

BILL ANALYSIS

C.S.H.B. 1378
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, except for extraordinary costs incurred to restore the electric system of a utility due to Hurricane Rita, an electric utility is required to file a general rate case to recover the costs of restoring its electric system and service following a hurricane or other major weather-related event. The process of dealing with such costs can be inefficient.

C.S.H.B. 1378 permits an electric utility to obtain timely recovery of its system restoration costs without having to file a general rate case and to use securitization financing for that recovery. The bill also authorizes the Public Utility Commission to require a utility to file for a securitization financing order to create benefits 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

C.S.H.B. 1378 amends the Utilities Code to enable an electric utility to timely recover system restoration costs, with respect to weather-related events and natural disasters, and to use securitization for recovery of system restoration costs. The bill sets out the intent of the legislature. The bill defines "system restoration costs" to mean reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, deferred, capitalized, or otherwise financed, that are incurred by an electric utility due to any activity or activities conducted by or on behalf of the electric utility in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electric utility as the result of any tropical storm or hurricane, ice or snow storm, flood, or other weather-related event or natural disaster that occurred in calendar year 2008 or thereafter. The bill provides that system restoration costs include mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities. The bill provides that system restoration costs shall include reasonable estimates of the costs of an activity or activities conducted or expected to be conducted by or on behalf of the electric utility in connection with the restoration of service or infrastructure associated with electric power outages, but such estimates shall be subject to true-up and reconciliation after the actual costs are known. The bill provides that system restoration costs shall include carrying costs at the utility's weighted average cost of capital as last approved by the Public Utility Commission of Texas (PUC) in a general rate proceeding from the date on which the system restoration costs were incurred until the date that transition bonds are issued or until system restoration costs are otherwise recovered pursuant to the provisions of this bill.

C.S.H.B. 1378 requires insurance proceeds, governmental grants, or any other source of funding that compensate a utility for its system restoration costs, to the extent a utility receives such sources of funding, to be used to reduce the utility's system restoration costs recoverable from customers. The bill requires the PUC, if the timing of a utility's receipt of such funding prevents their inclusion as a reduction to the system restoration costs that are securitized, or if the PUC

later determines as a result of the true-up and reconciliation that the actual costs incurred are less than estimated costs included in the determination of system restoration costs, to take those amounts into account in the PUC's next base rate proceeding or any subsequent proceeding, other than a true-up proceeding, in which the PUC considers system restoration costs.

C.S.H.B. 1378 authorizes the PUC, if it determines that the insurance proceeds, governmental grants, or other sources of funding that compensate the utility for system restoration costs, or the amount resulting from a true-up of such costs are of a magnitude to justify a separate tariff rider, to establish a tariff rider to credit such amounts against charges, other than transition charges or system restoration charges being collected by customers.

C.S.H.B. 1378 requires the PUC, to the extent that the utility receives such proceeds, governmental grants, or any other source of funding that is used to reduce system restoration costs, to impute interest on those amounts at the same cost of capital included in the utility's system restoration costs until the date that the amounts are used to reduce the amount of system restoration costs that are securitized or otherwise reflected in the rates of the utility.

C.S.H.B. 1378 specifies that the procedures and standards of the bill and the provisions under state law on securitization govern an electric utility's application for, and the PUC's issuance of, a financing order to provide for the securitization of system restoration costs, or to otherwise provide for the recovery of such costs. The bill requires the PUC, subject to certain standards, procedures, and tests, to adopt a financing order on the application of the utility to recover its system restoration costs. The bill requires the PUC, if on its own motion or complaint by an affected person the PUC determines that it is likely that securitization of system restoration costs would meet certain tests specified in the bill, to require the utility to file an application for a financing order. The bill specifies that, on the PUC's issuance of a financing order allowing for recovery and securitization of system restoration costs, the provisions of the bill and the law on securitization continue to govern the financing order and rights and interests established in the order, and the provisions of the bill and the law on securitization continue to govern any transition bonds issued pursuant to the financing order. The bill defines "financing order," "qualified costs," "transition bonds," and "transition charges."

