

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2532
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to certain estimates, there are dozens of centralized propane systems operating as utilities and providing service to residential customers in Texas who have no access to free-market choices regarding a service provider. The parties note that while the Railroad Commission of Texas has jurisdiction over the licensing of and safety provisions for the propane storage tanks, as well as jurisdiction over the pipeline safety of the main and service lines, such propane systems are essentially unregulated, unlike natural gas and other utilities. The parties point out that there is no governmental entity overseeing the pricing, rate setting, rate increase appeal process, or the services provided by these propane systems. Therefore, the parties further note, a customer has few options for negotiating a contract or directing complaints about rates or service to an appropriate regulatory authority. In addition to those problems, there are reports that some of these systems have had problems ranging from bankruptcy to disruption of service during some of the coldest days of winter. To address these and other problems, C.S.H.B. 2532 seeks to establish standards and requirements for the regulation of the retail sale of propane gas by propane gas distribution system retailers.

C.S.H.B. 2532 amends current law relating to the regulation of propane distribution system retailers and authorizes a fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 3, Utilities Code, by adding Subtitle C, as follows:

SUBTITLE C. PROPANE GAS DISTRIBUTION SYSTEMS

CHAPTER 141. STANDARDS FOR DISTRIBUTION SYSTEM RETAILERS

Sec. 141.001. DEFINITIONS. Defines, in this chapter, “allowable markup,” “allowable spot price,” “commission,” “customer,” “distribution system retailer,” “E.I.A. retail price,” “propane gas,” “propane gas system,” “rate,” and “spot price.”

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

Sec. 141.003. RATE AND FEE CEILINGS. (a) Requires a distribution system retailer, in each billing month, to charge a customer a just and reasonable rate for propane gas provided through a propane gas system to the customer. Provides that, for purposes of this section, a just and reasonable rate charged monthly for propane gas is a rate for propane gas provided through a propane gas system to the customer if it is less than or equal to the allowable spot price plus the allowable markup. Requires that the month with the most days covered by the bill, for a customer's bill that contains days in more

than one month, to be considered the billing month. Requires that the price per gallon be converted to the cubic foot rate by dividing the price per gallon by 36.4.

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

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

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

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

(2) an assessment, surcharge, levy, fee, or other charge imposed by a governmental entity, any one of which begins or is increased on or after January 1, 2013, either directly on a propane gas system or any portion or on a distribution system retailer by virtue of its ownership or operation of a propane gas system; or

(3) a sales tax or franchise fee.

(e) Requires that a fee passed through to a customer under Subsection (d) be passed through without any additional markup and identified as a separate item on a customer's bill.

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

(g) Requires the Railroad Commission of Texas (railroad commission), in the event either or both the E.I.A. retail price or the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon cease to be available, to designate a reasonably similar available substitute index or indices as necessary for purposes of calculation of the rate deemed just and reasonable for purposes of this section. Requires distribution system retailers, until the railroad commission publishes an order designating the substitute index or indices, to charge a rate not to exceed the most recent available allowable markup plus the most recent available Mont Belvieu, TX monthly Propane Spot Price FOB per gallon. Authorizes the distribution system retailer, for the purpose of defining the spot price, if the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon is not available from the United States Energy Information Administration, to identify and use the Mont

Belvieu, TX monthly Propane Spot Price FOB per gallon as reported by an alternative publicly available published source.

Sec. 141.004. DISCONNECTION OF PROPANE GAS SERVICE. (a) Prohibits a distribution system retailer from disconnecting propane gas service to a residential customer on a weekend day or holiday officially observed by the State of Texas unless personnel of the distribution system retailer are available on that day to receive payments and reconnect service.

(b) Prohibits a distribution system retailer from disconnecting propane gas service to a residential customer during an extreme weather emergency, as defined by Section 104.258 (Disconnection of Gas Service). Requires that the distribution system retailer defer collection of the full payment of bills that are due during an extreme weather emergency, as defined by Section 104.258, until after the emergency is over.

