

BILL ANALYSIS

Senate Research Center

H.B. 1567
By: Ritter (Williams)
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Southeast Texas region, served by Entergy Gulf States, Inc. (EGSI), is a developing wholesale electric market that does not have an Electric Reliability Council of Texas (ERCOT) type structure or market in place. EGSI was scheduled to move to competition on January 1, 2002, but the Public Utility Commission of Texas (commission) delayed competition in this area and pursued, with EGSI and other market participants, an alternative market structure that would have allowed competition to commence prior to a fully developed wholesale market. Although a great deal of time and money were spent on such efforts, the commission determined that such a structure would not allow competition to begin in that area of the state.

The commission's decision and its subsequent dismissal of EGSI's rate case filed August 25, 2004, have resulted in greater uncertainty for EGSI and its customers, which threatens the ability to serve customers in a predictable and cost-effective manner. A more structured transition to competition for this region, as opposed to an interim solution, together with the opportunity for EGSI to seek rate relief, will serve to protect consumers and should ultimately result in a more adequate, developed wholesale market structure.

H.B. 1567 lays out a transition to competition for this area until the commission certifies the applicable power region and authorizes EGSI 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 Section 39.402(a), Utilities Code, to require the rates of an electric utility to be regulated under traditional cost of service regulation and to provide that the utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37, until the later of January 1, 2009, rather than 2007, or the date on which the utility is authorized by the Public Utility Commission of Texas (commission) to implement customer choice.

SECTION 2. Amends Chapter 39, Utilities Code, by adding Subchapter J, as follows:

SUBCHAPTER J. TRANSITION TO COMPETITION IN CERTAIN NON-ERCOT AREAS

Sec. 39.451. **APPLICABILITY.** Provides that this subchapter applies only to an investor-owned electric utility that is operating solely outside of ERCOT in areas of this state that were included in the Southeastern Electric Reliability Council on January 1, 2005.

Sec. 39.452. **REGULATION OF UTILITY AND TRANSITION TO COMPETITION.**
(a) Requires the rates of the electric utility to be regulated under traditional cost-of-service regulation and provides that the electric utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37, until the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice under Section 39.453.

(b) Prohibits a person, notwithstanding Subsection (a) and except for adjustments authorized by Sections 36.203, 39.454, 39.455, and 39.456, from filing a proceeding to change, alter, or revoke any rate offered or charged by an electric utility subject to this subchapter before June 30, 2007, with an effective date no earlier than June 30, 2008. Requires the utility, as part of a Subchapter C, Chapter 36, rate proceeding, to propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation. Requires the commission to approve, reject, or modify the proposed tariff. Prohibits the tariffs subject to this subsection from being considered to offer a discounted rate or rates under Section 36.007, and requires the utility's rates to be set, in the proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the implementation of the tariff.

(c) Provides that the portion of any commission order issued before the effective date of this section requiring the electric utility to comply with a provision of this chapter is void.

(d) Provides that, until the date on which an electric utility subject to this subchapter implements customer choice, certain provisions of this chapter do not apply to that electric utility, the electric utility is not subject to a rate freeze and is authorized to file for rate changes under Chapter 36 and for approval of one or more of the rate rider mechanisms authorized by Sections 39.454 and 39.455, with certain limitations, the electric utility is prohibited from using credit scoring for certain purposes, the electric utility is required to accept a security deposit from a residential customer for specific purposes, and the electric utility is required, without interruption or a reduction in resources, to continue to offer all programs to assist low-income customers that were being offered on January 1, 2005.

(e) Authorizes an electric utility subject to this subchapter to proceed with and complete jurisdictional separation to establish two vertically integrated utilities, one of which is solely subject to the retail jurisdiction of the commission and one of which is solely subject to the retail jurisdiction of the Louisiana Public Service Commission.

(f) Requires an electric utility subject to this subchapter, not later than January 1, 2006, to file a plan with the commission for identifying the applicable power region or power regions, enumerating the steps to achieve the certification of a power region in accordance with Section 39.453, and specifying the schedule for achieving the certification of a power region. Authorizes the utility to amend the plan as appropriate. Authorizes the commission, on its own motion or the motion of any affected person, to initiate a proceeding to certify a qualified power region under Section 39.152 when the conditions supporting such a proceeding exist.

(g) Requires the electric utility, not later than the earlier of January 1, 2007, or the 90th day after the date the applicable is certified in accordance with Section 39.453, to file a transition to competition plan. Sets forth specific requirements for the transition to competition plan.

