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S.B. No. 769

A BILL TO BE ENTITLED

AN ACT

relating to the recovery by an electric utility of certain expenses relating to weather-related events or 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 OR RECOVERY OF

SYSTEM RESTORATION COSTS AND SELF-INSURANCE RESERVES

Sec. 36.401. PURPOSE AND INTENT. (a) The purpose of this subchapter is to enable an electric utility to:

(1) obtain timely recovery of system restoration costs;

(2) create, fund, eliminate shortages in, or replenish self-insurance reserves at such levels as the commission may authorize; and

(3) use appropriate mechanisms to recover system restoration costs or self-insurance reserves, including through a securitization financing mechanism because that type of financing will lower the carrying costs associated with the recovery of the costs, relative to the costs that would be incurred using conventional financing methods.

(b) The legislature intends that:

(1) the securitization of system restoration costs and self-insurance reserves under this subchapter will be accomplished

using the same procedures, standards, and protections for securitization authorized under Subchapter G, Chapter 39, except as provided by this subchapter; and

(2) the commission will ensure that the securitization of system restoration costs and self-insurance reserves under this subchapter provides greater tangible and quantifiable benefits to ratepayers than would be achievable without the issuance of transition bonds.

Sec. 36.402. DEFINITIONS AND APPLICABILITY OF TERMS. (a) In this subchapter:

(1) "Self-insurance reserves" means the self-insurance reserves authorized by Section 36.064 and, for purposes of this subchapter, the term includes the cost of creating, funding, eliminating a shortage in, or replenishing the self-insurance reserves. For purposes of this subchapter, the term applies to:

(A) shortages in self-insurance reserves in existence on the effective date of this subchapter; and

(B) shortages in self-insurance reserves that arise after the effective date of this subchapter.

(2) "System restoration costs" means reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, capitalized, or otherwise financed, that are incurred by an electric utility due to any activities conducted by or on behalf of the electric utility in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electric utility as the

1 result of any tropical storm or hurricane, ice or snow storm, flood,
2 or other weather-related event or natural disaster that occurred
3 during or after the calendar year 2008. The term includes:

4 (A) all costs related to mobilization, staging,
5 construction, reconstruction, replacement, or repair of electric
6 generation, transmission, distribution, or general plant
7 facilities, including all internal or external labor costs;

8 (B) reasonable estimates of the costs of an
9 activity or activities conducted or expected to be conducted by or
10 on behalf of the electric utility in connection with the
11 restoration of service or infrastructure associated with electric
12 power outages, except that such estimates are subject to true-up
13 and reconciliation after the actual costs are known; and

14 (C) carrying costs, at the electric utility's
15 last commission-authorized weighted average cost of capital, from
16 the date on which the system restoration costs were incurred until
17 the date that transition bonds are issued under this subchapter.

18 (b) For purposes of this subchapter, "financing order," as
19 defined by Section 39.302 and as used in this subchapter and
20 Subchapter G, Chapter 39, includes a financing order issued under
21 this subchapter authorizing the securitization of system
22 restoration costs or self-insurance reserves, or both.

23 (c) For purposes of this subchapter, "qualified costs," as
24 defined by Section 39.302 and as used in this subchapter and
25 Subchapter G, Chapter 39, includes:

26 (1) all of the electric utility's system restoration
27 costs and self-insurance reserves, net of any insurance proceeds or

governmental grants received by the utility at the time it files an application for a financing order together with 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 in connection with the issuance of transition bonds under this subchapter;

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

(3) 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.

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

(e) For purposes of this subchapter, "transition charges," as defined by Section 39.302 and as used in this subchapter and Subchapter G, Chapter 39, includes nonbypassable amounts to be charged for the use or availability of electric services, approved

by the commission under a financing order to recover system restoration costs, self-insurance reserves, or both, 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, self-insurance reserves, or both, may be referred to as "system restoration charges" or by any other term acceptable to the issuer and underwriters of the transition bonds.

Sec. 36.403. SUBCHAPTER CONTROLS. To the extent of any conflict between this subchapter and Subchapter G, Chapter 39, in relation to the securitization of system restoration costs or self-insurance reserves, the provisions of this subchapter control.

Sec. 36.404. LIMITATION ON USE OF TRANSITION BOND PROCEEDS. The proceeds of the transition bonds issued under this subchapter may be used only for:

(1) 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; or

(2) creating, funding, eliminating shortages in, or replenishing self-insurance reserves.

Sec. 36.405. DETERMINATION OF SYSTEM RESTORATION COSTS AND SELF-INSURANCE RESERVES. (a) An electric utility is entitled to:

(1) recover system restoration costs and self-insurance reserves under a financing order issued under this

1 subchapter; or

2 (2) seek, in its next base rate proceeding or through
3 any other proceeding authorized by Subchapter C or D, the recovery
4 of amounts not otherwise recovered under this subchapter, including
5 system restoration costs not yet incurred at the time an
6 application is filed under Subsection (b).

