

**SUBJECT:** Competition in energy efficiency services

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 10 ayes — Wolens, S. Turner, Carter, Counts, Craddick, Danburg, Hilbert, Hunter, Longoria, Ramsay

1 nay — Brimer

4 absent — Alvarado, D. Jones, McCall, Stiles

**WITNESSES:** For — Michael Leach, Richard Sperberg, and Robert King, National Association of Energy Service Companies

Against — Curtis Seidlits and Raymond Elmer, Association of Electric Companies of Texas

**BACKGROUND :** The 74th Legislature required the Public Utility Commission (PUC) to develop an integrated resource planning (IRP) process by which utilities choose the resources that will produce reliable electricity at the lowest reasonable system cost. The goal of IRP is to select the proper mix of energy sources, which may include demand side management programs that encourage energy conservation by the end user. All generating utilities are required to submit an IRP plan every three years within a 10-year planning phase. As part of the IRP process, utilities may be required to solicit bids to provide needed energy or energy conservation on the grounds that energy saved is energy that does not have to be produced. According to the *PUC Update*, the rules are intended to promote resource diversity and to “allow emerging competition markets to grow.”

The Public Regulatory Act prohibits utilities from discrimination or engaging in any practice that would in any way restrict competition.

Energy service companies (ESCOs) provide energy efficiency services such as weatherization and installation of energy efficient appliances and lighting.

**DIGEST:** HB 2148 would require the PUC to monitor and make rules by December

31, 1997, to regulate relationships between utilities and affiliates, partners and ventures of utilities to ensure that utilities or the affiliates would not gain an unfair advantage over unaffiliated competitors providing energy efficiency services or products in the same market.

The PUC rules would have to ensure that a utility's programs related to energy efficiency technology or services, including incentive programs, that are financed directly or indirectly by rate payments allow (1) customers to freely choose providers of energy efficiency services or technology and (2) providers of energy efficiency services to determine their products and services. In addition, the bill would require that PUC rules promote open market competition among all energy efficiency providers and not place energy efficiency providers at a competitive disadvantage regarding similar products or services provided by the utility.

HB 2148 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS  
SAY:**

HB 2148 would prevent utilities from abusing their market power by subsidizing growth of affiliated profit-making energy service companies that provide demand-side management programs. Further, it would allow customers to choose which demand-side service provider would install energy efficiency equipment while still having access to energy efficiency incentive payments. The bill would allow utilities to have competitive affiliates and reasonable programs for payment of incentives for demand-side management programs.

The bill would prevent utilities from using ratepayer money to start an ESCO or use their services without proper bidding procedures. Currently, the PUC may require demand-side management as part of the IRP process, but leaves it up to the utility to select ESCOs in a bid process, which narrows customer choice to the companies selected by the utility. Essentially, the new IRP rules have made the demand-side management market a wholesale market instead of a retail market where individual customers can choose their service provider and has damaged competition.

**OPPONENTS**

The PUC already has adequate jurisdiction to regulate transactions between

SAY: a regulated electric utility and its affiliates. The provision of HB 2148 that would require the PUC to monitor utility affiliates is too broad and could inhibit competition because companies might not want to do business with a Texas utility affiliate if it meant they would have to open their books and records. Furthermore, Texas utility affiliates would be placed at a competitive disadvantage compared to affiliates of non-Texas electric companies that are not regulated by the PUC.

The provision in the bill requiring the PUC to monitor affiliates, partners and ventures of utilities is too board and should be narrowly tailored to specific transactions.

NOTES: Rep. Longoria plans to offer a floor amendment that would require the PUC to monitor only utilities and their affiliates with respect to competitive services. The amendment would eliminate requirements that the PUC issue rules to regulate these relationships and free choice in utility incentive programs. It also would stipulate that services must provide for, rather than promote, open market competition.

The companion bill, SB 1858 by Gallegos, has been referred to the Senate State Affairs Committee.