

## **BILL ANALYSIS**

Senate Research Center

S.B. 684  
By: Patterson  
Economic Development  
4-8-97  
As Filed

### **DIGEST**

Currently, Article 1446c-0, V.T.C.S., the Public Utility Regulatory Act of 1995, governs and regulates the electricity market. This bill amends the Act and authorizes the restructuring of the electric industry by directing the Public Utility Commission of Texas to promulgate rules for the deregulation of electric generation and to open up the regulated market by allowing customers to choose their electricity supplier.

### **PURPOSE**

As proposed, S.B. 684 sets forth the guidelines in Article 1446c-0, V.T.C.S., the Public Utility Regulatory Act of 1995, for a restructured competitive electricity market.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Public Utility Commission of Texas in SECTIONS 4, 10 and 11 (Sections 2.0535(b) and (d), 2.304(a), (c)-(h), and (i), 2.307(c), 2.353(a), and 2.356(c), Article 1446c-0, V.T.C.S. (Public Utility Regulatory Act of 1995) and to the Electric Reliability Council of Texas independent system operator in SECTION 7 (Section 2.058(e)(2), Article 1446c-0, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that this Act may be referred to as the Texas Consumer Power Act of 1997.

SECTION 2. Amends Section 2.001(a), Article 1446c-0, V.T.C.S. (Public Utility Regulatory Act of 1995), to set forth the findings and intent of the legislature.

SECTION 3. Amends Section 2.0011, Article 1446c-0, V.T.C.S., by amending Subdivision (1) and by adding Subdivisions (8)-(16), to redefine "public utility" or "utility." Defines "customer choice," "designated supplier," "distribution service," "independent system operator," "local distribution utility," "power merchant," "retail customer," "recovery period," and "uneconomic utility investments." Makes conforming and nonsubstantive changes.

SECTION 4. Amends Title IIB, Article 1446c-0, V.T.C.S., by adding Section 2.0535, as follows:

Sec. 2.0535. POWER MERCHANTS. Authorizes a power merchant to sell electricity directly to a retail customer. Requires the price of that electricity to be determined between the power merchant and the retail customer and such a price may not be reviewed by the regulatory authority. Prohibits a power merchant from selling electricity to residential or small commercial consumers unless the power merchant obtains a license from the Public Utility Commission of Texas (commission). Requires the commission to adopt criteria and establish procedures for licensure. Requires the commission to monitor the marketing practices of power merchants. Authorizes the commission to adopt a code of conduct governing the actions of power merchants. Sets forth the required actions a new power merchant must take if a licensed power merchant sells all or a portion of its operations in this state to that merchant. Authorizes the commission to revoke a power merchant's license, impose a fine, or otherwise sanction a licensed power merchant when the power merchant engages in certain activities. Authorizes the commission to take an action under this section

only after providing the power merchant an opportunity for a public hearing. Authorizes the commission to enter an order that prevents a power merchant from marketing or adding new customers during a revocation proceeding if the commission finds that there is probable cause to believe the actions of the power merchant will harm customers or the reliability of the electrical supply.

SECTION 5. Amends Section 2.056(a), Article 1446c-0, V.T.C.S., to authorize the commission to require a utility to provide transmission service to any entity, including a retail customer, and a power merchant, among others. Makes conforming changes.

SECTION 6. Amends Section 2.057, Article 1446c-0, V.T.C.S., by amending the heading and Subsection (a), as follows:

Sec. 2.057. New heading: **WHOLESALE AND RETAIL COMPETITION**. Deletes provisions requiring the commission to adopt certain rules within a certain time frame and requiring certain public utilities to file certain tariffs. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Title IIB, Article 1446c-0, V.T.C.S., by adding Section 2.058, as follows:

Sec. 2.058. **INDEPENDENT SYSTEM OPERATOR**. (a) Requires the commission to oversee the establishment of an Electric Reliability Council of Texas independent system operator (operator) as a nonprofit, independent entity. Requires the operator to establish a governing board composed of representatives of all market participants.

(b) Prohibits an entity that owns generation, transmission, or distribution facilities in this state from having majority ownership or control of the operator.