7 (b) An electric utility may file an application with the
8 commission seeking a determination of:

9 (1) the amount necessary to create, fund, eliminate a
10 shortage in, or replenish self-insurance reserves;

11 (2) the amount of system restoration costs eligible
12 for recovery and securitization; or

13 (3) both amounts described by Subdivisions (1) and
14 (2).

15 (c) The commission by rule may prescribe the form of an
16 application under Subsection (b) and the information reasonably
17 necessary to support the determinations that are the subject of an
18 application. If an electric utility files an application under
19 Subsection (b) before the commission has adopted rules for purposes
20 of this subsection or before the rules have taken effect, the
21 commission shall accept the application and the commission may not
22 reject the application as incomplete.

23 (d) The commission shall issue an order that states the
24 amount, determined by the commission, necessary to create, fund,
25 eliminate a shortage in, or replenish self-insurance reserves, or
26 the amount of system restoration costs eligible for recovery and
27 securitization, or both, not later than the 150th day after the date

1 an electric utility files an application under Subsection (b).

2 (d-1) The 150-day period provided by Subsection (d) begins
3 on the date the electric utility files an application described by
4 Subsection (b), even if the electric utility files the application
5 before the effective date of this subchapter. This subsection
6 expires April 1, 2010.

7 (e) An electric utility may file an application for a
8 financing order before the end of the 150-day period provided by
9 Subsection (d). The commission shall issue a financing order under
10 this subchapter not later than the 90th day after the date the
11 utility files the request for a financing order. Notwithstanding
12 the 90-day period provided by this subsection, the commission is
13 not required to issue the financing order until the commission has
14 issued an order under Subsection (d) determining the amount
15 necessary to create, replenish, or eliminate a shortage in
16 self-insurance reserves, or the amount of system restoration costs
17 eligible for recovery and securitization, or both, if applicable.

18 (f) A determination made by the commission before the
19 effective date of this subchapter of an electric utility's eligible
20 system restoration costs or self-insurance reserves may provide the
21 basis for the utility's application for a financing order under
22 this subchapter and Subchapter G, Chapter 39. A previous
23 commission determination does not preclude the utility from
24 requesting recovery of additional system restoration costs or
25 self-insurance reserves eligible to be recovered under this
26 subchapter, but not previously authorized by the commission.

27 (g) A rate proceeding under Subchapter C or D is not

1 required to determine the amount of recoverable system restoration
2 costs or self-insurance reserves as provided by this section or for
3 the issuance of a financing order.

4 Sec. 36.406. STANDARDS AND PROCEDURES FOR FINANCING ORDER.

5 (a) The procedures and standards of this subchapter and the
6 provisions of Subchapter G, Chapter 39, govern an electric
7 utility's application for, and the commission's issuance of, a
8 financing order to provide for the securitization of system
9 restoration costs, self-insurance reserves, or both, or to
10 otherwise provide for the recovery of system restoration costs,
11 self-insurance reserves, or both.

12 (b) Notwithstanding any other provisions of this subchapter
13 or of Section 39.301 for determining tangible and quantifiable
14 benefits to ratepayers, if the commission determines that it is in
15 the public interest to use securitization financing for the
16 recovery of system restoration costs or to create, fund, eliminate
17 shortages in, or replenish self-insurance reserves, the commission
18 may issue a financing order for that securitization financing.

19 (c) Subject to the standards, procedures, and tests
20 provided by this subchapter and Subchapter G, Chapter 39, the
21 commission shall adopt a financing order on the application of the
22 utility to recover its system restoration costs or self-insurance
23 reserves.

24 (d) If the commission determines, on its own motion or on a
25 complaint by an affected person, that it is in the public interest
26 to securitize under this subchapter the amounts needed for an
27 electric utility to recover its system restoration costs or to

1 create, fund, eliminate shortages in, or replenish a utility's
2 self-insurance reserve, the commission shall require the utility to
3 file an application for a financing order.

4 (e) On the commission's issuance of a financing order
5 allowing for recovery and securitization of system restoration
6 costs or self-insurance reserves, or both, this subchapter and
7 Subchapter G, Chapter 39, continue to govern:

8 (1) the financing order and the rights and interests
9 established by the order; and

10 (2) transition bonds issued pursuant to the financing
11 order.

12 Sec. 36.407. NONBYPASSABLE CHARGES. The commission shall
13 include in a financing order issued under this subchapter terms
14 necessary to ensure that the imposition and collection of
15 transition charges for the recovery of system restoration costs and
16 self-insurance reserves are nonbypassable by:

17 (1) imposing restrictions on bypassability of the type
18 provided for in Chapter 39; or

19 (2) alternative means as the commission considers to
20 be appropriate and consistent with the purposes of securitization.

21 Sec. 36.408. TREATMENT OF ESTIMATED COSTS AFTER TRUE-UP AND
22 RECONCILIATION. (a) The commission may provide a process for
23 true-up and reconciliation of system restoration costs subject to
24 an order under this subchapter.

