

1-1 By: Ritter, et al. (Senate Sponsor - Williams) H.B. No. 1567
1-2 (In the Senate - Received from the House April 22, 2005;
1-3 April 25, 2005, read first time and referred to Committee on
1-4 Business and Commerce; May 16, 2005, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 16, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1567 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the transition to competition of certain electric
1-11 utilities outside of ERCOT.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 39, Utilities Code, is amended by adding
1-14 Subchapter J to read as follows:

1-15 SUBCHAPTER J. TRANSITION TO COMPETITION IN CERTAIN
1-16 NON-ERCOT AREAS

1-17 Sec. 39.451. APPLICABILITY. This subchapter applies only
1-18 to an investor-owned electric utility that is operating solely
1-19 outside of ERCOT in areas of this state that were included in the
1-20 Southeastern Electric Reliability Council on January 1, 2005.

1-21 Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO
1-22 COMPETITION. (a) Until the date on which an electric utility
1-23 subject to this subchapter is authorized by the commission to
1-24 implement customer choice under Section 39.453, the rates of the
1-25 electric utility shall be regulated under traditional
1-26 cost-of-service regulation and the electric utility is subject to
1-27 all applicable regulatory authority prescribed by this subtitle and
1-28 Subtitle A, including Chapters 14, 32, 33, 36, and 37.

1-29 (b) Notwithstanding Subsection (a), except for adjustments
1-30 authorized by Sections 36.203, 39.454, 39.455, and 39.456, a person
1-31 may not file a proceeding to change, alter, or revoke any rate
1-32 offered or charged by an electric utility subject to this
1-33 subchapter before June 30, 2007, with an effective date no earlier
1-34 than June 30, 2008. As part of a Subchapter C, Chapter 36, rate
1-35 proceeding, the utility shall propose a competitive generation
1-36 tariff to allow eligible customers the ability to contract for
1-37 competitive generation. The commission shall approve, reject, or
1-38 modify the proposed tariff. The tariffs subject to this subsection
1-39 may not be considered to offer a discounted rate or rates under
1-40 Section 36.007, and the utility's rates shall be set, in the
1-41 proceeding in which the tariff is adopted, to recover any costs
1-42 unrecovered as a result of the implementation of the tariff.

1-43 (c) That portion of any commission order issued before the
1-44 effective date of this section requiring the electric utility to
1-45 comply with a provision of this chapter is void.

1-46 (d) Until the date on which an electric utility subject to
1-47 this subchapter implements customer choice:

1-48 (1) the provisions of this chapter do not apply to that
1-49 electric utility, other than this subchapter, Sections 39.904 and
1-50 39.905, and the provisions relating to the duty to obtain a permit
1-51 from the Texas Commission on Environmental Quality for an electric
1-52 generating facility and to reduce emissions from an electric
1-53 generating facility; and

1-54 (2) the electric utility is not subject to a rate
1-55 freeze and, subject to the limitation provided by Subsection (b),
1-56 may file for rate changes under Chapter 36 and for approval of one
1-57 or more of the rate rider mechanisms authorized by Sections 39.454
1-58 and 39.455.

1-59 (e) An electric utility subject to this subchapter may
1-60 proceed with and complete jurisdictional separation to establish
1-61 two vertically integrated utilities, one of which is solely subject
1-62 to the retail jurisdiction of the commission and one of which is
1-63 solely subject to the retail jurisdiction of the Louisiana Public

2-1 Service Commission.

2-2 (f) Not later than January 1, 2006, an electric utility
 2-3 subject to this subchapter shall file a plan with the commission for
 2-4 identifying the applicable power region or power regions,
 2-5 enumerating the steps to achieve the certification of a power
 2-6 region in accordance with Section 39.453, and specifying the
 2-7 schedule for achieving the certification of a power region. The
 2-8 utility may amend the plan as appropriate. The commission may, on
 2-9 its own motion or the motion of any affected person, initiate a
 2-10 proceeding to certify a qualified power region under Section 39.152
 2-11 when the conditions supporting such a proceeding exist.

2-12 (g) Not later than the earlier of January 1, 2007, or the
 2-13 90th day after the date the applicable power region is certified in
 2-14 accordance with Section 39.453, the electric utility shall file a
 2-15 transition to competition plan. The transition to competition plan
 2-16 must:

2-17 (1) identify how the electric utility intends to
 2-18 mitigate market power and to achieve full customer choice,
 2-19 including specific alternatives for constructing additional
 2-20 transmission facilities, auctioning rights to generation capacity,
 2-21 divesting generation capacity, or any other measure that is
 2-22 consistent with the public interest;

2-23 (2) include a provision to reinstate a customer choice
 2-24 pilot project and to establish a price to beat for residential
 2-25 customers and commercial customers having a peak load of 1,000
 2-26 kilowatts or less; and

2-27 (3) include any other additional information or
 2-28 provisions that the commission may require.

2-29 (h) The commission shall approve, modify, or reject a plan
 2-30 filed under Subsection (g) not later than the 180th day after the
 2-31 date the plan is filed unless a hearing is requested by any party to
 2-32 the proceeding. A modification to the plan by the commission may
 2-33 not be in conflict with the jurisdiction or orders of the Federal
 2-34 Energy Regulatory Commission or result in significant additional
 2-35 cost without allowing for timely recovery for that cost. If a
 2-36 hearing is requested, the 180-day deadline is extended one day for
 2-37 each day of the hearing. The transition to competition plan shall
 2-38 be updated or amended annually, subject to commission approval,
 2-39 until the initiation of customer choice by an electric utility
 2-40 subject to this subchapter. Consistent with its jurisdiction, the
 2-41 commission shall have the authority in approving or modifying the
 2-42 transition to competition plan to require the electric utility to
 2-43 take reasonable steps to facilitate the development of a wholesale
 2-44 generation market within the boundaries of the electric utility's
 2-45 service territory.

