



Private Utility Franchising and Rate Regulation

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Utility Right-of-Way Franchise Agreements

These agreements grant the use of public rights of way (ROW) to a private utility for distribution and sale of natural gas or electricity in the city. The franchise ordinance establishes the obligations and rights of each party.

TYPES OF AGREEMENTS:

- ▶ **Municipal franchise agreements including:**
 - Electric Distribution (Bluebonnet Electric Co-Op, Oncor Electric Delivery, and Pedernales Electric Co-Op)
 - Natural Gas Distribution (Atmos Energy Mid-Texas Division, CenterPoint Energy - South Texas Division, Si Energy and Texas Gas Service)

- ▶ **State-issued certificates of franchise or operating authority:**
 - Certificated Telecommunications Providers (telephone service providers)
 - Cable/Video Services (AT&T, Grande Communications, Charter Communications (dba Spectrum), and Google Fiber)
 - State-wide ROW franchise fee structure

Article XI: Franchises and Public Utilities

City Charter Requirements

- ▶ Council shall have the power by ordinance to grant, renew and extend all franchises of all service providers placing or installing facilities or equipment in, on or over the city rights of way, and with consent of the franchise holder, to amend the same.
- ▶ No franchise shall be transferred by the holder except with approval of Council by ordinance.
- ▶ Every ordinance extending or amending a franchise shall be read at three regular meetings of the council and there must be 30 days between first and third reading. No such ordinance shall become effective until the expiration of 60 days following the date of its final adoption by the council. Subject to referendum procedure under state law.
- ▶ Term of no more than 25 years.
- ▶ Franchises shall include a right for the City to purchase the property of franchise holder at any time within 5 years of the expiration of the term, at a price to be determined according to the method agreed upon in the ordinance.

Article XI: Franchises and Public Utilities City Charter Requirements (cont'd.)

REGULATION OF RATES

- ▶ The council shall have full power after notice and hearing to regulate by ordinance the rates, charges, and fares of every franchise holder operating in the city to the fullest extent allowed by state and federal law.
- ▶ No franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the council until such franchise holder has filed a motion for rehearing with the council specifically setting out each ground of its complaint against the rate, charge or fare fixed by the council, and until the council shall have acted upon such motion.

Electric Distribution Rates

- ▶ Cities have original jurisdiction over rates within their city limits.
- ▶ Public Utility Commission of Texas (PUCT):
 - Original jurisdiction over rates in unincorporated areas.
 - Appellate jurisdiction over rates within the city limits.
 - Maintains current tariffs for all electric utilities.

Natural Gas Distribution Rates

- ▶ Cities have original jurisdiction over gas distribution rates within their city limits.
- ▶ Railroad Commission of Texas (RRC):
 - Original jurisdiction over rates in unincorporated areas.
 - Appellate jurisdiction over rates within the city limits.
 - Statewide responsibility for pipeline safety, including promulgating rules and enforcing safety rules.
 - Maintains current tariffs for all gas distribution utilities.

Note: The City's rates are part of a regional system-wide rate and because of that, the City participates in rate cases with municipal coalitions.

Natural Gas Distribution Utility Ratemaking

Formal Rate Case Proceeding per the Texas Utilities Code – Gas Utility Regulatory Act:

- ▶ Utility must file a written statement of intent to increase rates with the city it serves and publish notice to ratepayers and may not put the increased rates into effect until at least 35 days after filing statement of intent.
- ▶ Upon the filing of a statement of intent, the city may take one of several actions:
 1. The city may take no action at all, in which case the proposed rate increase will automatically take effect after day 35.
 2. The city may suspend the proposed rate increase for an additional 90 days beyond the 35th day (a total of 125 days from the date that the initial rate increase was filed). If, after 90 days from the date that the statement of intent of proposed rate increase was filed, the city has not established final rates, the utility may put into effect a rate less than or equal to the proposed rate. If, by the 125th day from the date the statement of intent was filed, the city has not adopted a rate ordinance setting final rates, then the city is considered to have approved proposed rates by the utility, and they go into effect after the 125th day.

Natural Gas Distribution Utility Ratemaking

3. City may expressly deny any rate increase, in which case the utility may:
 - a) maintain the existing rate schedule;
 - b) appeal to the Railroad Commission the city's rate ordinance denying the requested increase in rates;
 - c) or file with the city a statement of intent proposing a different rate increase.

