

By: Eltife

S.B. No. 365

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the methods of recovery of stranded environmental  
3 compliance costs by certain non-ERCOT electric utilities.

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

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

7 SUBCHAPTER J. RECOVERY OF STRANDED ENVIRONMENTAL  
8 COMPLIANCE COSTS

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

11 Sec. 36.502. SECURITIZATION FOR RECOVERY OF STRANDED  
12 ENVIRONMENTAL COMPLIANCE COSTS; PURPOSE. (a) The purpose of this  
13 subchapter is to enable an electric utility to use securitization  
14 financing to recover stranded environmental compliance costs,  
15 because that type of debt will lower the carrying costs associated  
16 with the recovery of these costs, relative to the costs that would  
17 be incurred using conventional financing methods. The proceeds of  
18 the transition bonds may be used only for the purposes of reducing  
19 the amount of stranded environmental compliance costs, as  
20 determined by the commission in accordance with this subchapter,  
21 including the refinancing or retirement of utility debt or equity.

22 (b) It is the intent of the legislature that:

23 (1) securitization of stranded environmental  
24 compliance costs will be accomplished using the same procedures,

1 standards, and protections for securitization authorized under  
2 Subchapter G, Chapter 39, as in effect on September 1, 2015, except  
3 as provided by this subchapter; and

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

8 Sec. 36.503. RECOVERY OF STRANDED ENVIRONMENTAL COMPLIANCE  
9 COSTS. (a) In this subchapter, "stranded environmental compliance  
10 costs" means costs 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 existing or anticipated developments in federal or state  
15 environmental laws or regulations. The term includes:

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 federal or state  
19 environmental requirements;

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

25 (3) for the portion of the stranded environmental  
26 compliance costs not included in rates, carrying costs at the  
27 utility's cost of debt reported in its most recent earnings

1 monitoring report, from the time at which the generating unit or  
2 facility, or associated component or capital addition, is retired,  
3 idled, or otherwise not considered to be used and useful, until the  
4 effective date of rates providing for recovery of the stranded  
5 environmental compliance costs.

6 (b) An electric utility is entitled to recover its stranded  
7 environmental compliance costs incurred before or after September  
8 1, 2015. Subject to compliance with this subsection, those costs  
9 are considered prudent for purposes of cost recovery. The stranded  
10 environmental compliance costs are recoverable regardless of  
11 whether those costs relate to property that is no longer used and  
12 useful in providing service. The electric utility is not required  
13 to demonstrate to the commission the prudence of the decision to  
14 incur the costs before the costs became stranded, but instead is  
15 required only to demonstrate that the level of the stranded  
16 environmental compliance costs described by Subsection (a)(1) was  
17 reasonable and necessary to comply with federal or state  
18 environmental requirements, if the generating unit or facility or  
19 associated component or capital addition in question had become or  
20 remained used and useful.

21 (c) An electric utility may file an application with the  
22 commission seeking a determination of the amount of stranded  
23 environmental compliance costs eligible for recovery and  
24 securitization. The commission shall issue an order determining  
25 the amount of stranded environmental compliance costs eligible for  
26 recovery and securitization not later than the 150th day after the  
27 date the electric utility files the application. If the commission

1 has not made a determination before the 151st day after that date,  
2 the application is considered to be approved. A rate proceeding  
3 under Subchapter C or D is not required to determine the amount of  
4 recoverable stranded environmental compliance costs under this  
5 section, including for a rider mechanism authorized by Subsection  
6 (d).

7 (d) If recovery through securitization under Sections  
8 36.504-36.507 is not available, the electric utility is entitled to  
9 recover all or any portion of its stranded environmental compliance  
10 costs through inclusion in base rates or through a rate rider  
11 mechanism. If the final implementation of rates resulting from the  
12 issuance of an order in a rate proceeding under Subchapter C or D  
13 provides for the recovery of all remaining stranded environmental  
14 compliance costs, a rider mechanism adopted under this subsection  
15 shall expire. Whether recovered through base rates or a rate rider  
16 mechanism, the utility is entitled to recover carrying costs on the  
17 stranded environmental compliance costs, at the utility's cost of  
18 debt reported in its most recent earnings monitoring report, over a  
19 recovery period of not more than 15 years.

20 Sec. 36.504. STANDARDS AND PROCEDURES GOVERNING  
21 SECURITIZATION OF STRANDED ENVIRONMENTAL COMPLIANCE COSTS. (a)  
22 The procedures and standards of this subchapter and the provisions  
23 of Subchapter G, Chapter 39, govern an electric utility's  
24 application for, and the commission's issuance of, a financing  
25 order to provide for the securitization of stranded environmental  
26 compliance costs, or to otherwise provide for the recovery of  
27 stranded environmental compliance costs. An electric utility may

1 recover stranded environmental compliance costs through  
2 securitization only if the electric utility's Texas retail  
3 jurisdictional amount of stranded environmental compliance costs  
4 to be recovered through securitization is at least \$75 million.

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

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

24 (d) For purposes of this subchapter, "qualified costs" as  
25 defined by Section 39.302 and as used in Subchapter G, Chapter 39,  
26 includes 100 percent of the electric utility's stranded  
27 environmental compliance costs, together with the costs of issuing,

1 supporting, and servicing transition bonds and any costs of  
2 retiring and refunding existing debt and equity securities of an  
3 electric utility in connection with the issuance of transition  
4 bonds. For purposes of this subchapter, the term includes:

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

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

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

22 (f) For purposes of this subchapter, "transition charges"  
23 as defined by Section 39.302 and as used in Subchapter G, Chapter  
24 39, includes nonbypassable amounts to be charged for the use of  
25 electric services, approved by the commission under a financing  
26 order to recover stranded environmental compliance costs, that  
27 shall be collected by an electric utility, its successors, an

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

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

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

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

24 (j) If in the course of a proceeding to adopt a financing  
25 order the commission determines that the recovery of all or any  
26 portion of an electric utility's stranded environmental compliance  
27 costs, using securitization, is not beneficial to ratepayers of the

1 electric utility under one or more of the tests applied to determine  
2 those benefits, the commission shall nonetheless use the proceeding  
3 to issue an order permitting the electric utility to recover the  
4 remainder of its stranded environmental compliance costs,  
5 consistent with the provisions of Section 36.503.

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

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

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

24 (c) A commission order approving securitization financing  
25 under this subchapter is not subject to rehearing. A commission  
26 order may be reviewed by appeal only to a Travis County district  
27 court by a party to the proceeding filed within 15 days after the



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

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

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