PROPOSED NEW 16 TAC §7.7102 RELATING TO REGULATORY ASSET FOR CERTAIN COSTS ASSOCIATED WITH GROSS PLANT	§ § § §	**BEFORE THE RAILROAD COMMISSION OF TEXAS**

COMMENTS OF SIENERGY GAS, LLC, PINES GAS, INC., AND PINES GAS DEVELOPMENT, INC.

SiEnergy Gas, LLC, Pines Gas, Inc., and Pines Gas Development, Inc. (collectively, the "Utilities") submit these timely filed comments in response to proposed new 16 Tex. Admin. Code ("TAC") § 7.7102, which was approved for publication by the Railroad Commission of Texas ("Commission") on September 30, 2025, and published in the October 17, 2025 issue of the *Texas Register.*[1]

I. PROPOSED RULE AND REQUESTED REVISIONS

Proposed rule § 7.7102 is being adopted to give effect to House Bill ("H.B.") 4384, which amended Subchapter G, Chapter 104 of the Texas Utilities Code (Tex. Util. Code) by adding new Section 104.302, effective June 20, 2025.[2] In enacting § 104.302 of the Tex. Util. Code, the Texas Legislature sought to address the fact that a gas utility historically had to wait more than a year before being permitted to recover the cost of new infrastructure investments through customer rates.[3] The Legislature appreciated that this delay in cost recovery put a financial strain on utilities, and sought to address this issue by authorizing a gas utility to defer certain costs, depreciation, and property taxes for future recovery as a regulatory asset. In this manner, new Tex. Util. Code § 104.302 aims to mitigate regulatory lag, allow gas utilities to more efficiently reinvest in

[1] 42 Tex. Reg. 6735-6930 (Oct. 17, 2025).
[2] Tex. H.B. 4384 § 1, 89th Leg. (Tex. 2025)(enacted).
[3] See C.S.H.B. 4384 Bill Analysis, available at Supplement: TX HB4384 | 2025-2026 | 89th Legislature | Analysis (House Committee Report) | LegiScan

infrastructure improvements, and ensure that the state continues to have a safe and reliable gas distribution system.[4]

A. Revisions required to make clear that the deferred accounting provisions set forth in Tex. Util. Code § 104.302 are not conditioned on the use of the GRIP Statute.

The Utilities commend the Commission for their efforts to timely adopt a rule to give effect to the newly enacted statute. However, as currently written, the proposed rule risks being wrongly interpreted as precluding a gas utility that does not utilize the provisions of Tex. Util. Code § 104.301 (the "GRIP Statute") from establishing a regulatory asset under the provisions of newly enacted Tex. Util. Code § 104.302. Such a reading would clearly be contrary to the intent and plain language of the new statute. It would also be contrary to the intent of the GRIP Statute, which establishes a discretionary, rather than mandatory, rate adjustment mechanism. The discretionary nature of the GRIP Statute is made clear in subsection (a) thereof, which states that "[a] gas utility that has filed a rate case under Subchapter C within the preceding two years **may** file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment...."[5] Conditioning a gas utility's ability to utilize the deferred accounting provisions under Tex. Util. Code § 104.302 on the use of the GRIP mechanism impermissibly changes the optional intent of the GRIP Statute. It would also unfairly penalize gas utilities that seek, as allowed under the GRIP Statute, to suspend the operation of a GRIP adjustment in any given year.[6] Typically, gas utilities that seek to suspend a GRIP adjustment forgo an increase in annual revenues. It makes no logical sense to preclude a utility from using the deferred accounting provisions under Tex. Util. Code § 104.302 on grounds that the utility chose to forgo an increase in customer rates under the GRIP mechanism during any given year.

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[4] *Id.*
[5] Tex. Util. Code § 104.301(a) (Emphasis added).
[6] Tex. Util. Code § 104.301(c).

To prevent the above-described misinterpretation of the new rule and incongruity with the purpose of the GRIP Statute, several revisions to the proposed rule are required to make clear that a gas utility may elect to utilize the deferred accounting provisions under Tex. Util. Code § 104.302, regardless of whether the gas utility files annual interim rate adjustments under the GRIP Statute.

