

**PROPOSED AMENDMENTS TO 16 TAC §
§ 3.70 AND VARIOUS RULES IN
CHAPTER 8 RE: FORM T-4B AND
FEDERAL UPDATES**

**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

**COMMENTS OF ATMOS ENERGY CORPORATION’S MID-TEX DIVISION AND
WEST TEXAS DIVISION TO PROPOSED 16 TAC § 3.70 AND VARIOUS RULES IN
CHAPTER 8, RELATING TO FORM T-4B AND FEDERAL UPDATES**

Atmos Energy Corporation’s Mid-Tex Division and West Texas Division, collectively referred to as “Atmos Energy” or the “Company” for the purpose of these comments, submit these timely filed comments in support of and in response to proposed 16 Texas Administrative Code (“TAC”) § 3.70 and various sections in Chapter 8 approved for publication by the Railroad Commission of Texas (“Commission”) August 15, 2024, and published in the August 30, 2024 issue of the *Texas Register*.

I. OVERVIEW

Atmos Energy is a local gas distribution company (“LDC”) engaged in natural gas sales and transportation to more than 2.1 million customers in approximately 770 communities in addition to the environs in the State of Texas. With regard to the rules that are the subject of this rulemaking, Atmos Energy commends the Commission for the exceptional job it has done to enhance the safe and reliable delivery of natural gas to Texas customers through the adoption and continued enhancement of state pipeline safety rules that go above and beyond federal requirements where appropriate. Atmos Energy appreciates that the primary purpose of the proposed changes is to remove outdated language and update the appropriate effective dates of federal regulations that are incorporated and adopted in the Commission’s rules by reference. Atmos Energy supports this category of changes and additional clean-up that update and clarify the existing rule. In one instance, however, the proposed change characterized as a clarification is actually a substantive change to the rule that would materially alter the framework for the

continued successful implementation of the required Distribution Facilities Replacement program. To aid the Commission in considering the proposed changes, Atmos Energy provides the following comments.

II. COMMENTS ON PROPOSED RULE CHANGES

A. § 3.70 – PIPELINE PERMITS REQUIRED

Atmos Energy believes that the proposed changes to this section effectively remove outdated language, update the language to incorporate changes regarding gathering lines (which is not applicable to Atmos Energy because Atmos Energy owns no gathering lines), and provide for an easy-to-understand process for filing a Form T-4B to transfer ownership of a pipeline when the signature of the prior owner cannot be obtained. Atmos Energy has no suggested edits and supports the changes proposed to Rule § 3.70.

B. § 8.1 – GENERAL APPLICABILITY AND STANDARDS

Atmos Energy interprets the changes to Rule § 8.1(b)(1) to mean that the Commission through this rulemaking is adopting the versions of the referenced federal code sections that are effective as of December 9, 2024. Atmos Energy seeks clarification as to whether this change will incorporate rules that are finalized by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) but that may not yet be effective as of December 9, 2024, which could be the case for the Leak Detection and Repair rulemaking promulgated by PHMSA. Subject to that clarification, Atmos Energy supports the changes to Rule § 8.1.

C. § 8.101 – PIPELINE INTEGRITY ASSESSMENT AND MANAGEMENT PLANS FOR NATURAL GAS AND HAZARDOUS LIQUIDS PIPELINES

Atmos Energy believes that the proposed changes to § 8.101 are in line with federal requirements and are in the public interest. Accordingly, the Company supports these changes.

D. § 8.110 – GATHERING PIPELINES

Since Atmos Energy owns no gathering pipelines, it has no comments on these changes.

E. § 8.115 – NEW CONSTRUCTION COMMENCEMENT REPORT

Since the changes made to Rule § 8.115 on January 6, 2020, Atmos Energy has worked with the Pipeline Safety Division to change its reporting on construction projects. It is Atmos Energy’s understanding that the proposed changes to this section in this rulemaking are an attempt to address any confusion and/or gaps in the language to reflect what the Pipeline Safety Division expects in those reports. For example, the addition of the word “new” in new subsection §8.115(a)(5) clarifies that operators are required to report on *any* construction project between three miles and ten miles in length pursuant to this subsection, whether the project be new, relocated, or replacement construction.

Based on discussions with the Pipeline Safety Division, the intent of new subsection § 8.115(a)(6) is to require reporting on projects less than three miles in length *only* if the project results in a new distribution system ID. To clarify the language further to effectuate this purpose, Atmos Energy proposes the following changes to the proposed language:

(6) ~~[(5)]~~ For the construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than ~~10~~ 3 miles in length ~~in a new subdivision or~~ that results in a new distribution system ID, an operator shall either:

(A) notify the Commission not later than 30 days before constructions by filing a Form PS-48 New Construction Report ~~[Form PS-48]~~ for every initial construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date.

Also, Atmos Energy suggests the following addition to § 8.115(b) to clarify the process for requesting extensions of time:

(b) Any of the notifications required by subsection (a) of this section, unless an operator elects to use the alternative notification allowed by subsection (a)(4) of this section, shall be made by filing with the Commission Form PS-48 stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. If a notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. A Form PS-48 that has been filed with the Commission shall expire if construction is not commenced within eight months of date the report is filed. An operator may submit one extension, which will keep the report active for an additional six months. Extension requests should be made by emailing PS-48Reports@rrc.texas.gov. After one extension, Form PS-48 will expire.