C.S.H.B. 1378 requires system restoration costs to be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the utility's current base rates. The bill requires, with respect to an electric utility operating within the Electric Reliability Council of Texas, that system restoration costs that are properly includable in the transmission cost of service mechanism, as well as associated deferred costs, be recovered under the method of pricing established by the law on the provision of transmission service and related PUC rules. The bill provides, however, that an electric utility operating under a rate freeze or other limitation on its ability to pass through wholesale costs to its customers may defer such costs and accrue carrying costs at its weighted average cost of capital as last approved by the PUC in a general rate proceeding until such time as the freeze or limitation expires.

C.S.H.B. 1378 prohibits the amount of any accumulated deferred federal income taxes offset used to determine the securitization total from being considered in future rate proceedings. The bill requires any tax obligation of the utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, to be recovered by the electric utility through the PUC's implementation of the bill.

C.S.H.B. 1378 specifies that, notwithstanding a rate freeze or limitations on a utility's ability to change rates, a utility is entitled to recover system restoration costs consistent with the provisions of the bill.

C.S.H.B. 1378 requires the PUC, if it determines in the course of a proceeding to adopt a financing order that the recovery of all or any portion of a utility's system restoration costs, using

securitization, is not beneficial to the utility's ratepayers, to allow the utility nonetheless to use the proceeding to issue an order permitting the electric utility to recover the remainder of its system restoration costs through an appropriate customer surcharge mechanism, including carrying costs at the utility's weighted average cost of capital as last approved by the PUC in a general rate proceeding, to the extent that the utility has not securitized those costs. The bill specifies that a rate proceeding shall not be required to determine and implement this surcharge mechanism. The bill requires a rider or surcharge mechanism to expire on the final implementation of rates resulting from the filing of a rate proceeding that provides for the recovery of all remaining system restoration costs. The bill specifies that such provisions are limited to instances in which an electric utility has incurred system restoration costs of \$100 million or more in any calendar year after January 1, 2008.

C.S.H.B. 1378 requires the PUC to include in a financing order terms necessary to ensure that the imposition and collection of transition charges for the recovery of system restoration costs are nonbypassable either by imposing restrictions on bypassability or by alternative means the PUC considers to be appropriate and consistent with the purposes of securitization.

C.S.H.B. 1378 entitles an electric utility to recover system restoration costs, and to seek the recovery of amounts not otherwise recovered under the provisions of the bill, including system restoration costs not yet incurred at the time an application is filed, in its next base rate proceeding or through another proceeding authorized under state law relating to rate changes.

C.S.H.B. 1378 authorizes an electric utility to file an application with the PUC seeking a determination of the amount of system restoration costs eligible for recovery and securitization. The bill authorizes the PUC by rule to prescribe the form of such an application and the information reasonably necessary to support the application. The bill establishes, however, that the utility is not precluded from filing its application even if a rule is not in effect. The bill provides that such a filing in such a situation cannot be rejected by the PUC as incomplete.

C.S.H.B. 1378 requires the PUC to issue an order determining the amount of system restoration costs eligible for recovery and securitization not later than the 150th day after the date a utility files an application for that purpose. The bill specifies that the 150-day period begins on the date the utility files an application, even if the utility files its application before the bill's effective date.

C.S.H.B. 1378 authorizes a utility to file an application for a financing order before the end of the 150-day period and requires the PUC to issue a financing order not later than 90 days after the utility files the request. The bill specifies that the PUC is not required to issue the financing order until it has issued its order on the amount of system restoration costs eligible for recovery and securitization. The bill specifies that a determination of a utility's eligible system restoration costs, made by the PUC before the bill's effective date, may provide the basis for the utility's application for a financing order pursuant to the bill and to the law on securitization. The bill specifies that a previous PUC determination does not preclude the utility from requesting recovery of additional system restoration costs that are eligible for recovery but have not previously been authorized by the PUC.

C.S.H.B. 1378 specifies that a rate proceeding is not required to determine the amount of recoverable system restoration costs or for the issuance of a financing order.

