

**TITLE 16. ECONOMIC REGULATION**  
**PART 1. RAILROAD COMMISSION OF TEXAS**  
**CHAPTER 7. GAS SERVICES DIVISION**  
**SUBCHAPTER B. SPECIAL PROCEDURAL**  
**RULES**

§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 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 reported to

the commission otherwise (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 or 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, plans, or records of its immediate area, with such other 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 paragraph (7) of this section, 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 customers that information is available upon request, at no charge to the customer, concerning the items listed in clause (vi)(I) - (XI) of this subparagraph. 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 prohibited by law.

(E) Delayed payment of bills by elderly persons.

(i) Applicability. This subparagraph applies only to:

(I) a utility that assesses late payment charges on residential customers and that suspends service before the 26th day after the date of the bill for which collection action is taken;

(II) utility bills issued on or after August 30, 1993; and

(III) an elderly person, as defined in clause (ii) of this subparagraph, who is a residential customer and who occupies the entire premises for which a delay is requested.

(ii) Definitions.

(I) Elderly person--A person who is 60 years of age or older.

(II) Utility--A gas utility or municipally owned utility, as defined in Texas Utilities Code, §§101.003(7), 101.003(8), and 121.001 - 121.006.

(iii) An elderly person may request that the utility implement the delay for either the most recent utility bill or for the most recent utility bill and each subsequent utility bill.

(iv) On request of an elderly person, a utility shall delay without penalty the payment date of a bill for providing utility services to that person until the 25th day after the date on which the bill is issued.

(v) The utility may require the requesting person to present reasonable proof that the person is 60 years of age or older. (vi) Every utility shall notify its customers of this delayed payment option no less often than yearly. A utility may include this notice with other information provided pursuant to subparagraph (A) of this paragraph.

(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 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 nonutility 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 guarantee was made in writing to the utility as a condition precedent to service; and

(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 5.0% 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 paragraph (2)(D) of this section 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 interferes 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 where required by paragraph (5) of this section;

(iv) without notice where a known dangerous condition exists for as long as the condition exists;

(v) tampering with the utility company'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 or more seriously ill if the 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 20 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 payment of 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 his amounts due the utility or execute a written deferred payment agreement, if offered, and reestablish credit as provided in subparagraph (A) of this paragraph.

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

(i) Each gas utility shall waive any deposit requirement for residential service for an applicant who has been determined to be a victim of family violence as defined in Texas Family Code, §71.004, by a family violence center, by treating medical personnel, by law enforcement agency personnel, or by a designee of the Attorney General in the Crime Victim Services Division of the Office of the Attorney General. This determination shall be

evidenced by the applicant's submission of a certification letter developed by the Texas Council on Family Violence and made available on its web site.

(ii) The required deposit shall not exceed an amount equivalent to one-sixth 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.

(iii) 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.

(iv) 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 on 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 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 thereon.

(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 thereof to the customer. If the customer wishes to obtain the benefits of clause (ii) of this subparagraph, 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: resolution of the dispute or the expiration of the 60-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.

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

(i) Meter equipment records. Each utility must keep a record of all 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 readings--meter unit location. 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 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, 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 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.

*The provisions of this §7.45 adopted to be effective June 26, 1977, 2 TexReg 2371; amended to be effective March 30, 1983, 8 TexReg 887; amended to be effective September 25, 1987, 12 TexReg 3040; amended to be effective September 21, 1998, 23 TexReg 9543; amended to be effective November 10, 2003, 28 TexReg 9826; amended to be effective July 12, 2004, 29 TexReg 6635.*

*§7.110. Communication by Gas Utilities with Members or Employees of the Railroad Commission.*

(a) The Commission shall maintain 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 Services Division or Office of General Counsel. This log shall be available to the public for inspection during regular 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 and address of the person initiating the contact and the gas utility represented, if applicable;

(4) the subject matter of the communication; and

(5) a statement of any action requested by a gas utility or its representative.

(b) The Commission shall maintain copies of all written correspondence between members of the Commission or employees of the Gas Services Division or Office of General Counsel and gas utilities or their representatives. These copies shall be available to the public for inspection during regular office hours.

(c) The form for recording personal contacts and telephone communications is adopted for the purpose of this section.





(12) Discrimination--Any material difference in rates, service, rules and regulations, or conditions of service for transportation services which unreasonably disadvantages or prejudices similarly-situated shippers.

(13) Domestic use--The use of natural gas for cooking, clothes drying, space heating, or water heating.

(14) 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 this section.

(15) Gas-gathering utility--For the purposes of determining which annual report to file, 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.

(16) Gas pipeline--Any gas pipeline under the provisions of Texas Utilities Code, Chapters 121 and 122.

(17) Gas Services Division or Division--The administrative subdivision of the Commission responsible for the regulation of the natural gas utility industry in Texas.

(18) Gas utility (utility)--Any gas utility or utility as defined in Texas Utilities Code, Title 3.

(19) Interim rate adjustment--A tariff or rate schedule that provides for an interim adjustment in a gas utility's monthly customer charge or initial block usage rate, made pursuant to §7.7101 of this title (relating to Interim Rate Adjustments), to recover the cost of changes in the utility's invested capital and related expenses and revenues, for providing gas utility service. An interim rate adjustment can be either an initial tariff or rate schedule or an annual adjustment to an existing interim rate adjustment tariff or rate schedule.

(20) Local distribution company--An entity that operates a retail gas distribution system.

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

(22) 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.

(23) Master meter--A single large volume gas measurement device by which gas is metered and sold to a single purchaser who distributes the gas to one or more additional persons downstream from that meter.

(24) 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.

(25) 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 rentals and receives gas through a submeter.

(26) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of the state.

(27) Person--Has the same meaning as the definition in Texas Utilities Code, §101.003(10).

(28) Preference--Any material difference in rates, service, rules and regulations, conditions of service, or the dissemination or providing of information concerning transportation services which unreasonably advantages or favors similarly-situated shippers.

(29) Rate case--A statement of intent to increase rates filed at the Commission pursuant to Texas Utilities Code, §104.102.

(30) Qualifying offer--An offer to convert all of the residential or commercial customers' gas burning facilities to the lowest cost available alternative energy source, including, at a minimum, a single tank of normal size for the customer's premises filled once with any liquid alternative energy source. At the customer's election, the qualifying offer shall be the cash equivalent of the cost of conversion to the lowest cost available alternative energy source.

(31) Shipper--Any person or corporation for which a transporter is currently providing, has provided, or has pending a written request to provide transportation services.

(32) Similarly-situated shipper--Any shipper that seeks or receives transportation services under the same or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter. In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance of relevant conditions, including, but not limited to, the following:

(A) service requirements;

(B) location of facilities;  
 (C) receipt and delivery points;  
 (D) length of haul;  
 (E) quality of service (firm, interruptible, etc.);  
 (F) quantity;  
 (G) swing requirements;  
 (H) credit worthiness;  
 (I) gas quality;  
 (J) pressure (including inlet or line pressure);  
 (K) duration of service;  
 (L) connect requirements; and  
 (M) conditions and circumstances existing at the time of agreement or negotiation.

(33) Special rates--Residential and commercial rates for a gas utility applicable to natural gas sales and service 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.

(34) 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.

(35) Transportation service--The receipt of a shipper's gas at a point or points on the facilities of a transporter, and redelivery of a shipper's gas by the transporter at another point or points on the facilities of the transporter, including exchange, backhaul, displacement, and other methods of transportation, provided, however, that the term "transportation service" shall not include processing services or the movement of gas to which the transporter has title.

(36) Transporter--Any common purchaser of gas, gas utility, or gas pipeline that provides gas gathering and/or transmission transportation service for a fee.

(37) Unaccounted for gas--Lost and unaccounted for gas less lost gas.

*The provisions of this §7.115 adopted to be effective July 29, 2002, 27 TexReg 6687; amended to be effective December 27, 2004, 29 TexReg 11948.*

*§7.201.Filing of Documents.*

(a) A person intending to initiate a proceeding before the Commission shall file two copies of such pleadings with the Director.

(b) A person filing pleadings or documents other than those initiating a proceeding shall file two copies. In cases in which a legal examiner or SOAH ALJ has not been assigned, the pleadings are to be filed with the Gas Services Division. In those cases in which a legal examiner or SOAH ALJ has been assigned, the pleadings are to be filed with the Office of General Counsel. At the discretion of the hearings examiner, the

person may file these pleadings or documents by facsimile transmission. If a person files a copy of a signed original, the person or the person's authorized representative shall maintain the signed original for examination by the Commission, the examiner, the Director, or any party to the proceedings.

(c) The mailing address of the Gas Services Division and the Office of General Counsel is: Railroad Commission of Texas, P.O. Box 12967, 1701 North Congress Avenue, Austin, Texas 78711-2967. The regular office hours of the Commission are 8:00 a.m. to 5:00 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays and on certain state-observed holidays.

*The provisions of this §7.201 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.205.Contents of Statements of Intent and Petitions for Review of Municipal Action.*

(a) Contents. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), and any necessary additional information required by the Commission to evaluate the filing, 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) 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 §7.501 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 Director on the same date it files its petition for review.

(c) Compliance. The Commission may reject any filing which does not substantially comply with the requirements of this section at the time of filing or a reasonable time therefrom. The Commission shall not consider a statement of intent or petition for review of action by a municipality to be properly filed until all items listed in subsection (a) of this section have been filed with the Director.

*The provisions of this §7.205 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.210.Increasing Residential and Commercial Rates--Statement of Intent.*

(a) Contents. In addition to the information required in §7.205 of this title (relating to Contents of Statements of Intent and Petitions for Review of Municipal Action), the following information shall be included in each statement of intent to increase residential and commercial rates within the original jurisdiction of the Commission:

(1) 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;

(2) a statement as to whether the proposed change will or will not result in a "major change," as that term is defined in Texas Utilities Code, §104.101.

(b) Requirement of additional information for cost of service increases in adjacent municipalities. If the utility proposes a rate for residential and commercial rates within the original jurisdiction of the Commission that is the same rate as the rate in effect in the nearest incorporated area in Texas served by the same utility, and the rate change in the municipality is the result of a cost of service adjustment clause as defined in §7.115(9) of this title (relating to Definitions), the gas utility shall file with the Director, 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 adjustment clause in effect in the adjacent municipality.

*The provisions of this §7.210 adopted to be effective July 29, 2002, 27 TexReg 6687.*

#### §7.220. Environs Rates.

(a) Levels of environs rates.

