

By: Creighton

S.B. No. 1782

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the response and resilience of certain utilities to
3 major weather-related events or natural disasters.

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

5 SECTION 1. Section 36.402(a), Utilities Code, is amended to
6 read as follows:

7 (a) In this subchapter, "system restoration costs" means
8 reasonable and necessary costs, including costs expensed, charged
9 to self-insurance reserves, deferred, capitalized, or otherwise
10 financed, that are incurred by an electric utility due to any
11 activity or activities conducted by or on behalf of the electric
12 utility in connection with the restoration of service and
13 infrastructure associated with electric power outages affecting
14 customers of the electric utility as the result of any tropical
15 storm or hurricane, ice or snow storm, flood, or other
16 weather-related event or natural disaster that occurred in calendar
17 year 2008 or thereafter. System restoration costs include
18 mobilization, staging, and construction, reconstruction,
19 replacement, or repair of electric generation, transmission,
20 distribution, or general plant facilities. System restoration
21 costs shall include reasonable estimates of the costs of an
22 activity or activities conducted or expected to be conducted by or
23 on behalf of the electric utility in connection with the
24 restoration of service or infrastructure associated with electric

1 power outages, but such estimates shall be subject to true-up and
2 reconciliation after the actual costs are known. System
3 restoration costs also include reasonable and necessary
4 weatherization and storm-hardening costs incurred, as well as
5 reasonable estimates of costs to be incurred by the electric
6 utility, but such estimates shall be subject to true-up and
7 reconciliation after the actual costs are known.

8 SECTION 2. Chapter 36, Utilities Code, is amended by adding
9 Subchapter J to read as follows:

10 SUBCHAPTER J. LOWER COST FINANCING MECHANISM FOR
11 SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS

12 Sec. 36.407. LOWER COST FINANCING MECHANISM FOR
13 SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE
14 AND DEFINITIONS.

15 (a) Except as otherwise specifically provided in this
16 subchapter, the same procedures, standards, and protections for
17 securitization authorized in Subchapter I and, to the extent made
18 applicable to Subchapter I, Subchapter G, Chapter 39, apply to the
19 lower cost financing mechanism for securitization of transition
20 costs (or "system restoration costs") as set forth in Subchapter I.
21 To the extent any conflict exists between the provisions of this
22 subchapter and Subchapter I or, to the extent made applicable by
23 Subchapter I, Subchapter G, Chapter 39, in cases involving the
24 securitization of system restoration costs under this subchapter,
25 the provisions of this subchapter control.

26 (b) The purpose of this subchapter is to make available a
27 lower cost and supplemental financing mechanism to allow an

1 electric utility to obtain timely recovery of system restoration
2 costs under Subchapter I through securitization and the issuance of
3 transition bonds (or "system restoration bonds") by an issuer other
4 than the electric utility or an affiliated special purpose entity.
5 Financing of system restoration costs pursuant to this subchapter
6 is hereby recognized to be a valid and essential public purpose.

7 (c) The Texas Electric Utility System Restoration
8 Corporation shall be created pursuant to this subchapter as a
9 special purpose public corporation and instrumentality of the state
10 for the essential public purpose of providing a lower cost
11 financing mechanism available to the commission and an electric
12 utility to attract low-cost capital to finance system restoration
13 costs.

14 (d) System restoration bonds issued consistent with this
15 subchapter will be solely the obligation of the issuer and the
16 corporation (as borrower, if applicable) and will not be a debt of
17 or a pledge of the faith and credit of the state.

18 (e) System restoration bonds issued consistent with this
19 subchapter shall be nonrecourse to the credit or any assets of the
20 state and the commission.

21 (f) This subchapter does not in any way limit or impair the
22 commission's jurisdiction under this title to regulate the rates
23 charged and the services rendered by electric utilities in this
24 state.

25 (g) An electric utility receiving the proceeds of
26 securitization financing under this subchapter shall not be
27 required to provide utility services to the corporation or the

1 state as a result of receiving such proceeds except in their role as
2 customers of the electric utility, nor shall this subchapter create
3 any obligation of the corporation or any issuer to provide any
4 electric services to the electric utility or its customers.

5 (h) As used in this subchapter:

6 (1) "corporation" means the Texas Electric
7 Utility System Restoration Corporation.

8 (2) "issuer" means the corporation or any other
9 Texas corporation, public trust, public instrumentality, or other
10 entity that issues system restoration bonds approved by a financing
11 order.

