

SUBJECT: Allowing certain utilities to adjust rates for power-generation investments

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Harless, Holland, Hunter, P. King, Parker,  
Raymond, E. Rodriguez, Smithee, Springer

0 nays

2 absent — Hernandez, Guerra

WITNESSES: For — Jonathan Griffin, AEP SWEPCO; Julia Rathgeber, Association of  
Electric Companies of Texas; Lino Mendiola, Entergy Texas Inc.;  
(*Registered, but did not testify*: Gary Gibbs, AEP SWEPCO; Isaac  
Albarado, AEP Texas; June Deadrick, CenterPoint Energy; Patrick  
Reinhart, El Paso Electric Company; Michael Geary, Texas Conservative  
Coalition; Jake Posey, Universal Coin and Bullion Ltd. of Beaumont;  
Mance Zachary, Vistra Energy; Damon Withrow, Xcel  
Energy/Southwestern Public Service Co.)

Against — Richard A. Bennett and Phillip Oldham, Texas Association of  
Manufacturers; Hector Rivero, Texas Chemical Council; Todd Staples,  
Texas Oil and Gas Association; (*Registered, but did not testify*: Joe  
Arnold, BASF Corporation; Paula Bulcao, BP America, Inc.; Guadalupe  
Cuellar, City of El Paso; Jamaal Smith, City of Houston; Alfred Herrera,  
Counsel for Cities Advocating Reasonable Deregulation, Texas Coast  
Utilities Coalition of Cities, Alliances of CenterPoint Municipalities,  
Atmos Texas Municipalities; Daniel Womack, Dow Chemical; Samantha  
Omev, Exxon Mobil; Todd Morgan, International Paper Corp.; Randy  
Cubriel, Nucor; Julie Moore, Occidental Petroleum; Neftali Partida,  
Phillips 66; Shanna Igo, Texas Municipal League; Brad Schlueter, U.S.  
Steel; Jay Brown, Valero; Jonathan Harding, WestRock Company)

On — Cyrus Reed, Lone Star Chapter Sierra Club; Darryl Tietjen, JP  
Urban, Public Utilities Commission of Texas

**BACKGROUND:** Utilities Code sec. 36.003 requires regulatory authorities to ensure that rates set by electric utilities are just and reasonable. Sec. 36.051 requires regulatory authorities to establish an electric utility's revenue at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on invested capital while providing services to the public.

Sec. 36.212 requires electric utilities that operate solely outside of the Energy Reliability Council of Texas undergo a base rate review at least every four years.

**DIGEST:** HB 1387 would allow electric utilities that operate outside the Energy Reliability Council of Texas (ERCOT) to submit to the Public Utility Commission (PUC) an application for a rider to recover the non-ERCOT utility's reasonable and necessary power generation investments.

The application could be filed and approved by PUC before the utility placed the power generation investment in service. The rider would take effect on the date the investment began providing service.

The rider would be required to account for changes in the number of an electric utility's customers and the effects, on a weather-normalized basis, that energy consumption and demand had on the amount of revenue recovered through the utility's base rates.

If the utility's investment was greater than \$200 million on a Texas jurisdictional basis, the utility would be required to undergo a base rate review no later than 18 months after the rider took effect.

The bill would extend the expiration date of certain statutory provisions relating to cost recovery and rate adjustment for non-ERCOT utilities from September 1, 2023, to September 1, 2031.

PUC would be required to adopt rules as necessary to implement the bill by September 1, 2020.

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, 2019.

**SUPPORTERS  
SAY:**

HB 1397 would reduce regulatory lag and encourage investment in non-Electric Reliability Council Of Texas (ERCOT) areas by allowing electric utilities in those locations to request riders to modify their rates in order to build new power-generation infrastructure. Under current law, these utilities only are able to adjust their rates every four years, which often has left them unable to recoup the costs of their investments.

Consumers would be protected from excessive rate hikes because the Public Utility Commission (PUC) would have authority to grant or reject the rider based on whether the investment was prudent and necessary and whether the proposed rates were just and reasonable. PUC already is required to host hearings on riders. Any consumer may request a rate case review, and PUC is required to initiate such a review if a utility over-earns for two years in a row.

Allowing utilities to apply for riders would make the cost recovery process for power-generation investment more efficient, leading to lower borrowing costs. This would strengthen non-ERCOT utility credit ratings and lead to lower capital costs, which could reduce rates.

**OPPONENTS  
SAY:**

HB 1397 could allow non-ERCOT utilities to raise rates and exceed their permitted return on investment by using riders to shift the burden of investment to captive ratepayers. Riders could be susceptible to abuse because they would not take into account whether costs had decreased elsewhere in the system and could extend for up to four years without receiving a base rate review from PUC.

**OTHER  
OPPONENTS  
SAY:**

HB 1397 should be amended to create a study to investigate the potential for securitization for non-ERCOT utilities that would couple investment in cleaner power generation with the retirement of older infrastructure that could cause issues with water use or air quality.