

By: King of Parker

H.B. No. 163

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the recovery and securitization of hurricane
3 reconstruction costs incurred by certain electric utilities
4 outside of the Electric Reliability Council of Texas area.

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

6 SECTION 1. Sections 39.452(b) and (d), Utilities Code, are
7 amended to read as follows:

8 (b) Notwithstanding Subsection (a), except for adjustments
9 authorized by Sections 36.203, 39.454, 39.455, and 39.456, and
10 except for proceedings and cost recovery mechanisms authorized by
11 Sections 39.458-39.463, a person may not file a proceeding to
12 change, alter, or revoke any rate offered or charged by an electric
13 utility subject to this subchapter before June 30, 2007, with an
14 effective date no earlier than June 30, 2008. As part of a
15 Subchapter C, Chapter 36, rate proceeding, the utility shall
16 propose a competitive generation tariff to allow eligible customers
17 the ability to contract for competitive generation. The commission
18 shall approve, reject, or modify the proposed tariff. The tariffs
19 subject to this subsection may not be considered to offer a
20 discounted rate or rates under Section 36.007, and the utility's
21 rates shall be set, in the proceeding in which the tariff is
22 adopted, to recover any costs unrecovered as a result of the
23 implementation of the tariff.

24 (d) Until the date on which an electric utility subject to

1 this subchapter implements customer choice:

2 (1) the provisions of this chapter do not apply to that
3 electric utility, other than this subchapter, Sections 39.904 and
4 39.905, ~~and~~ the provisions relating to the duty to obtain a permit
5 from the Texas Commission on Environmental Quality for an electric
6 generating facility and to reduce emissions from an electric
7 generating facility, and the provisions of Subchapter G that
8 pertain to the recovery and securitization of hurricane
9 reconstruction costs authorized by Sections 39.458-39.463; and

10 (2) the electric utility is not subject to a rate
11 freeze and, subject to the limitation provided by Subsection (b),
12 may file for rate changes under Chapter 36 and for approval of one
13 or more of the rate rider mechanisms authorized by Sections 39.454
14 and 39.455.

15 SECTION 2. Subchapter J, Chapter 39, Utilities Code, is
16 amended by adding Sections 39.458-39.463 to read as follows:

17 Sec. 39.458. RECOVERY AND SECURITIZATION OF HURRICANE
18 RECONSTRUCTION COSTS; PURPOSE. (a) The purpose of this section and
19 of Sections 39.459-39.463 is to enable an electric utility subject
20 to this subchapter to obtain timely recovery of hurricane
21 reconstruction costs and to use securitization financing to recover
22 these costs, because that type of debt will lower the carrying costs
23 associated with the recovery of hurricane reconstruction costs
24 relative to the costs that would be incurred using conventional
25 financing methods. The proceeds of the transition bonds may be used
26 only for the purposes of reducing the amount of recoverable
27 hurricane reconstruction costs, as determined by the commission in

1 accordance with this subchapter, through the refinancing or
2 retirement of utility debt or equity.

3 (b) It is the intent of the legislature that:

4 (1) securitization of hurricane reconstruction costs
5 will be subject to the same procedures, standards, and protections
6 for the securitization of stranded costs and regulatory assets
7 under Subchapter G in effect on the effective date of this section,
8 except as provided by this subchapter; and

9 (2) the commission will ensure that securitization of
10 hurricane reconstruction costs provides greater tangible and
11 quantifiable benefits to ratepayers than would have been achieved
12 without the issuance of transition bonds.

13 Sec. 39.459. HURRICANE RECONSTRUCTION COSTS. (a) In this
14 subchapter:

15 (1) "Hurricane reconstruction costs" means reasonable
16 and necessary costs, including costs expensed, charged to the storm
17 reserve, or capitalized, that are incurred by an electric utility
18 subject to this subchapter due to any activity or activities
19 conducted by or on behalf of the electric utility in connection with
20 the restoration of service associated with electric power outages
21 affecting customers of the electric utility as the result of
22 Hurricane Rita, including mobilization, staging, and construction,
23 reconstruction, replacement, or repair of electric generation,
24 transmission, distribution, or general plant facilities.

