

By: Hughes, Frost, Hopson, Merritt, Pickett

H.B. No. 2644

Substitute the following for H.B. No. 2644:

By: Hartnett

C.S.H.B. No. 2644

A BILL TO BE ENTITLED

AN ACT

relating to delay in the deregulation of certain electric utilities.

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

SECTION 1. Chapter 39, Utilities Code, is amended by adding Subchapters J and K to read as follows:

SUBCHAPTER J. DELAY OF COMPETITION IN CERTAIN NON-ERCOT AREAS

Sec. 39.451. APPLICABILITY. (a) This subchapter applies to an investor-owned electric utility:

(1) that is operating solely outside of ERCOT in areas of this state that were included in the Southwest Power Pool 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.

(b) The legislature finds that circumstances exist that require that areas served by an electric utility described by Subsection (a) be treated as areas in which it is not in the public interest to transition to full retail customer choice at this time.

Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO COMPETITION. (a) Until the later of January 1, 2010, 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 electric utility shall be regulated under traditional cost of

1 service regulation and the electric utility is subject to all
2 applicable regulatory authority prescribed by this subtitle and
3 Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the
4 date on which an electric utility subject to this subchapter
5 implements customer choice, the provisions of this chapter do not
6 apply to that electric utility, other than this subchapter,
7 Sections 39.904 and 39.905, and the provisions relating to the duty
8 to obtain a permit from the Texas Commission on Environmental
9 Quality for an electric generating facility and to reduce emissions
10 from an electric generating facility.

11 (b) On or after January 1, 2010, an electric utility subject
12 to this subchapter may choose to participate in customer choice. An
13 electric utility that chooses to participate in customer choice
14 shall file a transition to competition plan with the commission.
15 The transition to competition plan must identify how electric
16 utilities subject to this subchapter intend to achieve full
17 customer choice, including an evaluation of the transmission
18 facilities, an explanation of how certification of the power region
19 under Section 39.152 will be achieved, auctioning rights to
20 generation capacity, or any other measure that is consistent with
21 the public interest. The utility must also include in the
22 transition to competition plan a provision to establish a price to
23 beat for residential customers and commercial customers having a
24 peak load of 1,000 kilowatts or less. The commission may prescribe
25 additional information or provisions that must be included in the
26 plan. The commission shall approve, modify, or reject a plan within
27 180 days after the date of a filing under this section unless a

1 hearing is requested by any party to the proceeding. If a hearing is
2 requested, the 180-day deadline will be extended one day for each
3 day of the hearing. The transition to competition plan may be
4 updated or amended, subject to commission approval, until the
5 applicable power region is certified as a qualifying power region
6 under Section 39.152 and the plan is approved.

7 (c) On implementation of customer choice, an electric
8 utility subject to this subchapter is subject to the provisions of
9 this subtitle and Subtitle A to the same extent as other electric
10 utilities, including the provisions of Chapter 37 concerning
11 certificates of convenience and necessity.

12 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND
13 RELATED MATTERS. If an electric utility subject to this subchapter
14 chooses on or after January 1, 2010, to participate in customer
15 choice, the commission may not authorize customer choice until the
16 applicable power region has been certified as a qualifying power
17 region under Section 39.152.

18 SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN

19 AREAS OUTSIDE OF ERCOT

20 Sec. 39.501. APPLICABILITY. (a) This subchapter applies
21 to any multistate electric utility operating solely outside of
22 ERCOT that is serving customers in areas of this state within the
23 Western Electric Coordinating Council.

24 (b) The legislature finds that the power region in which an
25 electric utility subject to this subchapter provides electric
26 service is unable at this time to offer fair competition and
27 reliable service to all retail customer classes in this state. As a

1 result, the introduction of retail competition for the portions of
2 that power region in this state is delayed until fair competition
3 and reliable service are available to all retail customer classes.

4 Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Until the
5 date on which an electric utility subject to this subchapter is
6 authorized by the commission to implement retail customer choice,
7 the rates of the utility are subject to regulation under Chapter 36.

8 (b) Until the date on which an electric utility subject to
9 this subchapter implements customer choice, the provisions of this
10 chapter, other than this subchapter and Sections 39.904 and 39.905,
11 do not apply to that utility.