(1) The environs rates may be the same rates as those 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 order an adjustment where appropriate.

(2) In addition to the definition of environs rates in §7.115(13) of this title (relating to Definitions), environs rates shall include any quality of service rules adopted by the Commission in subchapter D of this chapter (relating to Customer Service and Protection). 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.

(b) Rate increases for environs rates. Rate increases in environs shall be made in accordance with the following procedures.

(1) The gas utility shall file a statement of intent and shall give notice as required under Texas Utilities Code, §104.102, and §7.210 of this title (relating to Increasing Residential and Commercial Rates--Statement of Intent). In addition, when environs rates are to be increased 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 to increase such environs rates shall include (in completed form) the following statement: "This is a Statement of Intent to increase environs rates for the unincorporated areas in the vicinity of \_\_\_\_\_, 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 \_\_\_\_\_." All rate schedules filed with the environs Statement of Intent shall bear the following statement: "Effective on the latter of \_\_\_\_\_ or such other date as new rates become effective in the City of \_\_\_\_\_."

(2) The utility shall give notice of the filing of a statement of intent to increase environs rates as required by §7.235 of this title (relating to Publication and Service of Notice).

(3) Upon request and a showing of good cause by the utility, the environs rates may become effective upon the same date as the rates became effective in the municipality pursuant to Texas Utilities Code, §104.104. Environs rates shall not become effective any earlier than the filing date of the statement of intent to increase rates with the Director. If a utility appeals the rate to the Commission, and the 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 the Commission dismisses that appeal, 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) No later than 60 days from the date of filing an environs statement of intent, the utility shall

furnish a copy to the Commission 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 Utilities Code, §104.103.

(c) Rate changes proposed pursuant to cost of service adjustment clause. The Commission shall review, on a cost of service basis, an increase in an environs rate that the utility proposes pursuant to a cost of service adjustment clause, as defined in §7.115(9) of this title (relating to Definitions). 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 Commission may review the proposed rate increases pursuant to these clauses on an informal basis and will not schedule a formal hearing unless a complaint is received pursuant to subsection (b)(4) of this section or the Commission elects to conduct a formal hearing.

(d) Other rate changes. This section shall not apply to major rate changes or to changes in special rates.

*The provisions of this §7.220 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.225. 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 §7.501 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 Director on the same date it files its statement of intent.

*The provisions of this §7.225 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.230. Contents of Notice.*

(a) Rate setting notice. In all proceedings involving rate setting, the gas utility's 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; and
- (5) any other information required by the Commission.

(b) Environs notice. In addition to the information required in subsection (a) of this section, in all proceedings involving statements of intent to change environs rates, as that term is defined in §7.115(13) of this title (relating to Definitions), the gas utility's notice shall also include:

(1) the date of the filing of the statement of intent;

(2) a statement as to whether or not the proposed rates constitute a "major change";

(3) a statement that the proposed change in rates will not become effective until similar changes have become effective within the nearest incorporated city if the rates are sought to be at the same level as the city rates;

(4) the location where information concerning the proposed change may be obtained; and

(5) a statement that any affected person may file in writing comments or a protest concerning the proposed change in the environs rates with the Docket Services Section of the Hearings Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, at any time within 30 days following the date on which the change would or has become effective.

(c) A gas utility may provide notice by electronic transmission (e-mail) to each directly affected customer, only if:

(1) the affected customer has previously consented in writing that the utility may notify the customer of proposed rate increases by e-mail, and has been informed that this consent may be withdrawn; and

(2) the affected customer has made an e-mail address available to the utility. An e-mail address is considered to be available if it was used for billing purposes by the utility within 60 days of the date the notice of the proposed increase is issued.

(d) In the event that the utility becomes aware that notice by e-mail has failed, the utility must provide notice to the affected customer by mail within 30 days of the date notice of the proposed increase is issued.

(e) If the gas utility gives notice by e-mail under the provisions of Texas Utilities Code, §104.103, the subject heading of the e-mail shall include, in large font, "Notice of Proposed Rate Increase" and such notice shall be printed in type large enough for easy reading and shall be the only information contained in the body of that e-mail.

(f) If the gas utility gives notice by mail under the provisions of Texas Utilities Code, §104.103, such notice shall be printed in type large enough for easy reading and shall be the only information contained on the piece of paper on which it is written. A gas utility may give the notice required under either subsection (a) or (b) of this section by mailing or otherwise delivering the notice with its billing statements.

*The provisions of this §7.230 adopted to be effective July 29, 2002, 27 TexReg 6687; amended to be effective April 14, 2014, 39 TexReg 2846.*

*§7.235.Publication and Service of Notice.*

(a) Rate setting proceedings.

(1) Notice. In all rate proceedings, notice shall be given in the following ways.

(A) The Commission shall publish the notice of hearing in the next Bulletin published after the date of issuance of the notice of hearing.

(B) The gas utility shall give notice in accordance with §1.45 of this title (relating to Notice of Hearing in Nonrulemaking Proceedings) and, when applicable, §1.48 of this title (relating to Service in Protested Contested Cases).

(C) The gas utility shall give notice in all rate proceedings as required under Texas Utilities Code, §104.103.

(D) The Office of General Counsel may also require that a gas utility mail or deliver notice to other affected persons or agencies.

(2) Commission's appellate jurisdiction. In addition to the types of notice required in paragraph (1) of this subsection, a gas utility shall also give notice in rate proceedings involving only the Commission's appellate jurisdiction by serving all parties in the original rate proceeding and the affected municipality with a copy of the petition for review on the same date the utility files the petition for review with the Commission. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the Director to the intervenor within five days from the date the motion to intervene is granted.

(3) City gate rates. In addition to the types of notice required in paragraph (1) of this subsection, a gas utility shall also give notice in rate proceedings involving city gate rates by serving all directly affected customers with a copy of the statement of intent on the same date the gas utility files the statement of intent with the Commission. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the Director to the intervenor within five days from the date the motion to intervene is granted.

(b) Rulemaking proceedings. In rulemaking proceedings, notice shall be given in the following ways.

(1) The Commission shall give notice in accordance with §1.42 of this title (relating to Notice of Rulemaking Proceedings).

(2) The Office of General Counsel shall mail notice to all persons who have made timely written requests of the Commission for advance notice of its rulemaking proceedings.

(3) The Commission shall publish the notice of hearing in the next Bulletin published after the date of issuance of the notice of hearing.

(4) The Office of General Counsel may require the applicant to mail or deliver notice to other affected persons or agencies.

(c) Proceedings other than rate setting or rulemaking proceedings. In proceedings other than rate setting or rulemaking, notice shall be given in the following ways.

(1) The Commission shall publish the notice of hearing in the next Bulletin published after the date of issuance of the notice of hearing.

(2) The Office of General Counsel may require the applicant to mail or deliver notice to other affected persons or agencies.

*The provisions of this §7.235 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.240.Statement of Intent to Participate.* If the Office of General Counsel receives a letter or other communication from an affected person concerning a statement of intent filed pursuant to Texas Utilities Code, §104.105, the Office of General Counsel shall, within a reasonable time thereafter, forward to such affected person a form for filing a complaint and statement of intent to participate. The affected person shall complete the complaint and statement of intent to participate form and shall include the complainant's name, address, the utility and the rate increase that is the subject of the complaint, how the affected person will be impacted by the proposed rate increase, and a statement that the complainant or an authorized representative shall appear and participate through the presentation of evidence and arguments if a hearing is held to consider the rate increase. The affected person shall properly complete and return the complaint and statement of intent to participate form to the Office of General Counsel within 14 days after the mailing by the Office of General Counsel, or the Commission shall not consider it to be a properly filed complaint pursuant to Texas Utilities Code, §104.105. If the initial complaint is received before the deadline in Texas Utilities Code, §104.105, and the complaint and statement of intent to participate form is received after that date but in a timely manner pursuant to this rule, the form shall be deemed to be filed as of the date of the filing of the original complaint.

*The provisions of this §7.240 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.245.Effective Date of Orders.*

(a) In rate proceedings under the Commission's original jurisdiction, rates set by the Commission are prospective only and are observed from the date of the applicable Commission order.

(b) In municipal rate appeals, the Commission shall enter a final order establishing rates the Commission determines the municipality should have set in the ordinance to which the appeal applies. Rates set by the Commission are prospective only and are observed from the date of the applicable Commission order, except as specifically provided under Texas Utilities Code, 103.056. If the Commission fails to enter a final order within 185 days after the date the appeal is perfected, the rates proposed by the gas utility are considered to be approved by the Commission and take effect on the expiration of the 185-day period.

*The provisions of this §7.245 adopted to be effective October 2, 2002, 27 TexReg 9150.*

### **SUBCHAPTER C. RECORDS AND REPORTS; TARIFFS; GAS UTILITY TAX**

#### *§7.301. Annual Report.*

(a) Each gas utility, public utility, or utility under the jurisdiction of the Commission shall file with the Commission each year a gathering, transmission, or distribution annual report showing that information required by the Commission to enable it to properly regulate natural gas utilities within the state. The annual report shall be made on a form approved by the Gas Services Division, printed or otherwise made available to all gas utilities by the Division. The annual report shall be made on a calendar year basis with the reports being due not later than April 1 of each calendar year for the preceding calendar year. The annual report shall be filed with the Gas Services Division.

(b) All intrastate gas utilities shall file either a gathering, transmission or distribution annual report with the Gas Services Division of the Commission. Gas gathering utilities, as defined in subsection (c) of this section, shall file the Gathering Annual Report. The Transmission Annual Report shall be filed by those gas utilities that do not meet the definition of a gas gathering utility and are not engaged in the distribution of natural gas to residential and commercial end users. The Distribution Annual Report shall be filed by those gas utilities that are engaged in the retail distribution of gas to end users.

(c) For the purpose of determining which annual report to file, 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.

(d) Any utility under the regulation of the Federal Energy Regulatory Commission (FERC) which alleges 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 this section. The utility shall include an affidavit that the utility makes no intrastate sales and engages in no intrastate transportation and shall provide any other information required by the Division. If, upon examination, the Gas Services Division determines that a utility filing under this section should properly have filed an annual report on the form prescribed by the Division, the Division shall notify the utility in writing and the utility shall file the appropriate report within 30 days.

(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 whether a utility meets the definition of gas gathering utility in subsection (c) of this section, 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.

(h) If a gas utility is unable to meet the deadline for filing an annual report, the utility may request an extension of time to file. The utility shall make such a request in writing filed with the Division, and shall state the reason or reasons the utility cannot meet the filing dead line and the date by which the utility will file the annual report. The Division will notify the utility of the new dead line, as approved.