12 (3) For purposes of this subchapter, "qualified
13 costs," as defined by Section 39.302 and as used in Subchapter G,
14 Chapter 39, also includes all costs of establishing, maintaining,
15 and operating the corporation and all costs of the corporation and
16 any issuer in connection with the issuance and servicing of the
17 system restoration bonds, all as approved in the financing order.

18 (4) Except as otherwise specifically provided in this
19 subchapter, the defined terms provided in Subchapter I and, if made
20 applicable by Subchapter I, Subchapter G, Chapter 39, have the same
21 meaning in this subchapter.

22 Sec. 36.408. CREATION OF THE CORPORATION. (a) The
23 corporation shall be incorporated as a nonprofit corporation and
24 instrumentality of the state, and shall perform the essential
25 governmental function of financing system restoration costs in
26 accordance with this subchapter. The corporation shall perform
27 only those functions consistent with this subchapter, shall

1 exercise its powers through a governing board, and shall be subject
2 to the regulation of the commission. The corporation shall have a
3 legal existence as a public corporate body and instrumentality of
4 the state separate and distinct from the state.

5 (b) Assets of the corporation shall not be considered part
6 of any state fund. The state shall not budget for or provide any
7 general fund appropriations to the corporation, and the debts,
8 claims, obligations, and liabilities of the corporation shall not
9 be considered to be a debt of the state or a pledge of its credit.
10 The corporation shall be self-funded. Prior to the imposition of
11 transition charges (or "system restoration charges"), the
12 corporation may accept and expend for its operating expenses such
13 funds as may be received from any source, including financing
14 agreements with the state, a commercial bank, or another entity to
15 finance the corporation's obligations until the corporation
16 receives sufficient transition property to cover its operating
17 expenses as financing costs, and to repay any short-term borrowing
18 under any such financing agreement.

19 (c) The corporation shall have the powers, rights, and
20 privileges provided for a corporation organized under Chapter 22,
21 Business Organizations Code, subject to the express exceptions and
22 limitations set forth in this subchapter.

23 (d) An incorporator selected by the executive director of
24 the commission shall prepare the articles of incorporation of the
25 corporation under Chapter 22, Business Organizations Code, which
26 articles shall be consistent with the provisions of this
27 subchapter.

1 (e) State officers, departments, and agencies are
2 authorized to render services to the corporation within their
3 respective functions, as may be requested by the commission or the
4 corporation.

5 (f) The corporation and any issuer may retain such
6 professionals, financial advisors, and accountants as it may deem
7 necessary to fulfill its duties under this subchapter and may
8 determine their duties and compensation, subject to approval of the
9 commission.

10 (g) The governing body of the corporation shall be a board
11 of directors that shall consist of five members appointed by the
12 commission. All official action of the governing body shall
13 require the favorable vote of a majority of the board members
14 present and voting at any meeting of the board of directors.

15 Sec. 36.409. POWERS AND DUTIES OF THE CORPORATION. (a) The
16 corporation shall, in each instance subject to the prior
17 authorization of the commission, participate in the financial
18 transactions contemplated by this subchapter. The corporation
19 shall engage in no other business activities except those
20 activities provided for in this subchapter and those ancillary and
21 incidental thereto. Neither the corporation nor any issuer shall
22 apply any proceeds of system restoration bonds or system
23 restoration charges to any purpose not specified in a financing
24 order, or to any purpose in excess of the amount allowed for such
25 purpose in the order, or to any purpose in contravention of the
26 order.

27 (b) The governing board of the corporation shall, pursuant

1 to the provisions of this subchapter, have the power to employ or
2 retain such persons as are necessary to perform the duties of the
3 corporation.

4 (c) The corporation may:

5 (1) Acquire, sell, pledge, and transfer transition
6 property as necessary to effect the purposes of this subchapter. In
7 connection therewith, the corporation may agree to such terms and
8 conditions as it deems necessary and proper, consistent with the
9 terms of a financing order, (i) to acquire transition property and
10 to pledge such transition property, and any other collateral, (a)
11 to secure payment of system restoration bonds issued by the
12 corporation, together with payment of any other qualified costs, or
13 (b) to secure repayment of any borrowing from any other issuer of
14 system restoration bonds, or (ii) to sell the transition property
15 to another issuer, which may in turn pledge such transition
16 property, together with any other collateral, to the repayment of
17 system restoration bonds issued by the issuer together with any
18 other qualified costs;

