

BILL ANALYSIS

C.S.H.B. 1567
By: Ritter
Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Southeast Texas region, served by Entergy Gulf States, Inc. (EGSI), is a developing wholesale electric market that does not have an Electric Reliability Council of Texas (ERCOT) type structure or market in place. Prior to the 79th Legislature, EGSI was scheduled to move to competition on January 1, 2002 but the Public Utility Commission of Texas (PUC) delayed competition in this area and pursued, with EGSI and other market participants, an alternative market structure that would have allowed competition to commence prior to a fully developed wholesale market. Although a great deal of time and money were spent on such efforts, the PUC determined that such a structure would not allow competition to begin in that area of the state.

The PUC's decision and its subsequent dismissal of EGSI's rate case filed August 25, 2004 have resulted in greater uncertainty for EGSI and its customers, which threatens the ability to serve customers in a predictable and cost effective manner. A more structured transition to competition for this region, as opposed to an interim solution, together with the opportunity for EGSI to seek rate relief, will serve to protect consumers and should ultimately result in a more adequate, developed wholesale market structure.

HB 1567 lays out a transition to competition for this area until the PUC certifies the applicable power region and authorizes EGSI to implement customer choice.

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

HB 1567 amends the Utilities Code to require the rates of an investor-owned electric utility operating solely outside of ERCOT in areas of this state that were included in the Southeastern Electric Reliability Council on January 1, 2005 to be regulated under traditional cost of service regulation until the date on which the utility is authorized by the PUC to implement customer choice. The utility is subject to all specified, applicable regulatory authority. Until customer choice, provisions governing the restructuring of the electric utility industry do not apply, other than provisions regarding goals for renewable energy, energy efficiency, and the duty to obtain a permit from the Texas Commission on Environmental Quality for generating and reducing emissions from an electric generating facility. Prior to implementing customer choice, the utility may proceed with and complete jurisdictional separation, and file for a separate rider for recovery of transition costs outside of a general base rate case. The utility is also authorized to file for rate changes in accordance with traditional cost-of-service regulations, with or without the separate riders identified in this bill. The bill provides that the portions of PUC orders entered before the effective date of the bill, requiring a utility subject to this bill to comply with a provision of the Utilities Code Chapter 39, are void.

By January 1, 2006, the utility shall file a plan with the PUC identifying key elements and a schedule for achieving the certification of a power region in this area of the state. No later than January 1, 2007, the utility shall file a transition to competition plan with the PUC that, among other things, identifies how the utility intends to mitigate market power, identify transmission alternatives and includes a provision to establish a price to beat for residential and commercial customers having a peak load of 1,000 kilowatts or less. The PUC shall approve, modify or reject the plan within 180 days. The bill provides that if a hearing is requested by any party to the proceeding, the 180-day deadline will be extended for each day of hearings. The bill requires the plan to be updated annually until the applicable power region is certified as a qualifying

power region. The PUC is prohibited from authorizing customer choice until the applicable power region has been certified as a qualifying power region; however, the PUC may initiate the proceeding to certify the power region.

The PUC is authorized to certify an area as a qualifying power region if the PUC finds that the utility has sufficient transmission facilities to provide customers access to power and energy from capacity controlled by suppliers not affiliated with the incumbent utility in the power region and the total capacity owned and controlled by each such electric utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the power region.

A utility is entitled to recover all reasonable and necessary expenditures made or incurred before the effective date of the bill to comply with provisions governing the restructuring of the electric utility industry. Upon filing of an application by the utility to recover such expenditures, and after notice and hearing, the PUC is required to review the requested amounts and, if found to be reasonable and necessary, approve a transition to competition retail rate rider mechanism for the recovery of the approved transition to competition costs. A rate rider implemented to recover approved transition to competition costs shall expire not later than December 31, 2015 (Sec. 39.454).

The bill provides in Sec. 39.452 that certain provisions of Chapter 39 of the Utilities Code do not apply to the utility, including provisions requiring utilities to, among other things, unbundle, freeze rates, and to undertake customer choice pilot projects.

EFFECTIVE DATE

This Act takes effect immediately if it receives the necessary votes. If it does not receive the necessary votes, it takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Committee Substitute to House Bill 1567 changes the name of Subchapter J to TRANSITION TO COMPETITION to better reflect the intent of the bill, and language is removed that states the legislature's belief that competition in the targeted area is unattainable.

C.S.H.B. 1567 prohibits the utility from filing a rate proceeding, altering or revoking an offered rate charged by the utility before June 30, 2007, with the effective date of the rate change going into effect no earlier than June 30, 2008. At the time the utility files a rate proceeding, a competitive generation tariff must be proposed that the PUC shall approve, reject, or modify. Any tariff that is approved cannot be considered as a discounted rate and the utility's rates shall be set in this proceeding to recover any costs associated with the tariff. When the utility files a rate proceeding, they cannot request approval of both a rate change and a rate rider mechanism.

The utility's jurisdictional separation must establish two vertically integrated utilities - one of which is in the sole jurisdiction of the PUC, and one under the jurisdiction of the Louisiana Public Service Commission.

The utility must file a plan with the commission not later than January 1, 2006, to identify the applicable power regions in which they may enter into to develop competition. Not later than January 1, 2007, or 90 days after the applicable power region is certified, the utility must file a transition to competition plan with the PUC that must identify how the utility intends to mitigate market power, achieve full customer choice, and achieve any other measure that is consistent with the public interest. The transition to competition plan must also include a provision to reinstate a customer choice pilot project and a price to beat for residential and commercial customers having a peak load of 1,000 kilowatts or less, and adhere to any other commission requirements. The PUC is allowed to modify a transition to competition plan that the utility files, as long as the modification does not conflict with Federal Energy Regulatory Commission jurisdiction and allows for timely recovery of any cost that is incurred as a result of the modification. The PUC must approve or modify a transition to competition plan to require that the utility takes reasonable steps to develop a wholesale generation market within the utility's service territory.

The utility is entitled to recover all reasonable and necessary costs incurred during their transition to competition before the effective date of this Act over a period of 15 yrs as long as the commission finds that the utility determines that these costs have not been previously recovered.

The utility is entitled to recover incremental capacity costs by filing a rate rider mechanism with the utility. In conjunction with the utility's fuel rate proceedings, the PUC shall reconcile the costs recovered compared to the actual costs incurred by the utility. This capacity cost recovery rider will expire upon implementation of customer choice or on the implementation of rates resulting from a Chapter 36 rate proceeding. All annual costs recovered associated with the rider may not exceed five percent of the utility's annual base rate revenues.