25 (b) If the commission determines as a result of a true-up
26 and reconciliation proceeding that the actual costs incurred are
27 less than estimated costs included in a determination under this

1 subchapter of system restoration costs, the commission shall take
2 the difference between actual and estimated costs into account in:

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

7 Sec. 36.409. INSURANCE PROCEEDS OR GOVERNMENTAL GRANTS
8 AFFECTING SYSTEM RESTORATION COSTS. (a) To the extent an electric
9 utility receives insurance proceeds or governmental grants that
10 compensate it for system restoration costs considered under this
11 subchapter, the utility shall use the amounts of those proceeds to
12 reduce the utility's system restoration costs recoverable from
13 customers.

14 (b) If the timing of a utility's receipt of insurance
15 proceeds or governmental grants prevents their inclusion as a
16 reduction to the system restoration costs that are securitized
17 under this subchapter, the commission shall take those insurance
18 proceeds and governmental grants into account in:

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

23 (c) To the extent that the utility receives insurance
24 proceeds or governmental grants that are used to reduce system
25 restoration costs, the commission shall impute interest on those
26 proceeds or grants at the same cost of capital included in the
27 utility's system restoration costs and until the date that the

1 proceeds or grants are used to reduce the amount of system
2 restoration costs that are securitized or otherwise reflected in
3 the rates of the utility.

4 Sec. 36.410. TAX OFFSETS AND TAX OBLIGATIONS. (a) The
5 amount of any accumulated deferred federal income taxes offset used
6 to determine the securitization total under this subchapter may not
7 be considered in future rate proceedings.

8 (b) The commission shall provide for an electric utility to
9 recover under this subchapter any tax obligation of the electric
10 utility arising from the utility's receipt of securitization bond
11 proceeds or from the collection and remittance of transition
12 charges.

13 Sec. 36.411. FUNCTIONALIZATION AND ALLOCATION OF SYSTEM
14 RESTORATION COSTS AND SELF-INSURANCE RESERVES. Notwithstanding
15 Section 39.303(c), system restoration costs and self-insurance
16 reserves shall be functionalized and allocated to customers in the
17 same manner as the corresponding facilities and related expenses
18 are functionalized and allocated in the utility's current base
19 rates.

20 Sec. 36.412. SURCHARGE AS ALTERNATIVE TO SECURITIZATION.

21 (a) If the commission determines that using securitization for
22 creating, funding, eliminating a shortage in, or replenishing all
23 or any portion of an electric utility's self-insurance reserves or
24 for the recovery of all or any portion of an electric utility's
25 system restoration costs is not beneficial to ratepayers of the
26 electric utility, under one or more of the tests applied to
27 determine those benefits, the commission shall allow the electric

utility to create, fund, eliminate a shortage in, or replenish the remainder of its self-insurance reserves or recover the remainder of its system restoration costs through an appropriate customer surcharge mechanism, including carrying costs at the electric utility's last commission-authorized weighted average cost of capital, to the extent that the electric utility has not securitized those costs.

(b) A rate proceeding under this chapter is not required to determine and implement the surcharge mechanism allowed under Subsection (a).

(c) The commission shall provide for a rider adopted under Subsection (a) to be reduced on the final implementation of rates resulting from the filing of a rate proceeding under Subchapter C or D to the extent that the costs to the utility to create, fund, eliminate a shortage in, or replenish self-insurance reserves or recover system restoration costs are included in the electric utility's base rates.

Sec. 36.413. LIMITATIONS ON RATES DO NOT AFFECT APPLICABILITY OF SUBCHAPTER. Notwithstanding a rate freeze or limitations on an electric utility's ability to change rates authorized or imposed by any other provision of this title or by a regulatory authority, an electric utility is entitled to create, fund, eliminate a shortage in, or replenish self-insurance reserves, or recover system restoration costs, or both, consistent with the provisions of this subchapter.

Sec. 36.414. REVIEW OF COMMISSION ORDER. (a) A commission order under this subchapter is not subject to rehearing and may be

1 reviewed only by appeal to a Travis County district court by a party
2 to the proceeding filed within 15 days after the order is signed by
3 the commission.

4 (b) The judgment of the district court may be reviewed only
5 by direct appeal to the Supreme Court of Texas filed within 15 days
6 after entry of judgment.

7 (c) All appeals shall be heard and determined by the
8 district court and the Supreme Court of Texas as expeditiously as
9 possible with lawful precedence over other matters.

10 (d) Review on appeal shall be based solely on the record
11 before the commission and briefs to the court and shall be limited
12 to whether the order conforms to the constitution and laws of this
13 state and the United States and is within the authority of the
14 commission under this chapter.

15 Sec. 36.415. SEVERABILITY. Effective on the date the first
16 utility transition bonds associated with system restoration costs
17 or self-insurance reserves are issued under this subchapter, if any
18 provision in this title or portion of this title is held to be
19 invalid or is invalidated, superseded, replaced, repealed, or
20 expires for any reason, that occurrence does not affect the
21 validity or continuation of this subchapter, Subchapter G, Chapter
22 39, as it applies to this subchapter, or any part of those
23 provisions, or any other provision of this title that is relevant to
24 the issuance, administration, payment, retirement, or refunding of
25 transition bonds or to any actions of the electric utility, its
26 successors, an assignee, a collection agent, or a financing party,
27 and those provisions shall remain in full force and effect.

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