HOUSE RESEARCH ORGANIZATION bill analysis | 5/5/2005 | HB 2644 Hughes, et al. (CSHB 2644 by Hartnett)

SUBJECT: Delaying deregulation of certain non-ERCOT electric utilities

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 5 ayes — P. King, Hunter, R. Cook, Crabb, Hartnett

0 nays

2 absent — Baxter, Turner

WITNESSES: For — Timothy Burrow, IBEW Local 738; Earl Roberts, Cities Advocating Reasonable Deregulation; George Shackelford, City of Texarkana; Ed Smith, City of Marshall; John Stroud, LEDCO (*Registered, but did not testify*: Rickey Childers, City of Longview CARD; Rick Levy, Texas AFL-CIO and Texas State Association of Electrical Workers - IBEW; Mike Williams, Texas Electric Cooperatives; Jim Finley, Dion Miller, Gordon Tiner, Tim Vaughn, Daryl Williams)

Against — Bradley Jones, TXU Energy (*Registered, but did not testify*: Charles Griffey, Reliant Energy; Michael Jewell, Direct Energy, CPL Retail Energy, WTU Retail Energy)

On — Julie Parsley, Public Utility Commission

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, far west Texas, Northeast Texas, and Southeast Texas are in the other adjacent power regions.

The 76th Legislature in 1999 enacted SB 7 by Sibley, restructuring electric utilities and allowing customers of Texas' investor-owned utilities to choose their electricity providers as of January 1, 2002. In non-ERCOT regions, implementation of customer choice has been delayed because of concerns about the scarcity of competitors entering the market to provide retail service and the shortage of available transmission capacity, among other factors.

DIGEST:

CSHB 2644 would delay electric utility competition in northeast Texas and would establish a plan for transition to electric utility competition in the El Paso region.

***Delay of competition in Northeast Texas*.** This section would apply to an investor-owned electric utility that:

- was operating solely outside ERCOT in areas of the state included in the Southwest Power Pool on January 1, 2004;
- was unaffiliated with the Southeastern Reliability Council on January 1, 2004; and
- did not have fewer than six interconnections with voltage levels above 69 kilovolts systemwide.

Until January 1, 2010, or the date an electric utility governed by this section was authorized to implement customer choice, whichever was later, CSHB 2644 would regulate the utility's electric rates under traditional cost-of-service regulation. Provisions in current law governing the system benefit fund and renewable energy goals would continue to apply.

Beginning January 1, 2010, an electric utility could choose to participate in customer choice. The utility would file a transition to competition plan with the PUC identifying how it intended to achieve consumer choice. The plan would describe and evaluate:

- transmission facilities;
- certification of the power region;
- auctioning rights to generation capacity;
- a provision to establish a residential and commercial price-to-beat; and
- additional information prescribed by the PUC.

The PUC would have to approve, reject, or modify the plan within 180 days, unless an extension was granted after a hearing was requested. The PUC could not authorize customer choice until the applicable power region for the utility had been certified as a qualified power region.

***Transition to competition in the El Paso region*.** The bill would establish transition to competition procedures for any multi-state electric utility operating solely outside ERCOT that served customers in the state within the Western Electric Coordinating Council. This would include the region in and around El Paso.

The rates of a utility under this section would be subject to regulation by the PUC until the utility was authorized to implement retail customer choice. The utility would be subject only to renewable energy and natural gas goals under Utilities Code, ch. 39. A utility would have to obtain at least enough renewable energy credits to meet its requirements for each compliance period beginning on January 1, 2006. A utility would have to meet at least 5 percent of its growth in demand through energy efficiency savings resulting from energy efficiency programs by January 1, 2007, and 10 percent of its growth after that.

The bill would establish five stages to be followed before retail competition by a utility in the service area defined in the bill was introduced.

The first stage would consist of:

- approval of a regional transmission organization by the Federal Energy Regulatory Commission (FERC) for the utility's power region and the commencement of independent operation of the network;
- development of retail market protocols to facilitate competition; and
- the completion of an expedited proceeding to develop non-bypassable delivery rate for a customer choice pilot project.

