

BILL ANALYSIS

C.S.H.B. 3245
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Since the deregulation of the electric market in Texas, concerns have been raised about the benefits to consumers. Current economic problems coupled with fluctuating fuel prices have brought this issue to the forefront of the Texas Legislature.

C.S.H.B. 3245 addresses consumer protection aspects in a deregulated market by providing limited protection from disconnection to certain people, establishing provisions regarding a retail electric market monitor, requiring the Public Utility Commission of Texas to investigate abuse of market power or related practices by a retail electric provider, and providing other provisions regarding consumer protection and notification.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTIONS 1, 3, and 7 of this bill.

ANALYSIS

C.S.H.B. 3245 amends the Utilities Code to revise the hot weather portion of the definition of "extreme weather emergency," for purposes of customer safeguards regarding electric utilities, to mean a day for which the National Weather Service forecasts that the heat index will reach or exceed 105 degrees Fahrenheit, or a period when, on any one of the previous two calendar days, the service observes a heat index of 105 degrees Fahrenheit or more, in any part of a county in the relevant service territory, rather than a period when the service issues a heat advisory for any county in the relevant service territory or when such an advisory has been issued on any one of the previous two calendar days.

C.S.H.B. 3245 prohibits a retail electric provider or other entity that provides retail electric service, during the period beginning July 1 and ending September 30 of each year, from disconnecting or authorizing the disconnection of service to a residential customer who is a low-income electric customer and requests, and complies with the terms of, a deferred payment plan described by provisions of the bill; is a low-income electric customer, at least 65 years of age, and requests, and complies with the terms of, a different deferred payment plan described by provisions of the bill; or, under Public Utility Commission of Texas (PUC) rules, is designated as a critical care residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition.

C.S.H.B. 3245 requires such a provider or other entity, on and after July 1, 2010, to provide clear notice of the legal protections available under the prohibition to certain customers, on or with each disconnection notice issued to a residential customer during the July 1-September 30 period. The bill establishes a temporary provision, set to expire June 30, 2010, requiring the provider or other entity to provide clear notice of the legal protections available under the prohibition on or with an invoice issued to a residential customer during the July 1-September 30 period.

C.S.H.B. 3245 requires such a provider or other entity, on request, to offer a low-income residential customer a deferred payment plan that allows the customer to avoid disconnection during the July 1-September 30 period. The bill establishes that the customer is eligible for such a plan if the customer does not owe an outstanding balance from a deferred payment plan granted by any provider of electric service in a previous year that allowed the customer to avoid disconnection during the July 1-September 30 period, pays a minimum of 33 percent of the outstanding balance due, and agrees to pay the remaining balance in equal installments over the next five billing cycles, unless the customer agrees to a lesser number of installments. The bill authorizes a customer granted such a plan to continue to avoid disconnection during the specified period by paying the additional amounts that become due, including the installment amount due, or by paying a minimum of 33 percent of the balance then currently due, including any installment amount due, and agreeing to pay the recalculated remaining balance in equal installments over the next five billing cycles, unless the customer agrees to a lesser number of installments.

C.S.H.B. 3245 requires such a provider or other entity, on request, to offer a low-income residential customer of at least 65 years of age a deferred payment plan that allows the customer to avoid disconnection during the July 1-September 30 period without payment of any outstanding balance until after September 30. The bill establishes that the customer is eligible for such a plan if the customer agrees to pay a minimum of 25 percent of the deferred charges when the first bill issued to the customer after September 30 is due and agrees to pay the remaining balance in equal installments over the next five billing cycles, unless the customer agrees to a lesser number of installments.

C.S.H.B. 3245 requires such a provider or other entity to allow a residential customer, if designated as a critical care residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition, to pay unpaid amounts accumulated during the July 1-September 30 period over the next six billing cycles beginning with the first bill issued to the customer after September 30.

