

AN ACT

relating to methods for the recovery of system restoration costs incurred by electric utilities following hurricanes, tropical storms, ice or snow storms, floods, and other weather-related events and natural disasters.

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

SECTION 1. Chapter 36, Utilities Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. SECURITIZATION FOR RECOVERY OF SYSTEM

RESTORATION COSTS

Sec. 36.401. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE. (a) The purpose of this subchapter is to enable an electric utility to obtain timely recovery of system restoration costs and to use securitization financing to recover these costs, because that type of debt will lower the carrying costs associated with the recovery of these costs, relative to the costs that would be incurred using conventional financing methods. The proceeds of the transition bonds may be used only for the purposes of reducing the amount of recoverable system restoration costs, as determined by the commission in accordance with this subchapter, including the refinancing or retirement of utility debt or equity.

(b) It is the intent of the legislature that:

1           (1) securitization of system restoration costs will be  
2 accomplished using the same procedures, standards, and protections  
3 for securitization authorized under Subchapter G, Chapter 39, as in  
4 effect on the effective date of this section, except as provided by  
5 this subchapter; and

6           (2) the commission will ensure that securitization of  
7 system restoration costs provides greater tangible and  
8 quantifiable benefits to ratepayers than would have been achieved  
9 without the issuance of transition bonds.

10       Sec. 36.402. SYSTEM RESTORATION COSTS; STANDARDS AND  
11 DEFINITIONS. (a) In this subchapter, "system restoration costs"  
12 means reasonable and necessary costs, including costs expensed,  
13 charged to self-insurance reserves, deferred, capitalized, or  
14 otherwise financed, that are incurred by an electric utility due to  
15 any activity or activities conducted by or on behalf of the electric  
16 utility in connection with the restoration of service and  
17 infrastructure associated with electric power outages affecting  
18 customers of the electric utility as the result of any tropical  
19 storm or hurricane, ice or snow storm, flood, or other  
20 weather-related event or natural disaster that occurred in calendar  
21 year 2008 or thereafter. System restoration costs include  
22 mobilization, staging, and construction, reconstruction,  
23 replacement, or repair of electric generation, transmission,  
24 distribution, or general plant facilities. System restoration  
25 costs shall include reasonable estimates of the costs of an  
26 activity or activities conducted or expected to be conducted by or  
27 on behalf of the electric utility in connection with the

restoration of service or infrastructure associated with electric power outages, but such estimates shall be subject to true-up and reconciliation after the actual costs are known.

(b) System restoration costs shall include carrying costs at the electric utility's weighted average cost of capital as last approved by the commission in a general rate proceeding from the date on which the system restoration costs were incurred until the date that transition bonds are issued or until system restoration costs are otherwise recovered pursuant to the provisions of this subchapter.

(c) To the extent a utility subject to this subchapter receives insurance proceeds, governmental grants, or any other source of funding that compensate it for system restoration costs, those amounts shall be used to reduce the utility's system restoration costs recoverable from customers. If the timing of a utility's receipt of those amounts prevents their inclusion as a reduction to the system restoration costs that are securitized, or the commission later determines as a result of the true-up and reconciliation provided for in Subsection (a) that the actual costs incurred are less than estimated costs included in the determination of system restoration costs, the commission shall take those amounts into account in:

- (1) the utility's next base rate proceeding; or
- (2) any subsequent proceeding, other than a true-up proceeding under Section 39.307, in which the commission considers system restoration costs.

(d) If the commission determines that the insurance

proceeds, governmental grants, or other sources of funding that compensate the electric utility for system restoration costs, or the amount resulting from a true-up of estimated system restoration costs are of a magnitude to justify a separate tariff rider, the commission may establish a tariff rider to credit such amounts against charges, other than transition charges or system restoration charges as defined in Section 36.403, being collected from customers.

(e) To the extent that the electric utility receives insurance proceeds, governmental grants, or any other source of funding that is used to reduce system restoration costs, the commission shall impute interest on those amounts at the same cost of capital included in the utility's system restoration costs until the date that those amounts are used to reduce the amount of system restoration costs that are securitized or otherwise reflected in the rates of the utility.

Sec. 36.403. STANDARDS AND PROCEDURES GOVERNING SECURITIZATION AND RECOVERY OF SYSTEM RESTORATION COSTS. (a) The procedures and standards of this subchapter and the provisions of Subchapter G, Chapter 39, govern an electric utility's application for, and the commission's issuance of, a financing order to provide for the securitization of system restoration costs, or to otherwise provide for the recovery of system restoration costs.