F. § 8.125 – WAIVER PROCEDURE

Rule § 8.125 contains the procedure for applications to waive requirements of a pipeline safety standard based on a technical inability to comply. Atmos Energy finds the edits to be clear and helpful and supports these changes.

G. § 8.201 – PIPELINE SAFETY AND REGULATORY PROGRAM FEES

The changes to Rule § 8.201 require payments of certain pipeline safety and regulatory program fees to be paid using the Commission’s online application available on the Commission’s website. Atmos Energy has traditionally remitted payment for the pipeline safety and regulatory program fee due March 15 of each year through a check mailed to the appropriate office each year, in part due to technical difficulties in using the online payment system, which seemed to be a limitation on the number of digits the system would allow. So long as the online payment system can capture these large amounts, Atmos Energy supports this change requiring online payment.

H. § 8.208 – MANDATORY REMOVAL AND REPLACEMENT PROGRAM

Atmos Energy no longer has any known compression couplings that are subject to this rule and therefore does not believe that the proposed changes to Rule § 8.208 are relevant to the Company.

I. § 8.209 – DISTRIBUTION FACILITIES REPLACEMENTS

Rule § 8.209 requires operators to have a Distribution Facilities Replacement program that works “in conjunction with the [operator’s] Distribution Integrity Management Program (“DIMP”) using scheduled replacements to manage identified risks associated with the integrity of distribution facilities.”¹ Rule § 8.209 has been an essential building block of the Texas-specific regulatory framework to significantly enhance the safety and reliability of the Texas natural gas distribution systems since it was adopted in 2011. The success of this program has hinged on the Commission’s intentionality in coupling the requirements to accelerate investment in the distribution system with appropriate accounting treatment that allows for recovery of the investment as well as the cost of the capital necessary for that investment. In the Preamble of the original adoption of the rule, it states that “the Commission has historically recognized the importance of these programs by authorizing the recovery of pipeline safety-related costs in the rate base and cost of service components of a utility’s rates. Thus, it is appropriate that the proposed rule sets an accounting framework for the potential recovery of the costs of the new risk-based safety programs. Subsection (j) will allow LDCs to establish regulatory asset and capital accounts to capture the expenses related to this new program and adjust those balances as they are recovered in rates.”²

¹ 16 TAC § 8.209(a).

² 36 Tex. Reg. 1658 (Mar. 11, 2011).

The Preamble to the currently proposed rule changes states that “Operators of gas distribution systems have inconsistently applied the provisions of §8.209(j)(1)(C) when recording interest on the balance of the regulatory asset account allowed by §8.209(j)(1).” Since the proposed rule was published, Atmos Energy has provided additional information to Commission Staff regarding the methodology of this calculation, which demonstrates that Atmos Energy records simple interest on the balance of the designated regulatory asset accounts using a monthly interest rate equal to one twelfth of the pre-tax weighted average cost of capital last approved by the Commission for each division. While the language originally proposed in this rulemaking does *not* accurately reflect the original intent of the rule or the methodology that has been applied pursuant to the original language, Atmos Energy supports a modification to the existing language to clarify that simple interest should be applied and that the monthly interest rate should be equal to one twelfth of the pre-tax weighted average cost of capital last approved for the utility by the Commission.

Available at: [https://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=T&app=2&p_dir=F&p_rloc=235358&p_tloc=58794&p_ploc=39456&pg=4&p_reg=201100734&ti=&pt=&ch=&rl=&z_chk=51713](https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=T&app=2&p_dir=F&p_rloc=235358&p_tloc=58794&p_ploc=39456&pg=4&p_reg=201100734&ti=&pt=&ch=&rl=&z_chk=51713). As further stated in the Preamble:

“Subsection (j) authorizes each operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts), to use the provisions of this subsection to account for the investment and expense incurred by the operator to comply with the requirements of this section. The subsection provides that the operator may establish one or more designated regulatory asset accounts in which to record any expenses incurred by the operator in connection with acquisition, installation, or operation (including related depreciation) of facilities that are subject to the requirements of this section; record in one or more designated plant accounts capital costs incurred by the operator for the installation of facilities that are subject to the requirements of this section; ***record interest on the balance in the designated distribution facility replacement accounts based on the pretax cost of capital last approved for the utility by the Commission***; reduce balances in the designated distribution facility replacement accounts by the amounts that are included in and recovered through rates established in a subsequent Statement of Intent filing or other rate adjustment mechanism; and use the presumption set forth in §7.503 of this title (relating to Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities), with respect to investment and expense incurred by a gas utility for distribution facilities replacement made pursuant to this section. This subsection does not render any final determination of the reasonableness or necessity of any investment or expense.” (emphasis added.)

J. § 8.210 - REPORTS

The proposed changes to this section provide clarity regarding the method and timing for submission of the PS-95 biannual leak reports, and Atmos Energy supports these changes.

II. CONCLUSION

Atmos Energy appreciates the opportunity to submit these comments and respectfully requests that they be considered in developing the final version of the rule changes resulting from this rulemaking.

Respectfully submitted,

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