

# Improving Rate Regulation of Natural Gas and Electricity

## HB 1148 & HB 1149

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### Findings

- Eliminate original jurisdiction for municipalities in natural gas and electricity rate settings; instead, shift original jurisdiction to the RRC (for natural gas) and the PUC (for electricity).
- Eliminate the mandated reimbursement of legal fees for municipalities in rate cases before the PUC and RRC.

### Overlapping Regulation of Rates

In Texas, municipalities and state regulators have overlapping authority in the rate setting process over investor-owned utilities that sell electricity or natural gas in a monopoly setting. The Public Utility Commission (PUC) and the Texas Railroad Commission (RRC) are the state-level regulatory bodies for electricity and natural gas, respectively. Cities have original jurisdiction concerning rate changes; however, they can surrender this authority to the state regulatory body through decree.

In the case of electricity rates, the utility starts off the rate change process by issuing to the municipality or respective regulatory agent a request to alter the rates for the area. This request, also called a statement of intent, needs to be filed to the “appropriate officer”<sup>1</sup> of both the original jurisdiction (i.e. the main municipality serviced, unless the PUC or RRC acts as original jurisdiction), as well as any other affected municipalities 35 days ahead of the intended date that the rate change is to take effect.<sup>2</sup> After filing the intent statement, the utility must notify the public of the proposed change by publishing notice of the change once a week for four weeks, generally through newspaper advertisements in each affected county.\* In addition, rate change notices must be mailed to each person affected by the change.<sup>3</sup>

If all parties are satisfied with the outcome at the municipal level, the process ends there. However, this rarely if ever happens. In fact, often the rate request simply goes through the motions at the municipal level since cases most

often proceed to the PUC, which may occur when one of the parties is unhappy with the results at the municipal level. The party may appeal the case to the PUC for a further hearing within 30 days of the original jurisdiction’s final decision on the matter.<sup>4</sup> In the case of a utility, they may appeal without any difficulty;<sup>5</sup> for citizens, a threshold (of either 20,000 voters or 10 percent of registered voters, whichever is lower) must be met on a petition to grant appeal.<sup>6</sup> If the Commission accepts the appeal, they have a 185-day period in which to hold hearings and decide whether to uphold the lower body’s decision, reject it and institute the rates requested by the utility, or modify the decision. If a decision is not reached and a final order is not filed within the 185 day mark, the rates requested by the utility go into effect regardless of the decision from the lower advisory body.<sup>7</sup>

For gas utilities, the process is very much the same. The utility must request an increase 35 days before it would take effect. From that point until 30 days after the rate would take effect, affected municipalities can hold hearings and freeze the rates. At any point, the increase can be denied to the company, requiring them to appeal to the RRC. Once there, the new process can take up to 150 days or longer if the RRC chooses to extend their hearings.<sup>8</sup>

Texas may be the only state in the United States in which municipalities still have original jurisdiction over utility companies. Other states have different processes with varying degrees of state regulation. For example, Georgia has a fairly straightforward process for electrical utility

\* An exception is made for rate decreases; in that case, only the mailing is required. The authority holding jurisdiction can also waive requirements in some cases at their discretion.

rate changes. Most rate decisions are suggested by the power companies in a rate case and finalized by the Public Service Commission (PSC). The municipalities are not involved in the process, other than perhaps to send an expert witness for which no compensation is provided by the utility. The PSC still has the power to suspend the implementation of rate changes for up to five months after the change is scheduled take effect, but there is no protracted period of uncertainty for the power company as they argue for the increase in rates necessary to maintain profitability.<sup>9</sup>

### Reimbursement of Legal Costs

An important aspect of all municipal-originating rate cases is that the utilities must reimburse all “reasonable” costs related to the appeal for municipalities.<sup>10</sup> This creates a significant expense for the utilities that is passed on directly to consumers with little to no risk for the municipalities. Furthermore, the appeal to the state bodies requires a *de novo hearing*—that is, the hearing is held as if the other one did not happen—meaning that the data and evidence used in the original case proceeding must be gathered again and the length of the proceeding is increased as the parties must familiarize themselves with the issue at hand.

