

## **BILL ANALYSIS**

C.S.H.B. 1535  
By: Frullo  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Informed observers explain that although a majority of electricity customers in Texas are served by the Electric Reliability Council of Texas (ERCOT), investor-owned electric utilities located outside the ERCOT grid serve more than one million customers in Texas. Non-ERCOT areas have a traditional market structure in which the utility is a regulated monopoly, and the observers point out that electric utilities in non-ERCOT areas are obligated to invest to meet growth in both population and industry and to replace aging infrastructure. Also of note is the disconnect between in-service investment and recovery of the investment which has produced significantly lower bond ratings for the electric utilities in non-ERCOT areas than for utilities inside the ERCOT grid and those in other states. These observers note a lack of synchronization between investment in infrastructure and timely recovery of those investments and express concern that this structure is unsustainable and threatens the ability of utilities to keep up with the public's infrastructure needs. C.S.H.B. 1535 seeks to address this lack of synchronization.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1535 amends the Utilities Code to create cost recovery and rate adjustment standards and procedures that apply only to an electric utility that operates solely outside of the Electric Reliability Council of Texas (ERCOT). The bill requires the regulatory authority, in establishing the base rates of the electric utility under statutory provisions relating to general procedures for rate changes proposed by a utility or statutory provisions relating to rate changes proposed by a regulatory authority, to determine the utility's revenue requirement based on, at the election of the utility, information submitted for a test year or information submitted for a test year, updated to include information that reflects the most current actual or estimated information regarding increases or decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales. The bill requires an electric utility that elects to provide such updated information to provide the information for a period ending not later than the 30th day before the date the applicable rate proceeding is filed. The bill requires an electric utility that includes estimated information in the initial filing of a proceeding to supplement the filing with actual information not later than the 45th day after the date the initial filing was made. The bill requires the regulatory authority to extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing, except that the bill prohibits the extension period from exceeding

45 days.

C.S.H.B. 1535 does not preclude an electric utility that makes an election regarding the type of information on which the utility's revenue requirement will be based from proposing other known and measurable adjustments to the utility's historical rate information as permitted by the Public Utility Regulatory Act and the Public Utility Commission of Texas (PUC) rules, including all attendant impacts on the utility's cost of service as determined by the PUC. The bill requires the regulatory authority, without limiting the availability of such known and measurable adjustments, to allow an affected electric utility to make a known and measurable adjustment to include in the utility's rates the prudent capital investment, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts, including any applicable load growth, as determined by the PUC, associated with a newly constructed or acquired natural gas-fired generation facility. The bill establishes that the regulatory authority is only required to allow the adjustment if the facility is in service before the date new rates begin to be billed to the customers of the utility, regardless of whether the investment is less than 10 percent of the utility's rate base before the date of the adjustment.

C.S.H.B. 1535, in a rate proceeding authorized by statutory provisions relating to general procedures for a rate change proposed by a utility, requires the final rate set in the proceeding to be made effective for consumption on and after the 45th day after the date the electric utility filed to initiate the rate proceeding. The bill requires the regulatory authority to:

- require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 45th day after the date the electric utility filed to initiate the rate proceeding; or
- authorize the electric utility to surcharge bills to recover the amount by which the money collected on or after the 45th day after the date the utility filed to initiate the rate proceeding is less than the money that would have been collected under the rate finally ordered.

The bill authorizes the regulatory authority to require recovery of such determined amounts over a period not to exceed 18 months, along with appropriate carrying costs. The bill requires the regulatory authority to make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding. The bill prohibits a utility from assessing more than one such authorized surcharge at the same time.

C.S.H.B. 1535 authorizes an electric utility that operates solely outside of ERCOT to file with the PUC a request that the PUC grant a certificate of convenience and necessity for an electric generating facility, make a public interest determination for the purchase of an existing electric generating facility under statutory provisions regarding the report of certain public utility transactions and the PUC's consideration of such a transaction, or both grant the certificate and make a determination. The bill requires the PUC, in a proceeding involving the purchase of an existing electric generating facility, to issue a final order on a certificate for the facility or to make the required determination on the facility, as applicable, not later than the 181st day after the date a request for the certificate or determination is filed. The bill requires, for generating facilities granted a certificate, the utility's recoverable invested capital included in rates to be determined by the PUC. The bill requires the PUC to issue a final order on a certificate in a proceeding involving a newly constructed generating facility not later than the 366th day after the date a request for the certificate is filed.