(b) Subject to the standards, procedures, and tests contained in this subchapter and Subchapter G, Chapter 39, the commission shall adopt a financing order on the application of the electric utility to recover its system restoration costs. If on its

1 own motion or complaint by an affected person, the commission  
2 determines that it is likely that securitization of system  
3 restoration costs would meet the tests contained in Section  
4 36.401(b), the commission shall require the utility to file an  
5 application for a financing order. On the commission's issuance of  
6 a financing order allowing for recovery and securitization of  
7 system restoration costs, the provisions of this subchapter and  
8 Subchapter G, Chapter 39, continue to govern the financing order  
9 and the rights and interests established in the order, and this  
10 subchapter and Subchapter G, Chapter 39, continue to govern any  
11 transition bonds issued pursuant to the financing order. To the  
12 extent any conflict exists between the provisions of this  
13 subchapter and Subchapter G, Chapter 39, in cases involving the  
14 securitization of system restoration costs, the provisions of this  
15 subchapter control.

16 (c) For purposes of this subchapter, "financing order," as  
17 defined by Section 39.302 and as used in Subchapter G, Chapter 39,  
18 includes a financing order authorizing the securitization of system  
19 restoration costs.

20 (d) For purposes of this subchapter, "qualified costs," as  
21 defined by Section 39.302 and as used in Subchapter G, Chapter 39,  
22 includes 100 percent of the electric utility's system restoration  
23 costs, net of any insurance proceeds, governmental grants, or other  
24 source of funding that compensate the utility for system  
25 restoration costs, received by the utility at the time it files an  
26 application for a financing order. Qualified costs also include  
27 the costs of issuing, supporting, and servicing transition bonds

and any costs of retiring and refunding existing debt and equity securities of an electric utility subject to this subchapter in connection with the issuance of transition bonds. For purposes of this subchapter, the term qualified costs also includes:

(1) the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under this subchapter; and

(2) costs associated with ancillary agreements such as any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with the issuance or payment of transition bonds.

(e) For purposes of this subchapter, "transition bonds," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes transition bonds issued in association with the recovery of system restoration costs. Transition bonds issued to securitize system restoration costs may be called "system restoration bonds" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(f) For purposes of this subchapter, "transition charges," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes nonbypassable amounts to be charged for the use of electric services, approved by the commission under a financing order to recover system restoration costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

Transition charges approved by the commission under a financing order to recover system restoration costs may be called "system restoration charges" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(g) Notwithstanding Section 39.303(c), system restoration costs shall be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the electric utility's current base rates. For an electric utility operating within the Electric Reliability Council of Texas, system restoration costs that are properly includable in the transmission cost of service mechanism adopted under Section 35.004 and associated deferred costs not included under Section 35.004 shall be recovered under the method of pricing provided for in that section and commission rules promulgated under that section; provided, however, that an electric utility operating under a rate freeze or other limitation on its ability to pass through wholesale costs to its customers may defer such costs and accrue carrying costs at its weighted average cost of capital as last approved by the commission in a general rate proceeding until such time as the freeze or limitation expires.

(h) The amount of any accumulated deferred federal income taxes offset, used to determine the securitization total, may not be considered in future rate proceedings. Any tax obligation of the electric utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, shall be recovered by the electric utility through the commission's implementation of this subchapter.

1        (i) Notwithstanding a rate freeze or limitations on an  
2 electric utility's ability to change rates authorized or imposed by  
3 any other provision of this title or by a regulatory authority, an  
4 electric utility is entitled to recover system restoration costs  
5 consistent with the provisions of this subchapter.

6        (j) If in the course of a proceeding to adopt a financing  
7 order the commission determines that the recovery of all or any  
8 portion of an electric utility's system restoration costs, using  
9 securitization, is not beneficial to ratepayers of the electric  
10 utility, under one or more of the tests applied to determine those  
11 benefits, the commission shall nonetheless use the proceeding to  
12 issue an order permitting the electric utility to recover the  
13 remainder of its system restoration costs through an appropriate  
14 customer surcharge mechanism, including carrying costs at the  
15 electric utility's weighted average cost of capital as last  
16 approved by the commission in a general rate proceeding, to the  
17 extent that the electric utility has not securitized those costs. A  
18 rate proceeding under Subchapter C or D shall not be required to  
19 determine and implement this surcharge mechanism. On the final  
20 implementation of rates resulting from the filing of a rate  
21 proceeding under Subchapter C or D that provides for the recovery of  
22 all remaining system restoration costs, a rider or surcharge  
23 mechanism adopted under this subsection shall expire. This  
24 subsection is limited to instances in which an electric utility has  
25 incurred system restoration costs of \$100 million or more in any  
26 calendar year after January 1, 2008.

