

By: Hughes, Frost, Merritt, Homer, Hopson,
et al.

H.B. No. 870

Substitute the following for H.B. No. 870:

By: Solomons

C.S.H.B. No. 870

A BILL TO BE ENTITLED

AN ACT

relating to transition to competition in the Southwestern Electric
Power Company service area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 39, Utilities Code, is amended by adding
Subchapter K to read as follows:

SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN

AREAS OUTSIDE OF ERCOT

Sec. 39.501. APPLICABILITY. (a) This subchapter applies
to an investor-owned electric utility:

(1) that is operating solely outside of ERCOT in areas
of this state that were included in the Southwest Power Pool on
January 1, 2008;

(2) that was not affiliated with the Southeastern
Electric Reliability Council on January 1, 2008; and

(3) to which Subchapter I does not apply.

(b) The legislature finds that an electric utility subject
to this subchapter is unable at this time to offer fair competition
and reliable service to all retail customer classes in the area
served by the utility. As a result, the introduction of retail
competition for such an electric utility is delayed until fair
competition and reliable service are available to all retail
customer classes as determined under this subchapter.

Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Until the

1 date on which an electric utility subject to this subchapter is
2 authorized by the commission under Section 39.503(f) to implement
3 retail customer choice, the rates of the utility are subject to
4 regulation under Chapter 36.

5 (b) Until the date on which an electric utility subject to
6 this subchapter implements customer choice, the provisions of this
7 chapter, other than this subchapter and Sections 39.904 and 39.905,
8 do not apply to that utility.

9 Sec. 39.503. TRANSITION TO COMPETITION. (a) The events
10 prescribed by Subsections (b)-(f) shall be followed to introduce
11 retail competition in the service area of an electric utility
12 subject to this subchapter. The commission may modify the sequence
13 of events required by Subsections (b)-(e), but not the substance of
14 the requirements. Full retail competition may not begin in the
15 service area of an electric utility subject to this subchapter
16 until all actions prescribed by those subsections are completed.

17 (b) The first stage for the transition to competition
18 consists of the following activities:

19 (1) approval of a regional transmission organization
20 by the Federal Energy Regulatory Commission for the power region
21 that includes the electric utility's service area and commencement
22 of independent operation of the transmission network under the
23 approved regional transmission organization;

24 (2) development of retail market protocols to
25 facilitate retail competition; and

26 (3) completion of an expedited proceeding to develop
27 non-bypassable delivery rates for the customer choice pilot project

1 to be implemented under Subsection (c)(1).

2 (c) The second stage for the transition to competition
3 consists of the following activities:

4 (1) initiation of the customer choice pilot project in
5 accordance with Section 39.104;

6 (2) development of a balancing energy market, a market
7 for ancillary services, and a market-based congestion management
8 system for the wholesale market in the power region in which the
9 regional transmission organization operates; and

10 (3) implementation of a seams agreement with adjacent
11 power regions to reduce barriers to entry and facilitate
12 competition.

13 (d) The third stage for the transition to competition
14 consists of the following activities:

15 (1) the electric utility filing with the commission:

16 (A) an application for business separation in
17 accordance with Section 39.051;

18 (B) an application for unbundled transmission
19 and distribution rates in accordance with Section 39.201;

20 (C) an application for certification of a
21 qualified power region in accordance with Section 39.152; and

22 (D) an application for price-to-beat rates in
23 accordance with Section 39.202;

24 (2) the commission:

25 (A) approving a business separation plan for the
26 utility;

27 (B) setting unbundled transmission and

distribution rates for the utility;

(C) certifying a qualified power region, which includes conducting a formal evaluation of wholesale market power in the region, in accordance with Section 39.152;

(D) setting price-to-beat rates for the utility;
and

(E) determining which competitive energy services must be separated from regulated utility activities in accordance with Section 39.051; and

(3) completion of the testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions, by the regional transmission organization, the registration agent, and market participants.

(e) The fourth stage for the transition to competition consists of the following activities:

(1) commission evaluation of the results of the pilot project;

(2) initiation by the electric utility of a capacity auction in accordance with Section 39.153 at a time to be determined by the commission; and

(3) separation by the utility of competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy services.

(f) The fifth stage for the transition to competition consists of the following activities:

1 (1) evaluation by the commission of whether the
2 electric utility can offer fair competition and reliable service to
3 all retail customer classes in the area served by the utility, and:

4 (A) if the commission concludes that the electric
5 utility can offer fair competition and reliable service to all
6 retail customer classes in the area served by the utility, the
7 commission issuing an order initiating retail competition for the
8 utility; and

9 (B) if the commission determines that the
10 electric utility cannot offer fair competition and reliable service
11 to all retail customer classes in the area served by the utility,
12 the commission issuing an order further delaying retail competition
13 for the utility; and

14 (2) on the issuance of an order from the commission
15 initiating retail competition for the utility, completion by the
16 utility of the business separation and unbundling in accordance
17 with the commission order approving the unbundling.

18 SECTION 2. This Act takes effect September 1, 2009.