19 (2) Issue system restoration bonds on terms and
20 conditions consistent with a financing order;

21 (3) Borrow funds from an issuer of system restoration
22 bonds to acquire transition property, and pledge such transition
23 property to the repayment of any borrowing from an issuer, together
24 with any related qualified costs, all on terms and conditions
25 consistent with a financing order. The corporation may also borrow
26 funds for initial operating expenses as specified in Section
27 36.408;

1 (4) Sue or be sued in its corporate name. The
2 corporation has the authority to intervene as a party before the
3 commission or any court in this state in any matter involving the
4 corporation's powers and duties;

5 (5) Negotiate and become a party to such contracts as
6 necessary, convenient, or desirable to carry out the purposes of
7 this subchapter; and

8 (6) Engage in corporate actions or undertakings that
9 are permitted for nonprofit corporations in this state and that are
10 not prohibited by, or contrary to, the provisions of this
11 subchapter.

12 (d) The corporation shall maintain separate accounts and
13 records relating to each electric utility that is collecting system
14 restoration charges for all charges, revenues, assets,
15 liabilities, and expenses relating to that utility's related system
16 restoration bond issuances.

17 (e) The governing board of the corporation shall be
18 prohibited from authorizing any rehabilitation, liquidation, or
19 dissolution of the corporation, and no such rehabilitation,
20 liquidation, or dissolution of the corporation shall take effect as
21 long as any system restoration bonds are outstanding unless
22 adequate protection and provision has been made for the payment of
23 the bonds pursuant to the documents authorizing the issuance of the
24 bonds. In the event of any rehabilitation, liquidation, or
25 dissolution, the assets of the corporation shall be applied first
26 to pay all debts, liabilities, and obligations of the corporation,
27 including the establishment of reasonable reserves for any

1 contingent liabilities or obligations, and all remaining funds of
2 the corporation shall be applied and distributed as provided by an
3 order of the commission.

4 (f) Prior to the date that is two years and one day after
5 which the corporation no longer has any payment obligation with
6 respect to any system restoration bonds, including any obligation
7 to any issuer of any system restoration bonds outstanding, the
8 corporation is prohibited from filing and shall have no authority
9 to file a voluntary petition under the Federal Bankruptcy Code, as
10 it may, from time to time, be in effect, and neither any public
11 official nor any organization, entity, or other person shall
12 authorize the corporation to be or to become a debtor under the
13 Federal Bankruptcy Code during such period. The state covenants
14 that it will not limit or alter the denial of authority under this
15 subsection or subsection (e), and the provisions of such
16 subsections are hereby made a part of the contractual obligation
17 that is subject to the state pledge set forth in Section 39.310.

18 (g) The corporation shall prepare an operating budget
19 annually that shall be submitted for approval to the commission. If
20 requested by the commission, the corporation shall prepare and
21 submit an annual report containing, among other appropriate
22 matters, the annual operating and financial statements of the
23 corporation.

24 Sec. 36.410. COMMISSION REGULATION OF THE CORPORATION. The
25 commission shall regulate the corporation as provided for in this
26 subchapter. Such regulation shall be concomitant with the
27 commission's regulation of public utilities. Notwithstanding such

1 regulation, the corporation is not a public utility.

2 Sec. 36.411. FINANCING ORDER. (a) This section applies to
3 the commission's issuance of a financing order under this
4 subchapter.

5 (b) Except as otherwise specifically provided in this
6 subchapter, the provisions in Subchapter I and, to the extent made
7 applicable to Subchapter I, Subchapter G, Chapter 39, addressing
8 the commission's issuance of a financing order apply to the
9 commission's issuance of a financing order under this subchapter.

10 (c) The corporation and any issuer shall be a party to the
11 commission's proceedings addressing the issuance of a financing
12 order along with the pertinent electric utility.

13 (d) A financing order issued under this subchapter shall, in
14 addition to the requirements of Subchapter I (as applicable):

15 (1) Require the sale, assignment, or other transfer of
16 certain specified transition property created by the financing
17 order to the corporation (in the manner contemplated by Section
18 39.308), and following such sale, assignment, or transfer, system
19 restoration charges paid under any financing order shall be
20 created, assessed, and collected as the property of the
21 corporation, subject to subsequent sale, assignment, or transfer by
22 the corporation as authorized under this subchapter.

