

- SUBJECT:** Citizen opt-out provisions for municipal energy aggregation
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 5 ayes — Bailey, Murphy, Menendez, Latham, Mallory Caraway
- 0 nays
- 2 absent — Cohen, Martinez Fischer
- WITNESSES:** For — Jay Doegey, Cities Aggregation Power Project (CAPP) and City of Arlington; Kristen Doyle, CAPP and South Texas Aggregation Project; Carolyn House, City of Snyder and CAPP; Jared Miller, City of Snyder; Tom “Smitty” Smith, Public Citizen; Don Wilson, City of Eastland; (*Registered, but did not testify:* Phillip Boyd, City of Lewisville; Geoffrey Gay, CAPP and South Texas Aggregation Project; Christal Kliever, City of Grand Prairie; Randolan C. Morause, CAPP and Town of Addison)
- Against — Charles Griffey, Association of Electric Companies of Texas; Michael Jewell, Direct Energy, CPL Retail Energy, and WTU Energy; Robert Thomas, Green Mountain Energy Company; (*Registered, but did not testify:* Stephen Davis, Alliance for Retail Markets; Kelly McBeth, Texas Energy Association for Marketers)
- BACKGROUND:** The Public Utility Commission (PUC) regulates electric companies in Texas. Following the enactment of SB 7 by Sibley in 1999 — the Texas Electric Choice Act — this includes overseeing fair competition in the wholesale and retail electric markets, governing transmission and distribution utilities in competitive areas, and regulating the rates of service of investor-owned utilities in areas of the state not subject to competition. A person may not generate electricity unless the person is registered with the commission as a power generation company.
- Local Government Code, ch. 304 permits a political subdivision to join with other political subdivisions to form a corporation in order to negotiate the purchase of electricity. A corporation so formed also may aid or act on behalf of the originating political subdivisions with respect to electricity use for public facilities. Such a corporation must be approved by ordinance, resolution, or order adopted by the governing body of each political subdivision for which the corporation is created.

A political subdivision corporation "aggregator" created through this process may negotiate for the purchase of electricity and energy services on behalf of the citizens of the political subdivision. The citizens must affirmatively request, or "opt in," to be included in the aggregation services by the aggregator. An aggregator also may contract with a third party to administer the aggregation of purchased electricity and energy services.

DIGEST:

CSHB 3498 would allow entities created for municipal energy aggregation to negotiate on behalf of citizens of member political subdivisions for the purchase of energy. Provisions requiring citizens affirmatively to request to be included in the aggregation services would be repealed. A political subdivision aggregator would be able to purchase or contract to purchase electricity and energy services on behalf of the citizens of the political subdivisions involved.

Aggregators could negotiate for electricity and energy service purchases for a municipality with a population less than 50,000 in a county with fewer than 200,000 people. An election would be held to determine whether the municipality should engage in municipal aggregation as provided. If a majority of voters in a municipality voted in favor, the municipality could adopt a resolution providing for automatic enrollment in aggregator services for citizens in its jurisdiction and on the request of those who resided in the unincorporated area located within 20 miles of the geographic boundaries of the municipality.

If automatic enrollment for citizens was approved, the municipality would have to provide written notice to each citizen at least 60 days before the enrollment took effect. Affected citizens would reserve the right to request to be excluded from enrollment in the program. A citizen who resided in an unincorporated area would have to affirmatively request to be included in municipal aggregation services. Retail electric providers and other utilities would be required to provide a municipality with any information necessary to create an aggregation program and comply with notification requirements.

Citizens would not be eligible for an energy aggregation program until any contract the citizen had signed with a competitive retail electric provider had expired. Any savings attributable to an aggregation program beyond administrative expenses would accrue to citizen participants.

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 3498 would provide electric customers in small cities and towns a realistic alternative to higher rates offered by retail utility providers in rural areas. The bill would make relatively minor adjustments in existing statutory provisions to alter the presumptive status of customers in certain municipalities that have formed or adopted an electric aggregator. Current provisions allow customers to opt in to arrangements with aggregators, making them, by default, customers of deregulated utility providers. The bill would reverse this presumption, enabling customers to opt out of a presumptive agreement with a municipal aggregator. Municipal aggregators can deliver more cost effective electricity prices to customers due to volume purchasing and proportionally smaller administrative expenses.

Deregulation in Texas has resulted in demonstrably higher electricity prices than the non-competitive rates offered by municipal utilities, cooperatives, and investor-owned utilities. Price-to-beat residential service rates for West Texas Utilities and TXU were 19.40 and 15.75 cents in 2006. Those prices were higher than the regulated residential rates that existed the day the deregulated retail market opened by 110 percent and 75 percent, respectively.