(c) Prohibits the operator from having a financial or commercial interest in certain entities, a power marketer or merchant, or certain transactions; or from giving any user of the state's transmission system preferential treatment.

(d) Provides that the operator has the ultimate responsibility over the operation and planning of the bulk power system within the Electric Reliability Council of Texas. Requires the commission to grant the operator the authority the commission considers necessary to ensure the reliability of the system and to carry out its duties consistent with this Act.

(e) Sets forth the required duties and obligations of the operator.

(f) Requires as a condition for having nondiscriminatory access to the Electric Reliability Council of Texas grid, each entity that uses the bulk power system to provide to the operator any information the operator determines is necessary to plan and operate the bulk power system. Authorizes the information to be subject to a confidentiality agreement. Entitles the commission to access to all information maintained by the operator, subject to applicable confidentiality requirements. Provides that information subject to a confidentiality agreement is confidential and not subject to disclosure under Chapter 552, Government Code.

(g) Requires the commission to ensure that one or more entities do not attempt to limit access to the system by a competitor or to engage in other anticompetitive practices.

(h) Authorizes the Electric Reliability Council of Texas' electronic information network to be accessed by any competing buyer or seller of generation services and is open to the public on a fair and nondiscriminatory basis.

(i) Requires the operator to submit to the commission a plan that identifies system needs and alternatives for meeting those needs every three years. Requires the plan to include the operator's recommendation for meeting the needs identified. Authorizes the

commission to require an electric utility to construct and expand transmission facilities if the commission finds that the facilities are reasonable and necessary for meeting system needs.

(j) Requires the commission to monitor and intervene in certain Federal Energy Regulatory Commission proceedings relating to a geographical area in Texas that is not located within the Electric Reliability Council of Texas.

SECTION 8. Amends Title IIE, Article 1446c-0, V.T.C.S., by adding Section 2.2015, as follows:

Sec. 2.2015. CUSTOMER CHOICE BY CERTAIN ELECTRIC COOPERATIVES. Provides that this section applies only to an electric cooperative that provides retail electric utility service at a distribution voltage. Provides that notwithstanding any other provision of this Act, an electric cooperative may not be required to provide customer choice in accordance with this Act to the cooperative's retail customers. Authorizes the general membership of an electric cooperative to elect at any time to allow the customers of the cooperative the opportunity to exercise customer choice. Sets forth the balloting procedures relating to such an election. Sets forth the filing requirements the electric cooperative is required to file with the commission if the proposition for customer choice is approved by a majority of the members. Prohibits a power merchant from selling electricity directly to a retail customer within the certificated service area of an electric cooperative; prohibits the cooperative from selling electricity to customers outside of the cooperative's certified service area; and authorizes the cooperative to purchase electricity from a power merchant on behalf of the cooperative's customers, if the cooperative has not elected to allow customer choice. Authorizes a power merchant to sell electricity directly to a retail customer within the certified service area of an electric cooperative; and authorizes the cooperative to sell electricity to customers outside of the cooperative's certified area, if the cooperative elects to allow customer choice. Provides that the transmission and distribution facilities of the cooperative are subject to Section 2.2011, of this Act.

SECTION 9. Amends Title IIE, Article 1446c-0, V.T.C.S., by adding Sections 2.2115 and 2.2142, as follows:

Sec. 2.2115. RATE REDUCTION. Sets forth the findings of the legislature supporting reductions in the rates of investor-owned utilities during a transition to greater competition. Requires each investor-owner utility to reduce each base rate charged to each class of customers by 15 percent, effective September 1, 1997, notwithstanding any other provision of this Act. Authorizes an electric utility required to reduce rates under this section to file with the commission a petition to reduce the rate reduction on or after September 1, 1997. Provides that the utility has the burden of proving and demonstrating that it has mitigated and reduced its cost to the greater extent reasonably practical and that it will not have a reasonable opportunity to maintain its financial integrity with the full rate reduction. Requires the commission to process a petition received under this section as a contested case with full opportunity for a hearing by the affected parties. Requires the commission to determine the appropriate rate reduction that will allow the utility to maintain financial integrity while taking all reasonable actions to mitigate its costs. Defines "financial integrity."

