

BILL ANALYSIS

C.S.H.B. 2644
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Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Since passage of the 1999 Texas Electric Choice Act (Senate Bill 7) other states within the Southwest Power Pool have either taken action to repeal or delay plans to move forward with competition or have made no move at all in that direction. The area of northeast Texas addressed in the bill is a part of the Southwest Power Pool, which also includes portions of five other states. When Senate Bill 7 was passed, the bill's authors voiced concern about the readiness of areas that fell outside the Electric Reliability Council of Texas (ERCOT). For this and other reasons, the 77th Legislature in 2001 passed House Bill 1692 delaying competition in the Texas Panhandle until at least 2007. This delay was predicated on infrastructure and market price concerns similar to those currently existing in northeast Texas.

In late 2001, the Public Utility Commission of Texas (PUC) entered an order delaying competition in Northeast Texas, but the agency can still decide at any time to mandate implementation. C.S.H.B. 2644 is the result of an initiative by a coalition of Northeast Texas cities seeking greater certainty, rather than remaining in regulatory limbo, on when retail competition comes to their portion of the Southwest Power Pool. The cities are concerned that such a mandate could occur before the proper infrastructure is in place. The cost and complexity of developing the infrastructure for this relatively small area, tied inextricably to several bordering states and federal jurisdiction, would be substantial.

The purpose of C.S.H.B. 2644 is to statutorily delay retail electric competition in that area of northeast Texas located outside the ERCOT until the proper infrastructure is in place. The bill provides an orderly path to competition and requires that a plan for competition, which would have to be approved by the PUC, be filed no sooner than January 1, 2010.

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.

SECTION BY SECTION ANALYSIS

SECTION 1 would amend Chapter 39 of the Public Utility Regulation Act (PURA), Texas Utilities Code, by addition Section J (Delay of Competition in Certain Non-ERCOT Areas). This subchapter would apply to an investor-owned utility: (1) that is operating solely outside of ERCOT in areas of the state that were included in the SPP on January 1, 2004; (2) that was not affiliated with the Southeastern Electric Reliability Council on January 1, 2004; and (3) to which Subchapter I does not apply (i.e. Southwestern Public Service Company). The bill provides that it is not in the public interest to transition to full customer choice at this time for the areas subject to this subchapter. Southwestern Electric Power Company is the only utility that would be subject to this bill.

Until the later of January 1, 2010 or the date that the Public Utility Commission of Texas (PUCT) authorizes the utility to implement customer choice, the rates of the utility would be regulated under traditional cost-of-service regulation and the utility would be subject to all applicable regulatory authority prescribed by subtitles A (Provisions Applicable to all Utilities) and B (Electric Utilities) of the Utilities Code. The bill would also provide that, until implementation of customer choice, the provisions of Chapter 39 (Restructuring of Electric Utility Industry) does not apply to the utility, *other than* Subchapter J, sections 39.904 and 39.905, and the provisions relating to the duty to reducing air emissions from an electric generating facility and environmental permitting for such facilities.

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Section 39.452(b) would allow the utility, on or after January 1, 2010, to choose to participate in customer choice. If the utility chooses to do so, it must file a transition-to-competition plan with the PUC that identifies how it intends to achieve full customer choice, including an evaluation of the transmission facilities, and explanation of how certification of the power region under PURA Section 39.152 will be achieved, auctioning rights to generation capacity, or other measures that are consistent with the public interest. The utility would also be required to include in this plan provisions to establish a price-to-beat rate for residential customers and small commercial customers. The bill would allow the PUCT to prescribe additional information or provisions that must be included in the plan and provides the PUCT 180 days after the date of filing to approve, modify, or reject a plan unless a hearing is requested by any part to the proceeding. If a hearing were requested the 180-day requirement would be extended one day for each day of the hearing. The bill also allows for the transition-to-competition plan to be updated or amended, subject to PUCT approval, until the applicable power region is certified as a qualifying power region under PURA Section 39.152 and the plan is approved.

Section 39.452(c) would provide that, upon implementation of customer choice, the utility is subject to the provisions of subtitles A and B to the same extent as other electric utilities, including provisions for certificates of convenience and necessity.

Section 39.453 would require that, if the utility chooses to participate in customer choice, the PUCT may not authorize customer choice until the applicable power region has been certified as a qualifying power region under Section 39.152.

Section 39.501 codifies a previous order by the PUCT related to a multistate electric utility operating solely outside of ERCOT that is serving customers in areas of this state within the Western Electric Coordinating Council.

Section 39.502 codifies a previous order by the PUCT that provides that until the date on which an electric utility company subject to this subchapter is authorized by the PUCT to implement retail customer choice, the rates of the utility are subject to regulation by the PUCT.

Section 39.503 codifies a previous order by the PUCT that provides the process for transition to retail competition.

SECTION 2 sets the effective date of this Act as September 1, 2005.

EFFECTIVE DATE

This Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute changes the date for retail competition for a retail electric utility operating solely outside of ERCOT in areas of the state that are included in the Southwest Power Pool from January 1, 2012 to January 1, 2010. It also adds Subchapter K to codify a previously adopted PUCT order related to a retail electric utility operating solely outside of ERCOT in areas of the state that are included in the Western Electric Coordinating Council.