The costs of the extended process can be quite hefty. In one case, TXU Energy spent over \$10 million on gathering information and making their case at the RRC hearing to raise its rates statewide. Atmos Energy similarly spent \$9.7 million on a different rate case. Both cases took over a year and half to process through the entire cycle. These totals do not include the cost of the original cases since the RRC only hears the

case after it has been heard in every affected area. The exorbitant cost of the cases must then be recouped later on through additional rate increases.

For example, Centerpoint Energy spent a year working to negotiate a temporary rate increase in Houston meant to cover the expenses from a prior rate case.<sup>11</sup> All told, almost 150 cases on the RRC dockets were filed as an “Appeal from City Action” in the last 12 years. In each of these cases, a gas company requested a rate increase and was denied by the city or felt that the process did not give it what it needed, necessitating a costly appeal after already having spent money on the initial case with the city.

The cost of reimbursing the legal fees of both parties in the rate change process to utility companies in Texas is unnecessary and excessive. These costs are also passed on to the consumer in the form of higher utility prices, which ultimately disadvantages the group the system originally aimed to protect. The time period of uncertainty for utility companies is also unreasonable. Other states may allow some interference—such as franchise fees on power cables or allowing cities to speak as consumers—but nowhere else in the nation can a state actively block a rate hike or directly influence the proceedings as much as in Texas. This lag creates additional expenses that can be passed on to consumers.

Additionally, municipalities also receive utility-related payments from consumers in the form of franchise fees. **Table 1** shows the revenue received in Texas’ ten largest cities over the last five years. Consumers during that time have paid

**Table 1: Municipal Franchise Fee Revenue in Texas’ 10 Largest Cities, 2008-2012**

City	2008	2009	2010	2011	2012	Total
Houston	\$183,153,695	\$184,221,688	\$183,858,504	\$184,410,797	\$185,721,595	\$921,366,279
San Antonio	\$28,386,813	\$29,299,815	\$28,976,795	\$28,100,000	\$26,410,000	\$141,173,423
Dallas	\$103,823,134	\$100,074,542	\$90,999,559	\$102,352,196	\$102,954,301	\$500,203,732
Austin	\$32,838,832	\$30,850,800	\$32,513,604	\$30,517,389	\$30,644,000	\$157,364,625
Fort Worth	\$39,715,763	\$38,390,140	\$39,787,303	\$41,381,268	\$41,417,189	\$200,691,663
El Paso	\$40,122,253	\$43,815,255	\$41,285,513	\$43,784,209	\$42,421,228	\$211,428,458
Arlington	\$28,925,283	\$28,293,626	\$30,369,380	\$32,702,318	\$31,664,774	\$151,955,381
Corpus Christi	\$17,272,515	\$16,071,288	\$17,054,727	\$16,970,857	\$17,165,935	\$84,535,322
Plano	\$22,628,847	\$23,586,444	\$21,886,667	\$22,770,635	\$22,794,580	\$113,667,173
Laredo	\$6,478,582	\$6,499,106	\$6,387,908	\$6,707,418	\$6,919,674	\$32,992,688
<b>Total</b>	<b>\$503,345,717</b>	<b>\$501,102,704</b>	<b>\$493,119,960</b>	<b>\$509,697,087</b>	<b>\$508,113,276</b>	<b>\$2,515,378,744</b>

Sources: Budget documents of each of the listed cities and calculations of the author

these cities an average of more than \$500 million a year. The five year total comes to \$2.5 billion.

As already noted, there is little reason today for Texas cities to engage in the rate setting process, either in their own city councils or at the PUC; certainly, there is little—if any—benefit to the residents of the cities who are also consumers of the services offered by the electric and natural gas utilities. If there is any benefit, however, the consumers have already paid for it and the legal bills of the cities many times over through franchise fees.

**Table 2** shows the franchise revenue for the cities only for electricity and natural gas. Houston for instance, generated revenue of about \$121 million from its electric and natural gas franchise fees. Dallas generated about \$63 million. All told, Texas’ ten largest cities generated franchise fee revenue of about \$291 million in 2012 alone. All of this money came from their citizens, who are also being forced to pay for the legal bills of cities in rate cases. The problems with this are highlighted even more when looking at the expenses of these cities for managing the rights of way where the electric and natural gas lines are located.

