

SUBJECT: Securitization of extraordinary costs incurred by certain gas utilities

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 8 ayes — Goldman, Craddick, Darby, Geren, T. King, Leman, Longoria,
Reynolds

0 nays

3 absent — Herrero, Anchia, Ellzey

WITNESSES: For — Conrad Gruber, Atmos Energy Corporation; Jason Ryan,
CenterPoint Energy; Brent Bishop, CoServ Gas, Ltd.; Daniel Pope,
SiEnergy, LP; Riley Stinnett, Texas Gas Service; (*Registered, but did not
testify*: Kyle Frazier, Epcor; Jason Modglin, Texas Alliance of Energy
Producers; Tyler Rudd, West Texas Gas; Tom Glass)

Against — None

On — Cyrus Reed, Lone Star Chapter Sierra Club; Mark Evarts, Railroad
Commission; (*Registered, but did not testify*: Natalie Dubiel, Railroad
Commission)

DIGEST: CSHB 1520 would provide securitization financing for gas utilities to
recover extraordinary costs related to securing gas supply and providing
service during natural and man-made disasters, system failures, or other
catastrophic events and restoring systems after those types of events.

The securitization financing mechanism would have to provide rate relief
to customers by extending the period during which the extraordinary costs
were recovered from customers and support the financial strength and
stability of gas utility companies.

The Railroad Commission (RRC) would have to ensure that securitization
provided tangible and quantifiable benefits to customers and that the
structuring and pricing of the customer rate relief bonds would result in

charges consistent with the terms of the applicable financing order and market conditions at the time of the pricing of the bonds.

Extraordinary costs. Under the bill, extraordinary costs would be the reasonable and necessary costs placed in a regulatory asset and approved by the RRC in a regulatory asset determination. They would include any costs of acquiring, retiring, and refunding a gas utility's existing debt and equity securities or credit facilities in connection with the issuance of customer rate relief bonds.

The bill would specify other items extraordinary costs could include, such as costs incurred to serve customers, including costs incurred by a utility for gas procurement, supply and system restoration and infrastructure, operations and administration in response to a hurricane, ice or snow storm, or other weather-related event, a natural or man-made disaster, or another catastrophic event. Extraordinary costs also could include natural gas procurement costs above normalized market pricing and reasonable estimates of those costs or the costs of any activity conducted or expected by the utility in connection with the restoration of service or infrastructure associated with natural gas outages.

A carrying charge interest rate at the gas utility's cost of long-term debt as last approved by the RRC in a general rate proceeding could be considered an extraordinary cost if the commission's final order was filed no more than three years before the application for regulatory asset recovery was filed. If the final order did not meet that requirement, the bill would provide for an alternative cost of long-term debt that would have to be used. The carrying charge interest rate set at the applicable cost of long-term debt would have to be applied from the date the extraordinary costs were incurred until the customer rate relief bonds were issued or extraordinary costs were otherwise recovered by the gas utility.

Powers of RRC, other regulatory authorities. The RRC would have exclusive, original jurisdiction to issue financing orders that authorized the creation of customer rate relief property, customer rate relief charges to service customer rate relief bonds, and financing costs. The commission

could authorize the issuance of customer rate relief bonds if other requirements of the bill were met.

The RRC could assess to a gas utility costs associated with administering the bill, and the assessments would have to be recovered from rate-regulated customers as part of gas cost. The bill would not limit or impair a regulatory authority's plenary jurisdiction over the rates, charges, and services rendered by gas utilities.

Regulatory asset determination. A gas utility desiring to participate in the customer rate relief bond process under a financing order would have to file an application with the commission within 90 days after the conclusion of the event for which regulatory asset recovery was requested. The RRC would determine the amount to be recovered.

A gas utility desiring to request recovery relating to the February 2021 winter storm could file an application within 60 days after the bill's effective date.

If the commission did not make a final determination on the regulatory asset amount to be recovered within 91 days after the utility filed the application, the regulatory asset amount requested by the utility would be considered approved. The bill would provide a process by which a utility could appeal the regulatory asset determination.

Financing orders, issuance of bonds. If the RRC determined that customer rate relief bond financing for extraordinary costs was the most cost-effective method of funding regulatory asset reimbursements, the RRC could request the Texas Public Finance Authority (TPFA) to issue bonds on the commission's behalf. The RRC would have to make the determination by comparing the net present value of the costs to customers resulting from the issuance of bonds and the costs that would result from conventional methods of financing extraordinary costs and would have to issue a financing order before making the request.

The financing order would have to be issued within 90 days after the

regulatory asset determination was concluded and do certain things as listed in the bill, including:

- finding that the use of the securitization financing mechanism was in the public interest;
- authorizing TPFA's issuance of bonds through one or more legally isolated, bankruptcy-remote financing entities;
- including a statement of the aggregated regulatory asset determination to be included in the principal amount of the bonds, not to exceed \$10 billion for any issue, and the maximum scheduled final maturity of the bonds, not to exceed 30 years;
- providing that customer rate relief charges be allocated among customers of each utility for which a regulatory determination had been made through uniform monthly volumetric charges to be paid as a component of gas cost; and
- reflecting the commitment made by each utility receiving proceeds that the proceeds were in lieu of recovery of those costs through the regular ratemaking process.