Sec. 2.2142. CUSTOMER CHOICE FOR PUBLIC SCHOOLS AND EDUCATIONAL INSTITUTIONS. Requires each public school and private and public college in this state to have the opportunity to choose the school's or college's electricity supplier beginning on August 1, 1998. Requires the commission to work with the Texas Education Agency, the General Services Commission, and other appropriate state agencies to ensure that each school and college receives sufficient information and assistance to allow the school or college to choose its electricity supplier. Requires the commission to monitor the experience with customer choice gained by schools and colleges, and requires the commission to use the information to implement retail customer choice. Prohibits savings realized by a school district under this section from being considered in determining the amount of state funding the district is entitled to receive.

SECTION 10. Amends Title II, Article 1446c-0, V.T.C.S., by adding Subtitle G, as follows:

SUBTITLE G. RETAIL CUSTOMER CHOICE

Sec. 2.301. APPLICATION. Provides that this subtitle does not apply to an electric cooperative corporation that has not elected to provide customer choice or to the customers of that cooperative.

Sec. 2.302. IMPLEMENTATION OF RETAIL CUSTOMER CHOICE. Requires each residential or small commercial retail customer to have customer choice no later than January 1, 1999. Requires all other retail customers to have customer choice no later than January 1, 2000. Prohibits a retail customer's total base rates in place on January 1, 1998 from increasing during the applicable period.

Sec. 2.303. AGGREGATION. Authorizes a retail customer to aggregate the customer's usage of electricity with other customers to purchase electricity. Authorizes, notwithstanding any other law, a municipality, political subdivision, or membership association to serve as a voluntary aggregator for the retail customers within its boundaries or membership. Requires a municipality or political subdivision to provide to a retail customer within the municipality or political subdivision the opportunity to participate in the aggregation, but may not require the customer to participate.

Sec. 2.304. RULES RELATING TO CUSTOMER CHOICE. (a) Requires the commission to oversee the transition to customer choice and adopt rules to define the responsibilities of electric utilities, municipally owned utilities, and power merchants; ensure development of a fully functioning competitive market for generation services, demand-side management, and energy services; and protect consumers and the public interest.

(b) Sets forth the rules, at a minimum, required to be established by the commission.

(c) Requires the commission, by rule, to prescribe minimum standards for contracts between powers merchants and residential or small commercial retail customers. Requires the minimum standards to require the disclosure of pricing, contract length, termination provisions, and anticipated or historical generation sources by location, fuel type, and emissions profile. Provides that if the exact sources of the power merchant's generation cannot readily be identified, the power merchant may choose to base its emissions profile on regional or national averages for generation sources and emissions. Requires the commission to periodically review disclosures under this subsection for accuracy.

(d) Provides that a customer is entitled to change power merchants. Requires the commission, by rule, to prohibit a local distribution utility or power merchant from altering a retail customer's choice of power merchant without third-party verification of the customer's consent.

(e) Provides that certain retail customers are entitled to participate in the choice of a power merchant using the customer's existing meter. Requires the commission, by rule, to adopt guidelines for settlements of electricity sales that allow a customer to choose a power merchant without obtaining a specialized meter.

(f) Requires the commission, by rule, to ensure that a customer receives a single bill for electric services that include separate, unbundled charges for electricity, transmission, distribution, and energy efficiency services, and any competitive charge. Requires the bill to include the information regarding generation sources.

(g) Sets forth the disclosure rules the commission is required to adopt relating to the customer and the customer's billing history.

(h) Sets forth rules the commission is required to adopt relating to disconnection of a customer's service in extreme weather conditions, notice in regard to changes in service,

and fair treatment in regard to service or bill disputes.

(i) Requires the commission to modify certain rules to ensure that at least the same level of customer protection against potential abuses and the same quality of service that exists on August 31, 1997, is maintained in a restructured electric industry.

