

BILL ANALYSIS

C.S.H.B. 5247
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Public Utility Commission of Texas (PUC), as required by H.B. 5066 passed by the 88th Legislature, directed the Electric Reliability Council of Texas, Inc. (ERCOT) to develop the Permian Basin Reliability Plan to ensure needed grid capacity for electricity users in the Permian Basin region, including the oil and gas industry, and the PUC has approved a plan that will require over \$12 billion of new transmission investment. The bill author has informed the committee that some of the same utilities tasked with this massive transmission build-out in the Permian Basin are already investing in infrastructure at a high rate to meet the historic, day-to-day load growth of the rest of the state, but because these large capital investments are far greater than current cash flows can fund, the utilities have seen their credit ratings negatively impacted. The bill author has further informed the committee that mechanisms to recover transmission and distribution investment require up to six annual proceedings for each utility, resulting in frequent rate changes for consumers that strain the PUC's workload at a time they are implementing major new programs like the Texas Energy Fund. C.S.H.B. 5247 seeks to address this issue by establishing a process through which certain utilities tasked with constructing transmission as part of the Permian Basin Reliability Plan may file a single annual proceeding to adjust their rates for new infrastructure.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 5247 amends the Utilities Code to provide for an alternative capital recovery process applicable only to an electric utility, other than a river authority, that operates solely inside ERCOT and was identified by the Public Utility Commission of Texas (PUC) as responsible for constructing transmission as part of the reliability plan for the Permian Basin approved by the PUC under applicable state law. The bill authorizes an applicable electric utility that makes total capital expenditures that exceed 300 percent of the annual depreciation in a calendar year to elect in the following calendar year to file a single annual proceeding to adjust nonfuel rates on a system-wide basis to reflect changes in transmission and distribution invested capital in lieu of adjustments to retail and wholesale transmission and distribution rates authorized under statutory provisions relating to periodic rate adjustments and to a transmission and distribution system resiliency plan and cost recovery and under rules adopted by the PUC under statutory provisions relating to the provision of transmission service.

C.S.H.B. 5247 requires an electric utility seeking to make an election under the bill's provisions to do the following:

- except as provided by the bill, use the filing requirements adopted by the PUC for the adjustment proceedings described by the bill;
- file a notice with the PUC of the utility's intent to make the election and supporting documentation of the applicable capital expenditures at least 60 days before the date the utility makes an annual proceeding filing under the bill;
- provide evidence of the utility's ongoing eligibility in the annual proceeding; and
- notify the PUC if the utility determines that the utility no longer qualifies for continued use of the adjustment under the bill.

The bill authorizes an electric utility that makes an election under the bill's provisions to defer all or a portion of the costs, including depreciation expense and carrying costs, associated with the transmission and distribution invested capital at the utility's weighted average cost of capital established in the PUC's final order in the utility's most recent base rate proceeding for invested capital, as described by statutory provisions relating to the components of invested capital, not currently reflected in the utility's rates for recovery as a regulatory asset. The bill requires such an electric utility to update the allocation of costs among customer classes to reflect customer growth and to take into account changes in the number of the utility's customers and the effects, on a weather-normalized basis, that energy consumption and energy demand have on the amount of revenue recovered through the utility's base rates.

C.S.H.B. 5247 requires the PUC, unless otherwise agreed to by an electric utility that makes an election under the bill's provisions, to include the regulatory asset in rates set under the bill's provisions and to authorize amortization of the asset over a period not to exceed 18 months, or if such a recovery period would cause the utility to earn more than the utility's allowed return on investment as normalized for weather, a longer recovery period.

C.S.H.B. 5247 requires an electric utility that makes an election under the bill's provisions, during a period when it earns more than the utility's allowed return on investment, on a weather-adjusted basis, to apply the over-earnings to the balance of the regulatory asset under the bill's provisions. The bill requires the PUC to approve an adjustment under the bill's provisions not later than the 120th day after the date an electric utility files a request for the adjustment and requires the electric utility to provide notice to retail electric providers of the approved rates not later than the 45th day before the date the rates take effect. The bill authorizes the electric utility, if the PUC does not issue a final order within that 120-day period and the electric utility complies with the notice requirement, to place the requested rates into effect on a temporary basis not earlier than the 165th day after filing the request. The bill requires the utility to refund or credit against future bills any difference between the temporary rate and the final rate along with interest at the current interest rate as determined by the PUC.

C.S.H.B. 5247 prohibits an electric utility that makes an election under the bill's provisions from petitioning for another adjustment under the bill's provisions, statutory provisions relating to periodic rate adjustments or to a transmission and distribution system resiliency plan and cost recovery, or PUC rules adopted under statutory provisions relating to the provision of transmission service before the first anniversary of the date the utility files a request for a single annual adjustment proceeding under the bill's provisions. The bill authorizes the PUC, notwithstanding any other law and in setting the rate of return in a comprehensive base rate proceeding for an electric utility receiving a rate adjustment under the bill's provisions, to expressly consider the effect of the adjustment on the utility's financial risk and rate of return. The bill establishes that an electric utility's use of the process under the bill's provisions terminates when the utility no longer qualifies for an adjustment under those provisions, except that the utility's rates in effect on the date the utility no longer qualifies remain in effect until modified in a future proceeding.

