

**SUBJECT:** Requiring PUC to adopt rules governing local registration of electric utilities

**COMMITTEE:** Regulated Industries — favorable, without amendment

**VOTE:** 5 ayes — King, Hunter, Baxter, Crabb, Guillen  
0 nays  
2 absent — Turner, Wolens

**WITNESSES:** For — Steve Davis, Alliance for Retail Markets; Terri Eaton, Green Mountain Energy Company; Vanus Priestley, Constellation New Energy Inc.  
  
Against — Monte Akers, Texas Coalition of Cities for Utility Issues; Kristen Doyle, Cities Aggregation Power Project, South Texas Aggregation Power Project  
  
On — Carrie Collier, Public Utility Commission

**BACKGROUND:** On January 1, 2002, Texas’ retail electricity market opened to competition. Previously, electric utilities had exclusive rights to provide electricity service at rates regulated by the Public Utility Commission (PUC) to customers in designated geographic areas. By contrast, competition allows retail electricity providers to compete for customers in any part of the state participating in the competitive retail electricity market.

Under Utilities Code, sec. 39.358, a municipality may require a retail electricity provider to register with the municipality in order to provide service to residents. A municipality may assess a reasonable administrative fee for registration and has the authority to suspend or revoke a retail electric provider’s registration.

In December 2002, PUC adopted Rule 25.113, which established an optional “safe-harbor” process for municipal registration of retail electric providers to standardize notice and filing procedures, deadlines, and registration information and fees. According to the rule, if a municipality enacts a

registration ordinance that is consistent with the rule, the ordinance shall be deemed to comply with Utilities Code, sec. 39.358.

**DIGEST:** HB 1369 would require PUC to adopt rules governing the local registration of a retail electricity provider.

The bill would take effect September 1, 2003.

**SUPPORTERS SAY:** HB 1369 would streamline the local registration process. Complying with a myriad of different municipal registration ordinances across the state creates a barrier to entry for retail electricity providers. Electricity providers not only must determine how to comply with each specific ordinance, they also have no way of easily knowing whether a municipality has even adopted a registration ordinance because municipalities are not required to file an ordinance with PUC or in the Texas Register. Requiring PUC to adopt rules governing municipal registration would standardize the local registration process and reduce uncertainty for retail electricity providers.

In addition, electric providers have experienced problems with some registration ordinance fee structures. Some ordinances impose fees well in excess of the reasonable administrative fee allowed by law, such as a \$500 annual registration fee or a \$10 fee per customer. These excessive fees can have significant adverse financial consequences, especially for smaller retail electricity providers.

The safe harbor rule adopted by PUC does not standardize registration ordinances because cities are not required to adopt it. Currently, only one city has adopted a registration ordinance under the safe harbor rule. Without uniformity among registration ordinances, retail electric providers still will face increased costs and administrative burdens to comply with different ordinances across the state.

**OPPONENTS SAY:** HB 1369 is unnecessary because PUC already has adopted the safe harbor rule that establishes a standardized registration process that cities may adopt. If a city enacts an ordinance under the safe harbor rule, it is considered in compliance with Utilities Code, sec. 39.358 and not vulnerable to appeal. Moreover, a municipality adopting a registration ordinance under the safe harbor rule must file the ordinance with PUC at least 30 days before its

effective date, so that an electric provider has ample warning of the need to register with a city.

Although cities are not required to adopt an ordinance under the safe harbor rule, any city seeking to enact a registration ordinance is not likely to adopt anything else. A registration ordinance not in compliance with the safe harbor rule would invite an appeal to PUC, thus requiring a city to pay for a legal defense that could have been avoided easily.

**NOTES:** The companion bill, SB 710 by Brimer, has been referred to the Senate Business and Commerce Committee.