C.S.H.B. 1378 specifies that a PUC order under provisions of the bill is not subject to rehearing and may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the PUC signs the order. The bill provides that the judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. The bill requires all appeals to be heard and determined by the district court and the supreme court as expeditiously as possible with lawful precedence over other matters. The bill requires review on appeal to be based solely on the

record before the PUC and briefs to the court and to be limited to whether the order conforms to the constitution and laws of Texas and the United States and is within the authority of the PUC.

C.S.H.B. 1378 specifies that, to the extent of any conflict between the provisions added by the bill and the law on securitization, in relation to the securitization of system restoration costs, the provisions of the bill control.

C.S.H.B. 1378 provides that the proceeds of the transition bonds issued under its provisions may be used only for reducing the amount of recoverable system restoration costs, as determined by the PUC, including the refinancing or retirement of utility debt or equity.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1378 has been reformatted to better parallel existing law that addressed recovery of costs associated with Hurricane Rita in 2005 and the use of securitization financing by an electric utility to recover those costs (Sections 39.458-39.463, Utilities Code).

C.S.H.B. 1378 differs from the original bill by removing all references to the use of securitization financing to create, fund, eliminate shortages in, or replenish self-insurance reserves.

C.S.H.B. 1378 differs from the original by adding language that includes deferred costs in the definition of "system restoration costs." The substitute specifies that carrying costs included in system restoration costs are at the utility's weighted average cost of capital as last approved by the PUC in a general rate proceeding, whereas the original bill refers to the last PUC-approved weighted average cost without reference to a rate proceeding. The substitute provides that carrying costs included as system restoration costs are not recovered through bonds resulting from securitization financing, carrying costs continue until system restoration costs are otherwise recovered, whereas the original bill has no continuation language. The substitute differs from the original by adding "any other source of funding" to the list of amounts, along with insurance proceeds and governmental grants, as also referenced in the original bill, that may compensate a utility for its system restoration costs and be used to reduce the amount recoverable from ratepayers, as well as be taken into account or considered by the PUC. The substitute authorizes the PUC to establish a tariff rider to credit insurance proceeds, governmental grants, and other sources of funding against charges, other than transition charges or system restoration charges, being collected from customers, whereas the original does not.

C.S.H.B. 1378 adds language, applicable to an electric utility within the Electric Reliability Council of Texas, requiring that restoration costs that are properly includable in the utility's transmission cost of service mechanism, as well as associated deferred costs not included, be recovered under the method of pricing provided for in specified state law and associated PUC rules, whereas the original does not. The substitute adds language that authorizes an electric utility operating under a rate freeze or other limitation on its ability to pass through wholesale costs to defer such costs and accrue carrying costs, at its weighted average cost of capital as last approved by the PUC in a general rate proceeding, until such time as the freeze or limitation expires, whereas the original does not. The substitute adds language that provides that where system restoration costs are recovered through a tariff rider or surcharge, the rider or surcharge mechanism expires on the final implementation of rates resulting from a general rate proceeding that provides for the recovery of all remaining system restoration costs. The original bill has no such language relating to the expiration of a rider or surcharge mechanism, and, with respect to the final implementation of rates, requires the PUC to reduce the rider to the extent system

restoration costs are included in the electric utility's base rates. The substitute adds language not in the original that would limit the use of a tariff rider or surcharge to recover system restoration costs to instances in which an electric utility has incurred system restoration costs of \$100 million or more in any calendar year after January 1, 2008.

C.S.H.B. 1378 retains a provision, present in the original bill, establishing that the 150-day deadline for issuance of a PUC order, determining the amount of system restoration costs eligible for recovery and securitization, begins on the date the electric utility files an application, even if filing occurs before the effective date of applicable bill provisions. However, the substitute removes a provision, present in the original bill, applicable to the provision on early filing, stating that such a provision expires on April 1, 2010.

C.S.H.B. 1378 differs from the original bill by removing language that explicitly stated that the defined term "system restoration costs" included, but was not limited to, all internal and external labor costs. The substitute differs from the original bill by removing language that would have authorized the PUC to approve securitization financing based solely on a public interest standard, notwithstanding the results of the ratepayer benefit tests provided for in the bill.