

SUBJECT: Delaying competition in non-ERCOT electric utilities in Northeast Texas

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Geren, Harless, Jones, Maldonado, Oliveira, Swinford, S. Turner

0 nays

2 absent — Hilderbran, Lucio

WITNESSES: For — Tom Brice, Southwestern Electric Power Company; John Fullen, AEP Southwestern Electric Power Company and the Cities Advocating Reasonable De-Regulation; (*Registered, but did not testify*: Rick Levy, International Brotherhood of Electric Workers; Thomas Ratliff, Cities Advocating Reasonable De-Regulation; Mike Williams, Texas Electric Cooperatives)

Against — None

On — (*Registered, but did not testify*: Jess Totten, 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 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.

One of the areas where customer choice has been delayed is the Southwestern Electric Power Company's (SWEPCO) service area in

Northeast Texas. A pilot program was set up to allow companies that wanted to come into Northeast Texas the opportunity to try to compete against SWEPCO, but none have attempted to do that. After finding that the region did not have a market capable of supporting customer choice, the PUC issued administrative orders delaying competition in Northeast Texas until 2011 at the earliest.

DIGEST:

CSHB 870 would delay electric utility competition in Northeast Texas and would establish a plan for transition to electric utility competition.

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

- was operating solely outside of ERCOT in areas of the state included in the Southwest Power Pool on January 1, 2008;
- was not affiliated with the Southeastern Electric Reliability Council on January 1, 2008; and
- did not have fewer than six synchronous interconnections with voltage levels above 69 kilovolts systemwide.

Until the date an electric utility was authorized to implement customer choice, the rates of the utility would be subject to traditional cost-of-service regulation. Provisions in current law governing renewable energy and energy efficiency goals would continue to apply.

Transition to competition. CSHB 870 would establish five stages to be followed to introduce retail competition into a service area of an electric utility subject to these provisions. The following stages would need to be completed before full retail competition could begin.

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 transmission network;
- development of retail market protocols to facilitate retail competition; and
- the completion of an expedited proceeding to develop non-bypassable delivery rates 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 to reduce barriers to entry and facilitate competition.

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 and that the PUC determine which competitive energy services would have to be separated from regulated utility activities.

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 electric utility could offer fair competition and reliable service to retail customers.

If the PUC determined the electric utility 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, 2009.

SUPPORTERS
SAY:

By delaying competition in the service area of SWEPCO until electric utilities in that area were able to offer fair competition and reliable

service, CSHB 870 would provide regulatory certainty for an electric market that is in a unique and challenging situation.

The region has been slow to develop attributes needed to ensure the success of competition, and it would be appropriate to delay competition until the market develops. CSHB 870 would codify readiness criteria established by the PUC, rather than provide a date certain and have to come back every legislative session to extend it.

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 are located in the Southwest Power Pool (SPP), a multi-state power grid outside of ERCOT. For this reason, Northeast Texas must compete economically with cities across the state border in other SPP states such as 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.

**OPPONENTS
SAY:**

CSHB 870 would short-circuit the PUC's process for determining when and how a non-ERCOT region should transition to 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 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. The citizens of Northeast Texas should not be denied the benefits of competition, which most of the rest of the state has had since 2002.

NOTES:

The companion bill, SB 547 by Eltife, passed the Senate by 31-0 on April 2 and was reported favorably, without amendment, by the House State Affairs Committee on April 17, making it eligible to be considered in lieu of HB 870.

Similar bills, HB 3053 and HB 2644 by Hughes, were filed in 2003 during the regular session of the 78th Legislature and in 2005 during regular session of the 79th Legislature, respectively. HB 3053 was left pending in the House Committee on Regulated Industries and HB 2644 passed the House, but died in the Senate Business and Commerce Committee.

The committee substitute differs from the bill as filed by removing language that would have required the Legislature to authorize the transition and allowing the PUC to modify the order of the stages of transition. The bill as filed would have provided that one stage must be completed before moving on to the next.