

CHAPTER 459

H.B. No. 1509

An Act relating to the regulation of certain rates charged or proposed by gas utilities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 5.02, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Rates charged or offered to be charged by a gas utility for pipeline-to-pipeline transactions and to transportation, industrial, and other similar large volume contract customers, but excluding *direct [city gate]* sales-for-resale to gas distribution utilities *at city gates*, are considered to be just and reasonable and otherwise to comply with this section, and shall be approved by the regulatory authority, if:

- (1) neither the gas utility nor the customer had an unfair advantage during the negotiations;
- (2) the rates are substantially the same as rates between the gas utility and two or more of those customers under the same or similar conditions of service; or
- (3) competition does or did exist either with another gas utility, another supplier of natural gas, or with a supplier of an alternative form of energy.

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

SECTION 2. Section 5.08, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

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

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

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

(d) Pending the hearing and decision, the local regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 90 days beyond the date on which the schedule of rates would otherwise go into effect, and the railroad commission may suspend the operation of the schedule for a period not to exceed 150 days beyond the date on which the schedule would otherwise go into effect. If the regulatory authority does not make a final determination concerning any schedule of rates prior to expiration of the period or periods of suspension, the schedule is considered to have been approved by the regulatory authority. This approval is subject to the

authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this subsection. During the suspension by the regulatory authority as provided by this subsection, the rates in force when the suspended schedule was filed continue in force unless the regulatory authority establishes a temporary rate. The regulatory authority shall give preference to the hearing and decision of questions arising under this subsection over all other questions pending before it and shall decide the questions as speedily as possible.

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

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

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 7, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 1509 on May 20, 1985, by the following vote: Yeas 141, Nays 1, 3 present, not voting; passed by the Senate, with amendments, on May 17, 1985, by the following vote: Yeas 30, Nays 0.

Approved: June 11, 1985

Effective: Immediately