

BILL ANALYSIS

C.S.H.B. 1189
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Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides for the opening of the Texas electricity market for competition, resulting in customers in different segments of the market exercising their ability to choose a new provider of electricity. However, the lack of competitive forces in the residential market has led to increased electricity prices and little customer mobility between providers. During the recent past, retail electricity prices increased with the increase in the price of natural gas, the primary source of fuel for electricity generation in Texas. However, when natural gas prices fell, electricity prices did not, and customers did not switch companies in response to the price increase.

It has become necessary to further competition in the retail electricity market by encouraging competitive activity among retail electric providers. Additionally, it has become necessary to target, educate and assist customers on the legacy price to beat to switch plans or providers to reduce their electric bills.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 4 of this bill.

ANALYSIS

SECTION 1. Amends Sections 17.157(a) and (b), Utilities Code, by delineating that the Public Utility Commission's authority related to customer disputes applies only to residential customers and by adding language that allows the commission to investigate residential retail customer disputes in addition to resolving such disputes.

SECTION 2. Adds new Section 39.051(h), Utilities Code, which requires that, on or before January 1, 2008, an electric utility and the competitive affiliates of the utility that were created pursuant to the separation requirements of Section 39.051 and that are owned by a common holding company each shall have a name and logo that is distinct from the name and logo of each of the other entities owned by the common holding company and distinct from the name and logo of the common holding company, have its board of directors composed exclusively of individuals who are not members of the board of directors of any of the other entities owned by the common holding company and are not members of the board of the common holding company, have a chief executive officer only of that entity, and have its headquarters located in a building separate and apart from the building or buildings in which the headquarters of any of the other entities owned by the common holding company is located or in which the headquarters of the common holding company is located. In addition, the utility and the competitive affiliates each shall maintain an arm's-length relationship with the other entities owned by the common holding company and shall enter into transactions with another entity owned by the common holding company only on a commercially reasonable basis and only as approved by a majority of the directors of its governing board of directors. This section also requires the utility and the competitive affiliates to each prepare its separate annual financial statement in accordance with generally accepted accounting principles showing its assets and liabilities as separate and distinct from the assets of the other entities owned by the common holding company and to each ensure that the commission has complete access to all of the entity's books and records pertaining to transactions between the entity and another entity owned by the common holding company.

SECTION 3. Adds new Section 39.101(i), Utilities Code, which prohibits a retail electric provider from stating or implying that it can provide better reliability of electric service or

preferential treatment in service restoration than another provider. Permits the provider to make claims about “customer service reliability.” Authorizes the Public Utility Commission to impose a penalty for a violation of Subsection (i), and requires that such a violation be included in the Commission’s highest class of violation.

SECTION 4. Amends Subchapter C, Chapter 39, Utilities Code, by adding Section 39.110, which promotes residential customer choice by imposing a charge for the next three years on certain retail electric providers that do not meet a specified annual target for gaining residential customers outside their traditional service territory. The charge applies to retail electric providers with more than 250,000 residential customers that on December 31, 2006 were required to offer the price to beat to residential customers and to any successors in interest to such retail electric providers. To avoid paying the charge, a retail electric provider with more than a million residential customers must gain 90,000 or more residential customers a year outside its traditional service territory, except that the provider may avoid the charge in the third year by meeting the target gain in customers for both of the first two years. To avoid paying the charge, a retail electric provider with less than a million but more than 250,000 residential customers must gain 45,000 or more residential customers a year outside its traditional service territory, except that the provider may avoid the charge in the third year by meeting the target for both of the first two years. The gain in customers in a calendar year is measured by move-in and switch transactions processed by the independent organization for the provider in areas outside the provider’s traditional service territory. Residential customers gained by a provider that was an affiliate of the retail electric provider on December 31, 2006 count toward meeting the target.

If the target is not met, the annual charge is calculated by subtracting the number of residential customers the affiliated retail electric provider gains outside its traditional service territory from the target and multiplying by \$100 on December 31, 2007, \$200 on December 31, 2008, and \$300 on December 31, 2009.

Unless funds are not appropriated from the system benefit fund sufficient to provide a 10 percent discount to low-income electric customers as provided by Section 39.903(h), the money collected from any charge assessed for not meeting the target residential customer gains are to be used to fund a Public Utility Commission customer education program for residential customers, including the provision of a call center. If funds are not appropriated from the system benefit fund sufficient to provide a 10 percent discount to low-income electric customers, the money collected for any charge shall be used first to assist low-income electric customers by providing a 10 percent reduced rate and then for a residential customer education program, including the provision of a call center.

