

BILL ANALYSIS

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S.B. 769
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires that an electric utility file a general rate case to recover the extraordinary costs of restoring its electric system and service following a hurricane or other major weather-related event. An electric utility that seeks to establish or replenish self-insurance reserves that are adequate to cover some or all of its costs following a hurricane or other major weather-related event can do so only in the course of a general rate case proceeding.

As proposed, S.B. 769 authorizes an electric utility to obtain timely recovery of its system restoration costs without having to file a general rate case and use securitization financing to recover the electric utility's system restoration costs and to create, fund, eliminate shortages in, or replenish its self-insurance reserves.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in Section 1 (Section 36.405, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 36, Utilities Code, by adding Subchapter I, as follows:

SUBCHAPTER I. SECURITIZATION OR RECOVERY OF SYSTEM RESTORATION COSTS AND SELF-INSURANCE RESERVES

Sec. 36.401. PURPOSE AND INTENT. (a) Provides that the purpose of this subchapter is to enable an electric utility to obtain timely recovery of system restoration costs; create, fund, eliminate shortages in, or replenish self-insurance reserves at such levels as the Public Utility Commission of Texas (PUC) may authorize; and use appropriate mechanisms to recover system restoration costs or self-insurance reserves, including through a securitization financing mechanism because that type of financing will lower the carrying costs associated with the recovery of the costs, relative to the costs that would be incurred using conventional financing methods.

(b) Provides that the legislature intends that:

(1) the securitization of system restoration costs and self-insurance reserves under this subchapter will be accomplished using certain procedures, standards, and protections for securitization authorized under Subchapter G (Securitization), Chapter 39 (Restructuring of Electric Utility Industry), except as provided by this subchapter; and

(2) PUC will ensure that the securitization of system restoration costs and self-insurance reserves under this subchapter provides greater tangible and quantifiable benefits to ratepayers than would be achievable without the issuance of transition bonds.

Sec. 36.402. DEFINITIONS AND APPLICABILITY OF TERMS. (a) Defines "self-insurance reserves" and "system restoration costs."

(b) Provides that for purposes of this subchapter, "financing order," as defined by Section 39.302 (Definitions) and as used in this subchapter and Subchapter G, Chapter 39, includes a financing order issued under this subchapter authorizing the securitization of system restoration costs or self-insurance reserves, or both.

(c) Provides that for purposes of this subchapter, "qualified costs," as defined by Section 39.302 and as used in this subchapter and Subchapter G, Chapter 39, includes other certain costs and reserves.

(d) Provides that for purposes of this subchapter, "transition bonds," as defined by Section 39.302 and as used in this subchapter and Subchapter G, Chapter 39, includes transition bonds issued in association with the recovery of system restoration costs or self-insurance reserves, or both. Authorizes transition bonds issued to securitize system restoration costs or self-insurance reserves to be referred to as "system restoration bonds" or any other term acceptable to the issuer and underwriters of the transition bonds.

(e) Provides that for purposes of this subchapter, "transition charges," as defined by Section 39.302 and as used in this subchapter and Subchapter G, Chapter 39, includes nonbypassable amounts to be charged for the use or availability of electric services, approved by PUC under a financing order to recover system restoration costs, self-insurance reserves, or both, that are required to be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order. Authorizes transition charges approved by PUC under a financing order to recover system restoration costs, self-insurance reserves, or both to be referred to as "system restoration charges" or by any other term acceptable to the issuer and underwriters of the transition bonds.

Sec. 36.403. SUBCHAPTER CONTROLS. Provides that to the extent of any conflict between this subchapter and Subchapter G, Chapter 39, in relation to the securitization of system restoration costs or self-insurance reserves, the provisions of this subchapter control.

Sec. 36.404. LIMITATION ON USE OF TRANSITION BOND PROCEEDS. Authorizes the proceeds of the transition bonds issued under this subchapter to be used only for reducing the amount of recoverable system restoration costs, as determined by PUC in accordance with this subchapter, including the refinancing or retirement of utility debt or equity, or creating, funding, eliminating shortages in, or replenishing self-insurance reserves.

Sec. 36.405. DETERMINATION OF SYSTEM RESTORATION COSTS AND SELF-INSURANCE RESERVES. (a) Entitles an electric utility to recover system restoration costs and self-insurance reserves under a financing order issued under this subchapter or seek, in its next base rate proceeding or through any other proceeding authorized by Subchapter C (General Procedures for Rate Changes Proposed by Utility) or D (Rate Changes Proposed by Regulatory Authority), the recovery of amounts not otherwise recovered under this subchapter, including system restoration costs not yet incurred at the time an application is filed under Subsection (b).

