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et al.

H.B. No. 1567

A BILL TO BE ENTITLED

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AN ACT

relating to the transition to competition of certain electric utilities outside of ERCOT.

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

SECTION 1. Section 39.402(a), Utilities Code, is amended to read as follows:

(a) Until the later of January 1, 2009 [~~2007~~], or the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice, the rates of the utility shall be regulated under traditional cost of service regulation and the utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter, Section 39.904, and the provisions relating to the duty to obtain a permit from the Texas Natural Resource Conservation Commission for an electric generating facility and to reduce emissions from an electric generating facility, shall not apply to that utility. That portion of any commission order entered before September 1, 2001, to comply with this subchapter shall be null and void.

SECTION 2. Chapter 39, Utilities Code, is amended by adding Subchapter J to read as follows:

1 SUBCHAPTER J. TRANSITION TO COMPETITION IN CERTAIN

2 NON-ERCOT AREAS

3 Sec. 39.451. APPLICABILITY. This subchapter applies only
4 to an investor-owned electric utility that is operating solely
5 outside of ERCOT in areas of this state that were included in the
6 Southeastern Electric Reliability Council on January 1, 2005.

7 Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO
8 COMPETITION. (a) Until the date on which an electric utility
9 subject to this subchapter is authorized by the commission to
10 implement customer choice under Section 39.453, the rates of the
11 electric utility shall be regulated under traditional
12 cost-of-service regulation and the electric utility is subject to
13 all applicable regulatory authority prescribed by this subtitle and
14 Subtitle A, including Chapters 14, 32, 33, 36, and 37.

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

1 unrecovered as a result of the implementation of the tariff.

2 (c) That portion of any commission order issued before the
3 effective date of this section requiring the electric utility to
4 comply with a provision of this chapter is void.

5 (d) Until the date on which an electric utility subject to
6 this subchapter implements customer choice:

7 (1) the provisions of this chapter do not apply to that
8 electric utility, other than this subchapter, Sections 39.904 and
9 39.905, and the provisions relating to the duty to obtain a permit
10 from the Texas Commission on Environmental Quality for an electric
11 generating facility and to reduce emissions from an electric
12 generating facility;

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

18 (3) the electric utility may not use credit scoring to
19 determine charges for residential electric service or for any other
20 purpose in relation to residential services other than to evaluate
21 whether a residential customer must qualify for credit by making a
22 security deposit;

23 (4) the electric utility shall accept a security
24 deposit from a residential customer as a means of qualifying for
25 credit, in an amount not to exceed a reasonable estimate of an
26 average charge for two months of service for the customer; and

27 (5) the electric utility shall, without interruption

1 or a reduction in resources, continue to offer all programs to
2 assist low-income customers that were being offered on January 1,
3 2005.

4 (e) An electric utility subject to this subchapter may
5 proceed with and complete jurisdictional separation to establish
6 two vertically integrated utilities, one of which is solely subject
7 to the retail jurisdiction of the commission and one of which is
8 solely subject to the retail jurisdiction of the Louisiana Public
9 Service Commission.

10 (f) Not later than January 1, 2006, an electric utility
11 subject to this subchapter shall file a plan with the commission for
12 identifying the applicable power region or power regions,
13 enumerating the steps to achieve the certification of a power
14 region in accordance with Section 39.453, and specifying the
15 schedule for achieving the certification of a power region. The
16 utility may amend the plan as appropriate. The commission may, on
17 its own motion or the motion of any affected person, initiate a
18 proceeding to certify a qualified power region under Section 39.152
19 when the conditions supporting such a proceeding exist.

20 (g) Not later than the earlier of January 1, 2007, or the
21 90th day after the date the applicable power region is certified in
22 accordance with Section 39.453, the electric utility shall file a
23 transition to competition plan. The transition to competition plan
24 must:

25 (1) identify how the electric utility intends to
26 mitigate market power and to achieve full customer choice,
27 including specific alternatives for constructing additional

1 transmission facilities, auctioning rights to generation capacity,
2 divesting generation capacity, or any other measure that is
3 consistent with the public interest;

4 (2) include a provision to reinstate a customer choice
5 pilot project and to establish a price to beat for residential
6 customers and commercial customers having a peak load of 1,000
7 kilowatts or less; and

8 (3) include any other additional information or
9 provisions that the commission may require.

10 (h) The commission shall approve, modify, or reject a plan
11 filed under Subsection (g) not later than the 180th day after the
12 date the plan is filed unless a hearing is requested by any party to
13 the proceeding. A modification to the plan by the commission may
14 not be in conflict with the jurisdiction or orders of the Federal
15 Energy Regulatory Commission or result in significant additional
16 cost without allowing for timely recovery for that cost. If a
17 hearing is requested, the 180-day deadline is extended one day for
18 each day of the hearing. The transition to competition plan shall
19 be updated or amended annually, subject to commission approval,
20 until the initiation of customer choice by an electric utility
21 subject to this subchapter. Consistent with its jurisdiction, the
22 commission shall have the authority in approving or modifying the
23 transition to competition plan to require the electric utility to
24 take reasonable steps to facilitate the development of a wholesale
25 generation market within the boundaries of the electric utility's
26 service territory.