C.S.H.B. 3245 provides that such a provider or other entity may encourage a residential customer who is low-income and at least 65 years of age, or who is designated as a critical care customer, to make a partial payment toward an amount deferred during the July 1-September 30 period, but requires such provider or entity to inform the customer clearly that the customer may not be disconnected for nonpayment before October 1 following that period.

C.S.H.B. 3245 establishes that its provisions prohibiting such a provider or other entity from disconnecting or authorizing the disconnection of service to certain residential customers, and allowing deferred or partial payment alternatives, do not apply to metered electric service sold to a residential customer on a prepaid basis. The bill establishes that a critical care residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition is not eligible for metered electric service sold on a prepaid basis.

C.S.H.B. 3245 requires the PUC by rule to provide uniform standards for an electric utility to apply when designating such a critical care residential customer, as well as special protections and procedures for such a utility to apply when disconnecting such a customer.

C.S.H.B. 3245 requires an independent organization certified by the PUC to contract with an entity selected by the PUC to act as the PUC's retail electric market monitor to detect and prevent market manipulation strategies, as well as unfair, misleading, or deceptive practices, and to recommend measures to enhance the efficiency of the retail market. The bill requires the organization to provide to the personnel of the monitor full access to the organization's records that concern operations, settlement, and reliability of the retail market, and other support and cooperation that the PUC determines is necessary for the monitor to perform the monitor's functions. The bill requires the organization, for purposes of paying for the monitor's activities,

to use money from the rate that it is authorized to charge wholesale buyers and sellers to cover the organization's costs.

C.S.H.B. 3245 establishes that the PUC is responsible for ensuring that the retail market monitor has the resources, expertise, and authority necessary to monitor the retail electric market effectively and requires the PUC to adopt rules and perform oversight of the monitor as necessary. The bill requires the monitor to operate under the supervision and oversight of the PUC. The bill requires the PUC to retain all enforcement authority conferred under the Public Utility Regulatory Act and prohibits provisions concerning the monitor from being construed to confer enforcement authority on the monitor or to authorize the PUC to delegate its enforcement authority to the monitor. The bill requires the PUC by rule to define the monitor's monitoring responsibilities, including reporting obligations and limitations; the standards for funding the monitor, including staffing requirements; qualifications for personnel of the monitor; and ethical standards for the monitor and the personnel of the monitor.

C.S.H.B. 3245 requires the PUC, in adopting rules governing the standards for funding the retail market monitor, to consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for market monitoring functions. The bill requires rules governing ethical standards to include provisions designed to ensure that the personnel of the monitor are professionally and financially independent from market participants. The bill requires the PUC to develop and implement policies that clearly separate the policymaking responsibilities of the PUC and the monitoring, analysis, and reporting responsibilities of the monitor.

C.S.H.B. 3245 requires the retail market monitor immediately to report directly to the PUC any potential market manipulations and any discovered or potential violations of PUC rules or rules of the independent organization. The bill authorizes the personnel of the monitor to communicate with the PUC staff on any matter without restriction. The bill requires the monitor annually to submit to the PUC and the organization a report that identifies market design flaws and recommends methods to correct the flaws. The bill requires the PUC and the organization to review the report and to evaluate whether changes to rules of the PUC or the organization should be made.

C.S.H.B. 3245 requires the PUC to apply provisions of the bill relating to a retail electric market monitor so as to avoid a conflict with a ruling of a federal regulatory body.

C.S.H.B. 3245 amends provisions that require the PUC, on a finding that market power abuses or market power violations are occurring, to pursue reasonable mitigation of the market power by alternative means, to require mitigation also if the PUC finds that market power abuses or other violations have occurred previously. The bill clarifies the PUC's responsibility to require one or more, or a combination of, the mitigation alternatives, and adds to those mitigation alternatives available under existing law the ordering of refunds to affected parties pursuant to certain customer protection provisions regarding disputes and, with regard to the wholesale market, the ordering of refunds to affected parties in a manner established by the PUC. The bill requires the PUC to permit the Office of Public Utility Counsel (OPUC), in exercising its powers to represent residential and small commercial consumers, to participate in enforcement proceedings to seek refunds for alleged market power abuses or manipulation of the wholesale market.