C.S.H.B. 1535 is not intended to affect the exercise of municipal jurisdiction under statutory provisions relating to jurisdiction and powers of a municipality regarding electric utilities.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1535 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Section 36.209, Utilities Code, is amended to read as follows:

Sec. 36.209. COST RECOVERY AND RATE ADJUSTMENT STANDARDS AND PROCEDURES FOR [BY] CERTAIN NON-ERCOT UTILITIES [OF CERTAIN TRANSMISSION COSTS]. (a) This section applies only to an electric utility that operates solely outside of ERCOT [~~in areas of this state included in the Southeastern Electric Reliability Council, the Southwest Power Pool, or the Western Electricity Coordinating Council and that owns or operates transmission facilities~~].

(b) The commission, after notice and opportunity for hearing, shall [~~may~~] allow an electric utility to adjust its rates to ensure timely recovery of the utility's [recover on an annual basis its] reasonable and necessary costs [expenditures] for transmission investment [infrastructure improvement costs] and changes in wholesale transmission charges to the [~~electric] utility~~ under a tariff approved by a federal regulatory authority, to the extent that the costs or charges have not otherwise been recovered. The commission may allow the electric utility to recover only the costs and charges allocable to retail customers in the state and may not allow the [electric] utility to over-recover costs or charges. The standards and procedures described in Subsections (c)-(e) exclusively govern a rate adjustment described by this subsection.

(c) An electric utility may apply to adjust the utility's transmission rates on an interim basis not more than twice each calendar year to reflect changes in the utility's invested capital and wholesale transmission charges since the test year in the utility's most recent base rate case before the commission. An application is eligible for informal disposition under commission rules and Section 2001.056, Government Code. If the requirements for informal disposition are met, the presiding officer shall issue a notice

### HOUSE COMMITTEE SUBSTITUTE

No equivalent provision. (*But see SECTION 1 below.*)

of approval not later than the 60th day after the date a materially sufficient application is filed, unless good cause exists to extend the deadline or the presiding officer determines that the proceeding should be considered by the commission.

(d) If an electric utility elects to adjust the utility's transmission rates under this section, the new rates must reflect the addition and retirement of transmission facilities, including associated depreciation, federal income tax and other associated taxes, and the commission-authorized rate of return on the facilities. The commission shall use load growth during this process only for the purpose of establishing billing determinants to set new rates.

(e) An adjustment of an electric utility's transmission rates under this section is subject to reconciliation at the next complete review of the utility's transmission cost of service. As part of the complete review, the commission shall review the costs of the interim transmission plant additions to determine if the costs were reasonable and necessary. Any amounts resulting from an adjustment, including amounts associated with capital investment expenditures or transmission charges, that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, shall be refunded with carrying costs. For the period beginning on the date the over-recovery is determined to have begun and ending on the effective date of the electric utility's rates set in the complete review of the utility's transmission cost of service, carrying costs shall be calculated using the same rate of return that was applied to the transmission investments included in the adjustment. For the time period that begins on the effective date of the electric utility's rates set in the complete review of the utility's transmission cost of service, carrying costs shall be calculated using the utility's rate of return authorized in the complete review.

(f) In establishing the base rates of an electric utility under Subchapter C, or rates governed by Subsections (b)-(e) or by Section 36.204, 36.205, or 36.210, the regulatory authority otherwise provided with jurisdiction over those rate proceedings shall determine the utility's revenue requirement based on, at the election of the

utility:

(1) information submitted for a test year or other applicable historical period for rate proceedings described by this subsection; or

(2) updated information that reflects actual or estimated information for a period ending not later than the earlier of:

(A) the last day of the seventh month after the end of the test year or other applicable historical period for rate proceedings described by this subsection; or

(B) the 35th day after the date the applicable rate proceeding is filed.

(g) An electric utility that elects to update information as authorized by Subsection (f) is not precluded from proposing other known and measurable changes to the utility's historical rate information. If the utility proposes a known and measurable change to the information, the utility must provide a reasonable estimate or projection of the annualized effects of the change on the utility's operating expenses, invested capital, and revenues during the first 12 months the rates are expected to be in effect. For the purposes of this subsection, a known and measurable change is:

(1) anticipated to occur not later than during the first 12 months the rates are expected to be in effect;

(2) a change in the level of an electric utility's operating expenses, invested capital, or revenues; and

(3) a change whose existence is known, is reflected in a reasonable budget estimate, or is otherwise the subject of a reasonable estimate or projection.

