SUBJECT: Recovery of costs for mandated relocation of a natural gas pipeline

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 7 ayes — R. Lewis, Hawley, Crabb, Merritt, West, Williams, Woolley

0 nays

2 absent — Driver, Wilson

WITNESSES: None

BACKGROUND: Municipal public works projects, such as street and road improvements, sometimes require relocation of natural gas pipelines. The local distribution company (LDC) that owns the pipes is not reimbursed directly by the city or other entity requiring the relocation. Instead, the LDC must file a complete rate case with the appropriate regulatory authority to receive reimbursement. Cities have primary jurisdiction over gas pipelines within city limits, and the Texas Railroad Commission (RRC) has appellate authority.

DIGEST: CSHB 1985 would amend the Utilities Code to enable an LDC to recover, over a one- to three-year period, unreimbursed costs associated with the mandated relocation of a pipeline or other existing facility because of public works projects on behalf of a governmental entity with the power of eminent domain. The LDC would have to file a new rate schedule or tariff with each appropriate regulatory authority and provide documentation supporting the reimbursement. Documentation would have to include:

- the reason for the relocation;
- the entity requiring the relocation;
- the costs of relocating comparable facilities;
- surcharge computations; and
- proof that the LDC made reasonable efforts to receive reimbursement from the entity requiring relocation, if applicable.

The regulatory authority would have to approve or deny the LDC's application within 30 days. Denial could be based only on a finding that the relocation was not necessary, that the costs were excessive or unsupported,

that the LDC did not pursue reimbursement from the entity first, that the surcharge would be unduly discriminatory, or that the recovery period was less than one or more than three years.

CSHB 1985 would take effect September 1, 1999, and apply only to relocation projects begun on or after that date.

SUPPORTERS SAY:

CSHB 1985 would treat gas companies like other utilities that have the ability to pass the costs of forced relocations on to their customers. It would provide a less costly and more equitable means of recovering unreimbursed public-works costs while continuing to allow cities and the RRC adequate regulatory review and oversight. The visibility of surcharges on consumers' bills, even at a few pennies a month, would encourage municipalities to plan infrastructure improvements more carefully so as to avoid costly relocations. Improved coordination among city planners, public-works project contractors, and utilities ultimately would save consumers money.

Increasing renovations in downtown areas are requiring LDCs to move company-owned facilities more often. These forced investments in new pipelines differ from other LDC investments in that they generate no incremental revenue. An LDC earns nothing on the moved pipeline, yet it receives no reimbursement from the city or other entity requiring the move.

Currently, an LDC's only remedy to recover relocation expenses is to conduct a full rate case, an expensive and time-consuming process. Often, the relocation expenses are less than the cost of conducting a rate case, especially if the case must be appealed to the RRC. The most recent LDC rate case heard before the RRC involved legal and consulting expenses of about $1.4 million.

CSHB 1985 would preserve a regulatory authority's ability to protect customers from unfair rates. The authority could reject an LDC's surcharge application if it found that the surcharge would discriminate unduly against customers or that it was based on excessive costs to relocate. The surcharge would apply only to the cost of relocating comparable pipelines, so the utility could not use the provisions of this bill to charge consumers for upgrading its pipelines. The bill would not alter the RRC's authority to hear appeals.

OPPONENTS SAY:

CSHB 1985 would restrict local regulatory authorities' ability to protect small-business and residential customers from increases in their utility rates, especially in areas where there is no competition between utilities. The bill would force a local authority to accept a rate hike unless it could find that the application did not meet a handful of specific criteria. The bill also would give the regulatory authority no flexibility with respect to the amount of the surcharge. A regulatory authority would be forced to accept the company's surcharge computation unless it found that it was "unduly discriminatory" or the result of "excessive" relocation costs. Because the bill defines neither of those terms, it is not clear how a local authority could determine either.

Rates should not be set in a piecemeal manner. CSHB 1985 would allow a utility to increase rates for certain cost increases while ignoring cost decreases that ought to result in lower rates. Only a full rate case allows a regulatory authority to examine the utility's entire costs and revenues and to determine a fair rate for consumers.

OTHER OPPONENTS SAY:

If a city requires an LDC to move a pipeline, the city — not the customers of the utility — should pay for it. Many relocations are the result of poor planning on the part of cities. The proper incentive to improve planning is to make planners pay for incidental costs they create for other entities.

NOTES:

The committee substitute would require an LDC to apply to each appropriate regulatory agency for approval to assess a surcharge, rather than to a single appropriate agency, as in the original bill. The substitute also added language specifying the documentation required for approval and clarifying the reasons for denying an LDC's application.