Companies bear the cost associated with installing and maintaining their facilities within municipal rights of way, including relocating, at their own expense, facilities that are required to be moved for municipal public works projects. The cities’ costs are mostly administrative and minimal, a small fraction of the \$291 million in franchise fees these cities generate each year.

**Table 2: Estimated Municipal Franchise Fee Revenue For Electricity and Natural Gas, 2012\***

City	Electricity	Gas	Total
Houston	\$99,693,604	\$22,009,397	\$121,703,001
Dallas	\$52,465,575	\$10,555,124	\$63,020,699
Austin		\$5,548,000	\$5,548,000
Fort Worth	\$26,542,900	\$7,310,725	\$33,853,625
El Paso	\$16,341,291	\$4,726,227	\$21,067,518
Arlington	\$13,670,088	\$2,552,325	\$16,222,413
Corpus Christi	\$10,072,705		\$10,072,705
Plano	\$12,209,671	\$2,629,673	\$14,839,344
Laredo	\$5,059,449	\$511,486	\$5,570,935
<b>Total</b>	<b>\$236,055,283</b>	<b>\$55,842,957</b>	<b>\$291,898,240</b>

*\*Some cities offer municipal service for electricity or natural gas so do not generate franchise revenue for those services.*

### Conclusion

The antiquated system in Texas may have made sense before Texas create the PUC in the 1970s, but now it only creates an incentive for municipalities to get involved in rate setting even though they have little inherent interest in the process and it does nothing to protect consumers.

Texas should not allow municipalities to have original jurisdiction in the rate change process for natural gas and electric utilities. Neither should consumers be forced to reimburse the legal fees of municipalities. These changes would positively affect utility consumers in Texas and lead to a more streamlined and efficient process. ★

<sup>1</sup> “Utilities Code. Title 2. Public Utility Regulatory Act. Subtitle B. Electric Utilities. Chapter 36. Rates.” Sec. 36.102 (1997).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid., Sec. 36.103 (1997).

<sup>4</sup> Ibid., Sec. 33.053 (1997).

<sup>5</sup> “Utilities Code. Title 2. Public Utility Regulatory Act. Subtitle B. Electric Utilities. Chapter 33. Jurisdiction And Powers Of Municipalities.” Sec. 33.051 (1997).

<sup>6</sup> Ibid., Sec. 33.052 (1997).

<sup>7</sup> Ibid., Sec. 33.054 (1997).

<sup>8</sup> “Utilities Code. Title 3. Gas Regulation. Subtitle A. Gas Utility Regulatory Act. Chapter 104 – Rates And Services.” Subchapter C (1997).

<sup>9</sup> 2010 Georgia Code Title 46 - Public Utilities And Public Transportation Chapter 2 - Public Service Commission Article 2 - Jurisdiction, Powers, And Duties Generally § 46-2-25.

<sup>10</sup> Ibid; “Utilities Code. Title 2. Public Utility Regulatory Act. Subtitle B. Electric Utilities. Chapter 33. Jurisdiction And Powers Of Municipalities.” Sec. 33.122 (1997).

<sup>11</sup> “Gas Utilities Docket 9954.” Railroad Commission of Texas (July 2010).

## About the Author



**Bill Peacock** is the vice president of research and director of the Texas Public Policy Foundation's Center for Economic Freedom. He has been with the Foundation since February 2005. Peacock has extensive experience in Texas government and policy on a variety of issues including, economic and regulatory policy, natural resources, public finance, and public education. His work has focused on identifying and reducing the harmful effects of regulations on the economy, businesses, and consumers.

Prior to joining the Foundation, Peacock served as the Deputy Commissioner for Coastal Resources for Commissioner Jerry Patterson at the Texas General Land Office. Before he worked at the GLO, he was a legislative and media consultant, working with groups like Citizens for a Sound Economy and Putting Children First. Peacock also served as the Deputy Assistant Commissioner for Intergovernmental Affairs for Commissioner Rick Perry at the Texas Department of Agriculture and as a legislative aide to Rep. John Culberson in the Texas House of Representatives.

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