(h) In a rate proceeding authorized by this subchapter or Subchapter C, notwithstanding Section 36.109(a), the regulatory authority with jurisdiction shall establish temporary rates on the application of the electric utility at a level that is 70 percent of the utility's requested increase, effective for consumption on and after the 35th day after the date the utility files to initiate the rate proceeding. The temporary rates shall remain in effect during any applicable suspension period until final rates become effective. On issuance of a final order that establishes new rates:

(1) money collected under the temporary rates in excess of the rate finally ordered is subject to refund; and

(2) the electric utility may surcharge bills to

recover the amount by which the money collected under the temporary rates is less than the money that would have been collected under the rate finally ordered.

(i) If the electric utility does not apply for temporary rates under Subsection (h), the final rate set in a rate proceeding under this subchapter or Subchapter C shall be made effective for consumption on and after the 35th day after the date the utility filed to initiate the rate proceeding. The regulatory authority shall:

(1) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 35th day after the date the utility filed to initiate the rate proceeding; or

(2) authorize the electric utility to surcharge bills to recover the amount by which the money collected on or after the 35th day after the date the utility filed to initiate the rate proceeding is less than the money that would have been collected under the rate finally ordered.

(j) An electric utility is entitled to file an application with the commission to recover, through a rate rider mechanism, a return of and on the prudent and reasonable capital expenditures, the reasonable and necessary operation and maintenance expenses, and the taxes associated with either the acquisition of an existing generating facility or the construction of a new generating facility. A rate proceeding under Subchapter C is not required to establish or adjust the rider. In a proceeding brought under this subsection to establish the initial rider, the commission shall issue a final order before the 181st day after the date the electric utility files the application with the commission. If the commission does not issue a final order before that date, the application is considered approved. An approved rider becomes effective on the date the generating facility begins to provide service to the electric utility's retail customers in this state, and continues in effect until the effective date of new base rates that allow the utility to recover the costs of the new generating facility from the utility's retail customers in this state. The electric utility may use both actual historical cost information and reasonable cost estimates as the basis for recovery under the initial rider. The rider must use the return

on equity most recently approved by the commission in the electric utility's base rate proceedings.

(k) In the case of the acquisition of an existing generating facility, an electric utility may file the application for approval of a rider described by Subsection (j) in the same proceeding in which it seeks issuance of a certificate of convenience and necessity for the facility under Chapter 37. Notwithstanding Section 36.053, the utility's recoverable invested capital shall be based on the purchase price for the newly acquired facility. In the case of a newly constructed generating facility, the utility may file its application for approval of a rider described by Subsection (j) not earlier than 180 days before the expected commercial operation date of the new facility.

(l) Once established, a rider described by Subsection (j) is subject to annual adjustment, so that the rider reflects historical costs from the most recent 12-month period available before the filing of an application to make the adjustment. An adjustment under the rider takes effect as a temporary rate, subject to refund based on the final commission decision, not later than the 35th day after the date of filing of an application to make the adjustment. The commission shall take final action on an application to make an adjustment not later than the 90th day after the date of filing. If the commission does not take final action before that date, the application is considered approved.

(m) A rider described by Subsection (j) is subject to a periodic true-up. A true-up must cover at least a 12-month period. In a true-up proceeding, the electric utility shall reconcile the revenues recovered by the utility under the rider with the actual prudent, reasonable, and necessary level of costs, and the rider shall be further adjusted as necessary to reflect the outcome of the reconciliation.

No equivalent provision. (*But see SECTION 1 above.*)

SECTION 1. Subchapter C, Chapter 36, Utilities Code, is amended by adding Section 36.112 to read as follows:

Sec. 36.112. COST RECOVERY AND RATE ADJUSTMENT STANDARDS AND PROCEDURES FOR CERTAIN NON-ERCOT UTILITIES. (a) This

section applies only to an electric utility that operates solely outside of ERCOT.

(b) In establishing the base rates of the electric utility under this subchapter or Subchapter D, the regulatory authority shall determine the utility's revenue requirement based on, at the election of the utility:

(1) information submitted for a test year; or  
(2) information submitted for a test year, updated to include information that reflects the most current actual or estimated information regarding increases or decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales.

