HOUSE RESEARCH ORGANIZATION bill analysis | 4/23/2007 | HB 2818 Ritter, et al. (CSHB 2818 by Hartnett)

SUBJECT: Delaying electric competition in Southeast Texas

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 6 ayes — P. King, Turner, Hartnett, Oliveira, Smithee, Swinford

1 nay — Crabb

2 absent — Christian, Straus

WITNESSES: For — John J. Baker, IBEW Local 2286; Rick Levy, Texas State Association of Electrical Workers; Nelson Nease, East Texas Electric Cooperatives; Oscar Ortiz, city of Port Arthur; Keith Stapleton, East Texas Electric Cooperative; Mike Williams, Texas Electric Cooperative; Bryan Dickens; *(Registered, but did not testify*: Wendell Bell, Texas Public Power Association; Carl A. Parker, cities of Beaumont, Port Arthur, Nederland, Port Neches and Groves; Tom "Smitty" Smith, Public Citizen, Don Adams)

Against — Stephen J. Davis, Alliance for Retail Markets; Joseph Domino, Entergy Gulf States Texas; Phillip Oldham, Texas Association of Manufacturers; *(Registered, but did not testify*: John W. Fainter, Jr., Association of Electric Companies of Texas, Inc.; Michael Jewell, Direct Energy, CPL Energy, and WTU Retail Energy; Scott Miller, Reliant Energy, Inc.; Vanus J. Priestly, Constellation New Energy, Inc.)

BACKGROUND: The U.S. electric network is divided into three grids: the western and eastern interconnections and the Electric Reliability Council of Texas (ERCOT). In addition, the United States, along with portions of Canada and Mexico, is divided into eight regional electric reliability councils, which make up the North American Electric Reliability Corporation.

Most of Texas falls within ERCOT, which is a unique combination of a grid and an electric reliability region. Portions of the state are included in three other reliability districts, which are:

- SERC Reliability Corporation (or Southeastern Electric Reliability Council), which includes portions of southeast Texas;

- Southwest Power Pool, Inc., which includes sections of northeast Texas and the Panhandle; and
- Western Electricity Coordinating Council, which includes far West Texas and El Paso.

The SERC region includes portions of 16 states (Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia) in the southeastern and central United States. It covers an area of approximately 560,000 square miles, and serves almost 40 million customers. SERC is divided into five subregions, including the Entergy subregion that serves southeast Texas. Entergy serves approximately 373,000 customers in 24 Texas counties, including about 326,000 residential customers.

Because it covers several states, the SERC region is subject to regulation by the Federal Energy Regulatory Commission. Federal regulators have limited oversight of wholesale sales of electricity in ERCOT, but the Public Utility Commission (PUC) is the primary regulatory body for ERCOT.

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. HB 1692 by Chisum, enacted in 2001 by the 77th Legislature, delayed implementation of retail competition in the Panhandle until 2007 or until the PUC authorizes customer choice in the area, whichever is later.

In 2001, the PUC issued orders to delay customer choice in the SERC region after determining that there was insufficient competition in the region. In October 2004, the PUC denied a rate request by Entergy based on a previous agreement that rates remain frozen until competition had been introduced.

During the 2005 regular session, the 79th Legislature enacted HB 1567 by Ritter, which allows the PUC to review Entergy's electric utility rates under traditional cost-of-service regulation. Such rate regulation would occur until the utility was authorized by the PUC to implement customer choice. HB 1567 also allowed Entergy to separate into two vertically integrated utilities, with one regulated by the PUC and the other regulated by the Louisiana Public Service Commission.

During its third called session in 2006, the 79th Legislature enacted HB 163 by P. King, which authorized Entergy to use securitization financing to recover reconstruction costs associated with the restoration of service after Hurricane Rita in September 2005. Entergy was allowed to petition the PUC to issue an order determining the amount of hurricane reconstruction costs that are eligible for recovery and securitization and determine how those costs would be allocated to customers in the utility's base rates. On December 1, 2006, the PUC approved a unanimous settlement that determined the total amount of Hurricane Rita reconstruction costs were $393.2 million as of March 31, 2006. Under HB 163, Entergy is eligible to file a separate rate case to recover these costs, plus 7.9 percent in annual carrying costs, through transition bonds.

As authorized by HB 1567, Entergy filed its transition-to-competition Plan with the PUC on December 29, 2006, (PUC Docket #33687). Among Entergy's requests in the transition-to-competition Plans are:

- creation of Entergy Gulf State, Inc.-TX (EGSI-TX) as a separate Texas-only utility;
- integration of EGSI-TX into ERCOT; and
- introduction of retail competition in the EGSI-TX territory.

PUC Docket #33687 is a contested rate hearing now continuing before the PUC. Several cities in the Entergy service area, including Beaumont, Conroe, Groves, Nederland, Port Neches, and Silsbee, have filed to intervene in the rate hearing. Also filing to intervene in the rate hearing include Texas Cooperatives, Inc.; East Texas Cooperatives, municipal utilities owned by Austin and Brownsville, TXU, and other entities.

DIGEST: CSHB 2818 would amend Utilities Code, ch. 39 to prohibit the PUC from considering or implementing a plan for retail competition in the SERC area of Texas unless the Legislature specifically authorized retail competition in that region.