27        Sec. 36.404. NONBYPASSABLE CHARGES. The commission shall



include terms in the financing order to ensure that the imposition and collection of transition charges associated with the recovery of system restoration costs are nonbypassable by imposing restrictions on bypassability of the type provided for in Chapter 39 or by alternative means of ensuring nonbypassability, as the commission considers appropriate, consistent with the purposes of securitization.

Sec. 36.405. DETERMINATION OF SYSTEM RESTORATION COSTS.

(a) An electric utility is entitled to recover system restoration costs consistent with the provisions of this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including system restoration costs not yet incurred at the time an application is filed under Subsection (b), in its next base rate proceeding or through any other proceeding authorized by Subchapter C or D.

(b) An electric utility may file an application with the commission seeking a determination of the amount of system restoration costs eligible for recovery and securitization. The commission may by rule prescribe the form of the application and the information reasonably needed to support the application; provided, however, that if such a rule is not in effect, the electric utility shall not be precluded from filing its application and such application cannot be rejected as being incomplete.

(c) The commission shall issue an order determining the amount of system restoration costs eligible for recovery and securitization not later than the 150th day after the date an electric utility files its application. The 150-day period begins

1 on the date the electric utility files the application, even if the  
2 filing occurs before the effective date of this section.

3 (d) An electric utility may file an application for a  
4 financing order prior to the expiration of the 150-day period  
5 provided for in Subsection (c). The commission shall issue a  
6 financing order not later than 90 days after the utility files its  
7 request for a financing order; provided, however, that the  
8 commission need not issue the financing order until it has  
9 determined the amount of system restoration costs eligible for  
10 recovery and securitization.

11 (e) To the extent the commission has made a determination of  
12 the eligible system restoration costs of an electric utility before  
13 the effective date of this section, that determination may provide  
14 the basis for the utility's application for a financing order  
15 pursuant to this subchapter and Subchapter G, Chapter 39. A  
16 previous commission determination does not preclude the utility  
17 from requesting recovery of additional system restoration costs  
18 eligible for recovery under this subchapter, but not previously  
19 authorized by the commission.

20 (f) A rate proceeding under Subchapter C or D shall not be  
21 required to determine the amount of recoverable system restoration  
22 costs, as provided by this section, or for the issuance of a  
23 financing order.

24 (g) A commission order under this subchapter is not subject  
25 to rehearing. A commission order may be reviewed by appeal only to  
26 a Travis County district court by a party to the proceeding filed  
27 within 15 days after the order is signed by the commission. The

1 judgment of the district court may be reviewed only by direct appeal  
2 to the Supreme Court of Texas filed within 15 days after entry of  
3 judgment. All appeals shall be heard and determined by the district  
4 court and the Supreme Court of Texas as expeditiously as possible  
5 with lawful precedence over other matters. Review on appeal shall  
6 be based solely on the record before the commission and briefs to  
7 the court and shall be limited to whether the order conforms to the  
8 constitution and laws of this state and the United States and is  
9 within the authority of the commission under this chapter.

10 Sec. 36.406. SEVERABILITY. Effective on the date the first  
11 utility transition bonds associated with system restoration costs  
12 are issued under this subchapter, if any provision in this title or  
13 portion of this title is held to be invalid or is invalidated,  
14 superseded, replaced, repealed, or expires for any reason, that  
15 occurrence does not affect the validity or continuation of this  
16 subchapter, Subchapter G, Chapter 39, as it applies to this  
17 subchapter, or any part of those provisions, or any other provision  
18 of this title that is relevant to the issuance, administration,  
19 payment, retirement, or refunding of transition bonds or to any  
20 actions of the electric utility, its successors, an assignee, a  
21 collection agent, or a financing party, and those provisions shall  
22 remain in full force and effect.

23 SECTION 2. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 769 passed the Senate on March 25, 2009, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 769 passed the House on April 7, 2009, by the following vote: Yeas 146, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor