

BILL ANALYSIS

Senate Research Center
85R6157 DMS-D

S.B. 1920
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since passage of S.B. 7, 76th Legislature, Regular Session, 1999, in areas where there is retail competition in the sale of electricity to end-use customers, electric transmission and distribution utilities ("TDUs") are required to have business separation between any affiliated companies that offer competitive services in Texas. This creates a level playing field for all competitive business operating in the market. With the business separation created by this legislature, the Texas retail electric market has been highly successful in providing end-use customers extensive choices in retail electric service. The competitive Texas retail market is the most successful in the United States and has received world-wide recognition.

In a 2015 opinion, the Third Court of Appeals upheld a decision by the Public Utility Commission of Texas (PUC) to deny an application by a competitive affiliate of one TDU seeking to offer competitive retail service to residential and small commercial customers under a name that shared the corporate logo used by the TDU. The PUC order found the sharing of the corporate logo to be improper joint marketing that had the potential to create customer confusion and the decision was upheld on that basis.

Currently one utility has a competitive affiliate that is marketing electricity service in its service area and is branding this service with the exact same brand as the brand under which the TDU operates. This co-branding has the potential to create customer confusion and gives the impression that the TDU is endorsing the service of the competitive affiliate.

Because the current language in the Public Utility Regulatory Act does not expressly prohibit a sharing of a corporate logo between a monopoly utility and its competitive affiliates, PUC is put in the position of having to review each possible instance of this practice on a case by case basis. This bill gives the market clear direction on the intent of maintaining name separation for monopoly utilities and their competitive affiliates in advertising and marketing.

This bill also deletes an obsolete provision of S.B. 7 which expired by its own terms in 2005.

As proposed, S.B. 1920 amends current law relating to electric industry market power rules.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Public Utility Commission is modified in SECTION 1 (Section 39.157, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 39.157(d), Utilities Code, as follows:

(d) Requires the Public Utility Commission of Texas (PUC), not later than January 10, 2000, to adopt rules and enforcement procedures to govern transactions or activities between a transmission and distribution utility and its competitive affiliates to avoid potential market power abuses and cross-subsidizations between regulated and competitive activities both during the transition to and after the introduction of competition. Requires the rules under this section to ensure that:

(1) to (4) makes no changes to these subdivisions;

(5) redesignates Paragraphs (A) and (B) as Subdivision (5); a utility, or any affiliated utility, does not communicate with a current or potential customer about products or services offered by a competitive affiliate in a manner that favors a competitive affiliate or allow a competitive affiliate to use the utility's corporate name, trademark, brand, logo, or other identifying brand feature, except that an affiliate relationship may be disclosed in communications that are not made for the purpose of advertising or joint marketing; deletes existing text of Paragraph (B) (relating to a certain disclaimer on employee business cards and advertisements of specific services to certain customers);

(6) a utility, or any affiliated utility, does not conduct joint advertising or promotional activities with a competitive affiliate in a manner that favors the competitive affiliate;

(7) to (17) makes no changes to these subdivisions.

SECTION 2. Effective date: September 1, 2017.