12 (c) In accordance with Section 39.904, an electric utility
13 subject to this subchapter shall obtain, at a minimum, renewable
14 energy credits in an amount sufficient to meet the requirements for
15 the compliance period beginning January 1, 2006, and for each
16 compliance period after that date.

17 (d) In accordance with Section 39.905, an electric utility
18 subject to this subchapter shall begin administering energy
19 efficiency programs on January 1, 2006. The utility shall meet, at
20 a minimum, five percent of its growth in demand through energy
21 efficiency savings resulting from those programs by January 1,
22 2007, and 10 percent of its growth in demand by January 1, 2008, and
23 each year after that date.

24 Sec. 39.503. TRANSITION TO COMPETITION. (a) The sequence
25 of events prescribed by Subsections (b)-(f) shall be followed to
26 introduce retail competition in the service area of an electric
27 utility subject to this subchapter. All listed items in a

1 subsection must be completed before the events provided by the next
2 subsection are initiated. Full retail competition may not begin in
3 the service area of the utility until all actions prescribed by
4 those subsections are completed.

5 (b) The first stage for the transition to competition
6 consists of the following activities:

7 (1) approval of a regional transmission organization
8 by the Federal Energy Regulatory Commission for the power region
9 that includes the electric utility's service area and commencement
10 of independent operation of the transmission network under the
11 approved regional transmission organization;

12 (2) development of retail market protocols to
13 facilitate retail competition; and

14 (3) completion of an expedited proceeding to develop
15 non-bypassable delivery rates for the customer choice pilot project
16 to be implemented under Subsection (c)(1).

17 (c) The second stage for the transition to competition
18 consists of the following activities:

19 (1) initiation of the customer choice pilot project in
20 accordance with Section 39.104;

21 (2) development of a balancing energy market, a market
22 for ancillary services, and a market-based congestion management
23 system for the wholesale market in the power region in which the
24 regional transmission organization operates; and

25 (3) implementation of a seams agreement with adjacent
26 power regions to reduce barriers to entry and facilitate
27 competition.

1 (d) The third stage for the transition to competition
2 consists of the following activities:

3 (1) the electric utility filing with the commission:

4 (A) an application for business separation in
5 accordance with Section 39.051;

6 (B) an application for unbundled transmission
7 and distribution rates in accordance with Section 39.201;

8 (C) an application for certification of a
9 qualified power region in accordance with Section 39.152; and

10 (D) an application for price-to-beat rates in
11 accordance with Section 39.202;

12 (2) the commission:

13 (A) approving a business separation plan for the
14 utility;

15 (B) setting unbundled transmission and
16 distribution rates for the utility;

17 (C) certifying a qualified power region, which
18 includes conducting a formal evaluation of wholesale market power
19 in the region, in accordance with Section 39.152;

20 (D) setting price-to-beat rates for the utility;
21 and

22 (E) determining which competitive energy
23 services must be separated from regulated utility activities in
24 accordance with Section 39.051; and

25 (3) completion of the testing of retail and wholesale
26 systems, including those systems necessary for switching customers
27 to the retail electric provider of their choice and for settlement

1 of wholesale market transactions, by the regional transmission
2 organization, the statewide registration agent, and market
3 participants.

4 (e) The fourth stage for the transition to competition
5 consists of the following activities:

6 (1) commission evaluation of the results of the pilot
7 project;

8 (2) initiation by the electric utility of a capacity
9 auction in accordance with Section 39.153 at a time to be determined
10 by the commission; and

11 (3) separation by the utility of competitive energy
12 services from its regulated utility activities, in accordance with
13 the commission order approving the separation of competitive energy
14 services.

15 (f) The fifth stage for the transition to competition
16 consists of the following activities:

17 (1) evaluation by the commission of whether the power
18 region that includes the electric utility can offer fair
19 competition and reliable service to all retail customer classes,
20 and:

21 (A) if the commission concludes that the power
22 region can offer fair competition and reliable service to all
23 retail customer classes, the commission issuing an order initiating
24 retail competition for the utility; and

25 (B) if the commission determines that the power
26 region cannot offer fair competition and reliable service to all
27 retail customer classes, the commission issuing an order further

1 delaying retail competition for the utility; and
2 (2) on the issuance of an order from the commission
3 initiating retail competition for the utility, completion by the
4 utility of the business separation and unbundling in accordance
5 with the commission order approving the unbundling.

6 SECTION 2. This Act takes effect September 1, 2005.