

By: Troxclair

H.B. No. 4212

A BILL TO BE ENTITLED

AN ACT

1
2 relating to competition in the electric utility market of certain
3 municipalities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 40.003, Utilities Code, is amended by
6 amending Subsection (a) and adding Subsection (g) to read as
7 follows:

8 (a) Municipally owned utilities, other than utilities
9 required to initiate customer choice under Section 40.051(d), and
10 river authorities may adopt and use securitization provisions
11 having the effect of the provisions provided by Subchapter G,
12 Chapter 39, to recover through appropriate charges their stranded
13 costs, at a recovery level deemed appropriate by the municipally
14 owned utility or river authority up to 100 percent, under rules and
15 procedures that shall be established:

16 (1) in the case of a municipally owned utility to which
17 this subsection applies, by the municipal governing body or a body
18 vested with the power to manage and operate the municipally owned
19 utility, including procedures providing for rate orders of the
20 governing body having the effect of financing orders, providing for
21 a separate nonbypassable charge approved by the governing body, in
22 the nature of a transition charge, to be collected from all retail
23 electric customers of the municipally owned utility, identified as
24 of a date determined by the governing body, to fund the recovery of

1 the stranded costs of the municipally owned utility and of all
2 reasonable related expenses, as determined by the governing body,
3 and providing for the issuance of bonds, having a term and other
4 characteristics as determined by the governing body, as necessary
5 to recover the amount deemed appropriate by the governing body
6 through securitization financing; and

7 (2) in the case of a river authority, by the
8 commission.

9 (g) A municipally owned utility required to initiate
10 customer choice under Section 40.051(d) may recover the utility's
11 stranded cost through securitization provisions:

12 (1) having the effect of the provisions provided by
13 Subchapter G, Chapter 39; and

14 (2) under rules and procedures established by the
15 commission.

16 SECTION 2. Section 40.051, Utilities Code, is amended by
17 amending Subsection (a) and adding Subsection (d) to read as
18 follows:

19 (a) Except as provided by Subsection (d), the ~~[The]~~
20 municipal governing body or a body vested with the power to manage
21 and operate a municipally owned utility has the discretion to
22 decide when or if the municipally owned utility will provide
23 customer choice.

24 (d) Not later than the 365th day after the date a municipal
25 governing body or other body described by Subsection (a) receives
26 notice under Section 2165.059, Government Code, that the utility is
27 included on the list created under that section, the utility shall:

- 1 (1) initiate customer choice; and
2 (2) except as otherwise provided by this chapter, be
3 considered to be a municipally owned utility that chooses to
4 participate in customer choice under Subsection (b) for purposes of
5 this subtitle.

6 SECTION 3. Section 40.054, Utilities Code, is amended by
7 amending Subsection (e) and adding Subsection (g) to read as
8 follows:

9 (e) The commission does not have jurisdiction to require
10 unbundling of services or functions of~~[, or to regulate the~~
11 ~~recovery of stranded investment of,~~ a municipally owned utility
12 or, except as provided by this section, jurisdiction with respect
13 to the rates, terms, and conditions of service for retail customers
14 of a municipally owned utility within the utility's certificated
15 service area.

16 (g) Except as provided by Section 40.003(g), the commission
17 does not have jurisdiction to regulate the recovery of stranded
18 investment of a municipally owned utility.

19 SECTION 4. Section 40.055, Utilities Code, is amended by
20 amending Subsection (a) and adding Subsection (c) to read as
21 follows:

22 (a) The municipal governing body or a body vested with the
23 power to manage and operate a municipally owned utility has
24 exclusive jurisdiction to:

- 25 (1) set all terms of access, conditions, and rates
26 applicable to services provided by the municipally owned utility,
27 subject to Sections 40.054 and 40.056, including nondiscriminatory

1 and comparable rates for distribution, but excluding wholesale
2 transmission rates, terms of access, and conditions for wholesale
3 transmission service set by the commission under this subtitle,
4 provided that the rates for distribution access established by the
5 municipal governing body shall be comparable to the distribution
6 access rates that apply to the municipally owned utility and the
7 municipally owned utility's affiliates;

8 (2) determine whether to unbundle any energy-related
9 activities and, if the municipally owned utility chooses to
10 unbundle, whether to do so structurally or functionally;

11 (3) except for a municipally owned utility required to
12 initiate customer choice under Section 40.051(d), reasonably
13 determine the amount of the municipally owned utility's stranded
14 investment;

