

SUBJECT: Providing consumer protections in the restructured electric market

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Solomons, Menendez, Cook, Farabee, Gallego, Geren, Jones, Lucio, Maldonado, Swinford, S. Turner

2 nays — Craddick, Harless

2 absent — Hilderbran, Oliveira

WITNESSES: (*On original bill:*)

For — Robert Brady, City of Denison; Gene Carey, City of Lewisville; Larry Homan, Town of South Padre Island; Bert Massey, City of Brownwood; Tom “Smitty” Smith, Public Citizen; Leonard Strub, AARP; Don Wilson, City of Eastland; (*Registered, but did not testify:* Steven Bacchus, City of Lewisville; Thomas Brocato, Texas Coalition of Cities for Utility Issues; Kristen Doyle, Cities Aggregation Power Project; Brendan Hall, City of Harlingen; Stephen Massey, City of Allen, Cities Aggregation Power Project; Randolph Moravec, Town of Addison; David Ragsdale, City of Benbrook)

Against — (*Registered, but did not testify:* Lisa Blocker, Energy Future Holdings; William A. Scott, Exelon Generation)

On — Carol Biedrzycki, Texas Ratepayers Organization to Save Energy; Marianne Carroll, Texas Competitive Power Advocates; Stephen Davis, Alliance for Retail Marketers; John W. Fainter, Jr., Association of Electric Companies of Texas, Inc.; Michael Jewell, Reliant Energy; Jan Newton, Electric Reliability Council of Texas; Phillip Oldham, Texas Association of Manufacturers; Ned Ross, Direct Energy, CPL Retail Energy, WTU Retail Energy; Barry Smitherman, Public Utility Commission; Catherine Webking, Texas Energy Association for Marketers; (*Registered, but did not testify:* Don Ballard, Public Utility Counsel; Lois Maryland, Association of Community Organizations for Reform Now; Larry Wall, Lone Star Transmission, LLC)

DIGEST: CSHB 3245 would amend the Utilities Code to add various consumer protection provisions, including guidelines for electric service

disconnection in the summer months, deferred payment options to prevent disconnection, a retail market monitor to detect and prevent market manipulations, mitigation options for market abuse, and provisions regarding the cost for nodal implementation and the publication of natural gas and electric prices.

Disconnection of electric service during extreme weather conditions.

CSHB 3245 would prohibit an electric provider from disconnecting service to a residential customer during a day when the heat index would be at least 105 degrees Fahrenheit, or a period when, on any one of the previous two calendar days, the National Weather Service observed a heat index of 105 degrees Fahrenheit or more in any part of a county in the relevant service territory.

During the period between July 1 and September 30 of each year, a provider could not disconnect a residential customer who:

- was a low-income and requested and complied with a deferred payment plan;
- was low-income, 65 years of age or older, and requested and complied with a deferred payment plan; and
- was designated as a critical care customer.

Deferred payment plans. A provider would be required to offer a residential customer a deferred payment plan that allowed the customer to avoid disconnection between July 1 and September 30. The customer would be eligible for a deferred plan if the customer:

- did not owe an outstanding balance from a deferred payment plan in a previous year;
- paid a minimum of 33 percent of the outstanding balance due; and
- agreed to pay the remaining balance in equal installments over the next five billing cycles.

A customer granted a deferred payment plan could continue to avoid disconnection by paying the additional amounts that become due, or paying a minimum of 33 percent of the balance, and agreeing to pay the recalculated remaining balance in equal installments over the next five billing cycles.

A provider would be required to offer a deferred payment plan without payment until after September 30 if the customer agreed to pay a minimum of 25 percent of the deferred charges and the remaining balance in equal installments over the next five billing cycles or less.

A provider would be required to allow a residential critical care customer to pay unpaid amounts accumulated from July 1 through September 30 over the next six billing cycles after September 30.

A provider could encourage a residential low-income customer of at least 65 years of age and a residential critical care customer to make a partial payment toward a deferred amount, but would be required to inform the customer that they could not be disconnected for nonpayment before October 1 following that period.

The PUC, by rule, would be required to provide a uniform standard to apply when designating a critical care residential customer and special protections and procedures to apply when disconnecting a critical care residential customer.

Retail electric market monitor. The Electric Reliability Council of Texas (ERCOT) would be required to contract with a retail electric market monitor to detect and prevent market manipulation strategies and unfair, misleading, or deceptive practices and to recommend measures to enhance the efficiency of the retail market. ERCOT would be required to provide full access to records concerning operations, settlement, and reliability of the retail market and would pay for the monitor's activities.