*The provisions of this §7.301 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.305. Curtailment Program.* All gas utilities within the state shall file curtailment programs with the Commission. Curtailment programs shall comply with the order issued in Gas Utilities Docket Number 489, as that order is hereby incorporated into this section, or the applicable curtailment order by the Commission for a specific gas utility.

*The provisions of this §7.305 adopted to be effective July 29, 2002, 27 TexReg 6687.*

#### *§7.310. System of Accounts.*

(a) Except as provided in this section, each gas utility, as defined in §7.115 of this title (relating to

Definitions), shall utilize the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA) prescribed for Natural Gas Companies subject to the Provisions of the Natural Gas Act (as amended from time to time) (FERC USOA) for all operating and reporting purposes. Gas-gathering utilities, as defined in §7.115 of this title (relating to Definitions), shall not be required to operate under the FERC USOA, but shall be required to report under those accounts for annual report and gas utility tax purposes pursuant to §7.301 of this title (relating to Annual Report) and §7.351 of this title (relating to Gas Utility Tax). The FERC Uniform System of Accounts shall be applicable to all gas utility and gas utility related operations regardless of location, except those gas-gathering utilities as defined in this chapter.

(b) As provided in General Instruction 3.C. of the FERC USOA, a gas utility may use a different system of account numbers than those prescribed by the FERC USOA if the gas utility maintains a readily available cross-reference between its account numbers and the prescribed account numbers. The contents of each account, however, must conform to the account definitions set forth in the USOA.

(c) Any utility currently using the NARUC USOA shall maintain a readily accessible cross-reference system between the NARUC USOA and the FERC USOA for calendar year 2003 reporting purposes. Every gas utility subject to this provision shall transition to the FERC Uniform System of Accounts not later than January 1, 2004. Any gas utility needing additional transition time may request an extension to the January 1, 2004, date by submitting a request in writing stating the reasons why an extension is needed and establishing a date for completion of the transition.

*The provisions of this §7.310 adopted to be effective July 29, 2002, 27 TexReg 6687; amended to be effective January 11, 2004, 29 TexReg 360.*

#### *§7.315.Filing of Tariffs.*

(a) Filing requirements for all tariffs. Each gas utility shall file with the Commission through the Commission's web site using an electronic format as prescribed by the Commission and the instructions contained in the Electronic Data Interchange (EDI) manual on the Commission's web site 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 rate to be charged, the utility shall, in the tariff filing, identify and report all components used in the calculation of the unit rate, including each component of the cost of gas. Each utility providing gas

distribution system service or sales shall file, as part of the rates, copies of all rules and regulations relating to or affecting rates, utility service, products, or commodities furnished by the gas utility. Electronic filing instructions may be obtained from the Commission's web site at [www.rrc.state.tx.us/electronic\\_filing/electronic\\_filing.html](http://www.rrc.state.tx.us/electronic_filing/electronic_filing.html).

(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, the utility shall file revised tariffs containing the minimum requirements as defined in subsections (c) and (d) of this section. If the rate charged is adjusted pursuant to an escalation provision or formula, the utility shall file an amended tariff that shows the current rate charged, including the unit of measure and the effective date. The utility shall file revised tariffs with the Gas Services Division within 30 days of the effective date of the change.

(c) Contents of tariffs. Each tariff filed at the Commission shall contain the following:

- (1) the utility name;
- (2) the full name of the customer or city, area, or environs that will be affected by the tariff. If the utility is requesting confidentiality for customer names, the utility shall report only the customer identification number assigned by the Gas Services Division. If a utility does not already have a customer identification number for a tariff, the utility shall notify the Gas Services Division prior to filing the tariff. The Gas Services Division shall assign a customer identification number or numbers and shall notify the utility of the assigned customer identification number or numbers prior to the utility filing the tariff;
- (3) the utility contract number or rate schedule number;
- (4) a list of the services the utility provides under the tariff. Service includes but is not limited to residential sales, commercial sales, industrial sales, sales to public authority, electric generation sales, gathering, transportation, compression, exchange, underground storage, sales for resale, city gate sales, and other. If the utility identifies the type of service as "other," the utility shall describe the service or services it offers under the tariff;
- (5) the effective date of the rate schedule (GSD-1) or the effective date of the original contract or agreement (GSD-2);
- (6) the effective date of the most recent amendment to the contract, rate schedule, or agreement;
- (7) the current rate. The utility shall state the billing unit (such as Mcf, MMBtu, Cf, etc.); shall list all charges that may apply under the contract or agreement; shall describe all components used in the calculation of the current rate including but not limited to standby

charges, reservation fees, imbalance provisions and charges, penalties, treating provisions, taxes, pooling fees, etc.; and shall state the effective date. A statement on the rate schedule that a particular rate includes certain provisions, without restating all the details or contingencies of the contract, is sufficient. If the rate the utility charges is based on a formula or requires a calculation to determine the unit rate to be charged, the utility shall identify in the tariff all components used in the calculation of the unit rate, including each component of the cost of gas;

(8) all rate adjustment provisions;

(9) the reason or reasons for filing. The utility shall state whether the filing:

(A) commemorates a new contract or agreement;

(B) is made in compliance with a Commission order, in which case the filing shall include the Commission docket number;

(C) is made in compliance with a city ordinance, in which case the filing shall include the city ordinance number or reference;

(D) amends an existing tariff; or

(E) is made for any other reason, in which case the utility shall provide an explanation; and

(10) the names, titles, addresses, telephone numbers and, if available, the electronic mail addresses of all persons who will respond to inquiries regarding tariff provisions.

(d) Additional requirements for specific types of tariffs. In addition to the information required by subsection (a) of this section, the utility shall also provide the following information, as applicable:

(1) For a gas utility distribution system service or sale, the utility shall file on GSD-1:

(A) all rate schedules. The utility shall include on these schedules the base rates and all adjustments to the base rates, including but not limited to late payment charges, gas cost adjustments, purchased gas adjustments, prompt payment provisions, franchise fees, authorized rate case expense surcharges, and weather normalization adjustments. The utility shall file every rate schedule applicable to the service area as part of the tariff, including any seasonal rates or special rates; and

(B) the current service charges in the city, environs, or other area affected by the tariff filing, in sufficient detail to enable customers to determine the applicability of each service charge. The utility shall include all service charges that may be assessed in the city, environs, or other area affected by the tariff filing, including, but not limited to, residential customer deposits, line extension policies and charges, meter testing charges, return check charges, initial connection charges, and reconnection charges.

(2) For transportation and exchange service or rates, the utility shall file on GSD-2:

(A) the customer name or customer identification number assigned by the Gas Services Division for which the utility is delivering gas;

(B) the contractual point or points of redelivery or customer identification number as established by the Gas Services Division;

(C) the information required by paragraph (4) of this subsection, if applicable;

(3) For utility service or sales, other than distribution system service or sales described in subsection (c) of this section, or for transportation and exchange service or rates, the utility shall file on GSD-2:

(A) the term of the contract. The utility shall provide the term specified in the contract. If the contract continues until canceled by either party, the utility may state that the contract is "evergreen" or other similar language as appropriate;

(B) the contractual point or points of redelivery or customer identification number as established by the Gas Services Division; and

(C) the information required by paragraph (4) of this subsection, if applicable.

(4) For a tariff reflecting a transaction described in Texas Utilities Code, §104.003(b), the utility shall:

(A) indicate which facts support the applicability of Texas Utilities Code, §104.003(b), to the transaction;

(B) indicate whether the transaction is between affiliates; and

(C) affirm that a true and correct copy of the tariff has been delivered to the customer simultaneously with delivery to the Commission and that the transaction is not a direct sale for resale to a gas distribution utility at a city gate.

(e) Compliance. Each tariff filing shall be subject to review by the Gas Services Division. If the Gas Services Division takes no action on a tariff filing on or before the 30th day after the filing is filed, the tariff is deemed accepted. If a tariff filing is deficient, the Gas Services Division will notify the utility of the item or items that must be corrected. The utility shall have a reasonable time, not less than 30 days, from the date of the Gas Services Division's notice of deficiency to make the required corrections and re-file the tariff. At the written request of the utility, the Gas Services Division may accept a rejected tariff as a statement of intent under Texas Utilities Code, §104.102. The Gas Services Division may docket a tariff or rate schedule filing on its own motion under Texas Utilities Code, §104.151, in circumstances that include but are not limited to a utility filing a tariff for an initial rate which on its face is not just and reasonable; filing a tariff for



higher environs rates based on city rates without filing a statement of intent to increase rates for the environs; filing a tariff to increase a city gate rate without filing a statement of intent; or filing tariffs containing provisions other than rates that have substantive service rule changes that have not been reviewed.

(f) Electronic format. Each utility shall comply with this section by filing or refiling all current tariffs with the Commission through the Commission's web site using an electronic format as prescribed by the Commission and the instructions contained in the Electronic Data Interchange (EDI) manual on the Commission's web site. Electronic tariffs filed under this subsection shall not contain any substantive changes to currently approved tariffs on file with the Commission.

(1) Utilities providing natural gas service to residential, commercial and industrial customers in a distribution capacity as of the effective date of this section shall file or refile by June 28, 2002.

(2) All other natural gas utilities selling or transporting natural gas as of the effective date of this section shall file or refile according to the following schedule:

(A) Utilities with names beginning with the letters A-M shall submit electronic filings no later than August 30, 2002; and

(B) Utilities with names beginning with the letters N-Z shall submit electronic filings no later than September 30, 2002.

(3) A utility may request a good cause extension of the deadline to which it is subject. The request for extension shall be in writing and shall:

(A) be signed by an officer of the utility company;

(B) include a detailed explanation of the reason for the delay;

(C) include a proposed date by which the utility will have filed all tariffs in electronic format; and

(D) be filed no later than 30 days before the deadline to which the utility is subject.

(4) The Commission may grant an extension as requested; may grant an extension for less time than requested; or may deny a requested extension. If the Commission grants a utility an extension, the Commission may require the utility to file or refile a hard copy of its current tariffs using the tariff forms prescribed by the Commission.

(5) The Commission shall not grant exemptions from the requirement that utilities shall file their tariffs in electronic format. Temporary or technical problems with the Commission's web site or with the Internet that prevent a utility from making a timely electronic filing shall not constitute the utility's failure to comply with this section.

