

BILL ANALYSIS

C.S.H.B. 870
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When the Texas Electric Choice Act was passed in 1999, the bill's author expressed concern about the readiness of areas that fell outside the Electric Reliability Council of Texas (ERCOT). In response to legislation filed in the House in 2003, the Public Utility Commission of Texas (PUC) entered an order delaying competition until 2007 in the Texas service area of Southwestern Electric Power Company (SWEPCO), located outside ERCOT and primarily in northeast Texas. In 2005, the PUC responded to legislative action by again delaying competition in the SWEPCO service area until no earlier than 2011.

Along with Arkansas, Louisiana, and Oklahoma, northeast Texas is part of the Southwest Power Pool, which has not moved into electric competition. Northeast Texas will be ready for electric competition at some point but, until then, regulatory certainty is important for providing reliable electric service and for keeping utility costs low in northeast Texas.

C.S.H.B. 870 clarifies when full retail competition can begin in the SWEPCO service area by codifying criteria for determining when an area is ready for competition. The criteria were established by PUC order in 2005 and include the establishment of an independent transmission operator, a balancing energy market, a market-based congestion management system, and market protocols. Rather than set a date at which the SWEPCO area would transition to competition, C.S.H.B. 870 requires the region to meet readiness standards established by the PUC before the region can transition to competition.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 870 amends the Utilities Code to add a subchapter relating to the transition to retail electric competition for certain areas outside of the Electric Reliability Council of Texas (ERCOT). The bill makes such provisions applicable to an investor-owned electric utility that is operating solely outside of ERCOT in areas of Texas that were included in the Southwest Power Pool on January 1, 2008, and was not affiliated with the Southeastern Electric Reliability Council on January 1, 2008, and to which provisions for certain other non-ERCOT utilities do not apply. The bill includes legislative findings regarding retail electric competition and service by, and delays the introduction of retail competition for, such an electric utility until fair competition and reliable service are available to all retail customer classes in the area served by the utility as determined under the bill's subchapter.

C.S.H.B. 870 provides that, until the date an electric utility subject to the bill is authorized by the Public Utility Commission of Texas (PUC) to implement retail customer choice, its rates are subject to regulation under the law on electric rates. The bill provides that until the date the electric utility implements customer choice, statutory provisions relating to the restructuring of

the electric utility industry, other than those of the bill and those relating to goals for renewable energy and energy efficiency, do not apply to the utility.

C.S.H.B. 870 establishes a sequence of events, in five prescribed stages, that are required to be followed to introduce retail competition in the service area of an electric utility subject to the bill. The bill authorizes the PUC to modify the sequence of such events, but prohibits the PUC from modifying the substance of the requirements. The bill prohibits full retail competition from beginning in the service area of the electric utility until all actions prescribed by the five stages are completed.

C.S.H.B. 870 provides that the first stage for the transition to competition consists of the Federal Energy Regulatory Commission's approval of a regional transmission organization (RTO) for the power region that includes the electric utility's service area, the commencement of independent operation of the transmission network under the approved RTO, the development of retail market protocols to facilitate retail competition, and the completion of an expedited proceeding to develop non-bypassable delivery rates for a customer choice pilot project to be implemented in the second stage.

C.S.H.B. 870 provides that the second stage consists of the initiation of the customer choice pilot project; the development of a balancing energy market, a market for ancillary services, and a market-based congestion management system for the wholesale market in the power region in which the RTO operates; and the implementation of a seams agreement with adjacent power regions to reduce barriers to entry and facilitate competition.

C.S.H.B. 870 provides that the third stage for the transition to competition includes the electric utility filing with the PUC an application for business separation in accordance with unbundling statutes, an application for unbundled transmission and distribution rates in accordance with statutory provisions relating to the cost of service tariffs and charges, an application for certification of a qualified power region, and an application for price-to-beat rates. The bill provides that the third stage also includes the PUC approving a business separation plan for the utility; setting unbundled transmission and distribution rates for the utility; certifying a qualified power region, which includes conducting a formal evaluation of wholesale market power in the region; setting price-to-beat rates for the utility; and determining which competitive energy services must be separated from regulated utility activities in accordance with unbundling statutes. The bill provides that the third stage also includes the completion of the testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions, by the regional transmission organization, the registration agent, and market participants.

C.S.H.B. 870 provides that the fourth stage for the transition to competition consists of the PUC's evaluation of the results of the pilot project, the initiation by the electric utility of a capacity auction at a time to be determined by the PUC, and the utility's separation of competitive energy services from its regulated utility activities in accordance with the PUC order approving the separation of competitive energy services.

C.S.H.B. 870 provides that the fifth stage for the transition to competition consists of an evaluation by the PUC of whether the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility; the PUC's issuance of an order initiating retail competition for the utility if the PUC concludes that the electric utility can offer such competition and service; the PUC's issuance of an order further delaying retail competition for the utility if the PUC determines that the electric utility cannot offer such competition and service; and, on the PUC's issuance of an order initiating retail competition for the utility, completion by the utility of the business separation and unbundling in accordance with the PUC order approving the unbundling.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 870 makes a legislative finding that the electric utility subject to the added subchapter is unable at this time to offer fair competition and reliable service to all retail customer classes in the area it serves, rather than in Texas as in the original. The substitute delays the introduction of retail competition for such an electric utility until fair competition and reliable service are available to all retail customer classes as determined by provisions of the subchapter, rather than until fair competition and reliable service are available to all retail customer classes in Texas as in the original.

C.S.H.B. 870 establishes a sequence of events in five prescribed stages, rather than in six stages as in the original, that are required to be followed to introduce retail competition in the service area of an electric utility subject to the bill. The substitute differs from the original by adding that the PUC may modify the sequence of such events, but prohibits the PUC from modifying the substance of the requirements. The substitute removes provisions of the original that required all listed items in a stage to be completed before the events provided by the next stage are initiated.

C.S.H.B. 870 specifies a registration agent in the third stage, rather than a statewide registration agent as in the original.

C.S.H.B. 870 provides, in the fifth stage, for an evaluation by the PUC of whether the electric utility can offer fair competition and reliable service to all retail customer classes in the area it serves, rather than to all retail customers in the state as provided by the original. The bill differs from the original by making related conforming changes in other provisions concerning the fifth stage.

C.S.H.B. 870 requires the PUC, if it concludes that the electric utility can offer fair competition and reliable service to all retail customer classes, to issue an order initiating retail competition for an electric utility, rather than, as in the original, submitting a report to the legislature recommending the enactment by the legislature of a law authorizing the implementation of retail competition by the utility.

C.S.H.B. 870 eliminates a sixth stage as provided in the original, but includes elements from that sixth stage in the substitute's fifth stage, with modifications. The substitute eliminates the original's sixth-stage activities consisting of the enactment of a law by the legislature authorizing the implementation of retail competition by the utility, and, if the legislature enacts such law, the PUC's issuance of an order authorizing the utility to implement retail competition. The substitute, in the provisions it moves from the original's sixth stage to the substitute's fifth stage, provides for completion by the utility of the business separation and unbundling in accordance with the PUC order approving the unbundling to occur on the PUC's issuance of an order initiating retail competition for the utility, rather than on the PUC's issuance of an order authorizing the implementation of retail competition by the utility as in the original.