

- SUBJECT:** Allowing periodic rate adjustments by electric utilities
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Cook, Menendez, Craddick, Frullo, Harless, Hilderbran, Huberty, Solomons, Turner
- 0 nays
- 4 absent — Gallego, Geren, Oliveira, Smithee
- WITNESSES:** For — Don Clevenger, Oncor Electric Delivery; Scott Rozzell, CenterPoint Energy; (*Registered, but did not testify:* Annie Mahoney, Texas Conservative Coalition (TCC); Patrick Reinhart, El Paso Electric Company; Carlton Schwab, Texas Economic Development Council; Patrick Tarlton, Southwestern Electric Power Company (SWEPCO); Jerry Valdez, Greater Houston Partnership)
- Against — Clifford Brown, City of Corsicana; Tim Morstad, AARP; Phillip Oldham, Texas Association of Manufacturers; Tom “Smitty” Smith, Public Citizen; Sunil Thekkepat, Texas Instruments, Inc.; (*Registered, but did not testify:* Mari Ruckel, Texas Oil and Gas Association; Daniel Womack, Texas Chemical Council)
- On — Thomas Brocato, Texas Coalition for Affordable Power and Oncor Cities Steering Committee; Snapper Carr, Texas Municipal League; Steve Davis, Alliance for Retail Markets; Rudy Garza, City of Corpus Christi; (*Registered, but did not testify:* Laurie Barker, Nathan Benedict, Office of Public Utility Counsel; Barry Smitherman, Darryl Tietjen, Public Utility Commission of Texas)
- DIGEST:** CSHB 3610 would amend the Utilities Code by allowing the Public Utility Commission (PUC) or a municipal regulatory authority to approve a tariff or rate schedule in which a nonfuel rate could be periodically adjusted based on changes in the utility’s distribution capital investments.
- Periodic rate adjustments.** The PUC or municipal regulatory authority would be allowed to approve a tariff or rate schedule in which a nonfuel

rate could be periodically adjusted upward or downward, based on changes in parts of the utility's invested capital.

A periodic rate adjustment would have to:

- be approved or denied in accordance with an expedited procedure that provided for appropriate updates of information, allowed for participation by the office and affected parties, and extended for at least 60 days;
- take into account changes in the number of an electric utility's customers and the effects, on a weather-normalized basis, that energy consumption and energy demand would have on the amount of revenue recovered through the electric utility's base rates;
- be consistent with how costs were allocated to each rate class, as approved by the PUC, in an electric utility's most recent base rate statement of intent proceeding with changes to residential and commercial class rates reflected in volumetric charges, to the extent that residential and commercial class rates were collected in that manner based on the utility's most recent base rate statement of intent proceeding;
- not diminish the ability of the PUC or regulatory authority to change the existing rates of an electric utility for a service after finding that the rates were unreasonable or violated law;
- be applied on a system-wide basis; and
- be supported by a sworn statement that the filing complied with the provisions of the tariff or rate schedule, and the filing was true and correct.

Requirements of a utility requesting a periodic rate adjustment. An electric utility in the Electric Reliability Council of Texas (ERCOT) power region, or an unbundled electric utility outside such a region where retail competition was available, that requested a periodic rate adjustment would be required to implement simultaneously all nonfuel rates to be adjusted in a 12-month period and provide notice to retail electric providers of the approved rates within 45 days of the rates taking effect.

Limitations in periodic rate adjustments. An electric utility could adjust its rates only once per year and not more than four times between comprehensive base rate proceedings.

A periodic rate adjustment could not be used to adjust the portion of a nonfuel rate relating to the generation of electricity.

