

By: Flynn

H.B. No. 3457

A BILL TO BE ENTITLED

AN ACT

relating to the methods of recovery of stranded environmental compliance costs by certain non-ERCOT electric utilities.

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

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

SUBCHAPTER J. RECOVERY OF STRANDED ENVIRONMENTAL COMPLIANCE COSTS

Sec. 36.501. APPLICABILITY. This subchapter applies only to an electric utility described by Section 39.501.

Sec. 36.502. SECURITIZATION FOR RECOVERY OF STRANDED ENVIRONMENTAL COMPLIANCE COSTS; PURPOSE. (a) The purpose of this subchapter is to enable an electric utility to use securitization financing to recover stranded environmental compliance 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 stranded environmental compliance 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) securitization of stranded environmental compliance costs will be accomplished using the same procedures, standards, and protections for securitization authorized under

1 Subchapter G, Chapter 39, as in effect on September 1, 2015, except
2 as provided by this subchapter; and

3 (2) the commission will ensure that securitization of
4 stranded environmental compliance costs provides greater tangible
5 and quantifiable benefits to ratepayers than would have been
6 achieved without the issuance of transition bonds.

7 Sec. 36.503. RECOVERY OF STRANDED ENVIRONMENTAL COMPLIANCE
8 COSTS. (a) In this subchapter, "stranded environmental compliance
9 costs" means costs described in this section that the commission
10 determines have been incurred in connection with any portion of a
11 generating unit or facility or any of its associated components or
12 capital additions that are subsequently retired, idled, or
13 otherwise not considered to be used and useful as a result of
14 federal or state environmental laws or regulations. The term is
15 limited to the following items:

16 (1) capital expenditures, including both plant in
17 service and construction work in progress, incurred by the electric
18 utility to achieve or maintain compliance with the Mercury and Air
19 Toxics Standards Rule enacted under the authority of sections 111
20 and 112 of the federal Clean Air Act (42 U.S.C. sections 7411 and
21 7412) and set out in volume 40 of the Code of Federal Regulations,
22 parts 60 and 63;

23 (2) the remaining unrecovered portion of the total
24 capital investment, including both plant in service and
25 construction work in progress, in a generating unit or facility
26 that is retired, idled, or otherwise considered not used and
27 useful; and

1 (3) for the portion of the stranded environmental
2 compliance costs not included in rates, carrying costs at the
3 utility's cost of debt reported in its most recent earnings
4 monitoring report, from the time at which the generating unit or
5 facility, or associated component or capital addition, is retired,
6 idled, or otherwise not considered to be used and useful, until the
7 effective date of rates providing for recovery of the stranded
8 environmental compliance costs.

9 (b) An electric utility is entitled to recover its
10 reasonable and necessary stranded environmental compliance costs
11 incurred before or after September 1, 2015. The stranded
12 environmental compliance costs are recoverable regardless of
13 whether those costs relate to property that is no longer used and
14 useful in providing service. The commission shall adopt rate
15 setting adjustments as necessary to ensure that the recovery of
16 stranded environmental compliance costs under the provisions of
17 this section does not result in over-recovery of such costs to the
18 extent they are reflected in base rates.

19 (c) No earlier than the date upon which a state or federal
20 implementation plan is established that requires a generating unit
21 or facility owned by the electric utility, or any of its associated
22 components or capital additions, to be retired, idled, or otherwise
23 considered not used and useful, the electric utility may file an
24 application with the commission seeking a determination of the
25 amount of stranded environmental compliance costs eligible for
26 recovery and securitization consistent with the requirements and
27 standards of this section. The commission shall issue an order

1 determining the amount of stranded environmental compliance costs
2 eligible for recovery and securitization not later than the 150th
3 day after the date the electric utility files the application. If
4 the commission has not made a determination before the 151st day
5 after that date, the application is considered to be approved. A
6 rate proceeding under Subchapter C or D is not required to determine
7 the amount of recoverable stranded environmental compliance costs
8 under this section, including for a rider mechanism authorized by
9 Subsection 6(d).

10 (d) If recovery through securitization under Sections
11 36.504-36.507 is not available, the electric utility is entitled to
12 recover all or any portion of its stranded environmental compliance
13 costs through inclusion in base rates or through a rate rider
14 mechanism. If the final implementation of rates resulting from the
15 issuance of an order in a rate proceeding under Subchapter C or D
16 provides for the recovery of all remaining stranded environmental
17 compliance costs, a rider mechanism adopted under this subsection
18 shall expire. Whether recovered through base rates or a rate rider
19 mechanism, the utility is entitled to recover carrying costs on the
20 stranded environmental compliance costs, at the utility's cost of
21 debt reported in its most recent earnings monitoring report, over a
22 recovery period of not more than 15 years.

23 Sec. 36.504. STANDARDS AND PROCEDURES GOVERNING
24 SECURITIZATION OF STRANDED ENVIRONMENTAL COMPLIANCE COSTS. (a) The
25 procedures and standards of this subchapter and the provisions of
26 Subchapter G, Chapter 39, govern an electric utility's application
27 for, and the commission's issuance of, a financing order to provide

1 for the securitization of stranded environmental compliance costs,
2 or to otherwise provide for the recovery of stranded environmental
3 compliance costs. An electric utility may recover stranded
4 environmental compliance costs through securitization only if the
5 electric utility's Texas retail jurisdictional amount of stranded
6 environmental compliance costs to be recovered through
7 securitization is at least \$75 million.

