

BILL ANALYSIS

H.B. 163
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Regulated Industries
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Hurricane Rita struck the service territory of Entergy Gulf States, Inc. (Entergy) in southeast Texas in September 2005. The storm caused catastrophic damage to the Company's electric utility system and left hundreds of thousands of Texans without electric service. Entergy spent substantial amounts of money to restore electric service and reconstruct utility infrastructure. The enormous cost burden and uncertainty regarding the manner and timing of cost recovery have created concern as to the Company's financial strength and its ability to respond effectively to another disaster of the magnitude of Hurricane Rita. Conventional rate setting mechanisms for recovery of the Hurricane Rita costs are inadequate, since the Company remains in a base rate freeze until at least June 2008. Providing for timely recovery of these costs will address these concerns and support continued reliable utility service in Southeast Texas.

House Bill 163 addresses these concerns by providing for timely current recovery of Hurricane Rita costs by a utility subject to Subchapter J, Utilities Code, through a special financing mechanism known as "securitization." Securitization allows the costs to be recovered through the sale of bonds with very high credit quality and, accordingly, favorable interest rates. These bonds, however, impose no financial obligation on the State of Texas. Securitization is expected to result in significant savings to customers, compared to the rates customers would pay if the Hurricane Rita costs were recovered through conventional means, such as their inclusion in a base rate proceeding.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1 of the bill amends Section 39.452 (b), Utilities Code, to expand the list of qualified exceptions of authorized rate adjustments for traditional cost-of-service regulated electric utilities to include proceedings for recovery and securitization of hurricane reconstruction costs authorized by Section 39.458-39.463. The bill amends Section 39.452 (d), Utilities Code, to add the provisions of Subchapter G that pertain to the recovery and securitization of hurricane reconstruction costs authorized by Sections 39.458-39.463.

SECTION 2 of the bill amends Subchapter J, Chapter 39, Utilities Code by adding Sections 39.458-39.463.

Section 39.458 states that the purpose of Sections 39.458-39.463 is to provide for timely recovery and for securitization of hurricane reconstruction costs by a utility subject to this subchapter, because use of securitization will lower the carrying costs associated with the recovery of these costs in comparison to conventional financing. The proceeds of the transition bonds may be used only for purposes of reducing the amount of recoverable hurricane reconstruction costs, as determined by the Public Utilities Commission (Commission) through the refinancing or retirement of utility debt or equity. It is the intent of the legislature that securitization of hurricane reconstruction costs will be subject to the same procedures, standards and protections for the securitization of stranded costs and regulatory assets under Subchapter G and that the Commission will ensure that securitization provides greater benefits to ratepayers

than would be the case in the absence of the issuance of transition bonds to recover hurricane reconstruction costs.

Section 39.459 defines hurricane reconstruction costs as the reasonable and necessary costs incurred in connection with an electric utility subject to this subchapter's repair and restoration activities in response to Hurricane Rita. Defines Hurricane Rita. Allows that carrying costs from the time the costs are incurred until the transition bonds are issued to be included as hurricane reconstruction costs if the Commission determines it is appropriate. If the utility receives insurance proceeds, governmental grants or other funding that compensates it for hurricane reconstruction costs, these amounts shall be used to reduce the costs recoverable from customers and provides mechanisms for such reductions.

Section 39.460 provides that the procedures and standards in this subchapter and Subchapter G govern the application and issuance of the securitization finance order. The Commission shall adopt a financing order authorizing the securitization of hurricane reconstruction costs, and provides that any transition bonds issued are governed by Subchapters J and G. Defines terms including "financing order," "qualified costs," "transition bonds" and "transition charges," for purposes of this subchapter.

The bill sets out the standards for the Commission to apply in functionalizing and allocating hurricane reconstruction costs in the course of establishing transition charges. The bill specifies that there will be no double counting of any accumulated deferred federal income taxes offset associated with the securitized costs, and further specifies that an electric utility subject to this subchapter will recover any tax obligation associated with securitization. If the Commission determines that securitization is not beneficial to ratepayers, then the Commission shall permit an alternative means to recover hurricane reconstruction costs, through a surcharge. The surcharge includes appropriate carrying costs and lasts until such time as the implementation of rates resulting from the utility's next Subchapter C, Chapter 36 rate proceeding.

Section 39.461 authorizes the Commission to include provisions in the financing order to make the transition charges nonbypassable.

Section 39.462 entitles an electric utility subject to this subchapter to recover hurricane reconstruction costs consistent with this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including hurricane reconstruction costs not yet incurred at the time an application is filed, in its next base rate proceeding or through any other proceeding authorized by Subchapter C, Chapter 36. The Commission shall issue an order determining the recoverable costs within 150 days from the date of filing. Upon issuance by the Commission of an order determining the costs eligible for recovery, a utility subject to this subchapter may file an application for a financing order, which shall be governed by the procedures in subchapter G. If the Commission has made a determination of the costs eligible for recovery prior to the effective date of this section, that determination may provide the basis for an application of a financing order, however a previous determination does not preclude the utility from requesting recovery of additional eligible costs. A rate proceeding under Chapter 36 is not required to determine the amount of costs eligible for recovery.

Section 39.463. The bill contains a severability clause.

SECTION 3 provides that the bill takes effect immediately if it receives a two-thirds vote in each house of the legislature. If the bill does not receive that vote, the bill takes effect on the 91st day after the last day of the legislative session.

EFFECTIVE DATE

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