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S.B. No. 735

A BILL TO BE ENTITLED

AN ACT

relating to delay in the deregulation of certain electric utilities  
outside of ERCOT.

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

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

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

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

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

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

1       (b) A commission order issued before the effective date of  
2 this section requiring the electric utility to comply with a  
3 provision of this chapter is void.

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

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

12           (2) the electric utility is not subject to a rate  
13 freeze and may file for rate changes under Chapter 36, for approval  
14 of one or more of the rate rider mechanisms authorized by Section  
15 39.454, or for both rate changes and approval of rate rider  
16 mechanisms.

17       (d) An electric utility subject to this subchapter may  
18 proceed with and complete jurisdictional separation.

19       (e) An electric utility subject to this subchapter may file  
20 a transition to competition plan with the commission. After the  
21 applicable power region is certified in accordance with Section  
22 39.453, the commission may order the electric utility to file a  
23 transition to competition plan. The transition to competition plan  
24 must identify how the electric utility intends to mitigate market  
25 power, if necessary, and to achieve full customer choice. The  
26 electric utility must also include in the transition to competition  
27 plan a provision to reinstate a customer choice pilot project and to

1 establish a price to beat for residential customers and commercial  
2 customers having a peak load of 1,000 kilowatts or less.

3 (f) The commission shall approve or reject a plan filed  
4 under Subsection (e) not later than the 180th day after the date the  
5 plan is filed unless a hearing is requested by any party to the  
6 proceeding. If a hearing is requested, the 180-day deadline is  
7 extended one day for each day of the hearing. The transition to  
8 competition plan may be updated or amended annually, subject to  
9 commission approval, until the applicable power region is certified  
10 as a qualifying power region under Section 39.152.

11 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND  
12 RELATED MATTERS. (a) The commission may not authorize customer  
13 choice until the commission certifies the applicable power region  
14 as a qualifying power region under Section 39.152(a). Sections  
15 39.152(b)-(d) also apply to the electric utility and commission in  
16 determining whether to certify the applicable power region.

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

23 Sec. 39.454. RECOUPMENT OF TRANSITION TO COMPETITION COSTS.  
24 An electric utility subject to this subchapter is entitled to  
25 recover, as provided by this section, all reasonable and necessary  
26 expenditures made or incurred before the effective date of this  
27 section to comply with this chapter. The electric utility may file

1 with the commission an application for recovery that gives details  
2 of the amounts spent or incurred. After notice and hearing, the  
3 commission shall review the amounts and, if the amounts are found to  
4 be reasonable and necessary, approve a transition to competition  
5 retail rate rider mechanism for the recovery of the approved  
6 transition to competition costs. A rate proceeding under Chapter 36  
7 is not required to implement the rider. A rate rider implemented to  
8 recover approved transition to competition costs shall expire not  
9 later than December 31, 2015.

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