

BILL ANALYSIS

Senate Research Center

C.S.S.B. 86
By: Nelson
Electricity Utility Restructuring
2/16/1999
Committee Report (Substituted)

DIGEST

Currently, in Texas, there has been a marked increase in retail competition in the telecommunications services industry with a resulting increase in reported incidences of unfair or fraudulent business practices. There is additional concern that similar occurrences may result if the electric industry is restructured to allow retail competition as well. Ultimately, the inability of customers to make choices with confidence in any retail market because of the prevalence of unfair or fraudulent business practices reduces the degree of participation and, consequently, the competitiveness of that market. This bill provides greater consumer protections in the telecommunications and electric services industries.

PURPOSE

As proposed, C.S.S.B. 86 provides an increase in protection of telecommunications and electric services customers, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Public Utility Commission in SECTION 3 (Title 2A, Sections 17.003(c), 17.004(b), 17.051(a), 17.052, and 17.102, Utilities Code) and to the governing body of a municipally owned utility in SECTION 3 (Title 2A, Section 17.005, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.002, Utilities Code, by adding Subsection (c) to establish the purpose of this title that significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was adopted, requiring the need for an increase in consumer protection.

SECTION 2. Amends Section 15.024, Utilities Code, by deleting text concerning the prohibition of a penalty in which the person penalized remedies the violation within 30 days after receiving notice and stating that the violator has the burden of proof that the alleged violation was remedied and was accidental or inadvertent. Makes conforming changes.

SECTION 3. Amends Title 2A, Utilities Code, by adding Chapter 17, as follows:

CHAPTER 17. CUSTOMER PROTECTION SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.001. CUSTOMER PROTECTION POLICY. Sets forth the findings of the legislature regarding new developments in telecommunications services and the production and delivery of electricity. Sets forth the purpose of this chapter which is to provide customer safeguards and provide rulemaking authority to the Public Utility Commission (PUC) to adopt and enforce rules providing customer safeguards, including safeguards against unfair, fraudulent, misleading, or anticompetitive practices. Provides that nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of enactment of this chapter. Provides that this chapter does not limit the constitutional, statutory, and common law authority of the Office of the Attorney General (OAG).

Sec. 17.002. DEFINITIONS. Defines “billing agent,” “billing utility,” “certificated telecommunications utility,” “customer,” “electric utility,” “service provider,” and “telecommunications utility.”

Sec. 17.003. CUSTOMER AWARENESS. Requires the PUC to promote public awareness of electric and telecommunications market changes and provide information to customers about available options and their rights as customers. Requires the PUC to compile a comparative customer service report yearly. Grants rulemaking authority to the PUC to require a certificated telecommunications utility or an electric utility to provide clear, uniform and understandable information to customers about rates, terms, services, customer rights, and other necessary information. Requires customer service awareness efforts to be conducted in English, Spanish, and any other language necessary.

Sec. 17.004. CUSTOMER PROTECTION STANDARDS. Establishes that all buyers of telecommunications and electric services have certain entitlements. Grants rulemaking authority to the PUC to adopt and enforce rules for minimum service standards on customer deposits, credit extensions, switching fees, levelized billing programs, and service termination for certificated telecommunications utilities and electric utilities. Authorizes the commission to waive language requirements for a good cause. Requires the commission to request the comments of the OAG in developing the rules necessary to carry out this section. Requires the commission to coordinate its enforcement efforts with the OAG. Provides that nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.

Sec. 17.005. PROTECTIONS FOR CUSTOMERS OF MUNICIPALLY OWNED UTILITIES. Prohibits a municipally owned utility from being deemed a “service provider” for purposes of Sections 17.156(b) and 17.156(e). Grants rulemaking authority to the governing body of a municipally owned utility to adopt, implement, and enforce rules to accomplish objectives set out in Sections 17.004(a) and (b) and Section 17.102. Requires the governing body of a municipally owned utility or its designate to perform the dispute resolution function provided for by Section 17.157 for customers served within its certificated service area.

SUBCHAPTER B. CERTIFICATION, REGISTRATION, AND REPORTING REQUIREMENTS

Sec. 17.051. ADOPTION OF RULES. Grants rulemaking authority to the PUC regarding certification, registration, and reporting requirements for certificated telecommunications utilities, electric utilities, telecommunications utilities that are not dominant carriers, pay telephone providers, qualifying facilities that are selling capacity into the wholesale or retail market, exempt wholesale generators, and power marketers. Requires the rules adopted under Subsection (a) to be consistent with and no less effective than federal law and shall not require the disclosure of highly-sensitive competitive or trade secret information.