Sec. 2.305. PUBLIC EDUCATION PROGRAM. Requires the commission to supervise a comprehensive public education program to inform each customer of the customer's ability to choose a power merchant and the availability of designated suppliers.

Sec. 2.306. CUSTOMER COMPLAINT RESOLUTION. Requires the commission to establish and advertise a citizens' hotline with a toll-free number to respond to customer complaints about electric service and consumer questions about the transition to a more competitive retail market. Requires each local distribution utility and power merchant to notify each customer at the time service is initiated and on receipts of a customer complaint of the customer's right to informally appeal the complaint by writing or by calling the toll-free number. Requires the commission to establish simplified consumer hearing procedures. Prohibits a local distribution utility or power merchant from disconnecting or discontinuing service to a customer because of a dispute if the customer has filed a complaint that is pending with the commission. Requires the administrative judge or commission hearings officer considering a complaint to issue a written order, appealable to the commission, that includes a description of the legal basis for the decision. Authorizes the decision to include recommendations for policy changes by the commission. Authorizes the commission to investigate, mediate, and resolve any complaint submitted by a customer.

Sec. 2.307. FACILITY SEPARATION OR UNBUNDLING. Prohibits an investor-owned electric utility from selling electricity at unregulated prices unless the utility first structurally separates the utility's generation division from the utility's transmission and distribution division. Authorizes the utility to accomplish the required separation through certain business transactions. Prohibits a municipally owned utility or an electric cooperative corporation from selling electricity at unregulated prices unless the utility or cooperative first functionally unbundles the utility's or cooperative's generation division from the utility's or cooperative's transmission and distribution division. Authorizes the commission to require the utility or cooperative to structurally separate facilities, operations, and services in accordance with this section if the commission determines that the separation is necessary. Requires the commission to establish, by rule, a code of conduct that must be observed by an electric or municipally owned utility, an affiliate, and the separated or unbundled facilities, operations, and services of an electric or municipally owned utility. Requires the code of conduct, at a minimum, to protect against abusive or anticompetitive practices. Provides that an electric or municipally owned utility that does not separate or unbundle the utility's generation division remains a regulated electric utility. Prohibits, notwithstanding any other provision of this Act, an investor-owned electric utility that does not separate the generation division from recovering from its customers certain expenses, costs, rate of return, or taxes. Requires an investor-owned electric utility that is prohibited from collecting certain income taxes to refund those taxes to customers on September 1, 1997.

Sec. 2.308. RESTRUCTURING PLAN. Requires each electric utility to file a restructuring plan with the commission providing for customer choice by January 1, 1998. Requires each municipally owned utility to file a restructuring plan with the municipality's governing body providing for customer choice by January 1, 1998. Sets forth the required details that must be included in the restructuring plan. Requires, after a hearing, the commission or the municipality's governing body to approve, reject, or modify the electric or municipally owned utility's restructuring plan.

Sec. 2.309. ANTITRUST LAWS; COMMISSION MONITORING. Provides that each state and federal antitrust law applies to the sale of electricity. Requires the commission to monitor electric utility and affiliate activities. Authorizes the commission to require the submission of certain information to effectively monitor business activities between a utility and the utility's affiliates. Requires the commission, if the commission finds that a utility or its

affiliates have engaged in anticompetitive or abusive practices, to prepare a report with findings and recommendations for investigation, prosecution, or other further actions and to forward the report to the appropriate authorities. Requires the commission to report to the legislature the commission's activities under this section and the final disposition of related matters by January 15 of each odd-numbered year.

Sec. 2.310. MUNICIPAL FRANCHISES. Authorizes a municipality to revise a franchise agreement with an electric utility in effect on September 1, 1997, to provide that the municipality will collect the franchise fee allowed by the agreement from the local distribution utility within the municipality. Sets forth the required parameters of the fee.

Sec. 2.311. INTERFERENCE WITH CONTRACT. Prohibits a provision of this Act from interfering with the rights of a party under a contract.

SECTION 11. Amends Title II, Article 1446c-0, by adding Subtitle H, as follows:

#### SUBTITLE H. UNIVERSAL SERVICE

Sec. 2.351. APPLICATION. Provides that except as otherwise provided by this subtitle, this subtitle does not apply to an electric cooperative corporation that has not elected to provide customer choice under this Act or to its customers.

