

BILL ANALYSIS

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C.S.H.B. 1692
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Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

The Texas Panhandle region, served by Southwestern Public Service Company (SPS), is transmission constrained, which means that power consumed in the Panhandle must be generated in the region. Currently, SPS is scheduled to sell 80% of its generation assets to unregulated companies and to unbundle its generation company which would weaken the ability of the Public Utility Commission of Texas (PUC) to regulate generation rates paid by customers. A slower, more structured transition to competition for regions with transportation and generation shortages may serve to protect consumers. C.S.H.B. 1692 prohibits full retail customer choice for competitive development areas from beginning until the later of January 1, 2007, or the date on which a non-ERCOT utility is authorized by the PUC to implement customer choice.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 39.401, 39.402, and 39.407, Utilities Code, as follows:

Sec. 39.401. **APPLICABILITY.** Provides that the legislature finds that circumstances exist that require that areas served by certain electric utilities be treated as competitive development areas in which it is not in the public interest to transition to full retail customer choice at this time. Deletes language regarding a structured schedule.

Sec. 39.402. New heading: **REGULATION OF UTILITY AND TRANSITION TO COMPETITION.** (a) Requires that, until the later of January 1, 2007, or the date on which an electric utility subject to this subchapter is authorized by the Public Utility Commission of Texas (commission) to implement customer choice, the rates of the utility be regulated under traditional cost of service regulation and the utility be subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Provides that until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter, Section 39.904, and the provisions relating to the duty to obtain a permit from the Texas Natural Resource Conservation Commission for an electric generating facility and to reduce emissions from an electric generating facility, do not apply to that utility. Requires that portion of any commission order entered before September 1, 2001, to comply with this subchapter be null and void.

(b) Requires that until the date on which an electric utility subject to this subchapter implements customer choice, Section 33.008 does not apply and requires the utility to pay franchise fees to a municipality as required by the utility's franchise agreement with the municipality. Provides that after the date on which an electric utility subject to this subchapter implements customer choice, Section 33.008 applies. Requires, however, for purposes of computing the franchise fees as provided by Section 33.008(b), the

calendar year immediately preceding the implementation of customer choice to be substituted for the year 1998.

(c) Provides that, on or after January 1, 2007, an electric utility, rather than all electric utilities, subject to this subchapter may choose to participate in customer choice. Requires an electric utility that chooses to participate in customer choice to file a transition to competition plan with the commission. Requires this transition to competition plan to identify how utilities subject to this subchapter intend to mitigate market power and achieve full customer choice, including specific alternatives for constructing additional transmission facilities, auctioning rights to generation capacity, divesting generation capacity, or any other measure that is consistent with the public interest. Requires the utility to also include in the transition to competition plan a provision to establish a price to beat for residential customers and commercial customers having a peak load of 1,000 kilowatts or less. Authorizes the commission to prescribe additional information or provisions that must be included in the plan. Requires the commission to approve, modify, or reject a plan within 180 days after the date of a filing under this section; provided, however, that if a hearing is requested by any party to the proceeding, the 180-day deadline will be extended one day for each day of hearings. Authorizes the transition to competition plan to be updated or amended annually, subject to commission approval until the applicable power region is certified as a qualifying power region under Section 39.152.

(d) Provides that on implementation of customer choice, an electric utility subject to this subchapter is subject to the provisions of this subtitle and Subtitle A to the same extent as other electric utilities, including the provisions of Chapter 37 concerning certificates of convenience and necessity.

Sec. 39.407. New heading: CUSTOMER CHOICE AND RELEVANT MARKET AND RELATED MATTERS. (a) Prohibits the commission, if an electric utility chooses on or after January 1, 2007, to participate in customer choice, from authorizing customer choice until the applicable power region has been certified as a qualifying power region under Section 39.152(a). Requires the commission, except as otherwise provided by this subsection, to certify that the requirements of Section 39.152(a)(3) are met for electric utilities subject to this subchapter only upon a finding that the total capacity owned and controlled by each such electric utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the constrained geographic region served by each such electric utility plus the total available transmission capacity capable of delivering firm power and energy to that constrained geographic region. Requires that, not later than May, 1, 2002, each electric utility subject to this subchapter submit to the electric utility restructuring legislative oversight committee an analysis of the needed transmission facilities necessary to make the electric utility's service area transmission capability comparable to areas within the ERCOT power region. Requires that, on or after September 1, 2003, each electric utility subject to this subchapter file the utility's plans to develop the utility's transmission interconnections with the utility's power region or other adjacent power regions. Requires the commission to review the plan and, not later than the 180th day after the date the plan is filed, determine the additional transmission facilities necessary to provide access to power and energy that is comparable to the access provided in areas within the ERCOT power region; provided, however, that if a hearing is requested by any party to the proceeding, the 180-day deadline will be extended one day for each day of hearings. Requires the commission, as a part of the commission's approval of the plan, to approve a rate rider mechanism for the recovery of the incremental costs of those facilities after the facilities are completed and in-service. Requires a finding of need under this subsection to meet the requirements of Sections 37.056(c)(1), (2), and (4)(E). Authorizes the commission to certify that the requirements of Section 39.152(a)(3) are met for electric utilities subject to the subchapter if the commission finds certain requirements.

(b) Prohibits the electric utility, in the area of a power region served by an electric utility subject to this subchapter, from choosing to participate in customer choice unless the affiliated power generation company makes a commitment to maintain and does maintain rates that are based on cost of service for any electric cooperative or municipally owned utility that was a wholesale customer on the date the utility chooses to participate in customer choice and was purchasing power at rates that were based on cost of service.

(c) Requires that, if the requirements of Section 39.152(a) have not been met for an electric utility subject to this subchapter when the electric utility chooses to participate in customer choice, then any power generation company in the power region affiliated with an electric utility subject to this subchapter maintain adequate supply and facilities to provide electric service to persons who were retail customers of the electric utility on the date the utility chooses to participate in customer choice.

SECTION 2. Amends Chapter 39I, Utilities Code, by adding Sections 39.409 and 39.410, as follows:

Sec. 39.409. RECOUPMENT OF TRANSITION TO COMPETITION COSTS. Provides that an electric utility subject to this subchapter is entitled to recover, as provided by this section, all reasonable and necessary expenditures made or incurred before September 1, 2001, to comply with the provisions of this chapter. Provides that, not later than December 1, 2001, each electric utility subject to this subchapter may file with the commission an application for recovery detailing the amounts spent or incurred. Requires the commission, after notice and hearing, to review the amounts and, if it finds them to be reasonable and necessary, approve a transition to competition retail rate rider mechanism for the recovery of the approved transition to competition costs. Requires rate rider implemented to recover approved transition to competition costs to expire not later than December 31, 2006.

Sec. 39.410. CONTRACTUAL OBLIGATIONS. Prohibits this subchapter from:

- (1) interfering with or abrogating the rights or obligations of any party, including a retail or wholesale customer, to a contract with an investor-owned electric utility, river authority, municipally owned utility, or electric cooperative;
- (2) interfering with or abrogating the rights or obligations of a party under a contract or agreement concerning certificated utility service areas; or
- (3) resulting in a change in wholesale power costs to wholesale customers in Texas purchasing electricity under wholesale power contracts the pricing provisions of which are based on formulary rates, fuel adjustments, or average system costs.

SECTION 3. Repealer: Sections 39.403 (Unbundling), 39.404 (Rate Freeze), 39.405 (Pilot Project), 39.406 (Price to Beat), and 39.408 (Use of Revenues for Utilities With no Stranded Costs), Utilities Code.

SECTION 4. Effective date: upon passage or September 1, 2001.