

- SUBJECT:** Delaying deregulation of Southwestern Public Service Co.
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 13 ayes — Wolens, S. Turner, Bailey, Counts, Craddick, Danburg, Hunter, D. Jones, Longoria, Marchant, McCall, McClendon, Merritt
- 0 nays
- 2 absent — Brimer, Hilbert
- WITNESSES:** For — Gary Gibson, Southwestern Public Service Co.; *Registered but did not testify:* Jack Bornsheuer, IBEW Local 716; Janee Briesemeister, Consumers Union; Alex “Ty” Cooke, City of Lubbock and West Texas Municipal Power Agency; Eric Craven, Texas Electric Cooperatives; Michael A. Dreyspring, Lea County Electric Cooperative; John Fainter, Association of Electric Companies of Texas; Richard Landry, Paper Allied-Industrial Chemical and Energy Workers International Union; Rick Levy, Texas State Association of Electric Workers and IBEW; Neal Miller, Chevron Cos.; Julie W. Moore, Occidental Petroleum Corp.; Phillip Oldham, Texas Industrial Energy Consumers in the SPS Service Territory; Derrell Oliver, Lubbock Power and Light; Steve Perry, Texaco Exploration and Production; Ken Rigsbee, Phillips Petroleum Co.; Tom “Smitty” Smith, Public Citizen; Danny Tilley, Texas Building and Trades Council; Mark Zion, Texas Public Power Association
- Against — None
- On — David Hudson, Southwestern Public Service Co.
- BACKGROUND:** The U.S. electric network is divided into three grids: the Western and Eastern Interconnections and the Electric Reliability Council of Texas (ERCOT). While most of Texas is in the ERCOT region, portions of the Panhandle, northeast Texas, and southeast Texas are in the other adjacent power regions. The Panhandle area outside of ERCOT is in the Southwest Power Pool (SPP), has limited transmission interconnections with the Eastern and Western Power Pools, and is not interconnected to ERCOT.

The 76th Legislature in 1999 enacted SB 7 by Sibley, et. al., restructuring electric utilities and allowing customers of Texas' investor-owned utilities to choose their electricity providers as of January 1, 2002. A pilot program involving up to 5 percent of all customers of investor-owned utilities will begin on June 1, 2001.

Utilities Code, chapter 39 sets out the criteria necessary for the Public Utility Commission (PUC) to certify a power region as qualified for competition. Besides requiring an independent system operator (ISO), nondiscriminatory access and uniform pricing for transmission and distribution, and limits of 20 percent on any one company's ownership of generating capacity (market power), power regions outside ERCOT must have adequate transmission interconnections to power regions outside Texas.

Southwestern Public Service Co. (SPS) owns and controls about 70 percent of the power generated in the Texas Panhandle and has limited transmission interconnections outside of its territory. The Utilities Code treats the Panhandle as a competitive development area in which full retail customer choice may develop on a more structured schedule than is anticipated for the rest of the state.

**DIGEST:**

CSHB 1692 would require the PUC to regulate SPS until January 1, 2007, or until the PUC authorized customer choice, whichever was later. Upon implementation of customer choice, SPS would be subject to the Public Utility Regulatory Act to the same extent as other electric utilities.

The bill would nullify any PUC orders entered into before September 1, 2001, regarding electric restructuring and would lift SPS' obligations under the restructuring statute, except for provisions regarding renewable energy goals and emissions permits from Texas Natural Resource Conservation Commission. SPS would have to continue to pay municipal franchise fees negotiated with cities until it implemented customer choice, at which time it would pay franchise charges as required under Utilities Code, sec. 33.008.

In its plan for transition to competition, SPS would have to show how it intended to mitigate its market power and would have to establish a "price to beat" for residential and commercial customers with a peak load of 1,000

kilowatts or less. The PUC could require that the plan include additional information or provisions. The plan would be subject to PUC approval until the applicable region was certified as a qualifying power region.

If SPS chose on or after January 1, 2007, to participate in customer choice, the PUC could not authorize customer choice until the applicable region was certified as a qualifying power region.

