

BILL ANALYSIS

C.S.H.B. 1386
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Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently there is no state mechanism in place to regulate the decommissioning costs of new nuclear electric generation units in the state. These are the costs associated with final site clean up at the end of the operational life of a nuclear plant. To obtain a license to build and operate a nuclear electric generator, the Nuclear Regulatory Commission requires applicants to demonstrate how they will fund such decommissioning costs.

C.S.H.B.1386 provides a structure for funding of nuclear decommissioning trusts that places the obligation on owners of the plants, with ratepayers only providing a guarantee for funding. This is the more conservative of two approaches suggested by the Public Utility Commission of Texas in its "Scope of Competition Report" (the other option would have placed all decommissioning costs on ratepayers) and will allow developers to avoid up front funding of these costs. This measure is intended to encourage development of nuclear power in the state. Owners will be obligated to pay decommissioning costs, with negligible risk to ratepayers.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 of this bill.

ANALYSIS

SECTION 1. Adds new Section 39.206, Utilities Code, to establish procedures for funding decommissioning costs for nuclear-powered electric generating units. The section:

- Defines "Decommissioning," "Nuclear decommissioning trust," "Nuclear generating unit," and "Retail electric customer;"
- Applies only to a nuclear generating unit constructed in this state on or after January 1, 2002 and owned by a power generating company;
- Requires a power generation company to fund its share of decommissioning costs on an annual basis out of its operating revenues;
- Requires a power generation company to establish, consistent with federal Nuclear Regulatory Commission requirements, a nuclear decommissioning trust and to begin funding of the trust before receiving its initial fuel load and beginning commercial operation;
- Requires the Public Utility Commission (PUC) to establish, in accordance with federal requirements, the required level of annual funding necessary to meet a nuclear generating unit's decommissioning obligations over the unit's operating license period;
- Requires a power generation company to conduct a study of decommissioning costs before beginning commercial operation and at least once in each three-year period during the term of the nuclear generating unit's operating license and requires the PUC to review for reasonableness, at least once in each three-year period, a power generation company's most recent study;
- Requires a power generation company to file an annual report on the status of its decommissioning trust fund and requires the PUC to review, at least once in each three-year period, the balance of each trust and the projected amount of annual decommissioning funding for the associated nuclear generating unit. Also requires the PUC to revise annual funding amounts if necessary after the review.
- Requires a power generation company to annually remit required decommissioning funding to the trust and allows the PUC to terminate the power generation company's registration to operate if the company fails to do so.

- Establishes the power generation company owning a nuclear generating unit as the funds administrator of the trust and requires the company to invest the funds in accordance with PUC rules to ensure that the funds and amounts earned from investment will be available at the time of decommissioning;
- Requires the PUC to adopt rules governing trust funds and cost studies and reviews required under this section;
- Requires the PUC to determine the manner in which any shortfall in actual decommissioning costs shall be recovered from retail electric customers if the balance of the trust fund is not sufficient or a power generation company's registration to operate is terminated for failure to remit the required funding amounts;
- Limits the responsibility of the retail electric customers of a municipally owned utility or electric cooperative for a shortfall to the portion of the shortfall that corresponds to the relative proportion of electricity from the nuclear generating unit purchased by the municipally owned utility or electric cooperative.
- If retail electric customers become responsible for decommissioning costs and the nuclear generating unit is recommissioned by the same or a new owner, requires the power generation company to repay the costs to retail electric customers over a period established by the PUC.

SECTION 2. Provides an effective date of September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1386 strikes the word "GENERATION" in the Section title of the original bill and replaces it with "GENERATING".

C.S.H.B.1386 alters the order of the definitions and provides a definition of "Retail electric customer," which includes a customer of municipally owned utility or electric cooperative with an agreement to purchase power from a nuclear generating unit, while the original bill provided a definition of "Competitive retail electric customer" and excluded customers of a municipally owned utility or electric cooperative that has not implemented customer choice. To conform to the definition provided in the substitute, the word "competitive" is omitted throughout when referring to a retail electric customer.

The original version of H.B.1386 placed the primary burden on the PUC to determine the amount of the annual decommissioning funding by considering the most current reasonably available information on the costs of decommissioning. In the substitute, the power generation company is obligated to conduct a study on decommissioning costs before beginning commercial operation and at least once in each three-year period during the term of the nuclear generating unit's operating license using the most current reasonably available information on the costs of decommissioning. The substitute also adds language to require the PUC to review a cost study for reasonableness at least once in each three-year period and to require a power generation company to file an annual report on its decommissioning trust fund.

Subsection (i)(2) is not contained in the original bill. Subsection (i)(2) of the substitute requires the PUC to adopt rules necessary to ensure that the periodic cost studies and reviews include all current reasonably available information the PUC determines is necessary and appropriate. [Subsections (i)(2) and (i)(3) of the original bill have been renumbered to (i)(3) and (i)(4) in the substitute].

The substitute inserts, in Subsection (j), the phrase "in this state" as clarification when describing retail electric customers and the process for payment of costs of decommissioning if the balance of the trust fund is insufficient. Additionally, the substitute modifies the criteria for payment of decommissioning costs by retail electric customers. Both the original bill and the substitute allow recovery from retail electric customers if the balance of the trust fund is not sufficient upon decommissioning to cover the costs of decommissioning. The original bill also allowed recovery from retail electric customers if the power generation company defaults on a debt associated with

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financing the nuclear generating unit or fails to remit the annual payment and fails to cure the default or failure within 90 days, whereas the substitute allows recovery from retail electric customers if the power generation company's registration to operate is terminated for failure to remit the required amount of funding.

Subsection (k) of the substitute is not contained in the original bill. Under the new Subsection (k), the substitute establishes that the retail electric customers of a municipally owned utility or electric cooperative are responsible for the portion of a shortfall in decommissioning costs that relates to the relative proportion of the electric power from the nuclear generating unit purchased by municipally owned utility or electric cooperative.

Subsection (k) of the original bill, which relates to repayment of decommissioning costs to retail electric customers if a nuclear generating unit becomes operational again, is relettered Subsection (l) in the substitute, and conforming changes are made to reflect changes in terminology and other changes made in the substitute with regard to the criteria for payment of decommissioning costs by retail electric customers.