SUBJECT: Trust funds to decommission nuclear generation built after restructuring

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 8 ayes — P. King, Christian, Turner, Crabb, Oliveira, Smithee, Straus, Swinford

0 nays

1 absent — Hartnett

WITNESSES: For — Marilyn Kray, Exelon Generation; Mark Walker, NRG Texas

Against — Cyrus Reed, Lone Star Chapter of the Sierra Club; Tom "Smitty" Smith, Public Citizen

On — Charles Griffey, Reliant Energy; Paul Hudson, Public Utility Commission; Michael Jewell, CPL Retail Energy and WTU Retail Energy; Phillip Oldham, Texas Association of Manufacturers; Jess Totten Public Utility Commission

BACKGROUND: Historically, electric utility rates were regulated, and the Public Utility Commission (PUC) established rates to allow owners an opportunity to recover the capital costs and operating expenses to provide electric service. In 1999, the 76th Legislature enacted SB 7 by Sibley. Among its provisions, the bill was designed to replace cost-of-service rate regulation with a system where competitive markets set retail electric rates.

SB 7 included some exceptions to ending cost-of-service rate regulation for setting retail electric rates. One provision allows continued PUC regulation of costs associated with decommissioning of nuclear power plants. Utilities Code, sec. 39.205 permits utilities to collect a charge on electricity bills to pay for the future decommissioning of nuclear power plants, even after restructuring limited the PUC's authority to regulate retail electric rates.

The federal Nuclear Regulatory Commission (NRC) requires that operators of nuclear generation facilities provide guarantees that they will have the financial ability to decommission and decontaminate nuclear

generation facilities when they cease operations. Typically, plant operators establish decommissioning trust funds. State and federal laws and regulations provide oversight of the management and investment practices of these decommissioning trust funds to ensure that the money set aside will be sufficient to dismantle, decontaminate, and dispose of components of the decommissioned nuclear plant.

According to the PUC's 2007 *Scope of Competition in Electric Markets in Texas* report, the estimated decommissioning costs for the South Texas Nuclear Project and the Comanche Peak facility would be approximately $1.1 billion in each case.

On October 12, 2004, Attorney General Opinion GA-0257 determined that CPS Energy, San Antonio's municipal utility, lacked the statutory authority to invest the decommissioning funds collected by American Electric Power before it sold its interest in the South Texas Nuclear Project. During its regular session in 2005, the 79th Legislature enacted SB 1464 by Van de Putte to clarify the ability of a municipally owned utility with an interest in a nuclear generation facility to invest decommissioning trust funds to meet both NRC and PUC requirements.

SB 1464 also amended Utilities Code, sec. 39.205 to authorize the PUC to make rules to ensure that funds collected for nuclear plant decommissioning are prudently collected, managed, and spent for the intended purposes. The PUC also is required to ensure that any money that remains unspent for decommissioning is returned to retail electricity customers.

DIGEST:

CSHB 1386 would add Utilities Code, sec. 39.206 to provide for the creation of decommissioning trust funds for nuclear generation facilities that might be built in Texas and stipulate the PUC's authority to make rules and regulations on decommissioning trust funds with regard to future generation facilities, in addition to current facilities.

The bill would apply only to nuclear generating facilities owned by power generation companies and built after January 1, 2002, when restructuring of electric utilities began.

A power generation company planning to build a nuclear generation facility would be required to:

- establish a nuclear decommissioning trust fund that met NRC and PUC standards; and
- start financing the decommissioning trust fund before the first load of nuclear fuel was loaded in the facility and before commercial operations began.

The PUC would be required to establish rules to determine the amount of annual funding collected each year to meet the NRC decommissioning requirements. The power generation company would be required, in turn, to conduct a study of the future costs of decommissioning to help determine what annual payment would be required to meet the future costs of decommissioning. In addition, the power generation company would be required to update that study at least once during each three-year period, and the PUC would have to hold a hearing at least once every three years to determine if the conclusions of the power generation company were reasonable.

The power company also would be required to file a yearly financial report on the status of the decommissioning fund with the PUC. The commission then would be required to hold a rate hearing once every three years to review the balance of the trust fund and projected amount needed to decommission the nuclear generation plant. After the rate hearing, PUC would adjust the annual charge assessed to ratepayers, as necessary, to ensure that the fund would collect enough to pay for decommissioning.

CSHB 1386 would require power companies owning the nuclear generation facility to make an annual payment, as determined by the PUC ratemaking process, to the decommissioning trust fund. Failure to make the payment would allow the PUC to terminate the power companies' ability to operate in Texas by revoking its registration.

Power companies would be required to invest the trust funds to meet NRC guidelines, and the PUC could adopt additional rules to ensure prudent management and investment of the nuclear decommissioning trust fund.