15 (4) except for a municipally owned utility required to
16 initiate customer choice under Section 40.051(d), establish
17 nondiscriminatory transition charges reasonably designed to
18 recover the stranded investment over an appropriate period of time,
19 provided that recovery of retail stranded costs shall be from all
20 existing or future retail customers, including the facilities,
21 premises, and loads of those retail customers, within the utility's
22 geographical certificated service area as it existed on May 1,
23 1999;

24 (5) determine the extent to which the municipally
25 owned utility will provide various customer services at the
26 distribution level, including other services that the municipally
27 owned utility is legally authorized to provide, or will accept the

1 services from other providers;

2 (6) manage and operate the municipality's electric
3 utility systems, including exercise of control over resource
4 acquisition and any related expansion programs;

5 (7) establish and enforce service quality and
6 reliability standards and consumer safeguards designed to protect
7 retail electric customers, including safeguards that will
8 accomplish the objectives of Sections 39.101(a) and (b), consistent
9 with this chapter;

10 (8) determine whether a base rate reduction is
11 appropriate for the municipally owned utility;

12 (9) determine any other utility matters that the
13 municipal governing body or body vested with power to manage and
14 operate the municipally owned utility believes should be included;

15 (10) make any other decisions affecting the
16 municipally owned utility's participation in customer choice that
17 are not inconsistent with this chapter; and

18 (11) determine the extent to which the municipally
19 owned utility offers energy efficiency programs and how the
20 programs are administered by the utility, except as provided by
21 Section 39.9051(e).

22 (c) For a municipally owned utility required to initiate
23 customer choice under Section 40.051(d), the relevant date for the
24 commission to identify stranded investment is the date the
25 municipal governing body or other body receives notice under
26 Section 2165.059, Government Code, that the utility is included on
27 the list created under that section.

1 SECTION 5. Subchapter B, Chapter 40, Utilities Code, is
2 amended by adding Section 40.061 to read as follows:

3 Sec. 40.061. ENFORCEMENT OF CUSTOMER CHOICE. (a) In this
4 section, "governing body" means the body vested with the power to
5 manage and operate a municipally owned utility.

6 (b) If the commission determines that a municipally owned
7 utility required to initiate customer choice under Section
8 40.051(d) is not adequately offering customer choice on the 90th
9 day after the date customer choice was to be initiated, the utility
10 becomes subject to the oversight authority of the commission for
11 matters relating to the implementation of customer choice.

12 (c) The commission shall make a determination under
13 Subsection (b), if any, as soon as practicable after the expiration
14 of the 90-day period. The commission assumes oversight authority
15 over the municipally owned utility on the date the commission makes
16 an affirmative determination that the utility is not adequately
17 offering customer choice, and this authority encompasses any
18 portion of the authority vested with the governing body of the
19 utility under this subchapter that the commission determines is
20 necessary.

21 (d) The governing body shall work cooperatively with the
22 commission in offering customer choice.

23 (e) The oversight authority under this section continues
24 until the date the commission determines that the municipally owned
25 utility:

26 (1) has completed the transition to customer choice;
27 and

1 (2) is prepared to continue to provide customer choice
2 in a manner consistent with the competitive market.

3 (f) On the date the commission makes an affirmative
4 determination under Subsection (e), the management and operation of
5 the municipally owned utility returns to the control of the
6 utility's governing body.

7 SECTION 6. Subchapter B, Chapter 2165, Government Code, is
8 amended by adding Section 2165.059 to read as follows:

9 Sec. 2165.059. LIST BASED ON CERTAIN STATE-OWNED OFFICE
10 SPACE. (a) On the second Monday in September of each year, the
11 commission shall:

12 (1) create a list of each municipally owned utility in
13 whose certificated retail service area the commission manages three
14 million or more square feet of state-owned office space; and

15 (2) for each utility that appears on the list for the
16 first time, notify the Public Utility Commission of Texas and the
17 governing body vested with the power to manage and operate the
18 utility of the utility's addition to the list.

19 (b) The Public Utility Commission of Texas shall assist the
20 commission as necessary in performing duties under Subsection (a).

21 SECTION 7. (a) The changes in law made by this Act apply
22 only to the activities of a municipally owned utility that occur on
23 or after the effective date of this Act. Activities of a
24 municipally owned utility that occur before the effective date of
25 this Act are governed by the law in effect on the date the
26 activities occurred, and the former law is continued in effect for
27 that purpose.

1 (b) The Texas Facilities Commission shall create the
2 initial list described by Section 2165.059, Government Code, as
3 added by this Act, on September 11, 2023.

4 SECTION 8. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2023.