A financing order also would have to ensure that the imposition and collection of the authorized customer rate relief charges were nonbypassable, meaning the charges could not be offset by any credit.

The principal amount could be increased to include an amount sufficient to pay the financing costs for issuance, reimburse TPFA for any incurred costs, provide a bond reserve fund, and capitalize interest for the period determined necessary by the RRC.

TPFA would have to issue customer rate relief bonds at the RRC's request within 45 days after receipt of a financing order and determine the terms of the bonds that best achieved the economic goals of the financing order at the lowest practicable cost.

TPFA would have to deliver bond proceeds net of upfront financing costs to each utility sufficient to reimburse the determined regulatory asset amount within 15 days after the bonds were issued. For the February 2021

weather-related event, TPFA would have to deliver such bond proceeds by December 31, 2021.

A financing order would remain in effect and unabated notwithstanding the bankruptcy of the gas utility, TPFA, or any successors.

The financing order together with the customer rate relief property and the customer rate relief charges would be irrevocable and not subject to reduction, impairment, or adjustment, except under certain circumstances as authorized by the bill. The bill would provide a process by which a financing order could be appealed.

Property rights. Customer rate relief bonds would be the obligation solely of the assignee or issuing financing entity and would not be a debt of a gas utility or a debt or pledge of the faith and credit of the state or any political subdivision. The bonds would be nonrecourse to the credit or any assets of the state or of TPFA.

The interest of an assignee or pledgee in customer rate relief property would not be subject to setoff, counterclaim, surcharge, or defense by the utility or in connection with the bankruptcy of the utility, TPFA, or any other entity.

True-up mechanism. The bill would require a financing order to include a formulaic true-up charge adjustment mechanism that required the customer rate relief charges be reviewed and adjusted at least annually to correct any over- or under-collections of the previous 12 months and ensure the expected recovery of amounts sufficient to provide for the timely payment of upcoming scheduled bond payments and financing costs.

The bill would provide timelines for the notification and review of true-up charge adjustments.

Bond proceeds in trust. TPFA could deposit proceeds of customer rate relief bonds it issued with a trustee or the proceeds could be held by the

comptroller in a dedicated trust fund outside the state treasury.

Bond proceeds would be held in trust for the exclusive benefit of the RRC's policy of reimbursing gas utility costs. TPFAs would use the proceeds to reimburse each utility the determined regulatory asset amount, pay the financing costs of issuing the bonds, and provide bond reserves. If there were no outstanding bonds or interest to be paid, the remaining proceeds would have to be used to provide credits to utility customers.

Repayment of relief bonds. If any bonds or related financing costs remained outstanding, uniform monthly volumetric customer rate relief charges would have to be paid by all current and future customers of the utility for which a regulatory asset determination had been made until all bonds and costs were paid in full.

TPFA would have to report to the RRC the amount of the outstanding customer rate relief bonds and the estimated amount of annual bond administrative expenses.

Taxation. Bonds issued under the bill, related transactions, and profits made from bond sales would be exempt from taxation by the state or a political subdivision. A utility's receipt or collection of relief charges would be exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar assessments.

A tax obligation of the utility arising from receipt of bond proceeds or the collection of relief charges would be an expense that could be recovered by the utility.

Other provisions. An assignee or financing party could not be considered to be a public utility or person providing natural gas service solely by virtue of transactions under the bill.

The creation, granting, perfection, and enforcement of liens and security interests in customer rate relief property would be governed by the bill and not other state law. The bill would provide related processes and

notification requirements.

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, 2021.

**SUPPORTERS
SAY:**

CSHB 1520 would minimize the impact to customers of the high cost of natural gas experienced during Winter Storm Uri by allowing gas utilities to recover extraordinary gas costs that resulted from the storm through securitization, a low-cost financial tool that allows for low interest rates on bonds and provides greater quantifiable benefits to ratepayers than conventional financing methods.

The cost of gas is not controlled by gas utilities but instead is set by the market and passed through to customers without markup. High demand for energy during the storm caused gas prices to rise, and as a result utilities incurred extraordinary gas costs to procure the supply needed to maintain service. Some utilities reported having incurred gas costs equal to two or three times more than expected annual gas costs. Because of these high gas costs, customers could see a significant increase in their monthly bills. To address this issue, CSHB 1520 would authorize securitization to recover these extraordinary costs, which is the best solution for customers as it would provide rate relief by extending the time frame over which the extraordinary costs would have to be recovered and lowering associated financing costs.

Securitization is a tried and true method that has been used previously in Texas for electricity utilities. This method allows entities to use the creditworthiness of the state to lower interest rates, ensuring ratepayers would not be impacted by additional fees. State policies have been cited as contributing factors that led to the widespread power outages experienced by millions of Texans. Therefore, it would be appropriate for the state to play a role in minimizing the impact of the storm to ratepayers and utilities, including through securitization of certain costs.

CRITICS

CSHB 1520 could increase the size of government and result in increased

SAY: annual debt servicing costs.

NOTES: According to the Legislative Budget Board, the bill would result in a negative impact of about \$1.6 million to general revenue funds through fiscal 2023. The fiscal impact to revenue collections associated with the collection of relief bond charge amounts could not be determined.