27 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND

1 RELATED MATTERS. (a) The commission may not authorize customer
2 choice until the commission certifies the applicable power region
3 as a qualifying power region under Section 39.152(a). Sections
4 39.152(b)-(d) also apply to the electric utility and commission in
5 determining whether to certify the applicable power region.

6 (b) The commission shall certify that the requirement of
7 Section 39.152(a)(3) is met for an electric utility subject to this
8 subchapter only if the commission finds that the total capacity
9 owned and controlled by the electric utility and the utility's
10 affiliates does not exceed 20 percent of the total installed
11 generation capacity within the power region of that utility.

12 Sec. 39.454. RECOUPMENT OF TRANSITION TO COMPETITION COSTS.
13 An electric utility subject to this subchapter is entitled to
14 recover, as provided by this section, all reasonable and necessary
15 expenditures made or incurred before the effective date of this
16 section to comply with this chapter, to the extent the costs have
17 not otherwise been recovered. The electric utility may file with
18 the commission an application for recovery that gives details of
19 the amounts spent or incurred. After notice and hearing, the
20 commission shall review the amounts and, if the amounts are found to
21 be reasonable and necessary and not otherwise previously recovered,
22 approve a transition to competition retail rate rider mechanism for
23 the recovery of the approved transition to competition costs. A
24 rate proceeding under Chapter 36 is not required to implement the
25 rider. A rate rider implemented to recover approved transition to
26 competition costs shall provide for recovery of those costs over a
27 period not to exceed 15 years, with appropriate carrying costs.

1 Sec. 39.455. RECOVERY OF INCREMENTAL CAPACITY COSTS. An
2 electric utility subject to this subchapter is entitled to recover,
3 through a rate rider mechanism, reasonable and necessary costs of
4 incremental resources required to meet load requirements to the
5 extent those costs result in the utility expending more for
6 capacity costs under purchase power agreements than were included
7 in the utility's last base rate case, adjusted for load growth. Any
8 rider under this section shall be implemented after review and
9 approval by the commission, after notice and opportunity for
10 hearing. Following the initial implementation of the rider, an
11 electric utility subject to this subchapter may request revisions
12 semiannually, after notice and opportunity for hearing, on the
13 dates provided in the commission's rules for filing petitions to
14 revise the utility's fuel factor. In conjunction with the utility's
15 fuel reconciliation proceedings, the commission shall reconcile
16 the costs recovered under the rider and the actual incremental
17 capacity costs eligible for recovery under this section. The rider
18 shall expire on the introduction of customer choice or on the
19 implementation of rates resulting from the filing of a Subchapter
20 C, Chapter 36, rate proceeding. In no event may the amount
21 recovered annually under the rider exceed five percent of the
22 utility's annual base rate revenues.

23 Sec. 39.456. FRANCHISE AGREEMENTS. A municipality, with
24 the agreement of an electric utility, may accelerate the expiration
25 date of a franchise agreement that was in existence on September 1,
26 1999. Any new franchise agreement must be approved by the governing
27 body of the municipality. To the extent that a new franchise

1 agreement would result in an increase in the payment of franchise
2 fees to the municipality, and subject to the terms of the franchise
3 agreement, either the electric utility or the municipality, without
4 the need for a rate proceeding under Chapter 36, may file with the
5 commission for approval of a rider for the electric utility's
6 recovery of franchise payments resulting from the agreement, so
7 long as such rider is collected only from customers of the electric
8 utility that are located within the boundaries of the municipality.

9 Sec. 39.457. CONTRACTUAL RIGHTS. In the event that the
10 electric utility subject to this subchapter either merges,
11 consolidates, or otherwise becomes affiliated with another owner of
12 electric generation, or completes the jurisdictional separation
13 authorized by Section 39.452(e) and the resulting vertically
14 integrated utility proposes to join a regional transmission
15 organization, and either action adversely affects the rights or
16 obligations of an electric cooperative under a wholesale generation
17 or transmission agreement entered into before the effective date of
18 this subchapter or otherwise adversely affects the electric
19 cooperative's access to its existing generation resources under
20 said agreements, then the utility shall submit a proposal agreeable
21 to the cooperative and the utility for addressing such rights and
22 obligations in the appropriate regulatory proceeding. Such
23 proposal shall be consistent with applicable law regarding the
24 rights and obligations of the electric cooperative and the utility
25 under such existing generation or transmission agreements.

26 SECTION 3. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2005.