeline Safety Rules as well as the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities.

(3) Each operator shall provide such additional reports, data and/or information as the Commission may from time to time reasonably require in the administration and enforcement of the provisions of these Hazardous Liquids Pipeline Safety Rules or in the investigation of any accident, violation or alleged violation of these Hazardous Liquids Pipeline Safety Rules.

**§7.90. DELEGATION OF AUTHORITY TO GAS UTILITIES DIVISION TO APPROVE
TEMPORARY SALES OF DRILLING RIG FUEL BY LO-VACA
GATHERING COMPANY**

(a) Any application for a drilling rig fuel exception shall state the following facts and be sworn to before a notary or other public official qualified to administer oaths:

- (1) Name of applicant.
- (2) Name and location of drilling site.
- (3) Approximate drilling time.
- (4) Daily gas usage for drilling.
- (5) Locations of all potential sources of fuel.
- (6) Ability to use other fuels such as butane, propane, or diesel.
- (7) Availability of other fuel supplies.
- (8) Description of what facilities will have to be installed to connect to the Lo-Vaca system.

(b) The Director of Gas Utilities, Assistant Rate Director, or Hearings Examiner designated by either of the foregoing, shall have the authority to grant emergency exceptions to the Commission's June 21, 1973, Order, Gas Utilities Docket Number 508, under the following conditions:

- (1) Lo-Vaca Gathering Company will have sufficient natural gas supplies to meet its current customer demand for the period that the applicant seeks to purchase natural gas supplies.
- (2) No exception shall be for more than 120 days.
- (3) All exceptions shall be on an emergency day-to-day basis and subject to interruption on order of the Director of Gas Utilities, Assistant Rate Director, or Hearings Examiner designated by them.
- (4) No other sources of fuel are economically feasible.

(5) All applications for exception must be made under oath and comply with the requirements of subsection (a) of this section.

(c) This delegation of authority shall be effective from May 1, 1976, and until further order of the Commission.

(d) The Director of Gas Utilities, Assistant Rate Director, or Hearings Examiner designated by either of the foregoing, shall have no authority to deny any drilling rig fuel application. If it is the Director's, Assistant Rate Director's, or Hearings Examiner's opinion that any application should be denied, the matter shall be presented to the Commission for consideration.