(b) Authorizes an electric utility to file an application with PUC seeking a determination of the amount necessary to create, fund, eliminate a shortage in, or replenish self-insurance reserves, the amount of system restoration costs eligible for recovery and securitization, or both amounts described by Subdivisions (1) and (2).

(c) Authorizes PUC by rule to prescribe the form of an application under Subsection (b) and the information reasonably necessary to support the determinations that are the subject of an application. Requires PUC, if an electric utility files an application under Subsection (b) before PUC has adopted rules for purposes of this subsection or before the rules have taken effect, to accept the application and prohibits PUC from rejecting the application as incomplete.

(d) Requires PUC to issue an order that states the amount, determined by PUC, necessary to create, fund, eliminate a shortage in, or replenish self-insurance reserves, or the amount of system restoration costs eligible for recovery and securitization, or both, not later than the 150th day after the date an electric utility files an application under Subsection (b).

(d-1) Provides that the 150-day period provided by Subsection (d) begins on the date the electric utility files an application described by Subsection (b), even if the electric utility files the application before the effective date of this subchapter. Provides that this subsection expires April 1, 2010.

(e) Authorizes an electric utility to file an application for a financing order before the end of the 150-day period provided by Subsection (d). Requires PUC to issue a financing order under this subchapter not later than the 90th day after the date the utility files the request for a financing order. Provides that PUC, notwithstanding the 90-day period provided by this subsection, is not required to issue the financing order until PUC has issued an order under Subsection (d) determining the amount necessary to create, replenish, or eliminate a shortage in self-insurance reserves, or the amount of system restoration costs eligible for recovery and securitization, or both, if applicable.

(f) Authorizes a determination made by PUC before the effective date of this subchapter of an electric utility's eligible system restoration costs or self-insurance reserves to provide the basis for the utility's application for a financing order under this subchapter and Subchapter G, Chapter 39. Provides that a previous PUC determination does not preclude the utility from requesting recovery of additional system restoration costs or self-insurance reserves eligible to be recovered under this subchapter, but not previously authorized by PUC.

(g) Exempts a rate proceeding under Subchapter C or D from being required to determine the amount of recoverable system restoration costs or self-insurance reserves as provided by this section or for the issuance of a financing order.

Sec. 36.406. STANDARDS AND PROCEDURES FOR FINANCING ORDER. (a) Provides that the procedures and standards of this subchapter and the provisions of Subchapter G, Chapter 39, govern an electric utility's application for, and PUC's issuance of, a financing order to provide for the securitization of system restoration costs, self-insurance reserves, or both, or to otherwise provide for the recovery of system restoration costs, self-insurance reserves, or both.

(b) Authorizes PUC, notwithstanding any other provisions of this subchapter or of Section 39.301 (Purpose) for determining tangible and quantifiable benefits to ratepayers, if PUC determines that it is in the public interest to use securitization financing for the recovery of system restoration costs or to create, fund, eliminate shortages in, or replenish self-insurance reserves, to issue a financing order for that securitization financing.

(c) Requires PUC, subject to the standards, procedures, and tests provided by this subchapter and Subchapter G, Chapter 39, to adopt a financing order on the application of the utility to recover its system restoration costs or self-insurance reserves.

(d) Requires PUC, if it determines, on its own motion or on a complaint by an affected person, that it is in the public interest to securitize under this subchapter the amounts needed for an electric utility for certain purposes, to require the utility to file an application for a financing order.

(e) Provides that on PUC's issuance of a financing order allowing for recovery and securitization of system restoration costs or self-insurance reserves, or both, this subchapter and Subchapter G, Chapter 39, continue to govern the financing

order and the rights and interests established by the order and transition bonds issued pursuant to the financing order.

Sec. 36.407. **NONBYPASSABLE CHARGES.** Requires PUC to include in a financing order issued under this subchapter terms necessary to ensure that the imposition and collection of transition charges for the recovery of system restoration costs and self-insurance reserves are nonbypassable by imposing restrictions on bypassability of the type provided for in Chapter 39 or alternative means as PUC considers to be appropriate and consistent with the purposes of securitization.

Sec. 36.408. **TREATMENT OF ESTIMATED COSTS AFTER TRUE-UP AND RECONCILIATION.** (a) Authorizes PUC to provide a process for true-up and reconciliation of system restoration costs subject to an order under this subchapter.

