

1                                    AN ACT

2    relating to incentives to encourage gas utilities to invest in new  
3    infrastructure.

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

5            SECTION 1. Chapter 104, Utilities Code, is amended by  
6    adding Subchapter G to read as follows:

7            SUBCHAPTER G. INTERIM COST RECOVERY AND RATE ADJUSTMENT

8            Sec. 104.301. INTERIM ADJUSTMENT FOR CHANGES IN INVESTMENT.

9    (a) A gas utility that has filed a rate case under Subchapter C  
10 within the preceding two years may file with the regulatory  
11 authority a tariff or rate schedule that provides for an interim  
12 adjustment in the utility's monthly customer charge or initial  
13 block rate to recover the cost of changes in the investment in  
14 service for gas utility services. The adjustment shall be  
15 allocated among the gas utility's classes of customers in the same  
16 manner as the cost of service was allocated among classes of  
17 customers in the utility's latest effective rates for the area in  
18 which the tariff or rate schedule is implemented. The gas utility  
19 shall file the tariff or rate schedule, or the annual adjustment  
20 under Subsection (c), with the regulatory authority at least 60  
21 days before the proposed implementation date of the tariff, rate  
22 schedule, or annual adjustment. The gas utility shall provide  
23 notice of the tariff, rate schedule, or annual adjustment to  
24 affected customers by bill insert or direct mail not later than the

1 45th day after the date the utility files the tariff, rate schedule,  
2 or annual adjustment with the regulatory authority. During the  
3 60-day period, the regulatory authority may act to suspend the  
4 implementation of the tariff, rate schedule, or annual adjustment.  
5 After the issuance of a final order or decision by a regulatory  
6 authority in a rate case that is filed after the implementation of a  
7 tariff or rate schedule under this section, any change in  
8 investment that has been included in an interim adjustment in  
9 accordance with the tariff or rate schedule under this section  
10 shall no longer be subject to subsequent review for reasonableness  
11 or prudence. Until the issuance of a final order or decision by a  
12 regulatory authority in a rate case that is filed after the  
13 implementation of a tariff or rate schedule under this section, all  
14 amounts collected under the tariff or rate schedule before the  
15 filing of the rate case are subject to refund.

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

25 (c) The interim adjustment shall be recalculated on an  
26 annual basis in accordance with the requirements of Subsection (b).  
27 The gas utility may file a request with the regulatory authority to

1 suspend the operation of the tariff or rate schedule for any year.  
2 The request must be in writing and state the reasons why the  
3 suspension is justified. The regulatory authority may grant the  
4 suspension on a showing by the utility of reasonable justification.

5 (d) A gas utility may only adjust the utility's rates under  
6 the tariff or rate schedule for the return on investment,  
7 depreciation expense, ad valorem taxes, revenue related taxes, and  
8 incremental federal income taxes related to the difference in the  
9 value of the invested capital as determined under Subsection (b).  
10 The return on investment, depreciation, and incremental federal  
11 income tax factors used in the computation must be the same as the  
12 factors reflected in the final order issued by or settlement  
13 agreement approved by the regulatory authority establishing the gas  
14 utility's latest effective rates for the area in which the tariff or  
15 rate schedule is implemented.

16 (e) A gas utility that implements a tariff or rate schedule  
17 under this section shall file with the regulatory authority an  
18 annual report describing the investment projects completed and  
19 placed in service during the preceding calendar year and the  
20 investments retired or abandoned during the preceding calendar  
21 year. The annual report shall also state the cost, need, and  
22 customers benefited by the change in investment.

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

27 (g) If the gas utility is earning a return on invested

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

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

15 (i) This section does not limit the power of a regulatory  
16 authority under Section 104.151.

17 (j) A gas utility implementing a tariff or rate schedule  
18 under this section shall reimburse the railroad commission the  
19 utility's proportionate share of the railroad commission's costs  
20 related to the administration of the interim rate adjustment  
21 mechanism provided by this section.

22 SECTION 2. This Act takes effect September 1, 2003.

David Newkum  
President of the Senate

Jim Coakley  
Speaker of the House

I hereby certify that S.B. No. 1271 passed the Senate on April 25, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 22, 2003, by a viva-voce vote. \_\_\_\_\_

Atsuy Saw  
Secretary of the Senate

I hereby certify that S.B. No. 1271 passed the House, with amendments, on May 16, 2003, by a non-record vote. \_\_\_\_\_

Robert Harey  
Chief Clerk of the House

Approved:

20 JUN '03

Date

Rick Perry  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
9:30 PM O'CLOCK

JUN 20 2003  
Kevin Shea  
Secretary of State