

By: Hughes

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 this state. 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 in this state.

Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Until the date on which an electric utility subject to this subchapter is

1 authorized by the commission under Section 39.503(g) to implement
2 retail customer choice, the rates of the utility are subject to
3 regulation under Chapter 36.

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

8 Sec. 39.503. TRANSITION TO COMPETITION. (a) The sequence
9 of events prescribed by Subsections (b)-(g) shall be followed to
10 introduce retail competition in the service area of an electric
11 utility subject to this subchapter. All listed items in a
12 subsection must be completed before the events provided by the next
13 subsection are initiated. Full retail competition may not begin in
14 the service area of an electric utility subject to this subchapter
15 until all actions prescribed by those subsections are completed.

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

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

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

25 (3) completion of an expedited proceeding to develop
26 non-bypassable delivery rates for the customer choice pilot project
27 to be implemented under Subsection (c)(1).

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

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

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

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

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

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

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

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

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

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

23 (2) the commission:

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

26 (B) setting unbundled transmission and
27 distribution rates for the utility;

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

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

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

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

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

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

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

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

26 (f) The fifth stage for the transition to competition
27 consists of evaluation by the commission of whether the electric

1 utility can offer fair competition and reliable service to all
2 retail customer classes in this state, and:

3 (1) if the commission concludes that the electric
4 utility can offer fair competition and reliable service to all
5 retail customer classes in this state, the commission submitting a
6 report to the legislature recommending the enactment by the
7 legislature of a law authorizing the implementation of retail
8 competition by the utility; and

9 (2) if the commission determines that the electric
10 utility cannot offer fair competition and reliable service to all
11 retail customer classes in this state, the commission issuing an
12 order further delaying retail competition for the utility.

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

15 (1) the enactment of a law by the legislature
16 authorizing the implementation of retail competition by the
17 utility;

18 (2) if the legislature enacts that law, the issuance
19 of an order from the commission authorizing the utility to
20 implement retail competition; and

21 (3) on the issuance of an order from the commission
22 authorizing the implementation of retail competition by the
23 utility, completion by the utility of the business separation and
24 unbundling in accordance with the commission order approving the
25 unbundling.

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