

By: Frullo

H.B. No. 1535

A BILL TO BE ENTITLED

AN ACT

relating to rates of and certificates of convenience and necessity for certain non-ERCOT electric utilities.

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

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.

1 The standards and procedures described in Subsections (c)-(e)  
2 exclusively govern a rate adjustment described by this subsection.

3 (c) An electric utility may apply to adjust the utility's  
4 transmission rates on an interim basis not more than twice each  
5 calendar year to reflect changes in the utility's invested capital  
6 and wholesale transmission charges since the test year in the  
7 utility's most recent base rate case before the commission. An  
8 application is eligible for informal disposition under commission  
9 rules and Section 2001.056, Government Code. If the requirements  
10 for informal disposition are met, the presiding officer shall issue  
11 a notice of approval not later than the 60th day after the date a  
12 materially sufficient application is filed, unless good cause  
13 exists to extend the deadline or the presiding officer determines  
14 that the proceeding should be considered by the commission.

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

23 (e) An adjustment of an electric utility's transmission  
24 rates under this section is subject to reconciliation at the next  
25 complete review of the utility's transmission cost of service. As  
26 part of the complete review, the commission shall review the costs  
27 of the interim transmission plant additions to determine if the

1 costs were reasonable and necessary. Any amounts resulting from an  
2 adjustment, including amounts associated with capital investment  
3 expenditures or transmission charges, that are found to have been  
4 unreasonable or unnecessary, plus the corresponding return and  
5 taxes, shall be refunded with carrying costs. For the period  
6 beginning on the date the over-recovery is determined to have begun  
7 and ending on the effective date of the electric utility's rates set  
8 in the complete review of the utility's transmission cost of  
9 service, carrying costs shall be calculated using the same rate of  
10 return that was applied to the transmission investments included in  
11 the adjustment. For the time period that begins on the effective  
12 date of the electric utility's rates set in the complete review of  
13 the utility's transmission cost of service, carrying costs shall be  
14 calculated using the utility's rate of return authorized in the  
15 complete review.

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

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

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

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

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

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

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

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

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

23           (h) In a rate proceeding authorized by this subchapter or  
24 Subchapter C, notwithstanding Section 36.109(a), the regulatory  
25 authority with jurisdiction shall establish temporary rates on the  
26 application of the electric utility at a level that is 70 percent of  
27 the utility's requested increase, effective for consumption on and

1 after the 35th day after the date the utility files to initiate the  
2 rate proceeding. The temporary rates shall remain in effect during  
3 any applicable suspension period until final rates become  
4 effective. On issuance of a final order that establishes new rates:

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

7 (2) the electric utility may surcharge bills to  
8 recover the amount by which the money collected under the temporary  
9 rates is less than the money that would have been collected under  
10 the rate finally ordered.

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

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

21 (2) authorize the electric utility to surcharge bills  
22 to recover the amount by which the money collected on or after the  
23 35th day after the date the utility filed to initiate the rate  
24 proceeding is less than the money that would have been collected  
25 under the rate finally ordered.

26 (j) An electric utility is entitled to file an application  
27 with the commission to recover, through a rate rider mechanism, a

1 return of and on the prudent and reasonable capital expenditures,  
2 the reasonable and necessary operation and maintenance expenses,  
3 and the taxes associated with either the acquisition of an existing  
4 generating facility or the construction of a new generating  
5 facility. A rate proceeding under Subchapter C is not required to  
6 establish or adjust the rider. In a proceeding brought under this  
7 subsection to establish the initial rider, the commission shall  
8 issue a final order before the 181st day after the date the electric  
9 utility files the application with the commission. If the  
10 commission does not issue a final order before that date, the  
11 application is considered approved. An approved rider becomes  
12 effective on the date the generating facility begins to provide  
13 service to the electric utility's retail customers in this state,  
14 and continues in effect until the effective date of new base rates  
15 that allow the utility to recover the costs of the new generating  
16 facility from the utility's retail customers in this state. The  
17 electric utility may use both actual historical cost information  
18 and reasonable cost estimates as the basis for recovery under the  
19 initial rider. The rider must use the return on equity most  
20 recently approved by the commission in the electric utility's base  
21 rate proceedings.

22 (k) In the case of the acquisition of an existing generating  
23 facility, an electric utility may file the application for approval  
24 of a rider described by Subsection (j) in the same proceeding in  
25 which it seeks issuance of a certificate of convenience and  
26 necessity for the facility under Chapter 37. Notwithstanding  
27 Section 36.053, the utility's recoverable invested capital shall be

1 based on the purchase price for the newly acquired facility. In the  
2 case of a newly constructed generating facility, the utility may  
3 file its application for approval of a rider described by  
4 Subsection (j) not earlier than 180 days before the expected  
5 commercial operation date of the new facility.

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

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

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

26 Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO  
27 CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) This

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

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

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

7 (2) make a public interest determination for the  
8 purchase of an existing electric generating facility under Section  
9 14.101; or

10 (3) both grant a certificate and make a determination.

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

13 (d) Notwithstanding any other law, in a proceeding  
14 involving the purchase of an existing electric generating facility,  
15 the commission shall issue a final order on a certificate for the  
16 facility or making a determination on the facility required by  
17 Section 14.101, as applicable, not later than the 181st day after  
18 the date a request for the certificate or determination is filed  
19 with the commission under Subsection (b). If the commission does  
20 not issue a final order before that date, the application is  
21 considered approved. For generating facilities granted a  
22 certificate under this subsection, notwithstanding Section 36.053,  
23 the utility's recoverable invested capital included in rates shall  
24 be based on the purchase price for the newly acquired facility.

25 (e) Notwithstanding any other law, in a proceeding  
26 involving a newly constructed generating facility, the commission  
27 shall issue a final order on a certificate for the facility not



1 later than the 366th day after the date a request for the  
2 certificate is filed with the commission under Subsection (b). If  
3 the commission does not issue a final order before that date, the  
4 application is considered approved.

5 SECTION 3. The changes in law made by this Act apply only to  
6 a proceeding before the Public Utility Commission of Texas or other  
7 regulatory authority described by Section 11.003, Utilities Code,  
8 that commences on or after the effective date of this Act. A  
9 proceeding before the Public Utility Commission of Texas or other  
10 regulatory authority described by Section 11.003, Utilities Code,  
11 that commenced before the effective date of this Act is governed by  
12 the law in effect on the date the proceeding commenced, and that law  
13 is continued in effect for that purpose.

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