(c) An electric utility that elects to provide updated information under Subsection (b)(2) must provide the information for a period ending not later than the 30th day before the date the applicable rate proceeding is filed.

(d) An electric utility that includes estimated information in the initial filing of a proceeding shall supplement the filing with actual information not later than the 45th day after the date the initial filing was made. The regulatory authority shall extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing, except that the extension period may not exceed 45 days.

(e) An electric utility that makes an election under Subsection (b) is not precluded from proposing other known and measurable adjustments to the utility's historical rate information as permitted by this title and commission rules, including all attendant impacts on the utility's cost of service as determined by the commission.

(f) Without limiting the availability of known and measurable adjustments described by Subsection (e), the regulatory authority shall allow an affected electric utility to make a known and measurable adjustment to include in the utility's rates the prudent capital investment, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts, including any applicable load growth, as determined by the commission, associated with a newly constructed or acquired natural gas-fired generation facility. The regulatory authority



is only required to allow the adjustment if the facility is in service before the date new rates begin to be billed to the customers of the utility, regardless of whether the investment is less than 10 percent of the utility's rate base before the date of the adjustment.

(g) In a rate proceeding authorized by this subchapter, notwithstanding Section 36.109(a), the final rate set in the proceeding shall be made effective for consumption on and after the 45th day after the date the electric utility filed to initiate the rate proceeding. The regulatory authority shall:

(1) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 45th day after the date the electric utility filed to initiate the rate proceeding; or

(2) authorize the electric utility to surcharge bills to recover the amount by which the money collected on or after the 45th day after the date the utility filed to initiate the rate proceeding is less than the money that would have been collected under the rate finally ordered.

(h) The regulatory authority may require recovery of amounts determined under Subsection (g) over a period not to exceed 18 months, along with appropriate carrying costs. The regulatory authority shall make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding.

(i) A utility may not assess more than one surcharge authorized by Subsection (g) at the same time.

SECTION 2. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.058 to read as follows:

Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility may file with the commission a request that the commission:

(1) grant a certificate for an electric generating facility;

(2) make a public interest determination for

SECTION 2. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.058 to read as follows:

Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility may file with the commission a request that the commission:

(1) grant a certificate for an electric generating facility;

(2) make a public interest determination for

the purchase of an existing electric generating facility under Section 14.101; or (3) both grant a certificate and make a determination.

(c) The commission may grant a request described by Subsection (b).

(d) Notwithstanding any other law, in a proceeding involving the purchase of an existing electric generating facility, the commission shall issue a final order on a certificate for the facility or making a determination on the facility required by Section 14.101, as applicable, not later than the 181st day after the date a request for the certificate or determination is filed with the commission under Subsection (b). If the commission does not issue a final order before that date, the application is considered approved.

For generating facilities granted a certificate under this subsection, notwithstanding Section 36.053, the utility's recoverable invested capital included in rates shall be based on the purchase price for the newly acquired facility.

(e) Notwithstanding any other law, in a proceeding involving a newly constructed generating facility, the commission shall issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under Subsection (b). If the commission does not issue a final order before that date, the application is considered approved.

No equivalent provision.

SECTION 3. The changes in law made by this Act apply only to a proceeding before the Public Utility Commission of Texas or other regulatory authority described by Section 11.003, Utilities Code, that commences on or after the effective date of this Act. A proceeding before the Public Utility Commission of Texas or other regulatory authority described by Section 11.003, Utilities Code, that commenced before the effective date of this Act is governed by the law in effect on the date the

the purchase of an existing electric generating facility under Section 14.101; or (3) both grant a certificate and make a determination.

(c) Notwithstanding any other law, in a proceeding involving the purchase of an existing electric generating facility, the commission shall issue a final order on a certificate for the facility or making a determination on the facility required by Section 14.101, as applicable, not later than the 181st day after the date a request for the certificate or determination is filed with the commission under Subsection (b).

For generating facilities granted a certificate under this subsection, notwithstanding Section 36.053, the utility's recoverable invested capital included in rates shall be determined by the commission.

(d) Notwithstanding any other law, in a proceeding involving a newly constructed generating facility, the commission shall issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under Subsection (b).

SECTION 3. The changes in law made by this Act are not intended to affect the exercise of municipal jurisdiction under Chapter 33, Utilities Code.

SECTION 4. Same as introduced version.

proceeding commenced, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 5. Same as introduced version.