PUC rules for periodic rate adjustments. The PUC would be required to adopt rules by the 120th day after the bill's effective date to provide for:

- a procedure for reviewing and approving a tariff or rate schedule;
- filing requirements and discovery consistent with the expedited procedure;
- an earnings monitoring report allowing the PUC to determine whether a utility was earning more than its allowed return on investment as normalized for weather;
- denial of the electric utility's filing if it was earning more than its authorized rate of return on investment, on a weather-normalized basis, at the time the periodic rate adjustment request was filed; and
- a mechanism for the PUC to refund customers any amounts determined to be improperly recovered through a periodic rate adjustment, including any appropriate carrying costs.

Other provisions. CSHB 3610 would not be intended to:

- conflict with a provision contained in a financing order issued to provide for the recovery of system restoration costs or the securitization of system restoration costs;
- affect the limitation on the PUC's jurisdiction;
- include costs adjusted under a transmission cost-of-service adjustment in a periodic rate adjustment;
- limit the jurisdiction of a municipality over the rates, operations, and services of an electric utility;
- limit the ability of a municipality to obtain a reimbursement for the reasonable cost of services; or
- prevent the PUC from reviewing the investment costs in a periodic rate adjustment or in the following comprehensive base rate proceeding to determine whether the costs were prudent, reasonable, and necessary, or refunding to customers any amount improperly recovered through the periodic rate adjustments, with appropriate carrying costs.

Effective date and expiration date. 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, 2011, and would expire August 31, 2017.

**SUPPORTERS
SAY:**

There is a concern that current law does not adequately address the authority of municipal regulatory authorities or of the PUC to approve an electric utility tariff or rate schedule that periodically adjusted a nonfuel rate, such as distribution capital expenses, outside of a general rate case. CSHB 3610 would confirm that municipal regulatory authorities and the PUC have the authority to modernize and bring efficiencies to their electric utility rate regulation process by employing periodic rate adjustments for distribution costs.

CSHB 3610 would allow the PUC and municipal regulatory authorities to use more efficient and less expensive methods to review what have historically been routine and noncontroversial costs, such as wires, poles, substations, and transformers, if they believe it is in the public interest to do so.

The bill would benefit electric customers because it would allow regulatory authorities to move forward with efforts to adopt accounting-based approaches to regulation rather than ones driven by expensive litigation, which would save ratepayers money. Lowering the cost of regulation benefits all parties involved, including the utilities, the PUC, the municipalities, and the end-use customers.

While there are concerns that CSHB 3610 would reduce regulatory oversight, the electric utility still would need to gain approval from the regulator to implement a tariff with the adjustment mechanism. The regulator would retain the ability to require the utility to justify its rates through a full and complete rate case the next time they were filed. Also, the bill would provide some safeguards to protect parties and customers from unverifiable or improper rate increases by a utility. The bill actually would improve transparency into distribution investment and promote greater involvement by regulators in the utility planning process.

**OPPONENTS
SAY:**

CSHB 3610 would allow utilities to periodically adjust a nonfuel rate, such as distribution capital expenses, outside of a general rate case. This would address only one side of the equation. When utilities are making capital investments, it is because they have new customers who would pay for those investments through rates. If utilities were allowed to increase their rates for incremental capital investments without taking into account

the revenue received from those new customers, then the utility would likely take in more revenue than needed. Further, while a utility may be investing more dollars, they also may be reducing costs from retiring facilities they no longer use or from decreased material and labor costs. Under CSHB 3610, there would be no way to consider all of the components, such as cost reductions, that affect utility rates until a utility had a full-scale rate case.

While CSHB 3610 would require the utility to justify its rates through a full and complete rate case with the next filing, this could take years, and it could be difficult to piece together what was reasonable over a long stretch of time. There should be a regular cycle to dictate when utilities would have to have a full-scale rate case.

Also, CSHB 3610 would expedite reimbursement for capital investments. However, having a lag between when an expense is made and when the reimbursement is made is beneficial because it creates an incentive for the utility to make cost-conscious, prudent investments.

NOTES:

The companion bill, SB 1693 by Carona, passed the Senate by 30-1 (Nichols) on April 26 and was referred to the House State Affairs Committee on April 28.