*The provisions of this §7.315 adopted to be effective May 12, 2002, 27 TexReg 3758.*

#### *§7.351. Gas Utility Tax.*

(a) Tax imposed. Every gas utility as described in Texas Utilities Code, §122.001(1), shall report and pay a gas utility tax as required by Texas Utilities Code, Chapter 122. The gas utility tax is imposed on the gross income received from all activity performed by the gas utility in Texas pursuant to Texas Utilities Code, §121.001. The rate of the tax is one-half of 1.0% of the gross income subject to the tax.

(b) Tax payment. Each gas utility subject to this tax shall report and pay the tax imposed to the Commission by February 20, May 20, August 20, and November 20 of a year for the preceding calendar quarter. The gas utility tax report shall be of a form and content as established by the Commission and shall be properly completed. The payment shall be made payable as directed by the Director. The Commission shall consider a gas utility tax report and payment timely filed if it is received by the Gas Services Division on or before the applicable date or is sent to the Division by first-class United States mail in an envelope or wrapper properly addressed and stamped and postmarked before the deadline and received not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(c) Gross income and gross receipts.

(1) Gross income shall be equal to the total gross receipts from any activity described in Texas Utilities Code, §122.001(2), less a deduction of the costs paid to another person for purchasing, treating, or storing natural gas or for gathering or transporting natural gas to the facilities of the gas utility. Treating shall be any process designed to make gas of pipeline quality.

(2) Gross receipts shall be equal to the total revenue received from the sale and/or transportation of gas. Revenue from residential sales, commercial and industrial sales, other sales to public authorities, sales for resale, interdepartmental sales, and revenues from transportation of gas of others (corresponding to Account Numbers 480, 481, 482, 483, 484, and 489 of the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts as they existed on January 16, 1991), as well as any other applicable revenue items determined by the Commission, shall be subject to the gas utility tax. If a gas utility that engages in both transmission and distribution of natural gas makes an allocation of costs to the transmission function which is approved by the Commission, then no additional gas utility tax shall be paid on costs allocated to the distribution function. If no such allocation is made, then such gas utility shall be

required to pay gas utility tax on sales to end-use customers. A properly authorized gate rate shall be deemed to constitute a sufficient allocation of transmission costs.

(d) Nontaxable receipts. The following revenues shall not be included in the computation of gross receipts:

(1) revenues received from first sales of gas by a producer thereof exclusively. If the sale by a producer of gas includes both produced and purchased gas, then the total revenues from the sale of produced gas shall be exempt from the gas utility tax. However, the total revenues from the sale of purchased gas shall be subject to the tax;

(2) revenues received from burnertip sales by a gas utility engaged solely in retail gas distribution;

(3) revenues derived from transporting, delivering, selling, or otherwise making available natural gas for fuel, either directly or indirectly, to irrigation wells or from the sale, transportation, or delivery of natural gas for any other direct use in agricultural activities;

(4) revenues received from interstate transactions or sales of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the provisions of the Natural Gas Act, 15 United State Code §717 et seq., and the Natural Gas Policy Act, 15 United States Code §3301 et seq.; or

(5) revenues received from brokerage or off-system sales.

(e) Deductions. To determine taxable gross income, deductions from gross receipts for certain costs incurred are allowed. Deductions may be used to reduce current tax liability to zero. Current deductions may not be carried forward and deducted from gross receipts in the next quarter. Allowable deductions shall be those costs associated with gas processed by others, natural gas wellhead purchases, natural gas field line purchases, natural gas gasoline plant outlet purchases, natural gas city gate purchases, exchange gas, purchased gas expenses, the transmission and compression of gas by others (corresponding to NARUC Account Numbers 777, 800, 801, 802, 803, 804, 806, 807, 824, and 858 as they existed on January 16, 1991), and any other applicable expenses as determined by the Commission. A deduction shall also be allowed for the cost of labor, materials used and expenses incurred in operating underground storage plant, and other underground storage operating expenses, including research and development expenses. The balances of gas withdrawn from storage (corresponding to NARUC Account Number 808 as it existed on January 16, 1991) (debit), and gas delivered to storage (corresponding to NARUC Account Number 809 as it existed on January 16, 1991) (credit) shall be netted. If the net is a debit balance, that balance shall

also be deducted from the gross receipts. If the net is a credit balance, that balance shall reduce the allowable deductions.

(f) Enforcement and penalties. Each gas utility liable for the gas utility tax shall be subject to the enforcement and penalty provisions set forth in Texas Utilities Code, Chapter 122. A penalty in the amount of 5.0% of the tax due shall be imposed on any person who fails to make a report or pay a tax as required under law. An additional penalty of 5.0% of the tax due shall be imposed on any person who fails to make a report or pay a tax as required before the 30th day after the date the report or tax payment is due. If a person fails to both make the report and pay the tax for a reporting period, only the penalty and additional penalty, as applicable, for failure to make the report is imposed. If the amount of a penalty or additional penalty computed as otherwise provided by this subsection is less than \$5.00, the amount of the penalty or additional penalty is \$5.00. Any gas utility tax delinquent during the period commencing on or after January 1, 1994, shall draw simple interest, at the rate of 12% per year beginning on the 60th day after the date the tax becomes delinquent until the tax is paid. Any gas utility tax delinquent during the period commencing on September 1, 1991, and ending December 31, 1993, shall draw interest at the rate of 12% per year, compounded monthly, beginning on the 60th day after the date the tax became delinquent until December 31, 1993, or until the tax is paid, whichever is first. Any gas utility tax delinquent during any period before September 1, 1991, shall draw interest at the rate of 10% per year, beginning on the 60th day after the date the tax became delinquent until August 31, 1991, or until the tax is paid, whichever is first. The tax is considered paid when received by the Commission in accordance with subsection (b) of this section.

*The provisions of this §7.351 adopted to be effective July 29, 2002, 27 TexReg 6687.*

#### **SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION**

*§7.450. Gas Distribution in Mobile Home Parks, Apartment Houses, and Apartment Units.*

(a) Applicability. This section 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 section. Such ordinance, charter, franchise agreement, or service rule shall be subject to review by the Commission upon written complaint by an owner, operator, manager, or mobile home park resident, or resident of an apartment house or unit, that it does not substantially comply with the provisions of this section.

(b) Delivery of gas. An owner, operator, or manager of a mobile home park, apartment house, or apartment unit may purchase natural gas through a master meter and 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 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 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 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 park resident, or apartment house or apartment unit occupant, plus a submeter fee or surcharge for each bill rendered of 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 shall 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 shall be approved by the Commission.

(d) Recordkeeping. The owner, operator, or manager shall keep adequate records in connection with sales or resales of natural gas to mobile home residents, apartment house, or apartment unit residents. The owner, operator, or manager shall make these records available to the mobile home park, apartment house, or apartment unit during regular 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 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 12 preceding months; and
- (3) all submeter readings and mobile home park residents, apartment house residents, or apartment units residents billings for the current month and the 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 reading 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 computer 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 in this section shall be subject to inspection and audit by the Railroad Commission of Texas or its agents. Violations shall be subject to enforcement pursuant to Texas Utilities Code, Title 3.

*The provisions of this §7.450 adopted to be effective July 29, 2002, 27 TexReg 6687.*

**§7.455. Curtailment Standards.** The following category shall be included as the lowest priority category on all curtailment plans of public utilities subject to the jurisdiction of the Commission: deliveries of natural gas or sales of natural gas to the interstate market under the provisions of the Natural Gas Policy Act, §311(b) and §312, and 18 Code of Federal Regulations §283.200.

(1) No sales pursuant to §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 §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 Code of Federal Regulations §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.

*The provisions of this §7.455 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.460.Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency.*

(a) Applicability and scope. This rule applies to gas utilities, as defined in Texas Utilities Code, §101.003(7) and §121.001, and to owners, operators, and managers of mobile home parks or apartment houses who purchase natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house, pursuant to Texas Utilities Code, §§124.001-124.002, within the jurisdiction of the Railroad Commission pursuant to Texas Utilities Code, §102.001. For purposes of this section, all such gas utilities and owners, operators and managers of master meter systems shall be referred to as "providers." Providers shall comply with the following service standards. A gas distribution utility shall file amended service rules incorporating these standards with the Railroad Commission in the manner prescribed by law.

(b) Disconnection prohibited. Except where there is a known dangerous condition or a use of natural gas service in a manner that is dangerous or unreasonably interferes with service to others, a provider shall not disconnect natural gas service to:

(1) a delinquent residential customer during an extreme weather emergency. An extreme weather emergency means a day when the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Station for the county where the customer takes service.

(2) a delinquent residential customer for a billing period in which the provider receives a written pledge, letter of intent, purchase order, or other written notification from an energy assistance provider that it is forwarding sufficient payment to continue service; or

(3) a delinquent residential customer on a weekend day, unless personnel or agents of the provider are available for the purpose of receiving payment or making collections and reconnecting service.

(c) Payment plans. Providers shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over, and shall work with customers to establish a payment schedule for deferred bills as set forth in paragraph (2)(D) of §7.45 of this title, relating to Quality of Service.

(d) Notice. Beginning in the September or October billing periods utilities and owners, operators, or managers of master metered systems shall give notice as follows:

(1) Each utility shall provide a copy of this rule to the social services agencies that distribute funds from the Low Income Home Energy Assistance Program within the utility's service area.

(2) Each utility shall provide a copy of this rule to any other social service agency of which the provider is aware that provides financial assistance to low income customers in the utility's service area.

(3) Each utility shall provide a copy of this rule to all residential customers of the utility and customers who are owners, operators, or managers of master metered systems.

(4) Owners, operators, or managers of master metered systems shall provide a copy of this rule to all of their customers.

(e) In addition to the minimum standards specified in this section, providers may adopt additional or alternative requirements if the provider files a tariff with the Commission pursuant to §7.44 of this title (relating to Filing of Tariffs). The Commission shall review the tariff to ensure that at least the minimum standards of this section are met.

*The provisions of this §7.460 adopted to be effective May 12, 2002, 27 TexReg 3769.*

*§7.465.Abandonment.*

(a) Service to a local distribution company or city gate customer. A gas utility shall obtain written Commission approval prior to the abandonment or permanent discontinuance of service to any local distribution company or city gate customer that involves the removal or abandonment of facilities other than a meter.