Sec. 2.352. DISTRIBUTION SERVICE. Provides that an electric utility retains all rights and obligations prescribed by this Act to provide electric transmission and local distribution service in the utility's certificated service area as it existed on August 31, 1997. Requires the electric or municipally owned utility to transmit and distribute electricity and implement all customer service programs prescribed by this Act or directed by the regulatory authority. Requires each local distribution utility to connect to its system and deliver electricity to all retail customers located in the utility's certified service area and establish rates for services in accordance with this Act. Requires, notwithstanding this section, an electric cooperative corporation that has elected to be exempt from rate regulation under Section 2.2011, Article 1446c-0, V.T.C.S., to continue to comply with this section in establishing rates for distribution service. Requires a local distribution utility to provide distribution service comparable to the service of the utility's or its affiliate's use of its system. Requires the regulatory authority to ensure that local distribution utilities provide nondiscriminatory access to distribution service for all entities. Requires each local distribution utility to file amended tariffs implementing this section with the appropriate regulatory authority by January 1, 1998.

Sec. 2.353. DESIGNATED SUPPLIER. Requires the commission, by rule, to provide for the competitive selection of at least one designated supplier for each certificated service area of an electric utility to ensure that all customers have access to electricity. Authorizes a licensed power merchant to bid to become a designated supplier. Requires, if the commission determines that there are no adequate bidders to become the designated supplier for a service area, the commission to require each power merchant operating in that area to service a portion of certain customers. Prohibits such a power merchant from charging for that service at rates that are higher than the rates charged to other similar customers in the same area. Requires the commission to review the selection of a designated supplier every two years.

Sec. 2.354. SERVICE BY DESIGNATED SUPPLIER IN EVENT OF POWER MERCHANT FAILURE. Requires the designated supplier to serve the customers of a power merchant that fails to meet the merchant's contractual obligations. Requires the commission to establish a settlement procedure between the designated supplier and the power merchant.

Sec. 2.355. CHOICE OF POWER MERCHANT. Authorizes a customer to leave the designated supplier and choose a power merchant after giving three days notice to the designated supplier.

Sec. 2.356. ESTABLISHMENT OF UNIVERSAL SERVICE AND ENVIRONMENTAL IMPROVEMENT FUND. Provides that a statewide universal service and environmental improvement fund is established outside the state treasury to ensure certain conditions. Requires the level of revenues in the fund to be at least equal to the amount of revenue collected from retail utility customers in rates in existence on September 1, 1997. Requires the commission to adopt rules for the implementation and administration of the fund and to seek input from certain interested parties.

Sec. 2.357. FEE. Requires the commission to collect revenues for the fund by imposing a fee on each power merchant and electric utility selling electricity. Provides that the fee is based on retail electric sales revenue. Requires the commission to begin collection of the fee on January 1, 2001. Authorizes the commission to collect the fee if necessary. Prohibits the commission from increasing the fee by an amount that would result in the collection of revenue that exceeds the revenue levels in place by more than 10 percent. Prohibits, notwithstanding this increase, an increase of the customer's total base rates in place on January 1, 1998, during the applicable recovery period.

Sec. 2.358. USE OF FUND. Requires the commission to ensure that low-income programs receive not less than 50 percent of the fund on an annual basis. Authorizes the remaining amount of the fund to be used to encourage the development of renewable sources and demand-side management programs. Sets forth the conditions in which the commission is required to discontinue collecting revenue for the encouragement of the development of renewable sources.

SECTION 12. Amends Title II, Article 1446c-0, V.T.C.S., by adding Subtitle I, as follows:

SUBTITLE I. RECOVERY OF UNECONOMIC INVESTMENTS  
BY INVESTOR-OWNED UTILITY

Sec. 2.401. APPLICATION OF SUBTITLE. Provides that this subtitle only applies to an investor-owned electric utility.