The commission may adopt rules as necessary or appropriate to carry out Section 39.110.

Section 39.110 as added by this Act expires March 31, 2010.

SECTION 5. Adds new Section 39.2021, Utilities Code, which requires that until March 1, 2008, a retail electric provider who served residential customers under a price to beat tariff on December 31, 2006, shall assist such customers who have not affirmatively chosen an electric service plan in choosing an alternative plan offered by the provider. The section defines “residential customers under a price to beat tariff on December 31, 2006”. After March 1, 2008, the retail electric provider may provide a ballot to such residential customers who have not affirmatively chosen an service plan to allow the customer to choose another plan. The ballot describes the alternative plans the provider offers and allows the residential customer to choose a particular alternative plan. The ballot shall include a statement as specified in this section. For a residential customer that does not choose a plan through the ballot process, the retail electric provider shall change the customer’s service plan to conform to the terms of service for an alternative electric service plan, but such plan shall not include a termination fee and at least 45 days notice shall be provided prior to the change. For retail electric providers not using the ballot process and retail electric providers imposed a charge under Section 39.110(d) for the calendar year 2007, the names and addresses of non-choosing residential customers shall be provided to the Public Utility Commission, who can then use this information to conduct a customer education program concerning alternative service plans and providers. For this section, a residential customer is not considered to have affirmatively chosen an electric service plan

offered by a retail electric provider if electric service is provided under a plan that is initiated through negative option marketing.

SECTION 6. Amends Section 39.202(c), Utilities Code, by adding information on available prices and savings available from switching providers or plans to the information that the Public Utility Commission may provide in its education campaign. Amends Section 39.202, Utilities Code, by adding subsection (d), which authorizes the Commission to require a transmission and distribution utility to issue public service announcements communicating that electric service reliability and outage restoration is not contingent upon receiving service from a particular retail electric provider.

SECTION 7. Provides that the change in law to Section 17.157(a), Utilities Code, does not apply to a dispute for which a final administrative order is entered on or before the effective date of the bill.

SECTION 8. Provides that the Act takes effect immediately if it receives a vote of two-thirds of all members elected to each house. Otherwise, the bill takes effect September 1, 2007.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of each house, otherwise it is effective September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1 of the original amends Section 39.051, Utilities Code, by adding Subsection (h), as follows:

(h) Requires an electric utility affiliated with power generation companies that own 5,000 megawatts or more of generating capacity or with retail electric providers (retail providers) that have at least 10,000,000 annual sales of megawatt hours of electricity in the State of Texas to file with the Public Utility Commission (PUC) an unbundling plan for discontinuing, within a reasonable period of time determined by the PUC, the utility's affiliation with power generation companies or retail providers.

SECTION 1 of the substitute amends Sections 17.157 (a) and (b), Utilities Code by delineating that the Public Utility Commission's authority related to customer disputes applies only to residential customers and by adding language that allows the commission to investigate residential retail customer disputes in addition to resolving such disputes.

SECTION 2 of the original amends Section 39.101, Utilities Code, by amending Subsection (a) and (b) and adding Subsection (i) as follows:

(a) Includes a provision requiring the PUC to ensure that retail customer protections are established to entitle a customer to privacy of certain information provided that the release to competitive retail electric providers (competitive provider) of information identifying residential customers served by the affiliated retail electric provider (affiliated provider) at the end of the price to beat period is not to be considered to be a violation of customer privacy.

(b) Entitles a customer to the choice of a retail provider that must be honored and cannot be changed without the customer's consent provided, however, that a residential customer receiving service from an affiliated provider with a month-to-month service plan is permitted to be transferred to a competitive provider after the end of the price to beat period in any PUC-authorized reallocation plan.

(i) Prohibits a retail provider from stating or implying that it can provide a greater level of reliability of electric service or preferential treatment in the restoration of service after an outage. Permits the PUC to impose an administrative penalty for a violation of this subsection according to Section 15.024 (Administrative Penalty Assessment Procedure). Requires a violation of this subsection to be included in the highest class of violations in

the classification system established by the PUC under Section 15.023 (Administrative Penalties).

