

BILL ANALYSIS

S.B. 1492
By: Williams
State Affairs
Committee Report (Amended)

BACKGROUND AND PURPOSE

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. S.B. 1492 amends current law relating to the authority of the Public Utility Commission (PUC) during a declaration of a natural disaster or other emergency by the governor.

RULEMAKING AUTHORITY

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

ANALYSIS

SB 1492 amends Section 36.209, Utilities Code, by amending Subsections (a), 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.

SB 1492 amends Subchapter D, Chapter 38, Utilities Code, by adding Section 38.073 to state that on a declaration of a natural disaster or other emergency by the governor, the commission may 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. 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 the commission shall allow timely recovery for the costs of those items. The commission is allowed 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. If the commission does not order the sale of electricity during a declared emergency as described by this subsection, the commission shall promptly submit to the legislature a report describing the reasons why the commission did not make that order. If an entity receives electricity under a declaration of a natural disaster or other emergency by governor the receiving entity shall reimburse the supplying entity for the actual cost of providing the electricity. The entity receiving the electricity is responsible for any transmission and distribution service charges specifically incurred in relation to providing the electricity. An entity that pays for electricity received during a declaration of a natural disaster or other emergency by the governor and that is regulated by the commission may 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; or notwithstanding Section 36.201, imposing a different surcharge.

S.B. 1492 amends Section 39.452, Utilities Code, by amending Subsection (b) and adding Subsection (i) to require an electric utility subject to this subchapter propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation. The commission shall approve, reject, or modify the proposed tariff not later than September 1, 2010. The tariffs subject to this subsection may not be considered to offer a discounted rate or rates under Section 36.007, and the utility's rates shall be set, in the proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the implementation of the tariff. The commission shall 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. Pursuant to the competitive generation tariff, an electric utility subject to this subsection shall purchase competitive generation service, selected by the customer, and provide the generation at retail to the customer. An electric utility subject to this subsection shall 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. Such customers shall not be considered wholesale transmission customers.

S.B. 1492 states that notwithstanding any other provision of this chapter, the commission may not issue 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. Notwithstanding any other provision of this chapter, if the commission has not approved the transition to competition plan under this section before January 1, 2009, an electric utility subject to this subchapter shall cease all activities relating to the transition to competition under this section. The commission may, on its own motion or the motion of any affected person, initiate a proceeding under Section 39.152 to certify a power region to which the utility belongs as a qualified power region when the conditions supporting such a proceeding exist. The commission may not approve a plan until the expiration of four years from the time that the commission certifies a power region. If after the expiration of four years from the time the commission certifies a power region, and after notice and a hearing, the commission determines consistent with the study required by Section 5, S.B. No. 1492, Acts of the 81st Legislature, Regular Session, 2009, that the electric utility cannot comply with Section 38.073, it shall consider approving a plan under Subsection (g). In awarding a certificate of convenience and necessity or allowing cost recovery for purchased power by an electric utility subject to this section, the Commission shall ensure in its determination that the provision of section 37.056(4)(d) and (e) are met.

S.B. 1492 states that not later than the 90th day after the effective date of this Act, an electric utility operating in the Southeastern Electric Reliability Council 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 the Public Utility Commission of Texas shall: withdraw the plan from the commission; and cease all activities related to the plan.

S.B. 1492 states that not later than November 1, 2009, the Public Utility Commission of Texas shall 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 Subsection (a), Section 38.073, 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 Subsection (a), Section 38.073, Utilities Code, as added by this Act, should take to prepare to comply with that section. An entity described by Subsection (a), Section 38.073, Utilities Code, as added by this Act, shall comply with any order issued by the Public Utility Commission of Texas under that subsection while the study required by Subsection (a) of this section is conducted.

S.B. 1492 states that The Public Utility Commission of Texas shall prepare a report based on the study conducted under Subsection (a) of this section. The report must include any recommendations the commission considers advisable in relation to the implementation of and compliance with Section 38.073, Utilities Code, as added by this Act. The commission may include the report in the report required by Section 31.003, Utilities Code.

EFFECTIVE DATE

Upon passage or, if this Act does not receive the vote necessary for immediate effect, September 1, 2009.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1

S.B. 1492 is amended to state that 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, the Commission shall ensure in its determination that the provision of section 37.056(4)(d) and (e) are met.