Sec. 2.402. COMPUTATION OF UNECONOMIC UTILITY INVESTMENTS. Sets forth the computation for uneconomic utility investments of an electric utility.

Sec. 2.403. CERTAIN EXPENSES NOT RECOVERABLE. Prohibits an electric utility from recovering uneconomic utility investments from a customer for certain losses of revenue.

Sec. 2.404. DUTY TO MITIGATE. Provides that an electric utility has the duty to aggressively mitigate any uneconomic utility investments. Sets forth possible mitigation measures.

Sec. 2.405. PREREQUISITES TO RECOVERY. Sets forth the conditions in which an electric utility is allowed to recover any uneconomic utility investments. Sets forth the required contents of a recovery plan required as one of the conditions for recovery of any uneconomic utility investments.

Sec. 2.406. ACTION ON RESTRUCTURING AND RECOVERY PLAN. Requires the commission, after a contested hearing conducted under Chapter 2001, Government Code, to approve, modify and approve, or reject the restructuring plan and recovery plan. Requires the commission to approve a plan if it finds that the plan meets certain conditions. Sets forth the issues the commission is required to review, at a minimum, in making the determination.

Sec. 2.407. RECOVERY OF UNECONOMIC INVESTMENTS. Requires the customers and shareholders of an electric utility to share equitably the utility's uneconomic interests. Requires the commission to consider the rate reduction required by Section 2.2115 in determining the appropriate cost sharing between customers and shareholders. Provides that this Act is not intended to provide a greater opportunity for recovery of uneconomic utility investments than is available under any applicable law or regulation in existence on August

31, 1997. Prohibits recovery of a portion of an uneconomic utility investment to be conditioned on the continued operation of a generating plant.

Sec. 2.408. **RECOVERY FROM CUSTOMERS.** Provides that the customers' portion of uneconomic utility investments may be collected only during the utility's recovery period and through a nonbypassable competitive transition charge. Requires the charge to be stated separately on each customer's bill. Sets forth the required computation for the charge and the price ceiling for the charge in regard to the customer. Prohibits an electric utility from imposing a charge against a qualifying facility or certain persons. Requires, except as provided by this section, each utility customer in the electric utility's service area to pay the charge to the utility. Prohibits the computation of the charge, for any class of customers, from causing the total base rates of the class to exceed the total base rates paid by that class on January 1, 1998.

Sec. 2.409. **USE OF EXIT FEES.** Prohibits an electric utility from collecting an exit fee as a method for recovering uneconomic utility investments unless the customer agrees to pay the fee.

Sec. 2.410. **USE OF TRANSITION CHARGE.** Authorizes an electric utility to use amounts collected through the nonbypassable competitive transition charge only to reduce the level of the utility's uneconomic utility investments.

Sec. 2.411. **RECONCILIATION.** Requires, at the conclusion of the recovery period, the electric utility to file for a reconciliation of the utility's anticipated uneconomic utility investments approved by the commission and actual incurred uneconomic utility investments. Requires an electric utility that recovers an amount greater than the utility's actual incurred uneconomic utility investments to refund the excess amounts collected to customers. Sets forth the factors the commission is required to consider in determining whether the utility has recovered an amount greater than the utility's actual incurred uneconomic utility investments.

SECTION 13. Amends Title II, Article 1446c-0, V.T.C.S., by adding Subtitle J, as follows:

**SUBTITLE J. RECOVERY OF UNECONOMIC INVESTMENTS BY ELECTRIC COOPERATIVE OR MUNICIPALLY OWNED UTILITY**

Sec. 2.451. **APPLICATION OF SUBTITLE; DEFINITIONS.** Provides that this subtitle applies to a municipally owned utility and an electric cooperative corporation that has elected to provide customer choice. Defines "electric utility" and "regulatory authority."

Sec. 2.452. **COMPUTATION OF UNECONOMIC UTILITY INVESTMENTS.** Provides that the uneconomic utility investments of an electric utility are computed in accordance with Section 2.402 of this Act.

Sec. 2.453. **CERTAIN EXPENSES NOT RECOVERABLE.** Prohibits an electric utility from recovering uneconomic utility investments from a customer for certain losses of revenue and any revenue reduction attributable to incrementally increased tariffs.