(1) Except in pipeline safety emergencies, the gas utility shall file an application to abandon or permanently discontinue service to a local distribution company or city gate customer with the Director at least 60 days prior to the proposed effective date of the proposed abandonment or permanent discontinuance of service. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(A) the number of affected customers in each class;

(B) the names and addresses of the local distribution company or city gate customer affected;

(C) the specific reasons for the proposed abandonment or permanent discontinuance of service;

(D) a description, age, and condition of the pipeline or plant that the gas utility proposes to abandon or through which it proposes to permanently discontinue service;

(E) the revenue from and cost to continue the existing service to the affected local distribution company or city gate customers;

(F) all reasonable alternative energy sources available to the affected local distribution company or city gate customers, and the cost of such energy sources on an MMBtu equivalent basis;

(G) the cost per customer of each conversion to available alternative energy sources;

(H) any previous notice provided by the utility to the affected local distribution company or city gate customer;

(I) a statement that the application is subject to Commission approval; and

(J) a statement of the affected local distribution company or city gate customer's right to intervene in the application.

(2) The gas utility shall send a copy of the application to the affected local distribution company or the affected city gate customer on the same day that the gas utility files the application to abandon or discontinue service with the Director.

(A) If a person files a statement of intent to participate or motion to intervene with the Commission within 30 days from the date of the filing of the application, and the Commission grants party status, the Commission shall hold a formal hearing within 60 days following the date on which the application is filed.

(B) If the Commission does not receive and grant a timely-filed statement of intent to participate or intervention pleading, then the Director shall act administratively on the application to abandon or permanently discontinue service within 45 days following the date on which the gas utility filed the application and shall notify all affected customers in writing of the decision. If the Director denies the application administratively, the gas utility, within 30 days of the date the Director administratively denies an application to abandon or permanently discontinue service, may request that a formal hearing be held within 60 days following the date on which the Director denies the application.

(3) If upon the granting of the application to abandon or permanently discontinue service the local distribution company would no longer provide service to any residential or commercial customer because of such abandonment, then the local distribution company shall file an application to abandon or permanently discontinue service under subsection (b) of this section.

(4) The Director shall have the authority to act administratively on abandonment or permanent discontinuance applications that satisfy the conditions of this subsection.

(5) Temporary termination of service due to a pipeline safety emergency shall not be considered to be abandonment or permanent discontinuance of service under the terms of this section. If the gas utility determines not to resume service as a result of a pipeline safety emergency, then the gas utility shall file an application under this section within 30 days of the temporary termination of service.

(6) The gas utility shall have the burden of proof to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. The Commission shall consider the following conditions when making a determination regarding an application for abandonment or permanent discontinuance of service:

(A) whether continued service is no longer economically viable for the gas utility;

(B) whether the potentially abandoned customers have any alternatives, how many, and at what cost;

(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;

(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and

(E) any other considerations affecting the potentially abandoned customers.

(b) Service to residential and commercial customers. A gas utility shall obtain written Commission approval prior to the abandonment or permanent discontinuance of service to any residential or commercial customer that involves the removal or abandonment of facilities other than a meter. This subsection shall not apply to discontinuance of service to residential or commercial customers for any of the reasons set forth in subchapter D of this chapter (relating to Customer Service and Protection).

(1) Except in pipeline safety emergencies, the gas utility shall file an application to abandon or permanently discontinue service with the Director at least 60 days prior to the proposed effective date of the proposed abandonment or permanent discontinuance of service to any residential or commercial customer involving the removal or abandonment of facilities other than a meter. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(A) the number of directly affected customers in each class of service;

(B) the names and addresses of all directly affected customers;

(C) the specific reasons for the proposed abandonment or permanent discontinuance of service;

(D) a description, age, and condition of the pipeline or plant that the gas utility proposes to abandon or through which it proposes to permanently discontinue service;

(E) the revenue from and cost to continue the existing service to the directly affected customers;

(F) all reasonable alternative energy sources available to the directly affected customers, and the cost of such energy sources on an MMBtu equivalent basis;

(G) the cost per customer of each conversion to available alternative energy sources;

(H) the terms of any agreements with, or offers, including qualifying offers, to, directly affected customers by the gas utility for the conversion of customers' appliances to enable the use of alternative energy sources;

(I) copies of any consents to abandonment or permanent discontinuance obtained by the utility from directly affected customers;

(J) any previous notice provided by the utility to the directly affected customer;

(K) a statement that the application is subject to Commission approval; and

(L) a statement of the directly affected customer's right to protest the application and the procedure for filing such a protest.

(2) The gas utility shall send a copy of the application to all directly affected customers on the same day that the gas utility files the application to abandon or permanently discontinue service with the Director.

(A) If any of the directly affected customers files a protest within 30 days following the date on which the application is filed, the Commission shall hold a formal hearing within 60 days following the date on which the application is filed.

(B) If all of the directly affected customers have not consented to the abandonment or permanent discontinuance of service and if the gas utility has not given all of the directly affected customers a qualifying offer, as defined in §7.115(27) of this title (relating to Definitions), but none of the directly affected customers files a protest within 30 days following the date on which the application is filed, the Director shall act administratively on the application within 45 days following the date on which the application is filed and shall notify all directly affected customers in writing of the decision. The Director may seek additional information from the directly affected customers to determine whether they have received adequate information regarding the consequences of the proposed abandonment. If the Director denies the application administratively, the gas utility, within 30 days of the date the Director administratively denies an application to abandon or permanently discontinue service, may request that a formal hearing be held within 60 days following the date on which the Director denies the application.

(C) The Director shall act administratively on the application within 30 days following the date on which the gas utility files the application if either:

(i) all of the directly affected customers consent to the abandonment or permanent discontinuance of service and none of the directly affected customers files a protest within 15 days following the date on which the gas utility files the application; or

(ii) the gas utility has given all of the directly affected customers a qualifying offer, as defined in §7.115(27) of this title (relating to Definitions) and none of the directly affected customers files a protest within 15 days following the date on which the gas utility files the application. If the Director denies the application administratively, the gas utility may request that a formal hearing be held within 60 days following the request for a hearing. The gas utility shall file any request for a formal hearing within 30 days of the date the Director administratively denies an application to abandon or permanently discontinue service.

(3) The Director shall have the authority to act administratively on abandonment or permanent discontinuance applications that satisfy the conditions of this subsection.

(4) Temporary termination of service due to a pipeline safety emergency shall not be considered to be abandonment or permanent discontinuance of service under the terms of this section. If the gas utility determines not to resume service as a result of a pipeline safety emergency, then the gas utility shall file an application under this section within 30 days of the temporary termination of service.

(5) The gas utility shall have the burden of proof to show that the proposed abandonment or permanent discontinuance of service is reasonable and necessary and is not contrary to the public interest. The Commission shall consider the following conditions when making a determination regarding an application for abandonment or permanent discontinuance of service:

(A) whether continued service is no longer economically viable for the gas utility;

(B) whether the potentially abandoned customers have any alternatives, how many, and at what cost;

(C) whether any customer has made investments or capital expenditures in reliance on continued availability of natural gas, where use of an alternative energy source is not viable;

(D) whether the utility has failed to properly maintain the facilities proposed for abandonment, rendering them unsalvageable due to neglect; and

(E) any other considerations affecting the potentially abandoned customers.

*The provisions of this §7.465 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.470. Natural Gas Bill Payment by the State or a State Agency.*

(a) Purpose. The purpose of this section is to implement requirements in Texas Utilities Code, §104.255.

(b) Definitions. The terms "payment," "service," and "state agency," when used in this section, have the meanings given in Texas Government Code, §2251.001. The terms "gas utility" and "municipally owned utility" have the meanings given in Texas Utilities Code, §101.003.

(c) Payment requirements. For natural gas utility service provided by a gas utility or by a municipally owned utility to the state or a state agency, the payer and payee must comply with Texas Government Code, Chapter 2251, and with 34 Texas Administrative Code §§20.221, 20.223, 20.225, 20.227, and 20.229 (relating to Definitions; Exceptions to Prompt Payment Process; Invoicing Standards; Payments; and Disputed Payments). In addition, the following provisions apply to gas utilities and municipally owned utilities:

(1) Gas utilities and municipally owned utilities are prohibited from billing the state or a state agency for a service before the service is provided.

(2) A gas utility or a municipally owned utility may enter into an agreement with the state or a state agency to establish a level or average monthly billing plan only if the billing plan includes a provision for quarterly reconciliation of the leveled or averaged bills.

*The provisions of this §7.470 adopted to be effective October 4, 2010, 35 TexReg 8903.*

*§7.475. Municipality Contact Information for Notice of Disconnection for Non-Payment for Non-submetered Master Metered Multifamily Properties.*

(a) A municipality entitled to receive notice of service disconnections for non-payment for non-submetered master metered multifamily properties pursuant to Texas Utilities Code, §104.352, may provide the Commission with the contact information of the municipality's authorized representative designated to receive such notice.

(b) A municipality shall provide its authorized representative's contact information by mail to Director, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, or through any other method as indicated on the Commission's website.

(c) The Commission shall make the municipalities' contact information available to the public.

*The provisions of this §7.475 adopted to be effective April 14, 2014, 39 TexReg 2846.*

## **SUBCHAPTER E. RATES AND RATE-SETTING PROCEDURES**

*§7.501. 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, in addition to any other matters required or permitted to be presented, evidence on the following:

(1) 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;

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

(3) 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 United States Code §46(e)(1);

(4) 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;

(5) 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; and

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

*The provisions of this §7.501 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.503. Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities.*

(a) In any proceeding before the Commission involving a gas utility that keeps its books and records in accordance with Commission rules, the amounts shown on its books and records as well as summaries and excerpts therefrom shall be considered prima facie evidence of the amount of investment or expense reflected when introduced into evidence, and such amounts shall be presumed to have been reasonably and

necessarily incurred; provided, however, that if any evidence is introduced that an investment or expense item has been unreasonably incurred, then the presumption as to that specific investment or expense item shall no longer exist and the gas utility shall have the burden of introducing probative evidence that the challenged item has been reasonably and necessarily incurred. The gas utility shall be given a reasonable opportunity to prepare and present such additional evidence relevant to the reasonableness or necessity of any item so challenged. This section shall apply to the books and records of an affiliate of a gas utility engaged in a transaction with the gas utility as described in the Texas Utilities Code, §102.104.

(b) Nothing in this section shall prevent the examiner or any commissioner from requiring the gas utility to provide additional information to support any specific record, fact, or argument at any time, whether or not such was put in issue at the hearing.

*The provisions of this §7.503 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5212. Construction Work in Progress.*

(a) 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 inclusion.

(b) 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.

*The provisions of this §7.5212 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5213. Allowance for Funds Used During Construction.* A utility may be permitted, subject to any revenue adjustment required, to include AFC related to a project in its rate base in rate proceedings after completion of the project. If, pursuant to this section, 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.

