

BILL ANALYSIS

Senate Research Center

S.B. 896
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Business & Commerce
2/26/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Public Utility Commission of Texas (PUC) is often required to examine information that is confidential or otherwise excepted from public disclosure. As markets have become competitive, PUC has seen an increase in the amount of information claimed to be confidential. The release of information related to market investigations that are underway will hamper the ability of PUC to perform its enforcement duties and could negatively impact the business practices of telecommunications and electric providers before all the facts have been determined.

As proposed, S.B. 896 provides that PUC has the authority to conduct a closed meeting to deliberate on matters involving confidential information but requires that any final order, action, or vote on a confidential matter be made in an open meeting. This bill provides that enforcement investigations and market monitoring tools are confidential, and also gives PUC additional authority to assess administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 5 (Section 39.001, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 14.051, Utilities Code, as follows:

Sec. 14.051. PROCEDURAL POWERS. (a) Creates this subsection from existing text.

(b) Authorizes the Public Utility Commission of Texas (PUC), notwithstanding Chapter 551 (Open Meetings), Government Code, to conduct a closed meeting to receive information that it determines is excepted from disclosure under Chapter 552 (Public Information), Government Code, and to deliberate concerning the information. Requires that a representative of a party to a PUC proceeding be allowed to attend a closed PUC meeting, provided that the representative complies with PUC's protective order prohibiting public disclosure of the information. Authorizes PUC to limit the number and types of party representatives that are given access to information and are allowed to attend a closed meeting. Provides that only that portion of the hearing during which the information is discussed is authorized to be closed to the public. Provides that a final action, decision, or vote on the matter deliberated in a closed meeting is only authorized to be made in an open meeting held in compliance with Chapter 551 (Open Meetings), Government Code.

SECTION 2. Amends Subchapter B, Chapter 15, Utilities Code, by adding Section 15.034, as follows:

Sec. 15.034. INVESTIGATIONS AND INVESTIGATORY MATERIALS. (a) Defines "executive director," "investigation," and "wholesale electric market monitor."

(b) Requires the executive director of PUC (executive director) to conduct investigations as the executive director deems necessary to prevent or detect the violation of this title or a rule or order adopted under this title.

(c) Provides that all information of every kind and nature received in connection with, that formed the basis of, or was created or compiled in the course of an investigation conducted by the executive director, a regional entity, as defined in Section 1211(a) of the federal Energy Policy Act of 2005 (16 U.S.C. Section 824o), or the wholesale electric market monitor are confidential. Requires that this information not be disclosed to the public except under order of the PUC or a court for good cause shown.

(d) Authorizes the disclosure of information at the discretion of the executive director to the person or entity that is the subject of the investigation.

(e) Requires that nothing in this section be interpreted to prohibit or limit the publication of rulings or decisions of the PUC. Prohibits the application of the limitation on disclosure provided by this section if disclosure is made, in the discretion of the executive director, as part of an administrative proceeding or a civil or criminal action to enforce this title, provided, however, that specific trade secrets or other information that is otherwise privileged or confidential by statute or judicial decision remains confidential.

(f) Prohibits a notice and report issued by the executive director in accordance with Section 15.024 (Administrative Penalty Assessment Procedure), the pleadings in an administrative proceeding, and a final decision or order by PUC from being considered confidential, provided, however, that specific trade secrets or other information that is otherwise privileged or confidential by statute or judicial decision remains confidential.

(g) Authorizes the executive director to disclose any confidential information in his or her possession to another governmental or regulatory authority, the office of attorney general, the state auditor's office, or federal, state, or local law enforcement agencies.

SECTION 3. Reenacts and amends Section 15.024(c), Utilities Code, as amended by Chapters 1212 and 1579, Acts of the 76th Legislature, Regular Session, 1999, to specify that this subsection does not apply to a violation of Chapter 17 (Customer Protection), 39 (Restructuring of Electric Utility Industry), 55 (Regulation of Telecommunications Services), or 64 (Customer Protection).

SECTION 4. Amends Section 15.024(f), Utilities Code, to require the hearing on the occurrence of a violation of this title or a rule adopted under this title to be held in accordance with Subchapter B (Practice and Procedure), Chapter 14, rather than by an administrative law judge of the State Office of Administrative Hearings. Makes a conforming change.

SECTION 5. Amends Section 39.001, Utilities Code, by adding Subsection (g), to authorize a market participant to assert a claim for any information required by this subtitle to be provided to PUC, the independent organization, or the independent market monitor that is competitively sensitive information or is exempt from disclosure under Chapter 552 (Public Information), Government Code. Authorizes PUC, on its own motion or in response to a request for disclosure of the information, to review such claims in a PUC proceeding. Authorizes PUC by rule or order to declassify information and make it publicly available if PUC determines that such information is not competitively sensitive and is not exempt from disclosure under Chapter 552, Government Code, and determines that release of the information is in the public interest. Authorizes PUC to adopt rules to establish the types of information that qualify as competitively sensitive under this subtitle.

SECTION 6. Amends Section 39.1515, Utilities Code, by adding Subsections (i) and (j), as follows:

(i) Provides that any methodologies, tools, indices, screening criteria, measures, forecasts, risk assessments, or formula developed or used by the market monitor for the purposes of

carrying out its responsibilities under this section, including conducting investigations, are confidential and not subject to disclosure under Chapter 552, Government Code.

(j) Defines "investigation."

SECTION 7. Amends Section 39.157(a), Utilities Code, to delete existing text specifying that Section 15.024(c) does not apply to an administrative penalty imposed under this section.

SECTION 8. Amends Section 40.004, Utilities Code, to delete existing text specifying that PUC has jurisdiction over municipally owned utilities for the purpose of administering the natural gas energy credits program under Section 39.9044(b).

SECTION 9. Repealer: Sections 39.9044 (Goal for Natural Gas) and 39.9048 (Natural Gas Fuel), Utilities Code.

SECTION 10. Effective date: upon passage or September 1, 2007.