C.S.H.B. 3245 requires the PUC to investigate whether a retail electric provider is abusing market power or engaging in unfair, misleading, or deceptive practices. The bill requires retail electric providers to cooperate with the PUC in any investigation and to provide information requested. The bill authorizes the PUC to assess administrative penalties for any violation discovered.

C.S.H.B. 3245 prohibits a certified independent organization from passing through to a retail customer or retail electric provider a cost or charge associated with nodal wholesale market

design implementation.

C.S.H.B. 3245 requires the PUC, on its Internet website at <http://www.puc.state.tx.us> and on the Power to Choose website at <http://www.powertochoose.org>, to publish charts or provide a link that compares the prices of natural gas, real-time or balancing electric energy, and retail electricity. The bill requires the PUC to provide that the charts be updated at least once each business day that the PUC's offices are open.

C.S.H.B. 3245 requires the PUC to adopt rules to implement the changes in law made by the bill as quickly as practicable.

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. 3245 differs from the original, in the definition of "extreme weather emergency," by referring to a day on which the National Weather Service forecasts that the heat index will reach 105, rather than 100, degrees Fahrenheit or a period when, on any of the previous two days, the service observes a heat index of 105, rather than 101, degrees Fahrenheit, as in the original.

C.S.H.B. 3245 adds provisions not in the original prohibiting, during the period beginning July 1 and ending September 30 of each year, a retail electric provider or other entity that provides retail electric service from disconnecting or authorizing the disconnection of service to low-income, elderly low-income, or critical care residential customers and requiring related notices and opportunities for deferred and partial payment plans for such customers. The substitute adds provisions not in the original to require the Public Utility Commission of Texas (PUC) by rule to provide uniform standards and special protections and procedures for an electric utility to apply with respect to critical care customers.

C.S.H.B. 3245 omits a provision in the original requiring an independent organization, in order to maintain its certification, to operate a regional electrical network that is contained wholly within the borders of Texas.

C.S.H.B. 3245 omits provisions in the original revising the membership of the governing body of an independent organization and the requirements for the organization's bylaws relating to that membership. The substitute omits provisions in the original requiring an independent organization certified by the PUC before September 1, 2009, modify its governing body no later than September 1, 2010, and authorizing the PUC, on or after September 1, 2010, to decertify the independent organization whose governing body is not in compliance with the required membership change.

C.S.H.B. 3245 adds provisions not in the original requiring the PUC to require reasonable mitigation of market power on a finding that market power abuses or market power violations have occurred, in addition to a finding that such abuses or violations are occurring. The substitute differs from the original by adding potential means of such mitigation to include ordering refunds to affected parties pursuant to certain customer protection provisions regarding disputes or by ordering refunds to affected parties in a manner established by the PUC with regard to the wholesale market. The substitute adds a provision not in the original requiring the PUC to permit the Office of Public Utility Counsel (OPUC), in exercising its powers to represent residential and small commercial consumers, to participate in enforcement proceedings to seek refunds for alleged market power abuses or manipulation of the wholesale market. The substitute omits provisions in the original requiring the PUC to permit affected customers, including political subdivisions, retail electric providers, and commercial power users, to participate in

enforcement proceedings alleging market power abuses or manipulation of the wholesale market; requiring the PUC to order refunds be made to end users adversely impacted by findings of market power abuse or manipulation of the wholesale market; and authorizing private parties to seek remedies in any appropriate forum notwithstanding any action or inaction by the PUC on an allegation of market power abuse or manipulation of the wholesale market. The substitute omits provisions in the original prohibiting the Filed Rate Doctrine from being a defense in any private party suit that alleges market power abuse or manipulation of the wholesale market. The substitute omits provisions in the original establishing that the possession of a low market share within a power region may not, by itself, be deemed as a sufficient condition to preclude a finding that an investor owner generator engaged in an abuse of market power.