*The provisions of this §7.5213 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5252. 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.

*The provisions of this §7.5252 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5414. Advertising, Contributions, and Donations.*

(a) Actual expenditures for advertising shall be allowed as a cost of service for ratemaking purposes provided that the total sum of such expenditures shall not exceed one-half of 1.0% of the gross receipts of the utility for utility services rendered in the public except as provided in this section.

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

(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; or

(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 I 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; or

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

*The provisions of this §7.5414 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5519. Gas Cost Recovery.*

(a) Each gas utility subject to the original jurisdiction or which becomes subject to the appellate jurisdiction of the Commission may 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 Commission in determining whether or not to grant a gas utility a purchased gas adjustment clause as well as the percentage thereof shall include but not be limited to:

(1) the ability of the gas utility to control prices for gas purchased as affected by competition and relative competitive advantage;

(2) the probability of continued frequent price changes; and

(3) the availability of alternate gas supply sources.

(b) This section shall be applied prospectively only to rate cases filed and only after notice and hearing pursuant to the Texas Utilities Code, Title 3. The gas utility shall have the burden of proof regarding the necessity, if any, of a purchased gas adjustment clause and any amount of adjustment. This section shall not impair the rights of existing contract gas customers in any manner 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.

*The provisions of this §7.5519 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5525. Lost and Unaccounted for Gas.*

(a) All lost and unaccounted for gas shall be 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.

(b) 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 5.0% of the amount metered in, and the maximum allowable for a transmission system is 3.0% of the amount metered in, except as provided in subsection (c) of this section.

(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 are available.

(c) The Commission may allow a greater percentage of lost gas than that specified in subsection (b) of this section 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.

(d) 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 rate setting orders.

*The provisions of this §7.5525 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.5530. Allowable Rate Case Expenses.*

(a) In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to:

(1) the amount of work done;

(2) the time and labor required to accomplish the work;

(3) the nature, extent, and difficulty of the work done;

(4) the originality of the work;

(5) the charges by others for work of the same or similar nature; and

(6) any other factors taken into account in setting the amount of the compensation.

(b) In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall 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.

*The provisions of this §7.5530 adopted to be effective July 29, 2002, 27 TexReg 6687.*

## **SUBCHAPTER F. PIPELINE APPEAL OF CITY ASSESSMENT OF ANNUAL CHARGE**

### **§7.6001. General Provisions.**

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

(1) City--The city or the municipality that assessed an annual charge pursuant to Texas Natural Resources Code, §117.102(b)(1), or Texas Utilities Code, §121.2025(b)(1).

(2) Director--The director of the Gas Services Division or the director's delegate.

(3) Pipeline--An owner or an operator of a hazardous liquid, carbon dioxide, or natural gas pipeline facility that is located in a public right-of-way in the city.

(4) Public right-of-way in the city--Public roads, highways, streets, alleys, streams, canals, or other public ways located within a city and maintained by the city.

(5) Regulating a pipeline facility--Administering, supervising, inspecting, and otherwise regulating the location of a pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(b) This subchapter implements the authority of the Commission to hear an appeal from a pipeline that has been assessed an annual charge pursuant to Texas Natural Resources Code, §117.102(b)(1), or Texas Utilities Code, §121.2025(b)(1).

(c) Under Texas Natural Resources Code, §117.102(d), and Texas Utilities Code, §121.2025(d), the Commission has exclusive jurisdiction to determine whether a city's annual charge is authorized under Texas Natural Resources Code, §117.102(b)(1), or Texas Utilities Code, §121.2025(b)(1). Texas Natural Resources Code, §117.102, and Texas Utilities Code, §121.2025, do not affect the validity or enforceability of a contract entered into before September 1, 2005, by a municipality and the owner or operator of a hazardous liquid, carbon dioxide, or gas pipeline, or the enforceability of a charge assessed by a municipality before September 1, 2006, under an ordinance adopted on or before September 1, 2004. Texas Natural Resources Code, §117.102, and Texas Utilities Code, §121.2025, apply to a charge assessed by a municipality

on or after September 1, 2005, under an ordinance adopted after September 1, 2004; and on or after September 1, 2006, under an ordinance regardless of the date of adoption of the ordinance.

(d) The Commission will hear an appeal filed under this subchapter *de novo*. The appeal will be handled by a legal examiner and a technical examiner pursuant to this subchapter; the Commission's rules of Practice and Procedure, 16 Texas Administrative Code Chapter 1; and the Commission's general standards for establishing just and reasonable rates. The examiners may require that the city send notice of an appeal filed under this subchapter to all pipelines that the city identifies as having been assessed an annual charge within one year preceding the filing of the appeal. The examiners may exercise their discretion in deciding whether to permit intervention by another pipeline or to join another pipeline as a necessary party to an appeal.

(e) A pipeline that files or intervenes in an appeal under this subchapter and the city that assessed the charge being appealed shall share the costs incurred by the Commission in connection with the appeal, pursuant to §7.6007 of this title, relating to Procedure for Determining and Sharing of the Commission's Costs.

*The provisions of this §7.6001 adopted to be effective March 15, 2007, 32 TexReg 1275.*

### **§7.6002. Procedure for Filing and Service of an Appeal, Obligation of City to Respond, and Intervention.**

(a) A pipeline shall file an appeal under this subchapter in writing no later than one year after the pipeline receives the invoice for or a similar written notice of the charge being appealed.

(b) The pipeline shall file the appeal with the director, who shall assign a docket number. Thereafter, all documents relating to the appeal shall include the assigned docket number and shall be filed in the Office of General Counsel Docket Services.

(c) The pipeline shall mail or deliver a copy of the appeal to the city attorney, the city secretary, or any other city official authorized to receive service of process in civil proceedings within 5 days of the date the pipeline files the appeal at the Commission.

(d) The city shall have 90 days from the date it receives an appeal to file its response to the appeal, in writing, at the Commission. The city shall simultaneously serve a copy of the response on the pipeline.

(e) The examiners may require the city to mail notice of the appeal to each pipeline identified in the city's response, at the address stated in the response, stating that the pipeline may intervene in the appeal.

(f) Another pipeline with a pipeline facility within public right-of-way in the city may file a motion to intervene in the appeal within 30 days after any notice

of the appeal is mailed to the pipelines pursuant to subsection (e) of this section.

*The provisions of this §7.6002 adopted to be effective March 15, 2007, 32 TexReg 1275.*

*§7.6003. Contents of Appeal.*

(a) The pipeline shall include the name, mailing address, and telephone number, and facsimile transmission number and electronic mail address, if available, of the following entities:

(1) the pipeline and any authorized representative of the pipeline; and

(2) the city attorney, the city secretary, or any other city official authorized to represent the city in an appeal filed under this subchapter.

(b) The pipeline shall describe the charge assessed by the city against the applicable pipeline facilities; state the basis for the pipeline's claim that the charge is not authorized under Texas Natural Resources Code, §117.102(b)(1), or Texas Utilities Code, §121.2025(b)(1); and include all supporting documentation and citations to authority.

(c) The pipeline or its authorized representative shall sign the appeal in ink.

*The provisions of this §7.6003 adopted to be effective March 15, 2007, 32 TexReg 1275.*

*§7.6004. Contents of Response.*

(a) The city shall include the name, mailing address, and telephone number, and facsimile transmission number and electronic mail address, if available, of every pipeline that has been assessed an annual charge under Texas Natural Resources Code, §117.102(b)(1), or Texas Utilities Code, §121.2025(b)(1).

(b) The city shall provide a detailed explanation of its methodology for calculating the annual charge assessed against the applicable pipelines, including but not limited to:

(1) a detailed explanation of and the specific cost elements for regulating the applicable pipeline facilities and all other pipeline facilities located on, along, or across public right-of-way in the city, based on historical costs actually incurred adjusted for known and measurable changes;

(2) a list of every owner or operator of pipeline facilities that are located on, along, or across public right-of-way in the city, the type and distance of each pipeline facility within public right-of-way in the city, and the name, mailing address, and telephone number, and facsimile transmission number and electronic mail address, if any, of each such pipeline and its authorized representative contained in city records;

(3) the total mileage for and charges assessed against all pipeline facilities of each type located on, along, or across public right-of-way in the city; and

(4) for those pipeline facilities that are located on, along, or across public right-of-way in the city but that were not assessed an annual charge, a detailed explanation of the reason for not assessing the annual charge.

*The provisions of this §7.6004 adopted to be effective March 15, 2007, 32 TexReg 1275.*

*§7.6005. Contents of Motion to Intervene.*

(a) A pipeline seeking to intervene in an appeal filed by another pipeline shall include the name, mailing address, and telephone number, and facsimile transmission number and electronic mail address, if available, of the movant pipeline and any authorized representative of the movant pipeline.

(b) A pipeline seeking to intervene shall describe the charge assessed by the city against the movant pipeline facilities; state the basis for the pipeline's claim that the charge is not authorized under Texas Natural Resources Code, §117.102(b)(1), or Texas Utilities Code, §121.2025(b)(1); include all supporting documentation and citations to authority; and state the movant pipeline's justiciable interest in the appeal in which the movant pipeline seeks to intervene.

(c) The movant pipeline or its authorized representative shall sign the motion to intervene in ink.

*The provisions of this §7.6005 adopted to be effective March 15, 2007, 32 TexReg 1275.*

*§7.6006. Standards for Determining an Appeal.*

(a) In an appeal brought under this subchapter, the city has the burden of establishing that every annual charge at issue is authorized by Texas Natural Resources Code, §117.102, or Texas Utilities Code, §121.2025. If the city fails to demonstrate that any annual charge at issue is authorized by Texas Natural Resources Code, §117.102, or Texas Utilities Code, §121.2025, the Commission shall either declare the annual charge invalid in its entirety or shall reduce the annual charge to an amount authorized by Texas Natural Resources Code, §117.102, or Texas Utilities Code, §121.2025.

(b) A city may assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a pipeline facility on, along, or across public right-of-way in the city. This charge may not exceed the cost to the city of regulating the pipeline facility.

(c) In determining whether an annual charge is reasonable, the Commission may consider:

(1) whether the charges assessed by the city against pipeline facilities are commensurate with charges assessed for other uses of public right-of-way in the city, other than by franchised public utilities;

(2) whether the charges assessed by the city are commensurate with charges assessed against pipeline facilities in public right-of-way by other cities in Texas; and

(3) whether total costs of regulating pipeline facilities within the city are fairly allocated among all pipeline facilities, including whether the exclusion of any pipelines from the charges is reasonable.

