

By: Williams

S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(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

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

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

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

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

(i) If the commission determines that recovery of all or any portion of an electric utility's hurricane reconstruction costs using securitization is not beneficial to ratepayers of the 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



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

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