By May 1, 2002, SPS would have to submit to the appropriate legislative oversight committee an analysis of the transmission facilities that would be necessary to make the utility's transmission capability comparable to areas within the ERCOT power region. On or after September 1, 2003, SPS would have to file plans to develop its transmission interconnections with its own or adjacent power regions. If the PUC approved the plan, it also would have to approve a rate rider mechanism for recovery of incremental costs for the added facilities after they were completed and in service.

SPS could not participate in customer choice unless its affiliated power generation company committed to maintain rates based on cost of service for any electric cooperative or municipally owned utility that was a wholesale customer on the date when the utility chose to participate in customer choice.

SPS would be entitled to recover expenditures incurred before September 1, 2001, to comply with electric utility restructuring. Upon application for recovery by the utility, the PUC could approve a retail rate rider mechanism for recovery of transition-to-competition costs. The rider mechanism would expire on or before December 31, 2006.

As revised by CSHB 1692, the portion of the restructuring statute pertaining to non-ERCOT utilities would not:

- ! interfere with the rights or obligations of any party to a contract with an investor-owned electric utility, river authority, municipally owned utility, or electric cooperative;
- ! interfere with the rights or obligations of a party in a contract or agreement concerning certified utility service areas; or
- ! result in a cost change for customers purchasing wholesale power under contracts with pricing provisions based on formulary rates, fuel

adjustments, or average system costs.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS  
SAY:

CSHB 1692 would regulate SPS until January 1, 2007, and would delay competition until sufficient transmission could be built to interconnect the SPS region with the Southwest Power Pool for electric competition.

SPS is an efficient utility with an abundance of low-cost coal-fueled power plants. SPS customers traditionally have enjoyed lower-cost electricity service than customers in other parts of the state or nation. Under SB 7, to qualify as a competitive power region, SPS would have to sell 80 percent of its generation capacity to meet the 20 percent market-power rule. This divestiture would eliminate the economies of scale that enable a large company to provide low-cost electricity. Also, companies that purchased the generating facilities would have to pass along their increased capital costs in the form of price increases for consumers. CSHB 1692 would allow Panhandle customers to continue to benefit from low-cost electricity until 2007 or until the PUC determined that competition was sufficient to implement customer choice without a rate shock.

The delay would give SPS time to increase high-voltage transmission capacity into the region. Increased transmission capacity would facilitate competition by wire. Competitors could use the high-voltage lines to transmit electricity to customers without building or buying new power plants in the region. This could eliminate the need for SPS to divest itself of 80 percent of its generating capacity. The increased competition would help to keep prices low in the Panhandle by reducing costly capital investments for new competitors and allowing SPS to retain economies of scale.

By delaying electric restructuring in the Panhandle region, CSHB 1692 would keep the implementation of restructuring synchronous with that of New Mexico. In March 2001, New Mexico enacted legislation to delay electric restructuring — which was set to begin in January 2002 — by five years. CSHB 1692 would allow SPS, which needs to reduce market power in both the Panhandle and New Mexico to comply with each state's current

restructuring laws, to avoid having to divest itself of generating capacity in one state and not the other. Such an unwieldy situation would create inefficiencies for the company and could increase prices for consumers.

OPPONENTS  
SAY:

CSHB 1692 would send conflicting signals to consumers in the Panhandle and across Texas. Since 1999, the state has asked consumers to prepare for the benefits of electric utility restructuring. Delaying implementation of restructuring for some Texas customers because of a fear of its effect on prices — coupled with publicity about California's experience with restructuring — could create significant unease among consumers.

NOTES:

The committee substitute removed several provisions from the original bill, including:

- ! prohibiting SPS from unbundling until full retail electric competition began;
- ! requiring SPS to share 90 percent of the proceeds from the sale of assets before implementing competition with retail customers;
- ! the provision that SPS could not sell more than 20 percent of its generation assets in a two-year period; and
- ! requiring PUC approval for any proposed sale of SPS assets.

The substitute added several provisions, including:

- ! regulating SPS rates until the PUC authorized implementation of customer choice or until January 1, 2007, whichever was later;
- ! requiring SPS to submit an analysis of the transmission facilities necessary to make the service area's transmission capacity similar to areas within the ERCOT power region; and
- ! permitting SPS to recover costs incurred before September 1, 2001, for the transition to competition.