(b) Requires PUC, if it determines as a result of a true-up and reconciliation proceeding that the actual costs incurred are less than estimated costs included in a determination under this subchapter of system restoration costs, to take the difference between actual and estimated costs into account in the utility's next base rate proceeding or any subsequent proceeding, other than a true-up proceeding under Section 39.307 (True-Up), in which PUC considers system restoration costs.

Sec. 36.409. **INSURANCE PROCEEDS OR GOVERNMENTAL GRANTS AFFECTING SYSTEM RESTORATION COSTS.** (a) Requires an electric utility, to the extent the utility receives insurance proceeds or governmental grants that compensate it for system restoration costs considered under this subchapter, to use the amounts of those proceeds to reduce the utility's system restoration costs recoverable from customers.

(b) Requires PUC, if the timing of a utility's receipt of insurance proceeds or governmental grants prevents their inclusion as a reduction to the system restoration costs that are securitized under this subchapter, to take those insurance proceeds and governmental grants into account in the utility's next base rate proceeding or any subsequent proceeding, other than a true-up proceeding under Section 39.307, in which PUC considers system restoration costs.

(c) Requires PUC, to the extent that the utility receives insurance proceeds or governmental grants that are used to reduce system restoration costs, to impute interest on those proceeds or grants at the same cost of capital included in the utility's system restoration costs and until the date that the proceeds or grants are used to reduce the amount of system restoration costs that are securitized or otherwise reflected in the rates of the utility.

Sec. 36.410. **TAX OFFSETS AND TAX OBLIGATIONS.** (a) Prohibits the amount of any accumulated deferred federal income taxes offset used to determine the securitization total under this subchapter from being considered in future rate proceedings.

(b) Requires PUC to provide for an electric utility to recover under this subchapter any tax obligation of the electric utility arising from the utility's receipt of securitization bond proceeds or from the collection and remittance of transition charges.

Sec. 36.411. **FUNCTIONALIZATION AND ALLOCATION OF SYSTEM RESTORATION COSTS AND SELF-INSURANCE RESERVES.** Requires that system restoration costs and self-insurance reserves, notwithstanding Section 39.303(c) (relating to collection and allocation of transition charges), 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.

Sec. 36.412. **SURCHARGE AS ALTERNATIVE TO SECURITIZATION.** (a) Requires PUC, if it determines that using securitization for creating, funding, eliminating a shortage in, or replenishing all or any portion of an electric utility's self-insurance

reserves or for the recovery of all or any portion of an electric utility's system restoration costs is not beneficial to ratepayers of the electric utility, under one or more of the tests applied to determine those benefits, to allow the electric utility to create, fund, eliminate a shortage in, or replenish the remainder of its self-insurance reserves or recover the remainder of its system restoration costs through an appropriate customer surcharge mechanism, including carrying costs at the electric utility's last PUC-authorized weighted average cost of capital, to the extent that the electric utility has not securitized those costs.

(b) Provides that a rate proceeding under this chapter is not required to determine and implement the surcharge mechanism allowed under Subsection (a).

(c) Requires PUC to provide for a rider adopted under Subsection (a) to be reduced on the final implementation of rates resulting from the filing of a rate proceeding under Subchapter C or D to the extent that the costs to the utility to create, fund, eliminate a shortage in, or replenish self-insurance reserves or recover system restoration costs are included in the electric utility's base rates.

Sec. 36.413. LIMITATIONS ON RATES DO NOT AFFECT APPLICABILITY OF SUBCHAPTER. Entitles an electric utility, notwithstanding a rate freeze or limitations on an electric utility's ability to change rates authorized or imposed by any other provision of this title or by a regulatory authority, to create, fund, eliminate a shortage in, or replenish self-insurance reserves, or recover system restoration costs, or both, consistent with the provisions of this subchapter.

Sec. 36.414. REVIEW OF COMMISSION ORDER. (a) Provides that a PUC order under this subchapter is not subject to rehearing and is authorized to be reviewed only by appeal to a Travis County district court by a party to the proceeding filed within 15 days after the order is signed by PUC.

(b) Authorizes the judgment of the district court to be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment.

(c) Requires that all appeals be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters.

(d) Requires that review on appeal be based solely on the record before PUC and briefs to the court and be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of PUC under this chapter.

Sec. 36.415. SEVERABILITY. Provides that effective on the date the first utility transition bonds associated with system restoration costs or self-insurance reserves are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter, Subchapter G, Chapter 39, as it applies to this subchapter, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, and requires that those provisions remain in full force and effect.

SECTION 2. Effective date: upon passage or September 1, 2009.