

## **BILL ANALYSIS**

Senate Research Center

S.B. 1693  
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Business & Commerce  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Funding a modern and reliable electrical grid depends on a regulatory structure that both allows utilities to keep pace with evolving demands and technology, and provides for timely cost recovery. The process to recover investments, revenues and expenditures associated with electric grid infrastructure can be drawn out and administratively burdensome. In fact, traditional rate recovery of distribution investment requires lengthy and expensive contested cases. Current law addresses periodic rate adjustments for transmission costs, energy efficiency costs, and fuel costs, but does not address distribution costs. To alleviate these pressures, and assist utilities with keeping up with infrastructure needs, S.B. 1693 clarifies that the Public Utility Commission (PUC), with participation from affected parties and in an expedited process, has the authority to adopt periodic rate adjustments for certain non-fuel items related to investment capital.

While current law does not address periodic rate adjustments for distribution costs; there is statutory guidance for energy efficiency, fuel costs, and timely recovery of transmission costs outside of the Electric Reliability Council of Texas region. Furthermore, nothing in statute requires municipalities or PUC to approve an electric utility tariff that periodically adjusts a non-fuel rate outside of a general rate case or prohibits them from doing so.

S.B. 1693 amends current law relating to periodic rate adjustments by electric utilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 36.210, Utilities Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 36, Utilities Code, by adding Section 36.210, as follows:

Sec. 36.210. PERIODIC RATE ADJUSTMENTS. (a) Authorizes the Public Utility Commission of Texas (PUC) or a regulatory authority, on the petition of an electric utility, to approve a tariff or rate schedule in which a nonfuel rate may be periodically adjusted upward or downward, based on changes in the parts of the utility's invested capital, as described by Section 36.053 (Components of Invested Capital), that are categorized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks in accordance with PUC rules adopted after consideration of the uniform system of accounts prescribed by the Federal Energy Regulatory Commission. Requires that a periodic rate adjustment:

(1) be approved or denied in accordance with an expedited procedure that provides for appropriate updates of information, allows for participation by the Office of Public Utility Counsel (OPUC) and affected parties, and extends for not less than 60 days;

(2) take into account changes in the number of an electric utility's customers and the effects, on a weather-normalized basis, that energy

consumption and energy demand have on the amount of revenue recovered through the electric utility's base rates;

(3) be consistent with the manner in which costs for invested capital described by this subsection were allocated to each rate class, as approved by PUC, in an electric utility's most recent base rate statement of intent proceeding with changes to residential and commercial class rates reflected in volumetric charges to the extent that residential and commercial class rates are collected in that manner based on the electric utility's most recent base rate statement of intent proceeding;

(4) not diminish the ability of PUC or a regulatory authority, on its own motion or on complaint by an affected person as provided by Subchapter D (Prohibited Relationships and Activities), after reasonable notice and hearing, to change the existing rates of an electric utility for a service after finding that the rates are unreasonable or in violation of law;

(5) be applied by an electric utility on a system-wide basis; and

(6) be supported by the sworn statement of an appropriate employee of the electric utility that affirms that the filing is in compliance with the provisions of the tariff or rate schedule, and the filing is true and correct to the best of the employee's knowledge, information, and belief.

(b) Requires an electric utility in the ERCOT power region, or an unbundled electric utility outside the ERCOT power region in whose service area retail competition is available, that requests a periodic rate adjustment under this section, to:

(1) except as provided by Subsection (f)(3) and to the extent possible, implement simultaneously all nonfuel rates to be adjusted in a 12-month period that are charged by the utility to retail electric providers; and

(2) provide notice to retail electric providers of the approved rates not later than the 45th day before the date the rates take effect.

(c) Prohibits a periodic rate adjustment approved under this section from being used to adjust the portion of a nonfuel rate relating to the generation of electricity.

(d) Authorizes an electric utility to adjust the utility's rates under this section not more than once per year and not more than four times between comprehensive base rate proceedings.

(e) Prohibits a periodic rate adjustment approved under this section from including indirect corporate costs or capitalized operations and maintenance expenses.

(f) Provides that nothing in this section is intended to:

(1) conflict with a provision contained in a financing order issued under Subchapter I (Provisions for Certain Non-ERCOT Utilities) of this chapter or Subchapter G (Securitization) or J (Transition to Competition in Certain Non-ERCOT Areas), Chapter 39 (Restructuring of Electric Utility Industry);

(2) affect the limitation on PUC's jurisdiction under Section 32.002 (Limitation on Commission Jurisdiction);

(3) include in a periodic rate adjustment authorized by this section costs adjusted under a transmission cost-of-service adjustment approved under Section 35.004(d) (relating to price of wholesale transmission services);

(4) limit the jurisdiction of a municipality over the rates, operations, and services of an electric utility as provided by Section 33.001 (Municipal Jurisdiction);

(5) limit the ability of a municipality to obtain a reimbursement under Section 33.023 (Ratemaking Proceedings) for the reasonable cost of services of a person engaged in an activity described by that section; or

(6) prevent PUC from reviewing the investment costs included in a periodic rate adjustment or in the following comprehensive base rate proceeding to determine whether the costs were prudent, reasonable, and necessary; or refunding to customers any amount improperly recovered through the periodic rates adjustments, with appropriate carrying costs.

(g) Requires PUC to adopt rules necessary to implement this section. Requires that the rules provide for:

(1) a procedure by which a tariff or rate schedule is to be reviewed and approved;

(2) filing requirements and discovery consistent with the expedited procedure described by Subsection (a)(1);

(3) an earnings monitoring report that allows PUC or regulatory authority to reasonably determine whether a utility is earning in excess of the utility's allowed return on investment as normalized for weather;

(4) denial of the electric utility's filing if the electric utility is earning more than the utility's authorized rate of return on investment, on a weather-normalized basis, at the time the periodic rate adjustment request is filed; and

(5) a mechanism by which PUC may refund customers any amounts determined to be improperly recovered through a periodic rate adjustment, including any interest on the amounts.

(h) Requires PUC to undertake a study and conduct a report analyzing any periodic rate adjustment established under this section. Requires the study to be available for the legislature's review by January 31, 2017, so that the legislature may properly be informed as to the need to continue PUC's authority to allow periodic rate adjustments. Requires that the report contain but not be limited to:

(1) an analysis of all periodic rate adjustments approved by PUC;

(2) an analysis of the amounts in real dollars and percentages of the approved amounts by PUC and the effects on all classes of ratepayers;

(3) the costs savings, if any, realized by all parties by utilizing periodic rate adjustment as opposed to ratemaking proceedings;

(4) an analysis on distribution costs included in periodic rate adjustments, and their appropriateness for inclusion in periodic rate adjustments; and

(5) an analysis submitted by OPUC on the effects of periodic rate adjustments.

(i) Provides that this section expires January 1, 2017.

SECTION 2. Requires PUC to adopt rules as necessary to implement Section 36.210, Utilities Code, as added by this Act, not later than the 120th day after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.