23 (2) Authorize either:

24 (A) the issuance of system restoration bonds by
25 the corporation secured by a pledge of such specified transition
26 property, and the application of the proceeds of such system
27 restoration bonds (net of issuance costs) to the acquisition of the

1 transition property from the electric utility; or

2 (B) the acquisition of specified transition
3 property from the electric utility by the corporation, financed (i)
4 by a loan by an issuer to the corporation of the proceeds of system
5 restoration bonds (net of issuance costs), or (ii) by the
6 acquisition by an issuer from the corporation of such transition
7 property, and in each case, the pledge of such transition property
8 to the repayment of such loan or system restoration bonds, as
9 applicable;

10 (3) Authorize the electric utility to serve as
11 collection agent to collect the system restoration charges and
12 transfer those collected charges to the corporation, the issuer, or
13 a financing party, as appropriate.

14 (e) After issuance of the financing order, the corporation
15 shall arrange for the issuance of system restoration bonds as
16 specified in the financing order by it or another issuer selected by
17 the corporation and approved by the commission.

18 (f) System restoration bonds issued pursuant to a financing
19 order under this section are secured only by the related transition
20 property and any other funds pledged under the bond documents, and
21 no assets of the state or electric utility shall be subject to
22 claims by such bondholders. Notwithstanding the provisions in
23 Subchapter G, Chapter 39, following assignment of the transition
24 property, the electric utility shall not have any beneficial
25 interest or claim of right in such system restoration charges or in
26 any transition property.

27 Sec. 36.412. SEVERABILITY. Effective on the date the first

1 system restoration bonds associated with system restoration costs
2 are issued under this subchapter, if any provision in this title or
3 portion of this title is held to be invalid or is invalidated,
4 superseded, replaced, repealed, or expires for any reason, that
5 occurrence does not affect the validity or continuation of this
6 subchapter, Subchapter I, as it applies to this subchapter,
7 Subchapter G, Chapter 39, as it applies to this subchapter, or any
8 part of those provisions, or any other provision of this title that
9 is relevant to the issuance, administration, payment, retirement,
10 or refunding of system restoration bonds or to any actions of the
11 electric utility, its successors, an assignee, a collection agent,
12 the corporation, an issuer, or a financing party, and those
13 provisions shall remain in full force and effect.

14 SECTION 3. Section 37.051, Utilities Code, is amended by
15 adding Subsection (d) to read as follows:

16 (d) Notwithstanding any other provision of this title, an
17 electric utility may, but shall not be required to, obtain a
18 certificate to install, own, or operate a generation facility with
19 a capacity of ten megawatts or less.

20 SECTION 4. Section 37.056(c)(4)(E), Utilities Code, is
21 amended to read as follows:

22 (E) the probable improvement of service or
23 lowering of cost to consumers in the area if the certificate is
24 granted, including any potential economic or reliability benefits
25 associated with dual fuel and fuel storage capabilities; and

26 SECTION 5. Subchapter F, Chapter 104, Utilities Code, is
27 amended by adding Section 104.259 to read as follows:

1 Sec. 104.259. PRIORITIES DURING NATURAL GAS CURTAILMENT.

2 (a) If the curtailment of natural gas is necessary during a state
3 of disaster as declared by the governor or an extreme weather
4 emergency as defined in Section 104.258, a gas utility shall
5 observe the following priorities for the continued delivery of gas
6 in descending order:

7 (1) deliveries of natural gas by gas utilities to
8 residences, hospitals, schools, churches, and other human needs
9 customers, and deliveries to local distribution companies that
10 serve human needs customers.

11 (2) deliveries of natural gas by gas utilities to
12 electric generation facilities that serve human needs customers.

13 (3) deliveries of natural gas by gas utilities to
14 small industrial and regular commercial loads, defined as those
15 customers using less than 3,000,000 cubic feet of gas per day, and
16 delivery of gas for use as pilot lights or in accessory or auxiliary
17 equipment essential to avoid serious damage to industrial plants;

18 (4) deliveries of natural gas by gas utilities to
19 large users of gas for fuel as raw material where an alternate fuel
20 source cannot be used and operation and plant production would be
21 curtailed or completely cease when gas is curtailed;

22 (5) deliveries of natural gas by gas utilities to
23 large users of gas for boiler fuel or other fuel users where an
24 alternate fuel source can be used. This category is not to be
25 determined by whether or not a user has actually installed
26 alternate fuel facilities, but whether or not an alternate fuel
27 could be used.

1 SECTION 6. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2021.