(h) Requires the commission to approve, modify, or reject a plan filed under Subsection (g) not later than the 180th day after the date the plan is filed unless a hearing is requested by any party to the proceeding. Prohibits a modification to the plan by the commission from being in conflict with the jurisdiction or orders of the Federal Energy Regulatory Commission or resulting in significant additional cost without allowing for timely recovery of that cost. Provides that, if a hearing is requested, the 180-day deadline is extended one day for each day of the hearing. Requires the transition to competition plan to be updated or amended annually, subject to commission approval, until the initiation of customer choice by an electric utility subject to this subchapter. Requires the commission, consistent with its jurisdiction, to have the authority in approving or modifying the transition to competition plan to require the electric utility to take reasonable

steps to facilitate the development of a wholesale generation market within the boundaries of the electric utility's service territory.

Sec. 39.453. **CUSTOMER CHOICE AND RELEVANT MARKET AND RELATED MATTERS.** Prohibits the commission from authorizing customer choice until the commission certifies the applicable power region as a qualifying power region under Section 39.152(a). Provides that Sections 39.152(b)-(d) also apply to the electric utility and commission in determining whether to certify the applicable power region. Requires the commission to certify that the requirement of Section 39.152(a)(3) is met for an electric utility subject to this subchapter only if the commission finds that the total capacity owned and controlled by the electric utility and the utility's affiliates does not exceed 20 percent of the total installed generation capacity within the power region of that utility.

Sec. 39.454. **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 the effective date of this section to comply with this chapter, to the extent the costs have not otherwise been recovered. Authorizes the electric utility to file with the commission an application for recovery that gives details of the amounts spent or incurred. Requires the commission, after notice and hearing, to review the amounts and, if the amounts are found to be reasonable and necessary and not otherwise previously recovered, to approve a transition to competition retail rate rider mechanism for the recovery of the approved transition to competition costs. Provides that a rate proceeding under Chapter 36 is not required to implement the rider. Requires a rate rider implemented to recover approved transition to competition costs to provide for recovery of those costs over a period not to exceed 15 years, with appropriate carrying costs.

Sec. 39.455. **RECOVERY OF INCREMENTAL CAPACITY COSTS.** Entitles an electric utility subject to this subchapter to recover, through a rate rider mechanism, reasonable and necessary costs of incremental resources required to meet load requirements to the extent those costs result in the utility expending more for capacity costs under purchase power agreements than were included in the utility's last base rate case, adjusted for load growth. Requires any rider under this section to be implemented after review and approval by the commission, after notice and opportunity for a hearing. Authorizes an electric utility subject to this subchapter, following the initial implementation of the rider, to request revisions semiannually, after notice and opportunity for hearing, on the dates provided in the commission's rules for filing petitions to revise the utility's fuel factor. Requires the commission, in conjunction with the utility's fuel reconciliation proceedings, to reconcile the costs recovered under the rider and the actual incremental capacity costs eligible for recovery under this section. Requires the rider to expire on the introduction of customer choice or on the implementation of rates resulting from the filing of a Subchapter C, Chapter 36, rate proceeding. Prohibits the amount recovered annually under the rider, in no event, from exceeding five percent of the utility's annual base rate revenues.

Sec. 39.456. **FRANCHISE AGREEMENTS.** Authorizes a municipality, with the agreement of an electric utility, to accelerate the expiration date of a franchise agreement that was in existence on September 1, 1999. Requires any new franchise agreement to be approved by the governing body of the municipality. Authorizes either the electric utility or the municipality, to the extent that a new franchise agreement would result in an increase in the payment of franchise fees to the municipality, and subject to the terms of the franchise agreement, without the need for a rate proceeding under Chapter 36, to file with the commission for approval of a rider for the electric utility's recovery of franchise payments resulting from the agreement, so long as such rider is collected only from customers of the electric utility that are located within the boundaries of the municipality.

Sec. 39.457. **CONTRACTUAL RIGHTS.** Requires an electric utility subject to this subchapter, in the event that the utility either merges, consolidates, or otherwise becomes affiliated with another owner of electric generation, or completes the jurisdictional separation authorized by Section 39.452(e), and the resulting vertically integrated utility

proposes to join a regional transmission organization, and either action adversely affects the rights or obligations of an electric cooperative under a wholesale generation or transmission agreement entered into before the effective date of this subchapter or otherwise adversely affects the electric cooperative's access to its existing generation resources under said agreements, to submit a proposal agreeable to the cooperative and the utility for addressing such rights and obligations in the appropriate regulatory proceeding. Requires such proposal to be consistent with applicable law regarding the rights and obligations of the electric cooperative and the utility under such existing generation or transmission agreements.

SECTION 3. Effective date: upon passage or September 1, 2005.