Sec. 2.454. **DUTY TO MITIGATE.** Provides that an electric utility has the duty to aggressively mitigate any uneconomic utility investments. Sets forth possible mitigation measures.

Sec. 2.455. **PREREQUISITES TO RECOVERY.** Prohibits an electric utility from recovery of any uneconomic utility investments unless the utility files a recovery plan as part of the restructuring plan required by Section 2.308 by January 1, 1998. Sets forth the contents that must be included in the recovery plan. Authorizes, notwithstanding any other provision of this Act, a generation and transmission electric cooperative corporation or a river authority that serves a distribution electric cooperative corporation or municipality owned utility subject to this subtitle to file a recovery plan.

Sec. 2.456. ACTION ON RESTRUCTURING PLAN AND RECOVERY PLAN. Requires the regulatory authority to approve, modify and approve, or reject the restructuring plan and recovery plan. Requires the regulatory authority to approve a plan if certain conditions are met. Requires the regulatory authority to examine the extent to which the utility has proposed or pursued all reasonable mitigation mechanisms in making this determination. Requires the regulatory authority to determine a recovery period for the electric utility and to set the utility's nonbypassable competitive charge if the regulatory authority approves the plan. Requires the recovery period to provide the utility an opportunity to fully recover the utility's uneconomic utility investments. Requires, if the plan is proposed by an electric cooperative corporation, the commission to conduct a full contest hearing on the plan under Chapter 2001, Government Code, on the written request of an affected party. Authorizes, if the plan is proposed by a municipally owned utility, an affected party to appeal the decision of the municipality's governing body by submitting a written petition to the commission within 30 days of the final decision. Requires the commission to stay the decision of the regulatory authority pending the appeal. Sets forth the appeal process to the commission. Requires the commission to conduct a full contested hearing under Chapter 2001, Government Code, on the written request of any party to the appeal proceeding.

Sec. 2.457. RECOVERY OF UNECONOMIC INVESTMENTS. Sets forth the conditions in which an electric utility is authorized to recover uneconomic utility investments. Requires the nonbypassable competitive charge to be stated separately on each customer's bill. Requires the charge to be computed for each customer class and prohibits the charge from being higher than the amount of uneconomic utility investments identified in the rates for that class at the time the charge is imposed. Prohibits an electric utility from imposing a charge against a qualifying facility or certain persons. Requires each electric utility customer in the electric utility's service area to pay the charge to the utility. Prohibits the computation of the charge, for any class of customers, from causing the total base rates of that class to exceed the total base rates paid by that class on September 1, 1997. Provides that this Act is not intended to provide a greater opportunity for recovery of uneconomic utility investments that is available under any applicable law or regulation in existence on August 31, 1997.

Sec. 2.458. USE OF EXIT FEES. Prohibits an electric utility from collecting an exit fee as a method for recovery uneconomic utility investments unless the customer agrees to pay the fee.

Sec. 2.459. USE OF TRANSITION CHARGE. Authorizes an electric utility to use amounts collected under this section only to reduce the level of the utility's debt or other obligations associated with the utility's uneconomic utility investments.

Sec. 2.460. RECONCILIATION. Requires, at the conclusion of the recovery period, the electric utility to file for a reconciliation of the utility's anticipated and actual uneconomic utility investments. Requires an electric utility that recovers an amount greater than the utility's actual incurred uneconomic utility investments to refund the excess amounts collected to the customers. Requires the commission to consider the extent to which the utility mitigated its uneconomic utility investments in determining whether the utility has collected an amount greater than the actual uneconomic utility investment.

SECTION 14. Amends Title IIF, Article 1446c-0, V.T.C.S., by adding Section 2.2511, as follows:

Sec. 2.2511. APPLICATION TO POWER MERCHANT. Defines "retail public utility." Prohibits, notwithstanding any other provision of this Act, the commission from regulating the wholesale or retail territory of or rates charged by a power merchant.

SECTION 15. Effective date: September 1, 1997.

SECTION 16. Emergency clause.