In addition, PUC would be required to adopt rules to ensure that:

- sufficient funds were remitted on a yearly basis to the nuclear decommissioning fund;
- cost studies and reviews submitted by the power companies were complete and current;

- trust fund money was managed prudently and spent for its intended purpose; and
- decommissioning funds were available for decommissioning if the trust or nuclear facility was transferred.

Other provisions would authorize the PUC to determine how to compensate for any shortfalls in the decommissioning trust fund. Retail electric customers would have to pay for the shortfall if the trust fund was insufficient to pay all the decommissioning costs, or if the power company failed to remit the yearly funding and had its registration to operate terminated. The share of the shortfall paid by customers of municipally owned utilities or electric cooperatives that purchase power from the nuclear facility would be limited to the percentage of power from the nuclear facility that was purchased by the municipal utility or cooperative.

CSHB 1386 would require any company that had its registration to operate terminated for not making trust payments — or any entity buying the company or the generation plant — to repay any shortfall paid by electric customers before being allowed to reopen the nuclear generation facility.

The bill would take effect on September 1, 2007.

SUPPORTERS SAY:

CSHB 1386 would encourage a renaissance of nuclear power generation in Texas by clarifying the PUC's authority to regulate decommissioning trust funds for proposed facilities. Federal and state law already recognize the need to ensure that money is available to decommission nuclear power plants at the end of their useful lives, and CSHB 1386 simply would grant the PUC the necessary authority to make rules for these future nuclear plants. Development of the rules would be subject to the current rulemaking process. The requirements for prudent investment and management practices for the trust funds, including continuing PUC review, would reduce the risks involved in planning for future decommissioning costs.

Texas needs additional generation capacity and diversity of its fuel sources. Already, 14 percent of the state's power needs are provided by the South Texas Nuclear Project and the Comanche Peak nuclear facility. Proposals by Exelon Energy to build facilities in East and South Texas, as well as a proposal for a plant near Amarillo, could add 16,000 megawatts or more to the state's capacity. Compared with natural gas, nuclear

generation produces much cheaper electricity, and nuclear generation creates virtually no greenhouse gases.

CSHB 1386 would allow the state to benefit from federal incentives to revive the nuclear generation industry. In the 1970s, 103 nuclear plants were operating in the United States, but no new plants have been ordered since the March 1979 accident at Three Mile Island. Newer designs and technologies make modern nuclear facilities safer and more reliable. The Energy Policy Act of 2005 grants $1 billion in tax credits for development of nuclear energy and would provide another $500 million in insurance to protect against delays in construction caused by regulatory logjams. The U.S. Energy Information Administration predicts a 45 percent increase in energy demand by 2030, equal to an additional 350,000 megawatts. Nuclear energy could supply some of this power.

The bill would protect ratepayers in the unlikely event of a shortfall caused by the generation company not remitting payments. Repayment of the shortfall would be required before the nuclear facility could reopen.

OPPONENTS SAY:

Nuclear plants are not the answer to Texans' needs for affordable power. The lengthy construction time, high costs of construction, waste storage and disposal problems, and the need to decommission and decontaminate plants make nuclear power an expensive and economically unfeasible enterprise for both investors and ratepayers. Trust funds can reduce some of the risks, but no one is certain what the final costs will be to decommission existing or future nuclear plants. Initial projections for both the South Texas and Comanche Peak nuclear facilities significantly understated the final construction costs, and the billion dollar cost estimate to decommission those plants could be itself be too low. Ratepayers should not be liable for possible additional costs for new plants when the cost for decommissioning existing plants remains uncertain.

Electric utility restructuring was supposed to remove government regulation and allow the competitive market to guide decisions on generation capacity and sale of electricity. Decisions to build nuclear power plants should be based on economic considerations, and government should offer no subsidies to private industry. Provisions in CSHB 1386 that would make ratepayers potentially liable for additional costs for decommissioning nuclear plants represent another guarantee that would help an unsustainable industry reap profits at the expense of future generations and the environment.

NOTES:

HB 1386 was placed on the General House Calendar for April 17, but was recommitted to the Regulated Industries Committee on April 16.

The committee substitute differs from the original bill by adding provisions that would require the power generation company, rather than the PUC, to assume the obligation to conduct the study on projected costs on decommissioning nuclear plants and require filing of an annual report. The substitute removed references to "competitive" in describing ratepayers and electric service and would distinguish between customers served in areas where retail choice was available and those served by municipally owned utilities. The substitute changed the provisions regarding the conditions of a default under which ratepayers would become responsible for contributions to the trust fund or additional costs of decommissioning. The substitute also removed a reference to a 90-day period to remedy the default and added the provision that would allow the PUC to terminate a company's registration to operate if the payments to the trust fund were defaulted.