The PUC would be required to adopt rules and perform oversight of the retail market monitor as necessary and, by rule, define the monitoring responsibilities, standards for funding, personnel qualifications, and ethical standards for the retail market monitor.

The retail market monitor would be required to report immediately any potential market manipulations or violations of rules as well as submit an annual report to the PUC and ERCOT identifying market design flaws and recommending methods to correct the flaws.

Market power abuse. On a finding of market power abuse, the PUC would require mitigation of the market power by one or any combination of the following:

- order the construction of additional transmission or distribution facilities;
- seek an injunction or civil penalties;
- impose an administrative penalty;
- order refunds to affected parties;
- suspend, revoke, or amend a certificate or registration of a retail electric provider (REP).

The PUC would be required to investigate whether a retail electric provider (REP) was abusing market power or engaging in unfair, misleading, or deceptive practices. REPs would be required to cooperate and provide information.

The PUC would be required to permit the Office of Public Utility Counsel to participate in enforcement proceedings to seek refunds.

Cost of nodal market implementation. ERCOT would not be able to pass through to a retail customer or REP a cost associated with nodal wholesale market design implementation.

Publication of natural gas and electric pricing. The PUC would be required to publish on their website and www.powertochoose.org price comparisons of natural gas, real-time or balancing electric energy, and retail electricity, to be updated at least once each business day.

Effective 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, 2009.

SUPPORTERS
SAY:

Since the deregulation of the electric market in Texas, concerns have been raised about the benefits to consumers and whether there are adequate market and consumer protections in place. This legislation would provide necessary guardrails so that consumers could benefit from the current market structure.

Many poor and elderly Texans face disconnection of electric service over the summer when extreme temperatures result in sky-high electric bills. This poses an unnecessary and extreme health hazard to children and the elderly. CSHB 3245 would provide regulatory certainty that these customers would be able to avoid disconnection of electricity when they needed it the most.

The language in the committee substitute would address many of the concerns expressed about provisions contained in the bill as filed. The committee substitute is the product of an extensive stakeholder process with input from consumer advocacy groups, the environmental community and the electric industry.

OPPONENTS
SAY:

CSHB 3245 would place a moratorium on electric disconnections for a large class of consumers during the summer months. Historically, moratoria have resulted in REPs being left with millions of dollars of bad debt. This bill would expand the pool of people who would be able to defer payments and would expand the amount of time the payments could be deferred. REPs would be forced to deliver a product without payment for several months. By the time the deferral period was over, the amount of money the consumer owed would be so large that many consumers would likely never catch up and ultimately would be disconnected, leaving the REP with a bad debt that would raise the rates of all of their electric consumers. REPs should not be forced to float a large class of customers for several months when there are other avenues of bill pay assistance available through the System Benefit Fund and the Texas Department of Housing and Community Affairs.

OTHER
OPPONENTS
SAY:

CSHB 3245 would make good progress in addressing consumer and market protections, but the language in the bill regarding the retail market monitor is broad enough to include the wholesale market. This could blur the distinction between the existing independent wholesale market monitor and a retail market monitor. The language should be tailored to fit the specific needs of the retail market.

NOTES:

The committee substitute differs from the bill as filed by:

- increasing the heat index temperature from 100 to 105 degrees Fahrenheit;
- adding guidelines for electric service disconnection during the summer months;
- adding a provision for deferred payment plans;
- removing a provision relating to the composition of the ERCOT board;

- removing a provision that in order to maintain certification as an independent organization, ERCOT would have to operate an electrical network that was contained wholly within the Texas borders;
- adding a provision related to mitigation of market power abuses;
- removing a provision prohibiting the filed rate doctrine from being a defense in any private party suite that alleged market power abuse;
- removing a provision that established that a low market share would not be sufficient to preclude a finding that generator participate in market power abuse;
- removing a provision relating to CCNs;
- prohibiting ERCOT from passing costs of the nodal wholesale market design implementation onto REPs or customers;
- removing a requirement that an electric utility, transmission and distribution utility, or river authority designated to participate in the construction of transmission for the competitive renewable energy zones to seek federal stimulus funds;
- removing all provisions relating to smart meters;
- removing a provision requiring the PUC and ERCOT to make public hearings available online without charge;
- adding a provision relating to the PUC's retail electric market monitor;
- adding a provision regarding investigation market power abuses;
and
- adding a provision requiring PUC to publish price comparisons of natural gas, real-time or balancing electric energy, and retail electricity on the Internet.