C.S.H.B. 3245 omits a provision in the original amending provisions relating to a certificate of convenience and necessity (CCN) to make them applicable to a person rather than an electric utility. The substitute omits a provision in the original authorizing a CCN to be granted to a person for a facility used solely for the transmission of electricity, and in such cases exempting the CCN holder from requirements to serve every customer in a certificated area and to provide continuous and adequate service in that area. The substitute omits a provision in the original authorizing the PUC to grant a CCN for a new transmission facility to any qualified applicant that meets the requirements of the law relating to a CCN.

C.S.H.B. 3245 differs from the original by prohibiting a certified independent organization from passing through to a retail electric provider, in addition to a retail customer, a cost or charge associated with nodal wholesale market design implementation. The substitute omits other provisions in the original relating to nodal implementation.

C.S.H.B. 3245 omits provisions in the original requiring electricity providers, on each provider's homepage, to provide a real time quote from the NYMEX for the Henry Hub spot gas price and setting forth related requirements.

C.S.H.B. 3245 omits provisions in the original requiring an electric utility or transmission and distribution utility that deploys advanced meter and meter information networks to seek to obtain and utilize funds, including grants, loans, and loan guarantees, made available by the federal government, if such funds would lower the overall cost of deployment, and omits provisions requiring the PUC to reflect the funds obtained by the electric utility or transmission and distribution utility when establishing the required non-bypassable surcharge relating to metering, including timely ordering reductions to surcharges approved prior to the receipt of the funds.

C.S.H.B. 3245 omits provisions in the original requiring an electric utility, transmission and distribution utility, or river authority that has been designated by the PUC to construct transmission capacity pursuant to provisions relating to the designation of competitive renewable energy zones, to seek to obtain and utilize funds, including grants, loans, and loan guarantees, made available by the federal government, if such funds would lower the overall cost of construction, and omits provisions requiring the PUC to reflect the funds obtained by the electric utility, transmission and distribution utility, or river authority when establishing or modifying the rates of the electric utility or transmission and distribution utility, including timely ordering reductions to rates approved prior to the receipt of the funds.

C.S.H.B. 3245 omits a provision in the original requiring an electric provider to state per unit cost of smart meters for residential and business on billing statements and the company website. The substitute omits other provisions in the original relating to smart meters.

C.S.H.B. 3245 omits provisions in the original requiring the PUC to make publicly accessible, without charge, live Internet video of all PUC public hearings and meetings, for viewing from the PUC website, and requiring the PUC to ensure that a certified independent organization makes publicly accessible, without charge for viewing from an Internet website, live Internet video of all its public hearings and meetings that are required to be open to the public. The

substitute omits a related transition provision contained in the original.

C.S.H.B. 3245 adds provisions not in the original relating to the PUC's retail electric market monitor and including the provisions of the bill relating to a retail electric market monitor among those the PUC is required to apply so as to avoid a conflict with a ruling of a federal regulatory body.

C.S.H.B. 3245 adds a provision not in the original requiring the PUC to investigate whether a retail electric is abusing market power or engaging in unfair, misleading, or deceptive practices, requiring the cooperation of a retail electric provider in an investigation, and giving the PUC authority to assess administrative penalties.

C.S.H.B. 3245 adds provisions not in the original requiring the PUC to publish charts on two Internet websites, or to provide a link at those websites, comparing the prices of natural gas, real-time or balancing electric energy, and retail electricity, and requiring the PUC to provide that the charts be updated at least once each business day that the PUC's offices are open.

C.S.H.B. 3245 adds a provision not in the original requiring the PUC to adopt rules to implement the changes in law made by the bill as quickly as practicable.