2-46 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND
 2-47 RELATED MATTERS. (a) The commission may not authorize customer
 2-48 choice until the commission certifies the applicable power region
 2-49 as a qualifying power region under Section 39.152(a). Sections
 2-50 39.152(b)-(d) also apply to the electric utility and commission in
 2-51 determining whether to certify the applicable power region.

2-52 (b) The commission shall certify that the requirement of
 2-53 Section 39.152(a)(3) is met for an electric utility subject to this
 2-54 subchapter only if the commission finds that the total capacity
 2-55 owned and controlled by the electric utility and the utility's
 2-56 affiliates does not exceed 20 percent of the total installed
 2-57 generation capacity within the power region of that utility.

2-58 Sec. 39.454. RECOUPMENT OF TRANSITION TO COMPETITION COSTS.
 2-59 An electric utility subject to this subchapter is entitled to
 2-60 recover, as provided by this section, all reasonable and necessary
 2-61 expenditures made or incurred before the effective date of this
 2-62 section to comply with this chapter, to the extent the costs have
 2-63 not otherwise been recovered. The electric utility may file with
 2-64 the commission an application for recovery that gives details of
 2-65 the amounts spent or incurred. After notice and hearing, the
 2-66 commission shall review the amounts and, if the amounts are found to
 2-67 be reasonable and necessary and not otherwise previously recovered,
 2-68 approve a transition to competition retail rate rider mechanism for
 2-69 the recovery of the approved transition to competition costs. A

3-1 rate proceeding under Chapter 36 is not required to implement the
 3-2 rider. A rate rider implemented to recover approved transition to
 3-3 competition costs shall provide for recovery of those costs over a
 3-4 period not to exceed 15 years, with appropriate carrying costs.

3-5 Sec. 39.455. RECOVERY OF INCREMENTAL CAPACITY COSTS. An
 3-6 electric utility subject to this subchapter is entitled to recover,
 3-7 through a rate rider mechanism, reasonable and necessary costs of
 3-8 incremental resources required to meet load requirements to the
 3-9 extent those costs result in the utility expending more for
 3-10 capacity costs under purchase power agreements than were included
 3-11 in the utility's last base rate case, adjusted for load growth. Any
 3-12 rider under this section shall be implemented after review and
 3-13 approval by the commission, after notice and opportunity for
 3-14 hearing. Following the initial implementation of the rider, an
 3-15 electric utility subject to this subchapter may request revisions
 3-16 semiannually, after notice and opportunity for hearing, on the
 3-17 dates provided in the commission's rules for filing petitions to
 3-18 revise the utility's fuel factor. In conjunction with the utility's
 3-19 fuel reconciliation proceedings, the commission shall reconcile
 3-20 the costs recovered under the rider and the actual incremental
 3-21 capacity costs eligible for recovery under this section. The rider
 3-22 shall expire on the introduction of customer choice or on the
 3-23 implementation of rates resulting from the filing of a Subchapter
 3-24 C, Chapter 36, rate proceeding. In no event may the amount
 3-25 recovered annually under the rider exceed five percent of the
 3-26 utility's annual base rate revenues.

3-27 Sec. 39.456. FRANCHISE AGREEMENTS. A municipality, with
 3-28 the agreement of an electric utility, may accelerate the expiration
 3-29 date of a franchise agreement that was in existence on September 1,
 3-30 1999. Any new franchise agreement must be approved by the governing
 3-31 body of the municipality. To the extent that a new franchise
 3-32 agreement would result in an increase in the payment of franchise
 3-33 fees to the municipality, and subject to the terms of the franchise
 3-34 agreement, either the electric utility or the municipality, without
 3-35 the need for a rate proceeding under Chapter 36, may file with the
 3-36 commission for approval of a rider for the electric utility's
 3-37 recovery of franchise payments resulting from the agreement, so
 3-38 long as such rider is collected only from customers of the electric
 3-39 utility that are located within the boundaries of the municipality.

3-40 Sec. 39.457. CONTRACTUAL RIGHTS. In the event that the
 3-41 electric utility subject to this subchapter either merges,
 3-42 consolidates, or otherwise becomes affiliated with another owner of
 3-43 electric generation, or completes the jurisdictional separation
 3-44 authorized by Section 39.452(e) and the resulting vertically
 3-45 integrated utility proposes to join a regional transmission
 3-46 organization, and either action adversely affects the rights or
 3-47 obligations of an electric cooperative under a wholesale generation
 3-48 or transmission agreement entered into before the effective date of
 3-49 this subchapter or otherwise adversely affects the electric
 3-50 cooperative's access to its existing generation resources under
 3-51 said agreements, then the utility shall submit a proposal agreeable
 3-52 to the cooperative and the utility for addressing such rights and
 3-53 obligations in the appropriate regulatory proceeding. Such
 3-54 proposal shall be consistent with applicable law regarding the
 3-55 rights and obligations of the electric cooperative and the utility
 3-56 under such existing generation or transmission agreements.

3-57 SECTION 2. This Act takes effect immediately if it receives
 3-58 a vote of two-thirds of all the members elected to each house, as
 3-59 provided by Section 39, Article III, Texas Constitution. If this
 3-60 Act does not receive the vote necessary for immediate effect, this
 3-61 Act takes effect September 1, 2005.

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