CSHB 2818 also would require Entergy to withdraw its transition-to-competition Plan (PUC Docket #33687) from consideration by the PUC and end all activities related to the plan within 180 days. The bill would allow Entergy to file a separate rate case to recover the costs of making infrastructure improvements in anticipation of creating the separate Texas company and preparing for competition as well as for filing PUC Docket #33687, its transition-to-competition plan.

The 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, 2007.

SUPPORTERS SAY:

CSHB 2818 would provide certainty and long-term stability for both Entergy and its ratepayers and allow Entergy to make the financial arrangements needed to ensure affordable and reliable electricity service in Southeast Texas. Entergy and its ratepayers already have identified more than $390 million in reconstruction costs because of Hurricane Rita, and the cost of integrating Entergy into ERCOT could cost $1 billion. The bill would help assure ratepayers that the PUC would provide oversight and regulation of these expenditures.

Residents of Southeast Texas have closely watched the experience the rest of the state has had with retail electric competition, and they correctly believe that the jury is still out on the true benefits of restructuring under SB 7. These citizens and ratepayers want to keep Entergy a fully regulated utility until it can be demonstrated that true competition does work for all ratepayers.

Side-by-side comparisons between restructured and regulated electric utilities already are available in Southeast Texas and neighboring counties in East Texans. Electric cooperatives, which are owned by their members, consistently offer lower electric rates than nearby cities or counties where retail choice prevails. Even within ERCOT, electric cooperatives and municipally owned utilities have declined to make the transition to retail competition even though SB 7 allows them to open their markets to retail customer choice.

CSHB 2818 properly would return the decision to continue electric utility restructuring, including retail competition, to the elected members of the Legislature rather than the appointed members of the PUC. The Legislature should make policy decisions, and the PUC should review and decide technical issues such as rate cases.

The bill is not intended to be punitive to Entergy or to its employees or stockholders. Entergy long has been a responsible and good corporate partner in Southeast Texas. The utility should be commended for its response to the devastation to the region after Hurricane Rita in 2005. The Legislature has been supportive in the past of Entergy's efforts to move to a competitive market, and it enacted legislation helping Entergy recover the costs of the restoring power after Hurricane Rita. Circumstances change, and the Legislature must retain the ability to make policy decisions in light of changing circumstances.

The bill specifically would allow Entergy to recover the $300 million it has committed to infrastructure improvements as well as other costs related to submitting the transition-to-competition plan.

Integration of the SERC region into ERCOT could be risky and lead to costs that exceed any immediate benefits. Entergy already has identified a cost of more than $1 billion to integrate SERC into ERCOT, but the total expense is unknown at this time. There needs to be a way to make a fair determination and assessment of the additional costs to ratepayers in both Southeast Texas and ERCOT. Also, changes in ERCOT could make the Texas grid subject to additional federal regulation.

OPPONENTS SAY:

CSHB 2818 could complicate Entergy's effort to improve reliability of electric service in Southeast Texas by integrating its Texas service area into ERCOT. Damage caused by Hurricane Rita cut the interconnections to the east. Entergy was forced to impose rolling blackouts in the Woodlands and Montgomery and Liberty counties and had to respond quickly to restore power to the Lake Livingston pumping stations, which provide most of the water to Houston. Even as Entergy attempted to balance the load, there was available generation capacity to the west to which the utility had no ready access. Tying Entergy to ERCOT would help serve rapidly growing areas of Southeast Texas, protect against hurricane damage, and improve overall reliability and reserve capacity that would benefit both reliability regions. This bill only would hamper these efforts.

The Legislature should not close the door on consideration of retail competition and short-circuit the current PUC rate case on the transition-to-competition plan. Entergy has taken significant and costly steps to prepare for future competition. It has created a stand-alone Texas company and has committed to investing $300 million in infrastructure improvement in addition to the Hurricane Rita repairs. Any decision to allow competition will be based on the PUC's contested rate hearing, and that process should be allowed to continue.

Integrating Entergy into ERCOT would not jeopardize reliability of the system or risk federal intervention. Entergy is in the process of constructing two direct-current interties to allow it to import energy into the region, including power from the River Bend nuclear station in Louisiana and coal-fired generation from Arkansas. Both of these sources provide cheaper energy than natural gas fueled generation used in Texas. Also, the integration into ERCOT can be done without subjecting Texas to further Federal Energy Regulatory Commission oversight.

OTHER OPPONENTS SAY:

CSHB 2818 should be expanded to give the Legislature approval of any expansion of retail competition into those areas of the state included in the Southwest Power Pool or the Western Electric Coordinating Council. Elected legislators, rather than appointed PUC commissioners, should make the decision on restructuring electric utilities in non-ERCOT areas other than SERC.

The ERCOT grid should be fully integrated into one or both of the national electric grids to ensure greater reliability and access to cheaper generation capacity outside Texas. Maintaining a separate ERCOT grid is an archaic attempt to preserve an accident of history and should be ended.

NOTES:

The committee substitute differs from the original bill by changing references to SERC and making other drafting changes. The substitute also added the section that would allow Entergy to recover the costs of filing its transition-to- competition plan.

The companion bill, SB 1878 by Williams, has been referred to the Senate Business and Commerce Committee. On March 27, the House Regulated Industries Committee held a public hearing and left pending a related bill, HB 2937 by McReynolds et al., which would prohibit the PUC from implementing or considering retail competition plans for all non-ERCOT areas of Texas.