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

(b) Requires a distribution system retailer, excluding service interruptions under Section 141.006, to keep complete records of all emergency and scheduled service interruptions lasting more than six hours and affecting more than two customers. Requires that the records describe the cause, date, length, and location of each interruption, the approximate number of customers affected by the interruption, and, in the case of an emergency interruption, the remedy and steps taken to prevent a recurrence, if applicable. Requires the distribution system retailer to submit copies of the service interruption records to the railroad commission quarterly.

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

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

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

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

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

(3) is the result of the distribution system retailer's failure or refusal to replenish the primary propane tank for a reason other than a general local

market disruption, a restriction on wholesale propane supplies, mechanical failure, criminal activity, or an act of God.

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

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

(1) has abandoned operation of its facilities;

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

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

(h) Requires the court to appoint a receiver if an appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest or continuous and adequate service to the customers of the utility.

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

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

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

(l) Authorizes a receiver appointed under this section, notwithstanding Section 64.021 (Qualifications; Residence Requirement), Civil Practice and Remedies Code, to seek railroad commission approval to acquire the distribution system retailer's facilities.

(m) Authorizes the receiver, subject to the approval of the court and after giving notice to all interested parties, to sell or otherwise dispose of all or part of the real or personal property of a propane gas system against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. Provides that the costs include payment of fees to the receiver for the receiver's services; payment of fees to attorneys, accountants, engineers, or any other persons or entities that provide goods or services necessary to the operation of the receivership; and payment of costs incurred ensuring that any property owned or controlled by a distribution system retailer is not used in violation of a final order of the court.

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

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

- (2) an applicant or customer fails to furnish a service or meter location specified for service by the distribution system retailer;
- (3) the existence or repeated creation of an unsafe condition, such as impaired meter access or a leak in the applicant's piping system, may potentially create bodily harm or endanger life or property in the distribution system retailer's opinion;
- (4) an applicant, customer, or service location owner is delinquent in payment for services provided by a distribution system retailer service location owner; or
- (5) a current resident or occupant of the premises to receive service is delinquent in payment for services provided by a distribution system retailer.

(b) Provides that the right to refuse service ends when the cause for the refusal to serve is corrected.

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

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

(b) Requires a distribution system retailer promptly and suitably, on receipt of a written complaint from the railroad commission on behalf of a customer, to investigate and notify the railroad commission and complainant of the results of the investigation. Requires that an initial response be made not later than the third business day after the date the distribution system retailer receives the complaint electronically delivered to a minimum of two electronic addresses designated by the distribution system retailer. Requires a distribution system retailer to send a final and complete response to the railroad commission and complainant not later than the 15th day after the date the complaint was received, unless the railroad commission grants additional time before the expiration of the 15-day period.

(c) Authorizes the railroad commission to impose sanctions on a distribution system retailer if, after an investigation, the railroad commission determines that the distribution system retailer has violated Section 141.003. Authorizes sanctions to include adopting an order requiring a distribution system retailer to refund the amounts of any overcharges to the distribution system retailer's customers; drawing down all or a portion of the financial surety for the purpose of refunding the amounts of any overcharges to the distribution system retailer's customers not refunded before the 61st day after the date the railroad commission orders a refund; or adopting an order setting rates and fees for the distribution system retailer in accordance with Section 141.003.

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

Sec. 141.010. DISCLOSURE TO HOMEOWNERS. (a) Requires a distribution system retailer to record in the real property records of each county in which the distribution system retailer owns or operates a propane gas system a notice of disclosure of the existence of the propane gas system and the service the retailer provides. Requires that the notice include:

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

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

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

(b) Requires a person, if the person proposes to sell or convey real property located in a propane gas system service area owned by a distribution system retailer, to give to the purchaser written notice as prescribed by this subsection. Sets forth the language required to be included on the notice.

(c) Requires each county to accept and record in its real property records a distribution system retailer's service map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. Requires that the recording required by this section be completed not later than the later of January 1, 2014, or the 90th day after the date a distribution system retailer completes construction of a new propane gas system in the county.

SECTION 2. Effective date: September 1, 2013.