25 (2) "Hurricane Rita" means the hurricane of that name
26 that struck the coastal region of this state in September 2005.

27 (b) If the commission determines it to be appropriate,

1 hurricane reconstruction costs may include carrying costs from the
2 date on which the hurricane reconstruction costs were incurred
3 until the date that transition bonds are issued.

4 (c) To the extent a utility subject to this subchapter
5 receives insurance proceeds, governmental grants, or any other
6 source of funding that compensates it for hurricane reconstruction
7 costs, those amounts shall be used to reduce the utility's
8 hurricane reconstruction costs recoverable from customers. If the
9 timing of a utility's receipt of those amounts prevents their
10 inclusion as a reduction to the hurricane reconstruction costs that
11 are securitized, the commission shall take those amounts into
12 account in:

13 (1) the utility's next base rate proceeding; or

14 (2) any proceeding in which the commission considers
15 hurricane reconstruction costs.

16 Sec. 39.460. STANDARDS AND PROCEDURES GOVERNING
17 SECURITIZATION OF HURRICANE RECONSTRUCTION COSTS. (a) The
18 procedures and standards of this subchapter and the provisions of
19 Subchapter G govern the application for, and the commission's
20 issuance of, a financing order to provide for the securitization of
21 hurricane reconstruction costs by an electric utility subject to
22 this subchapter.

23 (b) Subject to the standards, procedures, and tests
24 contained in this subchapter and Subchapter G, the commission shall
25 adopt a financing order on the application of the utility to recover
26 its hurricane reconstruction costs. On the commission's issuance
27 of a financing order allowing for recovery and securitization of

1 hurricane reconstruction costs, the provisions of this subchapter
2 and Subchapter G continue to govern the financing order and the
3 rights and interests established in the order, and this subchapter
4 and Subchapter G continue to govern any transition bonds issued
5 pursuant to the financing order. To the extent any conflict exists
6 between the provisions of this subchapter and Subchapter G in cases
7 involving the securitization of hurricane reconstruction costs,
8 the provisions of this subchapter control.

9 (c) For purposes of this subchapter, "financing order," as
10 defined by Section 39.302 and as used in Subchapter G, includes a
11 financing order authorizing the securitization of hurricane
12 reconstruction costs.

13 (d) For purposes of this subchapter, "qualified costs," as
14 defined by Section 39.302 and as used in Subchapter G, includes 100
15 percent of the electric utility's hurricane reconstruction costs
16 together with the costs of issuing, supporting, and servicing
17 transition bonds and any costs of retiring and refunding existing
18 debt and equity securities of an electric utility subject to this
19 subchapter in connection with the issuance of transition bonds.
20 For purposes of this subchapter, the term also includes the costs to
21 the commission of acquiring professional services for the purpose
22 of evaluating proposed transactions under this subchapter.

23 (e) For purposes of this subchapter, "transition bonds," as
24 defined by Section 39.302 and as used in Subchapter G, includes
25 transition bonds issued in association with the recovery of
26 hurricane reconstruction costs. Transition bonds issued to
27 securitize hurricane reconstruction costs may be called "hurricane

1 reconstruction bonds" or may be called by any other name acceptable
2 to the issuer and the underwriters of the transition bonds.

3 (f) For purposes of this subchapter, "transition charges,"
4 as defined by Section 39.302 and as used in Subchapter G, includes
5 nonbypassable amounts to be charged for the use of electric
6 services, approved by the commission under a financing order to
7 recover hurricane reconstruction costs, that shall be collected by
8 an electric utility subject to this subchapter, its successors, an
9 assignee, or other collection agents as provided for in the
10 financing order.

11 (g) Notwithstanding Section 39.303(c), hurricane
12 reconstruction costs shall be functionalized and allocated to
13 customers in the same manner as the corresponding facilities and
14 related expenses are functionalized and allocated in the utility's
15 current base rates.