The second stage would consist of:

- initiation of a customer choice pilot project;
- development of a balancing energy market, an ancillary services market, and a market-based congestion management system; and
- implementation of a seams agreement with adjacent power regions.

The third stage would consist of the utility filing applications for and the PUC approving:

- business separation;
- unbundled transmission and distribution rates;

- certification of a qualified power region; and
- price-to-beat rates

The third stage also would require the testing of retail and wholesale systems.

The fourth stage would consist of:

- PUC evaluation of the pilot project;
- initiation of a capacity auction by the utility; and
- separation of the utility's competitive energy services from its regulated activities.

The fifth stage would consist of:

- PUC evaluation of whether the region could offer fair competition and reliable service to retail customers.

If the PUC determined the region could offer fair competition and reliable service, the commission would initiate retail competition for the utility. Otherwise, the commission would delay competition. Upon initiation of competition, the fifth stage also would consist of business separation and unbundling by the utility.

Effective date. The bill would take effect September 1, 2005.

SUPPORTERS SAY:

Delaying competition in Northeast Texas. By delaying competition in the service area of the Southwestern Electric Power Company (SWEPCO) until January 1, 2010, CSHB 2644 would provide regulatory certainty for an electric market that is in a unique and challenging situation. After finding that the region did not have a market capable of supporting customer choice, the PUC in 2001 issued an order delaying competition in Northeast Texas until 2007. The region has been slow to develop attributes needed to ensure the success of competition, and it would be appropriate to delay competition for three additional years as the market develops.

Northeast Texas enjoys some of the lowest electric rates in the state, due largely to power generation from inexpensive lignite. Current rates in the SWEPCO service region are up to 40 percent lower than rates in competitive ERCOT markets. If competition were introduced prematurely, residential and commercial customers could be expected to see their electric rates increase substantially. The regulated market in northeast Texas is working well and should be allowed to continue in the near term.

Northeast Texas communities are in a unique situation because they must compete economically with cities across the border in Arkansas and Louisiana. Many of the chief competitors to cities like Texarkana, Marshall, and Longview are in the SWEPCO service region and also enjoy low rates. In addition, neither Arkansas nor Louisiana has deregulated its electric markets. With the increased electric rates that northeast Texas would see under competition, northeast Texas cities would be at a competitive disadvantage with communities across the state line, potentially harming local economies and costing jobs.

Transition to competition in the El Paso region. The bill would adopt in statute a PUC ruling that lays out the stages through which a utility operating in and around El Paso would have to pass before the region would be opened for competition. The commission determined that this area did not have sufficient competitive safeguards in place to allow for the functioning of a fully competitive market. This bill would include five specific, reasonable stages through which a utility operating in this area would pass before being opened to retail competition.

OPPONENTS SAY:

CSHB 2644 would short-circuit the PUC's process for determining when and how a non-ERCOT region should transition into competition. This process, which led to the original delay in competition in Northeast Texas, is the proper avenue by which the region should be evaluated. Without this bill, the PUC likely would undertake open and fair deliberations similar to those that led to the adoption of a plan for transition to competition in the El Paso region. Delaying competition until 2010 would impede the important developments toward a competitive retail electric market that are taking place and likely would push back the introduction of competition several years.

Northeast Texas is a growing part of the state, and additional transmission and generation facilities are needed to serve this region. The introduction of competition would facilitate infrastructure investment. It would be inappropriate to deny the citizens of northeast Texas the benefits of competition, which most of the rest of the state has had since 2002.

NOTES:

As filed, HB 2644 would have delayed competition in Northeast Texas until January 1, 2012. The committee substitute also added the section governing the transition to competition in the El Paso region.

HB 1777 by King, which contains language identical to the language in CSHB 2644 relating to the transition to competition in the El Paso region, passed the House on second reading yesterday and is scheduled for third reading consideration today.