

SUBJECT: Requiring disclosure of rates for chilled water programs offered by MOUs

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

1 nay — Howard

WITNESSES: For — Chris Hughes, Husch Blackwell LLP; (*Registered, but did not testify*: Calvin Tillman)

Against — None

On — Pat Sweeney, Austin Energy

BACKGROUND: Government Code sec. 552.133 excepts from required public disclosure information or records related to a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The provision lists categories of information that do and do not satisfy as a competitive matter.

DIGEST: CSHB 3615 would add information related to a chilled water program to the categories of information that would not qualify as a competitive matter for which related information could be excepted from public disclosure by a public power utility.

"Chilled water program" would mean:

- a program to produce chilled water at a central plant and pipe that water to buildings for air conditioning, including a district cooling system or chilled water service; or
- any other program designed to use chilled water to provide air conditioning, reduce peak electric demand, or shift electric load.

Notwithstanding contrary provisions, information or records related to a competitive matter of a public power utility would be subject to public disclosure if related to:

- a municipally owned utility's rate review process;
- the method a municipality or municipally owned utility used to set rates for retail electric service; or
- the method a municipality or municipally owned utility used to set rates for a chilled water program.

The bill would expand the statutory definition of a municipally owned utility as it related to the Public Utility Regulatory Act to include any chilled water program operated by the utility.

The bill would take effect September 1, 2021, and would apply only to a request for public information made on or after that date.

**SUPPORTERS
SAY:**

CSHB 3615 would increase government transparency by ensuring that information and records relating to a municipally owned utility's rate review process and the method for setting rates for retail electric service and a chilled water program were available to the public.

Some cities operate chilled water programs, including through a municipally owned utility, that are offered to large electric customers and promote energy efficiency by reducing peak electric demand and shifting electric load. Some have raised concerns that information related to the cost, revenue, and rates of chilled water programs is not publicly available. This information would help customers ensure rates were properly assessed and apply for a rate hearing if needed.

As governmental entities, municipally owned utilities are required to set electric rates in a public and transparent manner, and rates have to be just, reasonable, and nondiscriminatory. Likewise, rates paid for chilled water services provided by a municipally owned utility should be transparent and part of a formal ratemaking process to ensure that rates were reasonable and necessary and applied in a nondiscriminatory manner.

While some have raised concerns that requiring the public disclosure of rate information for chilled water programs operated by a municipally owned utility would put the utility at a competitive disadvantage, the concern is unfounded as the current market is not truly competitive. Municipally owned utilities control electric and water supplies, service territories, permitting processes, rights-of-way, and more, which creates an environment where it is economically infeasible to compete.

CRITICS
SAY:

CSHB 3615 could result in the release of proprietary information which could put a municipally owned utility at a competitive disadvantage in the market for chilled water services. A municipally owned utility does not have the exclusive right to provide such services, so keeping contract information confidential is essential to maintaining a fair and competitive marketplace and to protect customers' cost-related information. The bill also could result in altering already negotiated contracts freely entered into by both parties.