16 (h) The amount of any accumulated deferred federal income
17 taxes offset, used to determine the securitization total, may not
18 be considered in future rate proceedings. Any tax obligation of the
19 electric utility arising from its receipt of securitization bond
20 proceeds, or from the collection and remittance of transition
21 charges, shall be recovered by the electric utility through the
22 commission's implementation of Section 39.458, Section 39.459,
23 this section, and Sections 39.461-39.463.

24 (i) If the commission determines that recovery of all or any
25 portion of an electric utility's hurricane reconstruction costs
26 using securitization is not beneficial to ratepayers of the
27 electric utility, under one or more of the tests applied to

1 determine those benefits, the commission shall permit the electric
2 utility to recover the entirety of the hurricane reconstruction
3 costs through an appropriate customer surcharge mechanism,
4 including appropriate carrying costs, provided that the electric
5 utility has not securitized any portion of its hurricane
6 reconstruction costs. A rate proceeding under Chapter 36 may not be
7 required to determine and implement this surcharge mechanism. A
8 rider adopted under this subsection must expire on the
9 implementation of rates resulting from the filing of a Subchapter
10 C, Chapter 36, rate proceeding.

11 Sec. 39.461. NONBYPASSABLE CHARGES. The commission may
12 include terms in the financing order to ensure that the imposition
13 and collection of transition charges associated with the recovery
14 of hurricane reconstruction costs are nonbypassable by imposing
15 restrictions on bypassability of the type provided for in this
16 chapter or by alternative means of ensuring nonbypassability, as
17 the commission considers appropriate, consistent with the purposes
18 of securitization.

19 Sec. 39.462. DETERMINATION OF HURRICANE RECONSTRUCTION
20 COSTS. (a) An electric utility subject to this subchapter is
21 entitled to recover hurricane reconstruction costs consistent with
22 the provisions of this subchapter and is entitled to seek recovery
23 of amounts not recovered under this subchapter, including hurricane
24 reconstruction costs not yet incurred at the time an application is
25 filed under Subsection (b), in its next base rate proceeding or
26 through any other proceeding authorized by Subchapter C, Chapter
27 36.

1 (b) The commission shall issue an order determining the
2 amount of hurricane reconstruction costs eligible for recovery and
3 securitization not later than the 150th day after the date an
4 electric utility subject to this subchapter files an application
5 seeking that determination. The 150-day period begins on the date
6 the electric utility files the application, even if the filing
7 occurs before the effective date of this section.

8 (c) On issuance by the commission of an order determining
9 the amount of eligible hurricane reconstruction costs, an electric
10 utility subject to this subchapter may file an application for a
11 financing order, which shall be governed by the procedures in
12 Subchapter G.

13 (d) To the extent the commission has made a determination of
14 the eligible hurricane reconstruction costs of an electric utility
15 subject to this subchapter before the effective date of this
16 section, that determination may provide the basis for the utility's
17 application for a financing order pursuant to this subchapter and
18 Subchapter G. A previous commission determination does not
19 preclude the utility from requesting recovery of additional
20 hurricane reconstruction costs eligible for recovery under this
21 subchapter, but not previously authorized by the commission.

22 (e) A rate proceeding under Chapter 36 is not required to
23 determine the amount of recoverable hurricane reconstruction costs
24 as provided by this section.

25 Sec. 39.463. SEVERABILITY. Effective on the date the first
26 utility transition bonds associated with hurricane reconstruction
27 costs are issued under this subchapter, if any provision in this

1 title or portion of this title is held to be invalid or is
2 invalidated, superseded, replaced, repealed, or expires for any
3 reason, that occurrence does not affect the validity or
4 continuation of this subchapter, Subchapter G as it applies to an
5 electric utility subject to this subchapter, or any part of those
6 provisions, or any other provision of this title that is relevant to
7 the issuance, administration, payment, retirement, or refunding of
8 transition bonds or to any actions of the electric utility, its
9 successors, an assignee, a collection agent, or a financing party,
10 and those provisions shall remain in full force and effect.

11 SECTION 3. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect on the 91st day after the last day of the
16 legislative session.