

BILL ANALYSIS

Senate Research Center

S.B. 2236
By: Seliger
Natural Resources
4/7/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas public policy favors increased reliance on renewable resources to supply the state's electric energy requirements. There is tremendous potential in Texas for development of wind-generated electricity, but wind power is intermittent and dependant on prevailing wind conditions. Electric energy consumers, however, expect energy to be available on demand.

Electric cooperatives and their member-consumers support Texas public policy and are taking steps to increase their ability to make greater use of renewable energy resources such as wind power. However, they can do so only if these intermittent resources can be reinforced with back-up generation sources that can respond rapidly when energy from the renewable resource is reduced or entirely unavailable.

One way to address this reliability challenge is with quick-start gas-fired generators, such as aero-derivative combustion turbine generators. These generators can respond rapidly during low wind conditions to supply the energy needed, are relatively efficient, and have lower emissions than generators powered by other fossil fuels. However, these generators cannot operate without the immediate availability of fuel, posing an operational challenge. Natural gas pipelines typically require day-ahead notice of the quantity of gas that a customer will purchase to allow appropriate arrangements for operation of the gas pipeline system. Absent such prior notice, gas may not be available when called for; one way to address this is for electric cooperatives to maintain a supply of readily available natural gas in an underground gas storage facility that is designed to support the quick-start generation relied on by the electric cooperative to back up intermittent wind generation.

Modern technology quick-start generation is very expensive, as is developing, operating, and maintaining an underground gas storage facility that would be sufficient in size to support this generation. However, these are costs that cannot be avoided if electric cooperatives are to reliably increase the amount of renewable energy included in their resource portfolios. To partially off-set these high costs, and to reduce the costs borne by their member-consumers, it would be prudent for these electric cooperatives to offer short-term gas storage services to other entities at times when the storage facility has capacity that temporarily exceeds the electric cooperative's needs. These negotiated contracts would contain clear provisions stating that these gas storage services are short-term and subject to termination.

Unfortunately, current Texas law does not envision this type of arrangement. If an electric cooperative or an affiliated owner/operator of a gas storage facility were to offer gas storage services to another party, even an affiliated party, it might fall under any number of definitions under current statutes and incur related obligations, such as the obligation to offer or provide gas storage services to others without favoring its own operations and needs. Thus, under Texas law the electric cooperative would not be able to contract with other entities to provide temporary gas storage services while maintaining the assurance that it can rely on the facility to support its own generation needs. Instead, the basic purpose of making a substantial investment in a new quick-start generation and acquisition of underground gas storage facilities to support renewable generation would be frustrated by demands of third parties for access to the gas storage facility.

As proposed, S.B. 2236 provides that the act of offering or providing gas storage services to the public for hire does not make an electric cooperative organized under Chapter 161 (Electric Cooperative Corporations), Utilities Code, or a subsidiary of the electric cooperative, a gas utility or make the electric cooperative or the subsidiary subject to the jurisdiction, control, and regulation of the railroad commission as a gas utility. This bill also redefines "gas utility."

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 101.003(7), Utilities Code, to redefine "gas utility."

SECTION 2. Amends Subchapter A, Chapter 121, Utilities Code, by adding Section 121.008, as follows:

Sec. 121.008. UNDERGROUND STORAGE FACILITY OWNED OR OPERATED BY ELECTRIC COOPERATIVE OR SUBSIDIARY EXCLUDED. Provides that the act of offering or providing gas storage services to the public for hire does not make an electric cooperative organized under Chapter 161 (Electric Cooperative Corporations), or a subsidiary of the electric cooperative, a gas utility or make the electric cooperative or the subsidiary subject to the jurisdiction, control, and regulation of the railroad commission as a gas utility.

SECTION 3. Amends Section 111.001(2), Natural Resources Code, by adding Subdivision (3), to define "storage facility."

SECTION 4. Amends Subchapter A, Chapter 111, Natural Resources Code, by adding Section 111.005, as follows:

Sec. 111.005. NONAPPLICABILITY TO ELECTRIC COOPERATIVES AND SUBSIDIARIES. Provides that the act of offering or providing gas storage services to the public for hire does not:

- (1) make an electric cooperative organized under Chapter 161, or a subsidiary of the electric cooperative, a public utility, common carrier, or common purchaser, as those terms are defined by this chapter;
- (2) make an electric cooperative or a subsidiary of the electric cooperative described by Subdivision (1) a common carrier under the common law; or
- (3) subject an electric cooperative or a subsidiary of the electric cooperative described by Subdivision (1) to the provisions of this chapter.

SECTION 5. Effective date: upon passage or September 1, 2009.