

BILL ANALYSIS

Senate Research Center

S.B. 1492
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 79th Legislature, Regular Session, 2005, enacted H.B. 1567, which put Energy Gulf States, Inc. (EGSI), on a path toward introducing retail electric competition in its Texas service territory and setting milestones along the path. One of those milestones was the filing of a transition to competition plan (TTC plan) at the Public Utility Commission (PUC) not later than January 1, 2007. EGSI filed its TTC plan on December 29, 2006. Among other things, the TTC plan calls for the creation of EGSI-Texas, a separate, Texas-only utility, the integration of EGSI-Texas into the Electric Reliability Council of Texas (ERCOT), and the introduction of retail electric competition in EGSI-Texas territory. PUC declined to accept the plan as filed, and the case is still pending before PUC over two years later.

The TTC plan also estimates that its implementation would increase the retail rates of EGSI's residential customers and the transmission rates in ERCOT to a point where the costs could outweigh the benefits. After nearly two years of hearings in a contested docket, there has been no support shown from the numerous stakeholders who intervened in the matter for the move over to ERCOT. Additionally, EGSI and the electric cooperatives operating within its service territory would be required to make difficult and expensive long-term decisions regarding the planning, contracting for, and/or construction of generation and transmission facilities.

This bill provides a statutory postponement of the introduction of retail electric competition in the Texas portion of the Southeastern Electric Reliability Council to provide EGSI and the affected cooperatives the necessary certainty to make long-term commitments and assure cost-of-service rates for electric consumers in EGSI's service territory until the legislature acts to introduce retail electric competition in this area.

S.B. 1492 amends current law relating to the delay of retail electric competition in the areas of the state covered by the Southeastern Electric Reliability Council and to the recovery of certain transmission costs by electric utilities in those areas and to the provision of power during a natural disaster or declared emergency.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.209(a), Utilities Code, to provide that this section applies only to an electric utility that operates solely outside of Electric Reliability Council of Texas (ERCOT) in areas of this state included in the Southeastern Electric Reliability Council (SERC), the Southwest Power Pool, or the Western Electricity Coordinating Council and that owns or operates transmission facilities. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter D, Chapter 38, Utilities Code, by adding Section 38.073, as follows:

Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY. (a) Authorizes the Public Utility Commission of Texas (PUC), on a declaration of a natural disaster or other emergency by the governor, to require an electric utility, municipally owned utility, electric cooperative, qualifying facility, power generation company,

exempt wholesale generator, or power marketer to sell electricity to an electric utility, municipally owned utility, or electric cooperative that is unable to supply power to meet customer demand due to the natural disaster or other emergency. Provides that any plant, property, equipment, or other items used to receive or deliver electricity under this subsection are used and useful in delivering service to the public, and requires PUC to allow timely recovery for the costs of those items. Authorizes PUC to order an electric utility, municipally owned utility, or electric cooperative to provide interconnection service to another electric utility, municipally owned utility, or electric cooperative to facilitate a sale of electricity under this section. Requires PUC, if PUC does not order the sale of electricity during a declared emergency as described by this subsection, to promptly submit to the legislature a report describing the reasons why PUC did not make that order.

(b) Requires the receiving entity, if an entity receives electricity under Subsection (a), to reimburse the supplying entity for the actual cost of providing the electricity. Provides that the entity receiving the electricity is responsible for any transmission and distribution service charges specifically incurred in relation to providing the electricity.

(c) Authorizes an entity that pays for electricity received under Subsection (b) and that is regulated by PUC to fully recover the cost of the electricity in a timely manner by including the cost in the entity's fuel cost under Section 36.203 (Fuel Cost Recovery; Adjustment of Fuel Factor) or notwithstanding Section 36.201 (Automatic Adjustment for Changes in Costs), imposing a different surcharge.