(d) In determining whether an annual charge exceeds costs of regulating pipeline facilities the Commission may consider:

(1) historical costs attributable to regulating pipeline facilities adjusted for known and measurable changes, including out-of-pocket expenses and an allocable portion of the capital depreciation of specialized equipment and salaries, employee benefits, and reasonable overhead for city officials and employees engaged in and fairly attributable to regulating pipeline facilities;

(2) whether any costs advanced by the city to support the charge are attributable to the costs of activities other than regulating public right-of-way in the city, such as safety regulation, emergency response, or other action that is not required to administer, supervise, inspect, or otherwise regulate the location of a pipeline facility in public right-of-way in the city, whether or not authorized to be performed by the city; and

(3) whether charges assessed against pipeline facilities in the aggregate exceed the city's actual or reasonably expected costs of regulating pipeline facilities in public right-of-way in the city.

*The provisions of this §7.6006 adopted to be effective March 15, 2007, 32 TexReg 1275.*

*§7.6007.Procedure for Determining and Sharing of the Commission's Costs.*

(a) The pipelines and a city that are parties to an appeal under this subchapter shall reimburse the Commission for its costs incurred in connection with the appeal. In each appeal, the city shall pay half of the Commission's costs and each pipeline that files or intervenes in the appeal shall pay an equal share of the half of Commission's costs.

(b) The Commission shall determine its costs as follows:

(1) The director and the Commission's General Counsel shall require employees assigned to an appeal under this subchapter to keep records of time spent on each appeal. These shall be filed with and made part of the record in each appeal docket.

(2) The Commission shall from time to time specify an hourly rate as its costs for each employee hour devoted to appeals under this subchapter. The rate shall be based on the employee's hourly compensation and multiplied by a factor to cover employment benefit

costs and fairly allocable overhead costs (use of copiers, faxes, telephones, computers, hearing room, etc.).

(c) The director shall invoice the pipelines and the city for Commission costs, based on the hours recorded by Commission employees and their hourly rates, together with any out-of-pocket expenses not included in the overhead factor, within 30 days after the disposition of an appeal. The pipelines and the city shall each remit to the Commission the invoiced costs within 30 days after receipt of notice of the total amount or after disposition of any appeal from the invoice, whichever is later.

(d) Any pipeline or the city may contest the amount of the costs invoiced to it by filing with the director a written request for reconsideration within 30 days after the date of the invoice, stating the basis for reconsideration. The director shall forward any recommendation to the Commission with the record, and the Commission will determine to approve or adjust the invoiced costs within 30 days.

*The provisions of this §7.6007 adopted to be effective March 15, 2007, 32 TexReg 1275.*

**SUBCHAPTER G. CODE OF CONDUCT**

*§7.7001.Natural Gas Transportation Standards and Code of Conduct.*

(a) Purpose. The purpose of this section is to specify standards of conduct governing the provision of gas transportation services in order to prevent discrimination prohibited by the Common Purchaser Act, Texas Natural Resources Code, §111.081, et seq.; the Texas Utilities Code, Titles 3 and 4, which if violated, as found by the Commission, may constitute evidence of unlawful discriminatory activity. Any exemptions provided in this rule do not diminish statutory prohibitions against discrimination.

(b) Code of conduct. A transporter that provides transportation services for any shipper (including affiliate shippers) shall:

(1) apply any tariff or contract provision for transportation services which provides for discretion in the application of the provision in a similar manner to similarly-situated shippers;

(2) enforce any tariff or contract provision for transportation services if there is no discretion stated in the tariff or contract in the application of the provision in a similar manner to similarly-situated shippers;

(3) not give any shipper preference in the provision of transportation services over any other similarly-situated shippers;

(4) process requests for transportation services from any shipper in a similar manner and within a similar period of time as it does for any other similarly-situated shipper; and maintain its books of account in

such a fashion that transportation services provided to an affiliate can be identified and segregated.

(c) Exemptions.

(1) The distribution and transportation activities services performed by a local distribution company are exempt from this section.

(2) In the event that an entity transports only its own gas through its own system, as designated by the transporter's current T-4 permit on file with the Commission, then that system is exempt from this section.

(d) Other requirements. Any transporter subject to the provisions of this section shall make available to the Commission its books and records of transportation service for audit purposes. With at least ten working days notice by the Commission, the transporter shall provide the Commission access to records showing rates which the transporter is charging and any other contractual conditions of transportation service. The transporter shall provide the Commission access on a reasonable basis to information contained in the transporter's records regarding any other relevant conditions of transportation service.

*The provisions of this §7.7001 adopted to be effective July 29, 2002, 27 TexReg 6687.*

*§7.7003. Administrative Penalties and Other Remedies for Discrimination.*

(a) This section implements the authority delegated to the Commission by Texas Natural Resources Code, §81.058(a) and (b), as enacted by House Bill 3273, 80th Legislature (2007).

(b) Terms used in this section shall have the same meaning as in §2.1 of this title (relating to Informal Complaint Procedure); §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas); and §7.115 of this title (relating to Definitions).

(c) The Commission, after notice and opportunity for hearing, may impose an administrative penalty against:

(1) a purchaser, transporter, gatherer, shipper, or seller of natural gas; a person described by Texas Natural Resources Code, §81.051(a) or §111.081(a); or any other entity under the jurisdiction of the Commission under the Texas Natural Resources Code that the Commission determines has:

(A) violated §7.7001 of this title (relating to Code of Conduct) or any other Commission rule adopting standards for entities in the natural gas industry prohibiting unlawful discrimination; or

(B) unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller; and

(2) a purchaser, transporter, or gatherer of natural gas if the Commission determines that the

person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the Commission against the person relating to the person's purchase, transportation, or gathering of the gas.

(d) In determining whether an entity has violated §7.7001 of this title or has unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller, the Commission will consider the factors set forth in the definition of "similarly situated shipper" in §7.115 of this title (relating to Definitions). In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance and degree of similarity or difference in relevant conditions between sellers that are material and probative, including, but not limited to, the following:

- (1) service requirements;
- (2) location of facilities;
- (3) receipt and delivery points;
- (4) length of haul;
- (5) quality of service (firm, interruptible, etc.);
- (6) quantity;
- (7) swing requirements;
- (8) credit worthiness;
- (9) gas quality;
- (10) pressure (including inlet or line pressure);
- (11) duration of service;
- (12) connect requirements; and
- (13) conditions and circumstances existing at

the time of agreement or negotiation.

(e) In determining whether an entity has engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the Commission against the person relating to the person's purchase, transportation, or gathering of the gas, the Commission will consider all relevant and material facts.

(f) An administrative penalty imposed under this section may not exceed \$5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(g) If the Commission determines after notice and opportunity for hearing that an entity has engaged in prohibited discrimination for which a penalty may be imposed under this section, the Commission may issue any order necessary and reasonable to prevent the discrimination from continuing, including an order setting rates pursuant to §7.7005 of this title (relating to Authority to Set Rates).

(h) The remedy provided by this section is cumulative of any other remedy the Commission may order.

(i) In all situations, the Commission will apply the relevant statutory and rule provisions to achieve the

intended statutory purposes of preventing or remedying undue discrimination and ensuring that natural gas transportation and gathering services are provided at rates and under terms and conditions that are just and reasonable.

*The provisions of this §7.7003 adopted to be effective April 28, 2008, 33 TexReg 3402.*

**§7.7005. Authority to Set Rates.**

(a) This section implements the authority of the Commission pursuant to Texas Natural Resources Code, §81.061, as enacted by House Bill 3273, 80th Legislature (2007).

(b) Terms used in this section shall have the same meaning as in §2.1 of this title (relating to Informal Complaint Procedure); §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas); and §7.115 of this title (relating to Definitions).

(c) Except for rates established under Texas Utilities Code, Chapter 103, or Texas Utilities Code, Chapter 104, Subchapters C or G, the Commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

(d) On the filing of a complaint by a shipper or seller of natural gas, the Commission may set a transportation or gathering rate in a formal rate proceeding if the Commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. The Commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.

(e) The Commission may use a cost-of-service method or a market-based method in setting a rate pursuant to this section in a formal rate proceeding conducted after notice and an opportunity for hearing in accordance with the Commission's rules of practice and procedure in 16 Texas Administrative Code, Chapter 1 (relating to Practice and Procedure).

(f) In determining whether to use a cost-of-service method or a market-based method to set rates for transportation or gathering service, the Commission will consider all relevant factors in a formal rate proceeding.

*The provisions of this §7.7005 adopted to be effective April 28, 2008, 33 TexReg 3402.*

**SUBCHAPTER H. INTERIM RATE ADJUSTMENTS**

**§7.7101. Interim Rate Adjustments.**

(a) General requirements. Pursuant to Texas Utilities Code, §104.301, a gas utility may file with the Commission an application for an interim rate adjustment, subject to the requirements of this section. The director may reject any filing that, at the time of

filing or within a reasonable time afterward, does not substantially comply with the requirements of this section.

(1) The filing date of the gas utility's most recent rate case in which there is a final order setting rates for the area in which the interim rate adjustment will apply shall be no more than two years prior to the date the gas utility files its initial interim rate adjustment application under this section. The gas utility shall state in its application the gas utilities docket number of the gas utility's most recent rate case.

(2) A gas utility shall file its application for interim rate adjustment with the Commission at least 60 days before the proposed implementation date of the interim rate adjustment.

(3) A gas utility shall complete notice of its application for interim rate adjustment to all affected customers in accordance with subsection (b) of this section no later than the 45th day after the date the gas utility files its application for interim rate adjustment.

(4) An application for interim rate adjustment is complete on the date the gas utility has filed at the Commission all information required by this section.

(5) A gas utility shall not implement its requested interim rate adjustment until the later of:

(A) the 60th day after the filing is complete;

(B) the day after the utility completes notice to customers; or

(C) the day after the last day of a suspension period imposed pursuant to paragraph (6) of this subsection.

(6) During the 60-day period following a gas utility's filing of an application for interim rate adjustment, the director may suspend the implementation of the interim rate adjustment for a period of up to 45 days from the later of:

(A) the 60th day after the gas utility's application is complete;

(B) the proposed implementation date; or

(C) the day after the utility completes notice to customers.