Aggregation programs provide an alternative to increasing electricity prices that have taken hold in many rural areas. Opt-out aggregation is a way to provide rate relief for residential consumers that is within the basic framework of Texas's competitive electricity market. Opt-out aggregation would provide consumers lower rates through the bulk-buying advantage of aggregation, while retaining the option to discontinue service and sign a contract with a retail provider at any time. Aggregation does not put cities in the electricity business — the municipality would act only as a facilitator to arrange transactions between its citizens and an electric provider. CSHB 3498 would require that any savings resulting from aggregation practices be passed to participating consumers, increasing the benefits for participants and eliminating any incentives for rate or price manipulation.

CSHB 3498 would establish numerous safeguards to ensure that a consumer's retail service was not altered without permission. A

municipality would have to adopt an ordinance requiring the automatic enrollment of citizens in aggregation services. This ordinance would be subject to the deliberative process of each city, including public comment and a public vote. Once the ordinance was adopted, each city would be required to send its citizens a notice that they will be automatically enrolled in the program unless they expressly requested not to participate within sixty days of receiving the notice.

The bill would also be very limited in scope, only applying to municipalities with a population less than 50,000 in a county no larger than 200,000. This limitation would provide for a type of pilot program, which would allow small cities and towns that have been the most heavily impacted by soaring electricity rates time to test opt-out aggregation.

CSHB 3498 explicitly would provide that a citizen aggregation program would not override an existing contract between a citizen and a retail provider. A consumer obligated by a pre-existing contract effectively would be considered to have opted out of the aggregation program. The bill would give municipalities the ability to obtain information from electric providers only insofar as such information was necessary to establish an aggregation program. Municipalities receiving information would be no different than retail utilities retaining such information, and no records would be released that could pose a financial or other personal liability to the individual.

OPPONENTS
SAY:

CSHB 3498 inappropriately would effect a partial reversion to regulated energy practices that would deny customers a full range of choice for energy providers. Municipal opt-out aggregation is directly counter to provisions in the Texas Electric Choice Act, which state that “a customer is entitled to choose the customer’s retail electric provider...to have that choice honored, and to assume that the customer’s chosen provider will not be changed without the customer’s informed consent.” By contrast, opt-out aggregation would empower municipalities to choose a provider for the customer, thereby contradicting this principle of allowing each customer to choose from whom to buy power.

Opt-out municipal aggregation would not provide for each customers’ express consent, and therefore would constitute a questionable retail trade practice. Municipal opt-out aggregation could allow cities to automatically modify aggregate electric services without customers’ express prior consent — a practice known as “slamming” — which is unfair to

customers and not in keeping with the principles of electric choice. Market research has shown that customers, by and large, oppose laws allowing government to choose their electric providers.

The bill also would disregard important consumer protections by allowing municipalities to function as retail electric providers without obtaining certification from the PUC, which requires demonstration of appropriate financial resources, the technical ability to supply electricity, and compliance with customer protection requirements. All of these standards constitute important safeguards put in place by the 76th Legislature when it enacted the Texas Electric Choice Act in 1999. CSHB 3498 also would require electric providers to share personal information of their clients with municipalities. This could lead to a deluge of legal and other challenges, since customers could be made to feel violated by not giving their express consent to the release of personal information for those purposes. Transferring and retailing these records also could pose unacceptable liabilities for municipalities, who could be held accountable for any personal records used inappropriately.

CSHB 3498 would present a major change in the Texas electricity market that is not justified by current circumstances. Customers have demonstrated their willingness and ability to choose electricity plans and providers that best meet their needs. As of March 2007, Texas electric retailers had processed more than 14 million electric choice-related transactions since the implementation of electric choice. Even in smaller Texas towns, residents currently have numerous suppliers to choose from — for example, Azle, Decatur, Mineral Wells, Sweetwater, Channelview, Highlands, and Atascocita all have at least 14 competing suppliers — and many customers already have exercised that choice to switch providers. PUC data shows that some of the most rural areas of the state have the highest rates of switching from original providers. Current law already allows citizens of a municipality to sign up with a municipal aggregator if they believe it offers better prices and services — the choice to do so should remain with the customer, not the city.

**OTHER
OPPONENTS
SAY:**

Requiring a majority vote in an election prior to instituting an opt-out energy aggregation policy in a municipality significantly would reduce the efficacy and impact of the bill. Electric utilities have a major stake in ensuring that municipalities are unable to effectively provide aggregation services. Retail utilities easily could band together and sink thousands of dollars into negative advertisements and other defamatory tactics to ensure

that voters were misled into believing that aggregation would affect them negatively.

The bill would be limited in scope to small cities and towns in relatively small counties and would provide citizens the option to opt-out and remain with their current provider. The small municipalities that would be eligible for automatic aggregation services would not have the resources to effectively respond to a negative campaign. Opt-out aggregation should not require a majority vote in a public election to take effect.

NOTES: The companion bill, SB 1401 by Lucio, has been referred to the Senate Business and Commerce Committee.