SECTION 2 of the substitute adds new Section 39.051(h), Utilities Code, which requires that, on or before January 1, 2008, an electric utility and the competitive affiliates of the utility that were created pursuant to the unbundling requirements of Section 39.051 and that are owned by a common holding company shall each have a name and logo that is distinct from the name and logo of the other entities owned by the common holding company and distinct from the name and logo of the common holding company, its separate board of directors composed exclusively of individuals who are not members of the board of directors of any of the other entities owned by the common holding company and are not members of the board of the common holding company, a chief executive officer only of that entity, and have its headquarters located in a building separate and apart from the building or buildings in which the headquarters of any of the other entities owned by the common holding company is located or in which the headquarters of the common holding company is located. In addition, the utility and the competitive affiliates shall each maintain an arm's-length relationship with the other entities owned by the common holding company and shall enter into transactions with another entity owned by the common holding company only on a commercially reasonable basis and only as approved by a majority of the directors of its governing board of directors. This section also requires the utility and the competitive affiliates to each prepare its separate annual financial statement in accordance with generally accepted accounting principles showing its assets and liabilities as separate and distinct from the assets of the other entities owned by the common holding company and to each ensure that the commission has complete access to all of the entity's books and records pertaining to transactions between the entity and another entity owned by the common holding company.

SECTION 3 of the original amends Section 39.102 (b), Utilities Code, which permits an affiliated provider serving a retail customer on December 31, 2001, to continue to serve a customer until the customer chooses service from certain different electric providers or until the customer is switched to another retail provider under Section 39.202 (r).

SECTION 3 of the substitute adds new Section 39.101(i), Utilities Code, which prohibits a retail electric provider from stating or implying that it can provide better reliability of electric service or preferential treatment in service restoration than another provider. Permits the provider to make claims about "customer service reliability." Authorizes the Public Utility Commission to impose a penalty for a violation of Subsection (i), and requires that such a violation be included in the Commission's highest class of violation.

SECTION 4 of the original amends Subchapter C, Chapter 39, Utilities Code, by adding Section 39.110, as follows:

Sec. 39.110. PROMOTION OF RESIDENTIAL CUSTOMER CHOICE. (a) Provides that the purpose of this section is to promote customer choice for residential customers by imposing a charge on certain retail providers to create an incentive for them to compete for residential customers.

(b) Provides that this section applies to a retail provider that on December 31, 2006, was required to offer service to residential customers at the price to beat, and to any successor of the retail provider, and any reference in this section to a retail service provider includes a successor to such provider. Provides that this section no longer applies to a retail provider if the provider is not assessed a charge under Subsection (c) for two consecutive years.

(c) Requires PUC to impose an annual charge on a retail provider that is subject to this section under certain conditions.

(d) Sets forth the manner of determining the amount of the annual charge under this section. Requires the annual charge to be paid to residential customers served by the retail provider in the transmission and distribution utility service territory in which the retail provider was required to offer the price to beat.

(e) Provides that the annual charge no longer applies to a retail provider if each of the retail providers that provided service in accordance with Section 39.202 (Price to Beat) in the two transmission and distribution utility service territories with the greatest number of residential customers are not assessed a charge under this section for two consecutive years.

(f) Authorizes the PUC to adopt and enforce rules necessary for the implementation of this section.

SECTION 4 of the substitute amends Subchapter C, Chapter 39, Utilities Code, by adding Section 39.110, which promotes residential customer choice by imposing a charge for the next three years on certain retail electric providers that do not meet a specified annual target for gaining residential customers outside their traditional service territory. The charge applies to retail electric providers with more than 250,000 residential customers that on December 31, 2006 were required to offer the price to beat to residential customers and to a successor in interest to such retail electric provider. To avoid paying the charge, a retail electric provider with more than a million residential customers must gain 90,000 or more residential customers a year outside its traditional service territory, except that the provider may avoid the charge in the third year by meeting the target gain in customers for both of the first two years. To avoid paying the charge, a retail electric provider with less than a million but more than 250,000 residential customers must gain 45,000 or more residential customers a year outside its traditional service territory, except that the provider may avoid the charge in the third year by meeting the target for both of the first two years. Residential customers gained by a provider that was an affiliate of the retail electric provider on December 31, 2006 count toward meeting the target.

If the target is not met, the annual charge is calculated by subtracting the number of residential customers the affiliated retail electric provider gains outside its traditional service territory from the target and multiplying by \$100 on December 31, 2007, \$200 on December 31, 2008, and \$300 on December 31, 2009.