4. City may expressly grant a lower than requested rate increase, in which case the utility may:
 - a) appeal to the Railroad Commission the city's rate ordinance denying the requested increase in rates and setting rates at a lower level than requested;
 - b) put the new rates into effect (even though they are lower than the utility originally requested), and file with the city a new statement of intent proposing another rate increase;
 - c) or simply put the new rates into effect (even though they are lower than the utility originally requested).

5. City may expressly approve the requested rate increase as filed.

Natural Gas Distribution Utility Ratemaking

Gas Reliability Infrastructure Program (GRIP)

Texas Utilities Code Section 104.301 allows for gas utilities to recover capital investments on calendar year basis. TX Supreme Court determined that municipalities have ministerial review only. It is not a rate case subject to full rate review. Statute allows companies to recover costs through the fixed monthly customer service charge. Statute allows municipalities to suspend effective date for additional time to review compliance of filing.

Natural Gas Energy-Efficiency Programs

- ▶ All natural gas franchisees are required to have energy efficiency program.
- ▶ Managed by the natural gas company.
- ▶ Rate-payer funded programs. Each company has its own unique efficiency or conservation program and associated tariff. Each is operated and managed by the gas utility with changes to program tariffs subject to City staff and Resource Management review.
- ▶ Customer rate increases due to conservation tariff changes are also subject to Council approval.

State-issued Certificates of Franchise or Operating Authority

The City has no role in setting the fees of the providers. Removed by legislative action.

- ▶ **Certificated Telecommunications Providers – Local exchange carriers.**
 - ▶ Chapter 283 of Texas Utilities Code (1993).
 - ▶ ROW compensation and rent changed from % of gross revenues to access line fee methodology.
- ▶ **Cable TV/Video Providers:**
 - ▶ Chapter 66 of the Texas Utilities Code (2005).
 - ▶ ROW compensation and rent at 5% of cable services gross revenues and 1% of gross revenues for public, education, and government access capital equipment.
 - ▶ Existing cable franchises allowed to expire and eliminated ability to negotiate community benefits such as free cable tv drops in facilities, network capacity, discounts, customer service standards.
- ▶ **Small Cell Permitting**
 - ▶ Chapter 284 of Texas Utilities Code (2017)
 - ▶ ROW compensation and rent. Statewide fees and permitting shot clocks.
 - ▶ Litigation.

Recovery of Gas Supply Costs from Winter Storm Uri

- ▶ HB 1520 allows gas utility providers who sustained significant costs to securitize these costs through a financial instrument.
- ▶ In November of 2021, RRC approved regulatory assets for Atmos, CenterPoint, and Texas Gas Service totaling about \$3.6 billion in costs these companies incurred to be securitized and paid through bonds to be issued by the Texas Public Finance Authority.
- ▶ City participated through the Alliance of CenterPoint Municipalities, Atmos Texas Municipalities, and Texas Gas Service Central Gulf Coast Service Area coalition of cities. Cities were able to reduce interest calculations from the original request.
- ▶ Additionally, the City's participation garnered the following commitments from the utilities, which the Railroad Commission endorsed:
 - A. An agreement to seek the best financing term possible consistent with a high bond rating, up to 30 years; and crucially
 - B. An order from the Commission imposing on the utilities an affirmative duty to attempt to recover monies paid out to gas suppliers that perhaps should have been a lower amount.

Recovery of Gas Supply Costs from Winter Storm Uri

HOW WILL THIS IMPACT CUSTOMERS' RATES?

Instead of ratepayers being required to pay the entire \$3.6 billion in a single year (and in some cases over one to nine months), securitization allows ratepayers to pay for these costs over a period of 10-15 years. Securitization produces the lowest monthly surcharge for ratepayers—about \$5.00 per month state-wide - when compared to recovery in a more traditional manner, for example, through existing "purchase gas adjustment" (PGA) tariffs, which produces a surcharge (that is, charges in addition to customer's typical bill) of about \$45.00 - \$50.00 per month).

STATUS: The filing is at the Railroad Commission and Texas Public Financing Authority (TPFA). The Commission and TPFA are working on the Financing Order. Hopefully, that will be approved by mid-February. Then TPFA will need to sell the bonds. We have heard that it will be sometime this summer. Until the bonds are issued, we will not know the monthly amount or effective date for charges to ratepayers.

Questions?