SECTION 3. Amends Section 39.452, Utilities Code, by amending Subsection (b) and adding Subsections (i) and (j), as follows:

(b) Requires an electric utility subject to this subchapter to propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation. Requires PUC to approve, reject, or modify the proposed tariff not later than September 1, 2010. Requires PUC to ensure that a competitive generation tariff shall not be implemented in a manner that harms the sustainability or competitiveness of manufacturers that choose not to take advantage of competitive generation. Requires an electric utility subject to this subsection, pursuant to the competitive generation tariff, to purchase competitive generation service, selected by the customer, and provide the generation at retail to the customer. Requires an electric utility subject to this subsection to provide and price retail transmission service, including necessary ancillary services, to retail customers who choose to take advantage of the competitive generation tariff at a rate that is unbundled from the utility's cost of service. Prohibits such customers from being considered wholesale transmission customers. Prohibits PUC, notwithstanding any other provision of this chapter, from issuing a decision relating to a competitive generation tariff that is contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction. Deletes existing text prohibiting a person, notwithstanding Subsection (a) (relating to the required regulated rates of the electric utility), except for adjustments authorized by Sections 36.203 (Fuel Cost Recovery; Adjustment of Fuel Factor), 39.454 (Recoupment of Transition to Competition Costs), 39.455 (Recovery of Incremental Capacity Costs), and 39.456 (Franchise Agreements), and except for proceedings and cost recovery mechanisms authorized by Sections 39.458 (Recovery and Securitization of Hurricane Reconstruction Costs; Purpose), 39.459 (Hurricane Reconstruction Costs), 39.460 (Standards and Procedures Governing Securitization of Hurricane Reconstruction Costs), 39.461 (Nonbypassable Charges), 39.462 (Determination of Hurricane Reconstruction Costs), 39.463 (Severability), from filing a proceeding to change, alter, or revoke any rate offered or charged by an electric utility subject to this subchapter before June 30, 2007, with an effective date no earlier than June 30, 2008. Deletes existing text requiring the utility, as part of Subchapter C (General Procedures for Rate Changes Proposed by Utility), Chapter 36 (Rates), rate proceeding, to propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation.

(i) Requires an electric utility subject to this subchapter, notwithstanding any other provision of this chapter, if PUC has not approved the transition to competition plan under this section before January 1, 2009, to cease all activities relating to the transition to competition under this section. Authorizes PUC, on its own motion or the motion of any affected person, to initiate a proceeding under Section 39.152 (Qualifying Power Regions), to certify a power region when the conditions supporting such a proceeding exist. Prohibits PUC from approving a plan under Subsection (g) (relating to the electric utility filing a transition to competition plan) until the expiration of four years from the time that PUC certifies a power region under Subsection (f) (relating to the electric utility filing a plan with PUC for identifying the applicable power region or power regions). Requires PUC, if after the expiration of four years from the time PUC certifies a power region under Subsection (f), and after notice and a hearing, PUC determines consistent with the study required by Section 5, S.B. No. 1492, Acts of the 81st Legislature, Regular Session, 2009, that the electricity utility cannot comply with Section 38.073, to consider approving a plan under Subsection (g).

(j) Requires PUC, notwithstanding any other provision of this subtitle, in awarding a certificate of convenience and necessity or allowing cost recovery for purchased power by an electric utility subject to this section, to ensure that in its determination that the provisions of Section 37.056(c)(4)(D) (relating to requiring PUC to grant each certificate on a nondiscriminatory basis after considering environmental integrity) and (E) (relating to requiring PUC to grant each certificate on a nondiscriminatory basis after considering the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted) are met and that the generating facility or the purchased power agreement satisfies the identified reliability needs of the utility.

SECTION 4. Requires an electric utility operating in the SERC that is subject to traditional cost of service rate regulation and on the effective date of this Act has a transition to competition plan on file with PUC, not later than the 90th day after the effective date of this Act, to withdraw the plan from PUC and cease all activities related to the plan.

SECTION 5. (a) Requires PUC, not later than November 1, 2009, to conduct and complete a study to evaluate the locations in this state that are most likely to experience a natural disaster or other emergency; the ability of each entity described by Section 38.073(a), Utilities Code, as added by this Act, to comply with that section in the event of a natural disaster or other emergency; and any steps an entity described by Section 38.073(a), Utilities Code, as added by this Act, should take to prepare to comply with that section.

(b) Requires an entity described by Section 38.073(a), Utilities Code, as added by this Act, to comply with any order issued by PUC under that subsection while the study required by Subsection (a) of this section is conducted.

(c) Requires PUC to prepare a report based on the study conducted under Subsection (a) of this section. Requires that the report include any recommendations PUC considers advisable in relation to the implementation of and compliance with Section 38.073, Utilities Code, as added by this Act. Authorizes PUC to include the report in the report required by Section 31.003 (Report on Scope of Competition), Utilities Code.

SECTION 6. Effective date: upon passage or September 1, 2009.