Unless funds are not appropriated from the system benefit fund sufficient to provide a 10 percent discount to low-income electric customers as provided by Section 39.903(h), the money collected from any charge assessed for not meeting the target customer gains are to be used to fund a Public Utility Commission customer education program for residential customers, including the provision of a call center. If funds are not appropriated from the system benefit fund sufficient to provide a 10 percent discount to low-income electric customers, the money collected for any charge shall be used first to assist low-income electric customers by providing a 10 percent reduced rate and then for a residential customer education program, including the provision of a call center.

SECTION 5 of the original amends Section 39.202, Utilities Code, by adding Subsections (q) and (r), to require affiliated providers to release information to competitive providers that identifies the residential customers receiving retail electric service from the affiliated providers on a schedule determined by the PUC. Also authorizes PUC to conduct a program requiring residential customers receiving service from an affiliated provider under a month-to-month service plan to choose a retail provider. Authorizes customers who do not select a retail provider may be switched to a competitive provider or to a different product with their current provider.

SECTION 5 of the substitute amends Subchapter E, Chapter 39, Utilities Code by adding Section 39.2021 which requires that until March 1, 2008, a retail electric provider who served price to beat customers on December 31, 2006, shall assist its residential customers who have not affirmatively chosen an electric service plan in choosing an alternative plan offered by the provider. After March 1, 2008, the retail electric provider may provide a ballot to its residential customers that have not affirmatively chosen an service plan to allow the customer to choose another plan. For a residential customer that does not choose a plan through the ballot process, the retail electric provider shall change the customer's service plan to conform to the terms of service for an alternative electric service plan, but such plan shall not include a termination fee and at least 45 days notice shall be provided prior to the change. For retail electric providers not using the ballot process and affiliated retail electric providers imposed a charge under Section 39.110(d) for the calendar year 2007, the names and addresses of non-choosing customers shall

be provided to the Public Utility Commission, who can then use this information to conduct a customer education program concerning alternative service plans and providers.

SECTION 6 of the original amends Subchapter E, Chapter 39, Utilities Code, by adding Section 39.2025, as follows:

Sec. 39.2025. MARKET REVIEW BASED ON PRICE OF ELECTRICITY. (a) Authorizes PUC, on its own motion, to conduct a review of a transmission and distribution service area that customer choice has been introduced to determine whether the retail price of electricity sold to residential customers is unreasonably high or is a threat to public safety. Requires PUC to conduct a review if it receives a request for the review from the Office of Public Utility Counsel, a municipality in the service area, or a standing committee of the Senate or House of Representatives of the State of Texas that has primary jurisdiction over the PUC.

(b) Authorizes PUC, while its conducting a review, to impose a cap on the retail price of electricity sold to residential customers in a transmission and distribution service area at a price the PUC deems appropriate. Requires that any cap PUC imposes will apply to all retail electric providers in the capped area that sell electricity to residential customers.

(c) Authorizes PUC to take any action in the public interest, including extending a cap imposed under Subsection (b), if, after the completion of a review, the PUC deems that the retail price of electricity sold to residential customers in the transmission and distribution service area is unreasonably high or is a threat to public safety.

SECTION 6 of the substitute amends Section 39.202(c), Utilities Code, by adding information on available prices and savings available from switching providers or plans to the information that the Public Utility Commission may provide in its education campaign. Amends Section 39.202, Utilities Code, by adding subsection (d), which authorizes the Commission to require a transmission and distribution utility to issue public service announcements communicating that electric service reliability and outage restoration is not contingent upon receiving service from a particular retail electric provider.

SECTION 7 of the original amends Section 39.902, Utilities Code, by amending Subsection (c) and by adding Subsections (d) and (e). Authorizes PUC to provide customers information concerning marketplace prices available, savings available via switching retail providers, and information concerning certain specific retail provider. Authorizes PUC to require an affiliated provider to provide information to customers regarding savings available to the customer from switching to another retail provider or product in a manner specified by PUC. Authorizes PUC to require a transmission and distribution utility to issue public service announcements that inform customers of certain information regarding service following an outage is not contingent upon the customer's receiving service from a particular retail provider.

SECTION 7 of the substitute provides that the change in law made to Section 17.157(a), Utilities Code, by this Act does not apply to a dispute for which a final administrative order is entered on or before the effective date of this Act.

SECTION 8 of the original is the effective date of upon passage of September 1, 2007.

SECTION 8 of the substitute is the same as the original.