C.S.H.B. 5247 establishes that nothing in its provisions is intended to do any of the following:

- conflict with a provision of a financing order issued under statutory provisions relating to securitization for recovery of system restoration costs;
- affect the limitation on the PUC's jurisdiction under applicable state law;
- limit the jurisdiction of a municipality over the rates, operations, and services of an electric utility under statutory provisions relating to municipal jurisdiction or limit the ability of a municipality to obtain a reimbursement under statutory provisions relating to ratemaking proceedings; or
- prevent the PUC from doing any of the following:
 - reviewing the investment costs included in an adjustment under the bill's provisions in the electric utility's next comprehensive base rate proceeding to determine whether the costs were prudent, reasonable, and necessary;
 - refunding to customers any amount improperly recovered through an adjustment under the bill's provisions, with appropriate carrying costs; or
 - if applicable, refunding to customers the realized equity portion of carrying costs deferred under the bill on a transmission project associated with the reliability plan for the Permian Basin approved by the PUC if the in-service date is unreasonably delayed beyond December 31, 2030, due to the utility's actions, unless the utility demonstrates that the delay is necessary to maximize the load serving capability of other transmission projects.

C.S.H.B. 5247 requires the PUC, as soon as practicable after the bill's effective date, to adopt rules necessary to implement the bill's provisions. The bill establishes legislative intent that the amendments made by the bill be harmonized with another Act of the 89th Legislature, Regular Session, 2025, relating to nonsubstantive additions to and corrections in enacted codes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5247 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced made the bill's provisions applicable to an electric utility operating solely inside ERCOT that is constructing transmission as part of a reliability plan for the Permian Basin approved by the PUC, the substitute makes the bill's provisions applicable only to an electric utility operating solely inside ERCOT that was identified by the PUC as responsible for constructing transmission as part of that reliability plan.

Additionally, whereas the introduced further conditioned application of the bill's provisions to an electric utility on the utility, before September 1, 2025, and in the prior calendar year, making total capital expenditures in excess of 300 percent of annual depreciation, the substitute conditions the authorization for an applicable electric utility to make an election under the bill's provisions in a calendar year on the utility making total capital expenditures that exceed 300 percent of annual depreciation in the prior calendar year.

The substitute includes a requirement absent from the introduced requiring an electric utility seeking to make an election under the bill's provisions to do the following:

- file a notice with the PUC of the utility's intent to make the election and supporting documentation of the applicable capital expenditures at least 60 days before the date the utility makes an annual proceeding filing;
- provide evidence of the utility's ongoing eligibility in the annual proceeding; and

- notify the PUC if the utility determines that the utility no longer qualifies for continued use of the adjustment under the bill's provisions.

Both the introduced and the substitute require the PUC to include the regulatory asset in rates set under the bill's provisions and to authorize amortization of the asset over a period not to exceed a specified number of months, with a certain exception. However, the substitute differs from the introduced as follows:

- the substitute extends the maximum duration of the amortization period from 12 months, as in the introduced, to 18 months; and
- the substitute provides for an exception to those requirements if an applicable electric utility agrees otherwise, whereas the introduced did not provide such an exception.

The substitute replaces the introduced version's authorization for an electric utility that makes an election under the bill's provisions to update the allocation of costs among customer classes to reflect customer growth with a requirement for that utility to do so.

The substitute includes the following provisions absent from the introduced:

- a requirement for an electric utility that makes an election under the bill's provisions to take into account changes in the number of the utility's customers and the effects, on a weather-normalized basis, that energy consumption and energy demand have on the amount of revenue recovered through the utility's base rates;
- a requirement for an electric utility that makes an election under the bill's provisions, during a period when it earns more than the utility's allowed return on investment, on a weather-adjusted basis, to apply the over-earnings to the balance of the regulatory asset under the bill's provisions;
- an authorization for the PUC, notwithstanding any other law and in setting the rate of return in a comprehensive base rate proceeding for an electric utility receiving a rate adjustment under the bill's provisions, to expressly consider the effect of the adjustment on the utility's financial risk and rate of return;
- a provision establishing that an electric utility's use of the process under the bill's provisions terminates when the utility no longer qualifies for an adjustment under those provisions, except that the utility's rates in effect on the date the utility no longer qualifies remain in effect until modified in a future proceeding;
- a provision establishing that nothing in the bill's provisions is intended to prevent the PUC from, if applicable, refunding to customers the realized equity portion of carrying costs deferred under the bill on a transmission project associated with the reliability plan for the Permian Basin approved by the PUC if the in-service date is unreasonably delayed beyond December 31, 2030, due to the utility's actions, unless the utility demonstrates that the delay is necessary to maximize the load serving capability of other transmission projects; and
- a provision establishing legislative intent that the amendments made by the bill be harmonized with another Act of the 89th Legislature, Regular Session, 2025, relating to nonsubstantive additions to and corrections in enacted codes.