

SUBJECT: Extending PUC's authority to hire outside counsel for federal proceedings

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Cook, Craddick, Farney, Harless, Huberty, Kuempel, Minjarez,
Smithee

3 nays — Farrar, Oliveira, Sylvester Turner

1 present not voting — Giddings

1 absent — Geren

SENATE VOTE: On final passage, April 9 — 31-0, on local and uncontested calendar

WITNESSES: For — (*Registered, but did not testify*: John W. Fainter, Jr., The
Association of Electric Companies of Texas, Inc.; Stephanie Simpson,
Texas Association of Manufacturers)

Against — None

On — Brian Lloyd, 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). The ERCOT region lies solely within Texas and is made up of 90 percent of Texas' total electric load and 75 percent of the state's land area. ERCOT excludes parts of the Panhandle, northeast and southeast Texas, and El Paso, which are in other adjacent power regions.

Because ERCOT is an intrastate grid, the Public Utility Commission of Texas has regulatory authority over utilities operating within. The Federal Energy Regulatory Commission (FERC) has only limited jurisdiction over certain reliability standards.

There are four Texas utilities operating outside ERCOT: Entergy Texas,

Inc.; the Southwestern Public Service; Southwestern Electric Power Company (SWEPCO); and El Paso Electric. FERC has regulatory authority over these non-ERCOT utilities.

Utilities Code, sec. 39.4525 authorizes the Public Utility Commission to use outside consultants, auditors, engineers, or attorneys to represent the commission in a federal proceeding before FERC for matters relating to Entergy. These matters could include Entergy's relationship to a power region, regional transmission organization, or independent system operator as well as the approval of an agreement concerning the coordination of the operations of Entergy and its affiliates. Expenditures are capped at \$1.5 million during a 12-month period and can be recovered through the rates.

The Public Utility Commission's authority to hire outside counsel is scheduled to expire in 2017.

DIGEST:

SB 932 would extend from 2017 to 2023 the authority of the Public Utility Commission (PUC) to use outside consultants, auditors, engineers, or attorneys to represent the commission in a proceeding before the Federal Energy Regulatory Commission (FERC) for matters relating to Entergy Texas, Inc. The bill also would extend the authorization to use outside counsel for other matters related to the electric utility that could affect the ultimate rates paid by retail customers in this state.

The bill also would give the PUC that same authority to use outside counsel in proceedings before FERC for two other non-ERCOT utilities, the Southwestern Public Service and SWEPCO. Each authorization also would have an expiration date of 2023 and would include the 12-month expenditure limit of \$1.5 million.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 932 would provide an important tool for the Public Utility Commission (PUC) to respond to complex federal regulatory matters and better enable it to protect the public interest in Texas. Federal Energy

Regulatory Commission (FERC) proceedings tend to be lengthy and complicated, requiring specialized legal and consulting services.

The bill would extend the authorization and expenditure limit for the PUC to use outside counsel for federal proceedings relating to Entergy from 2017 to 2023. The PUC currently is a party to 21 separate FERC proceedings related to Entergy and anticipates that these proceedings will continue beyond 2017. Extending the existing expiration date would allow the PUC to continue retaining necessary legal and consulting services to ensure that Entergy's Texas ratepayers were adequately represented before FERC.

The bill also would create authority for the PUC to engage similar outside experts for issues relating to two other non-ERCOT utilities — the Southwestern Public Service and SWEPCO. The PUC has found itself increasingly involved in matters at FERC concerning how the wholesale markets in these areas work and how new transmission facilities are planned, built, and paid for. Texas ratepayers could be exposed to higher rates if the other states or FERC tried to make Texas bear more than its fair share of these costs. In addition, pending Environmental Protection Agency regulations may require additional work at FERC related to reliability of the power grids in these areas and additional cost allocation risk to Texas consumers.

The annual amount of costs to ratepayers would be capped for each utility and would be recovered through rates paid by customers for whom the PUC was acting. In the three years that this authority has existed for Entergy, the PUC has spent less than \$800,000. While hiring outside counsel would be a cost to ratepayers, the costs would be minimal compared to what could result if the PUC was not adequately represented in federal proceedings.

**OPPONENTS
SAY:**

SB 932 would allow costs of hiring outside counsel to be passed on to ratepayers. While the bill would provide a cap on the expenditures, this would place an additional burden on ratepayers, especially those with low incomes.