(b) Notice. The utility shall print the notice of its application for an interim rate adjustment in type large enough for easy reading. The notice shall be the only information contained on the piece of paper on which it is written. A gas utility may give the notice required by this section either by separate mailing or by mailing or otherwise delivering the notice with its billing statements. Notice by mail shall be presumed to be complete three days after the date of deposit of the paper upon which it is written, enclosed in a post-paid, properly addressed wrapper, in a post office or official depository under the care of the United States Postal Service. The notice to customers shall include the following information:

(1) a description of the proposed revision of rates and schedules;

(2) the effect the proposed interim rate adjustment is expected to have on the rates applicable to each affected customer class and on an average bill for each affected customer class;

(3) the service area or areas in which the proposed interim rate adjustment would apply;

(4) the date the proposed interim rate adjustment was or will be filed with each other regulatory authority;

(5) the gas utility's address, telephone number, and web site where information concerning the proposed interim rate adjustment may be obtained; and

(6) a statement that any affected person may file written comments or a protest concerning the proposed interim rate adjustment with the Gas Services Division, Market Oversight Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

(c) Contents of application. A gas utility shall submit a signed original and two copies of the following information with the Gas Services Division as the utility's application for interim rate adjustment:

(1) a copy of the notice to customers and an affidavit stating the method of giving notice and the date or dates on which the notice was or will be given;

(2) a tariff or rate schedule or schedules;

(3) an annual project report, as more specifically described in subsection (d) of this section;

(4) an annual earnings monitoring report, as more specifically described in subsection (e) of this section; and

(5) the gas utility's business address, telephone number, and, if applicable, facsimile transmission number and/or e-mail address.

(d) Annual project report. A gas utility seeking to implement an interim rate adjustment shall electronically file with the Commission an annual project report as part of the application.

(1) The annual project report shall be made on a form approved by the Commission and made available via the Commission's website at <http://www.rrc.state.tx.us/divisions/gs/gsforms/index.html>.

(2) The annual project report shall describe by jurisdictional area:

(A) the gas utility investment projects completed and placed in service during the preceding calendar year;

(B) the gas utility investment retired or abandoned during the preceding calendar year; and

(C) the cost of, need for, and customers, by class and location, benefitted by the change(s) in gas utility investment projects.

(3) Similar investment projects, such as service lines or small tools that the gas utility normally accounts for on a group basis, may be reported as a single investment project.

(e) Annual earnings monitoring report. A gas utility seeking to implement an interim rate adjustment shall electronically file with the Commission an annual earnings monitoring report as part of the application.

(1) The annual earnings monitoring report shall be made on a form approved by the Commission and made available via the Commission's website at <http://www.rrc.state.tx.us/divisions/gs/gsforms/index.html>.

(2) The annual earnings monitoring report shall demonstrate the utility's earnings during the preceding calendar year. A gas utility whose annual earnings monitoring report shows that the utility is earning a return on invested capital of more than 75 basis points above the return established by Commission final order setting rates in the utility's most recent rate case for the area in which the interim rate adjustment was implemented shall include with its annual earnings monitoring report a statement of the reasons the rates are not unreasonable or in violation of law.

(f) Methodology for interim rate adjustments. Approval of a gas utility's application for interim rate adjustment is subject to the requirements of this subsection.

(1) The components of the revenue to be recovered through an interim rate adjustment shall be limited to those set forth in this subsection. The revenue to be recovered through an interim rate adjustment shall be incremental to that established in the gas utility's most recent rate case for the area in which the interim rate adjustment is to be implemented, as previously adjusted.

(2) All incremental values for investment, accumulated depreciation, return on investment, depreciation expense, ad valorem taxes, revenue related taxes, and incremental federal income taxes shall be calculated and presented on a full calendar year basis, except as provided in paragraph (3) of this subsection.

(3) The amount by which the gas utility may adjust its rates upward or downward using the interim rate adjustment for each calendar year is based on the difference between the value of the gas utility's invested capital for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year; except for a gas utility's first interim rate adjustment application following a rate case and except for amounts that can be collected by the utility under Texas Utilities Code, §104.112. For the first interim rate adjustment following a rate case, the allowed adjustment shall be based on the difference between the gas utility's invested capital at the end of the rate case

test year and the invested capital at the end of the calendar year following the end of such test year. The value of the gas utility's invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment.

(4) Based on the difference between the values of the investment amounts as determined under paragraphs (2) and (3) of this subsection, a gas utility may adjust its revenue only by the following components:

- (A) return on investment;
- (B) depreciation expense;
- (C) ad valorem taxes;
- (D) revenue related taxes; and
- (E) federal income taxes.

(5) The factors used to calculate the return on investment, depreciation expense, and incremental federal income tax used to compute the revenues to be collected through the interim rate adjustment must be the same as those established or used in the final order setting rates in the gas utility's most recent rate case for the area in which the interim rate adjustment is to be implemented.

(6) The gas utility shall allocate the revenue to be collected through the interim rate adjustment among the gas utility's customer classes in the same manner as the cost of service was allocated among customer classes in the utility's most recent rate case for the area in which the interim rate adjustment is to be implemented.

(7) The gas utility shall design the interim rate adjustment as either a flat rate to be applied to the monthly customer charge or a volumetric rate to be applied to the initial block usage rate. The interim rate adjustment, whether it is applied to the monthly customer charge or the initial block rate, shall be shown on the customers' monthly billing statements as a surcharge.

(g) Procedure for review. The director shall ensure that applications for interim rate adjustments are reviewed for compliance with the requirements of Texas Utilities Code, §104.301; and this section.

(1) The director may:

(A) suspend the implementation date of an interim rate adjustment in accordance with subsection (a) of this section;

(B) request assistance in reviewing applications for interim rate adjustments from other Commission divisions; and

(C) request additional staff to achieve timely review of interim rate adjustment applications.

(2) Upon completion of the review; the director shall prepare a written recommendation, which shall be provided to the applicant gas utility. The director may recommend:

(A) approval of the application for interim rate adjustment;

(B) approval of some elements of the application to allow only those elements of the interim rate adjustment to take effect without further Commission action; or

(C) rejection of the application for interim rate adjustment.

(3) The director's recommendation shall be submitted to the Commission for decision at a scheduled conference.

(4) If the Commission approves an application for interim rate adjustment, the gas utility shall either file the tariff or rate schedule implementing the approved interim rate adjustment or shall, within 30 days of the Commission's action, notify the Commission's Gas Services Division that the tariff or rate schedule initially filed with the application correctly implements the approved interim rate adjustment.

(h) Annual interim rate adjustments. A gas utility shall recalculate its approved interim rate adjustment annually in accordance with the requirements of this section and shall file an application for an annual adjustment no later than 60 days prior to the one-year anniversary of the proposed implementation date of the previous interim rate adjustment application.

(i) Refunds. All amounts collected from customers under an interim rate adjustment tariff or rate schedule are subject to refund. The issues of refund amounts, if any, and whether interest should be included on refunded amounts and, if so, the rate of interest, shall be addressed in the rate case a gas utility files or the Commission initiates after the implementation of an interim rate adjustment and shall be the subjects of specific findings of fact in the Commission's final order setting rates.

(j) Review for reasonableness and prudence. In the rate case a gas utility files or the Commission initiates after the implementation of an interim rate adjustment under this section, any change in investment and related expenses and revenues that have been included in any interim rate adjustment shall be fully subject to review for reasonableness and prudence. Upon issuance of a final order setting rates in this rate case, any change in investment and related expenses and revenues that have been included in any interim rate adjustment shall no longer be subject to review for reasonableness or prudence.

(k) Suspension of interim rate adjustment. A gas utility may file a request to suspend the operation of an interim rate adjustment tariff or rate schedule for any year subject to the following requirements and conditions:

(1) A gas utility's request to suspend operation of an interim rate adjustment tariff or rate schedule



shall be filed no later than the date on which the gas utility's annual adjustment of the interim rate adjustment would have been filed.

(2) A gas utility's request shall be in writing and shall state the reasons the suspension is justified.

(3) The director may grant the suspension, provided that the gas utility has made a showing of reasonable justification. If granted, the suspension shall be effective until the next annual anniversary of the implementation date of the interim rate adjustment.

(4) The utility's next annual filing for interim rate adjustment shall be made in accordance with this section.

(l) Rate case filing. A gas utility that implements an interim rate adjustment under this section and does not file a rate case before the fifth anniversary of the date its initial interim rate adjustment became effective shall file a rate case not later than the 180th day after that anniversary.

(m) Reimbursement. A gas utility that implements an interim rate adjustment under this section shall reimburse the Commission for the utility's proportionate share of the Commission's annual costs related to the administration of the interim rate adjustment mechanism. The Commission shall determine the amount of the reimbursement as follows:

(1) After the Commission has finally acted on a gas utility's application for an interim rate adjustment, the director shall estimate such utility's proportionate share of the Commission's annual costs related to the processing of such applications.

(2) In making the estimate required by paragraph (1) of this subsection, the director shall take into account the number of utilities the Commission reasonably expects to file for interim rate adjustments during the fiscal year, and the costs expected to be incurred in processing such applications.

(3) The utility shall reimburse the Commission for the amount so determined within thirty days after receipt of notice of the amount of the reimbursement.

(4) In the event that the utility wishes to contest the amount of the reimbursement determined by the director, it may file a request to have the Commission determine the appropriate amount. In such event, the utility agrees to pay the amount determined by the Commission within thirty days of the determination.

*The provisions of this §7.7101 adopted to be effective December 27, 2004, 29 TexReg 11948.*

## **SUBCHAPTER I. NATURAL GAS PIPELINE COMPETITION**

### *§7.7201.Natural Gas Pipeline Competition Study Advisory Committee.*

(a) Definitions. The following words and terms, when used in this section, shall have the following

meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Committee--The Natural Gas Pipeline Competition Study Advisory Committee of the Commission.

(b) Establishment; duration. The Natural Gas Pipeline Competition Study Advisory Committee is hereby established. The committee is abolished on December 31, 2006, unless the Commission amends this subsection to establish a different date.

(c) Purpose and tasks. The purpose of the committee is to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate pipeline industry, assess the effect of current statutes and rules on such competition, and develop recommendations for changes to statutes or rules that may be necessary. The committee shall report its advice and recommendations in writing to the Commission no later than July 1, 2006.

(d) Nominations for committee membership. The Commission shall make nominations for membership on the committee. All members of the committee serve at the pleasure of the Commission. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the Commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(e) Reimbursement of members' expenses. The Commission shall not reimburse members for travel or other expenses related to service on the committee.

(f) Committee records. The committee shall maintain and make available to the Commission records of each committee meeting.

*The provisions of this §7.7201 adopted to be effective April 3, 2006, 31 TexReg 2850.*