8 (b) Subject to the standards, procedures, and tests
9 contained in this subchapter and Subchapter G, Chapter 39, the
10 commission shall adopt a financing order on the application of the
11 electric utility to recover its stranded environmental compliance
12 costs. On the commission's issuance of a financing order allowing
13 for recovery and securitization of stranded compliance costs, the
14 provisions of this subchapter and Subchapter G, Chapter 39,
15 continue to govern the financing order and the rights and interests
16 established in the order, and this subchapter and Subchapter G,
17 Chapter 39, continue to govern any transition bonds issued pursuant
18 to the financing order. To the extent any conflict exists between
19 the provisions of this subchapter and Subchapter G, Chapter 39, in
20 cases involving the securitization of stranded environmental
21 compliance costs, the provisions of this subchapter control.

22 (c) For purposes of this subchapter, "financing order" as
23 defined by Section 39.302 and as used in Subchapter G, Chapter 39,
24 includes a financing order authorizing the securitization of
25 stranded environmental compliance costs.

26 (d) For purposes of this subchapter, "qualified costs" as
27 defined by Section 39.302 and as used in Subchapter G, Chapter 39,

1 includes 100 percent of the electric utility's stranded
2 environmental compliance costs, together with the costs of issuing,
3 supporting, and servicing transition bonds and any costs of
4 retiring and refunding existing debt and equity securities of an
5 electric utility in connection with the issuance of transition
6 bonds. For purposes of this subchapter, the term includes:

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

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

16 (e) For purposes of this subchapter, "transition bonds" as
17 defined by Section 39.302 and as used in Subchapter G, Chapter 39,
18 includes transition bonds issued in association with the recovery
19 of stranded environmental compliance costs. Transition bonds
20 issued to securitize stranded environmental compliance costs may be
21 called "environmental compliance bonds" or may be called by any
22 other name acceptable to the issuer and the underwriters of the
23 transition bonds.

24 (f) For purposes of this subchapter, "transition charges"
25 as defined by Section 39.302 and as used in Subchapter G, Chapter
26 39, includes nonbypassable amounts to be charged for the use of
27 electric services, approved by the commission under a financing

1 order to recover stranded environmental compliance costs, that
2 shall be collected by an electric utility, its successors, an
3 assignee, or other collection agents as provided by the financing
4 order. Transition charges approved by the commission under a
5 financing order to recover stranded environmental compliance costs
6 may be called "environmental compliance charges" or may be called
7 by any other name acceptable to the issuer and the underwriters of
8 the transition bonds.

9 (g) Notwithstanding Section 39.303(c), stranded
10 environmental compliance costs shall be functionalized and
11 allocated to customers in the same manner as the costs of the
12 stranded or similar facilities are functionalized and allocated in
13 the electric utility's most recently approved base rates.

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

21 (i) Notwithstanding a rate freeze or limitations on an
22 electric utility's ability to change rates authorized or imposed by
23 any other provision of this title or by a regulatory authority, an
24 electric utility is entitled to recover stranded environmental
25 compliance costs consistent with the provisions of this subchapter.

26 (j) If in the course of a proceeding to adopt a financing
27 order the commission determines that the recovery of all or any

1 portion of an electric utility's stranded environmental compliance
2 costs, using securitization, is not beneficial to ratepayers of the
3 electric utility under one or more of the tests applied to determine
4 those benefits, the commission shall nonetheless use the proceeding
5 to issue an order permitting the electric utility to recover the
6 remainder of its stranded environmental compliance costs,
7 consistent with the provisions of Section 36.503.

8 Sec. 36.505. NONBYPASSABLE CHARGES. The commission shall
9 include terms in the financing order to ensure that the imposition
10 and collection of transition charges associated with the recovery
11 of stranded environmental compliance costs are nonbypassable by
12 imposing restrictions on bypassability, as the commission
13 considers appropriate, consistent with the purposes of
14 securitization.

15 Sec. 36.506. FINANCING ORDER PROCEEDING. (a) An electric
16 utility may file an application for a financing order before the
17 expiration of the 150-day period provided by Section 36.503(c). The
18 commission shall issue a financing order not later than the 90th day
19 after the date the utility files its request for a financing order,
20 except that the commission is not required to issue the financing
21 order until it has determined the amount of stranded environmental
22 compliance costs eligible for recovery and securitization.

23 (b) A rate proceeding under Subchapter C or D is not
24 required for the issuance of a financing order.

25 (c) A commission order approving securitization financing
26 under this subchapter is not subject to rehearing. A commission
27 order may be reviewed by appeal only to a Travis County district

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

12 Sec. 36.507. SEVERABILITY. Effective on the date the first
13 utility transition bonds associated with stranded environmental
14 compliance costs are issued under this subchapter, if any provision
15 in this title or portion of this title is held to be invalid or is
16 invalidated, superseded, replaced, repealed, or expires for any
17 reason, that occurrence does not affect the validity or
18 continuation of this subchapter, or Subchapter G, Chapter 39, as it
19 applies to this subchapter, or any part of those provisions, or any
20 other provision of this title that is relevant to the issuance,
21 administration, payment, retirement, or refunding of transition
22 bonds or to any actions of the electric utility, its successors, an
23 assignee, a collection agent, or a financing party, and those
24 provisions shall remain in full force and effect.

25 SECTION 2. This Act takes effect September 1, 2015.