As noted in the preamble of the proposed new rule, Tex. Util. Code § 104.302 authorizes a gas utility to establish a regulatory asset for the future recovery of certain costs related to new capital investment, or gross plant, placed in service. It further requires the Commission to review the costs included in a regulatory asset established by a gas utility under such provisions in a general rate proceeding. Importantly, Tex. Util. Code § 104.302 does not condition a gas utility's ability to utilize the deferred accounting provisions under the statute on a gas utility's use of the GRIP Statute. Rather, Tex. Util. Code § 104.302 simply makes clear that:

1. If a gas utility does utilize the GRIP Statute, the gas utility must include the deferred balance on unrecovered gross plant as part of the GRIP Statute's annual Interim Rate Adjustment ("IRA") filing;

2. If a gas utility does not utilize the GRIP Statute, the deferred accounting balance for unrecovered gross plant will be included in the gas utility's next general rate proceeding; and

3. In any case, whether recovered through an IRA filing or not, all deferred amounts are subject to review by the Commission for reasonableness in a general rate proceeding.

The preamble and language of the proposed rule must be revised to reflect the above-stated facts. Accordingly, the preamble of the proposed rule on page 5, lines 14-17 should be revised as follows:

> Any costs included in a regulatory asset authorized under this section ~~and~~, <u>including those costs</u> recovered through an interim rate adjustment tariff or rate schedule, shall be fully subject to review for reasonableness and prudence by the Commission in the subsequent rate case filed by the gas utility or initiated by the Commission.

Similarly, subsections (b)(2), (b)(3), and (c)(1) of the proposed rule should also be revised:

> (b) Deferral of certain costs associated with gross plant.
> (2) An unrecovered gross plant regulatory asset shall be included in the Commission's interim rate adjustment cost recovery mechanism under §7.7101 of this title, if applicable.
>
> (3) A gas utility that defers for recovery an unrecovered gross plant regulatory asset shall include in its interim rate adjustment filing made pursuant to §7.7101 of this title, if applicable, a workpaper, with formulas intact, on a form approved by the Commission and found in the Gas Services' section of the Commission's website.
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> (c) Review in general rate proceeding.
> (1) Any costs included in a regulatory asset authorized under this section ~~and~~, including those costs recovered through an interim rate adjustment tariff or rate schedule, shall be fully subject to review for reasonableness and prudence by the Commission in the subsequent rate case filed by the gas utility or initiated by the Commission.

B. The rule should make clear that the initial balance to be used by a gas utility for qualifying unrecovered gross plant is the balance recorded on the gas utility's books on or after the effective date of Tex. Util. Code § 104.302.

As currently drafted, the proposed rule does not address the date on which a gas utility may commence the deferral authorized under Tex. Util. Code § 104.302, which took effect on June 20, 2025.[7] The adopted rule should include language to make clear that unrecovered gross plant balances recorded on the gas utility's books on or after June 20, 2025, should be used to establish the amount of the initial deferred balance.

To give effect to this clarification, the Utilities request that the Commission revise 16 TAC § 7.7102(a)(1) as follows:

> (a) Definitions.
> (1) Gross plant--A gas utility's plant, facilities, or equipment that has been placed in service and is used and useful on or after June 20, 2025.

[7] The House and Senate votes are available for viewing at: Texas Legislature Online - 89(R) History for HB 4384.

C. 16 TAC § 7.7102(a)(3), titled "Recovery" should be deleted or further clarified.

As written, the requirements of proposed 16 TAC §7.455(a)(3) are unclear and should be deleted or, at a minimum, further clarified. The proposed rule language is not derived from Tex. Util. Code § 104.302 and it is not clear what the proposed language seeks to achieve. Further, any recovery requirement imposed under the rule should not be tied to the interim rate recovery mechanism under 16 TAC § 7.7101 for the reasons set forth above.

II. CONCLUSION

The Utilities appreciate the opportunity to submit these comments and respectfully requests that the Commission adopt a final version of the proposed rule that reflects the revisions proposed herein to give full effect to the intent of the Legislature in enacting Tex. Util. Code § 104.302, as well as the plain language of the statute.

Respectfully,

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