Sec. 17.052. SCOPE OF RULES. Sets forth requirements for the creation and enforcement of the PUC’s rules.

Sec. 17.053. REPORTS. Authorizes the PUC to require telecommunications service providers or electric utilities to submit reports to the PUC over any matter the PUC has authority.

SUBCHAPTER C. CUSTOMER’S RIGHT TO CHOICE

Sec. 17.101. POLICY. Establishes a state policy to protect customers from unauthorized switching of a selected telecommunications service provider or electric utility.

Sec. 17.102. RULES RELATING TO CHOICE. Grants rulemaking authority to the PUC

to ensure customers are protected from unauthorized switching of a selected telecommunications service provider or electric utility.

SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES

Sec. 17.151. REQUIREMENTS FOR SUBMITTING CHARGES. Authorizes a service provider or billing agent to submit charges on a customer's bill if certain requirements are met. Requires customer consent to be verified by the service provider offering the product or service in a manner prescribed by the PUC and a record kept of the authorization for a certain time period. Requires the contract required by Subsection (a)(3)(B) to be maintained by the billing utility for a certain period of time. Prohibits the use of any fraudulent, unfair, misleading, deceptive, or anticompetitive marketing practices, including the use of negative option marketing, sweepstakes, and contests, by any billing agent or service provider, other than the billing utility. Provides that this section does not apply to customer initiated transactions for which the service provider has appropriate documentation.

Sec. 17.152. RESPONSIBILITIES OF A BILLING UTILITY. Requires a billing utility, upon its knowledge or notification of an unauthorized charge on a customer's bill, to promptly take certain actions by a certain date. Requires certain information to be contained in every report of an unauthorized charge to a customer's bill. Prohibits a billing utility from disconnecting or terminating service to any customer for nonpayment of an unauthorized charge, or from filing an unfavorable credit report against a customer who has not paid charges the customer has alleged were unauthorized unless the dispute regarding the unauthorized charge is ultimately resolved against the customer. Requires the customer to remain obligated to pay any charges that are not in dispute, and provides that this subsection does not apply to those undisputed charges.

Sec. 17.153. RECORDS OF DISPUTED CHARGES. Requires every service provider to maintain a record of every disputed charge placed on a customer's bill. Requires certain information to be contained in the record of a disputed charge to a customer's bill. Requires the record to be kept for at least 24 months following the completion of all steps required by Section 17.152(a).

Sec. 17.154. NOTICE. Requires a billing utility to provide notice of a customer's right in a manner prescribed by the PUC. Requires the notice to be provided by mail to each residential and business customer within 60 days of the effective date of this section or by inclusion in the publication of the telephone directory next following the effective date of this section. Requires each billing utility to send the notice to new customers at the initiation of service or to any customer upon their request.

Sec. 17.155. PROVIDING COPY OF RECORDS. Requires a billing utility to provide a copy of records to the PUC staff upon request.

Sec. 17.156. VIOLATIONS. Authorizes the PUC to implement penalties and other enforcement actions under Chapter 15 for any violation of this subchapter by a billing utility. Authorizes the PUC to enforce the provisions of Chapter 15 for any violation of this subchapter or for the knowing provision of false information to the PUC against any entity as if it was regulated by the PUC. Establishes that jurisdiction to regulate entities not otherwise subject to PUC regulation is not authorized other than as specifically provided by this chapter. Authorizes the PUC to deny a telecommunications service provider or electric utility the right to provide service in this state if the billing utility repeatedly violates this subchapter. Authorizes the PUC to order a billing utility to terminate billing and collection services with a repeat violator of this subchapter. Establishes that a billing utility may terminate or restrict its billing and collection services on its own to provide customer safeguards.

Sec. 17.157. DISPUTES. Authorizes the PUC to resolve disputes between a customer and a certificated telecommunications utility or an electric utility. Authorizes the PUC to take certain actions in resolving disputes. Requires the PUC to adopt procedures for resolution

of disputes in a timely manner which in no event shall exceed 60 days.

SECTION 4. Emergency clause.

Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

Relating Clause.

Amends relating clause to include “providing penalties.”

SECTION 3.

Amends Section 17.001, Title 2A, Utilities Code, to include in the purpose of the chapter the enforcement of rules providing customer safeguards, including safeguards against unfair, fraudulent, misleading, and anticompetitive practices and to require that nothing in this section be construed to abridge customer rights set forth in commission rules in effect at the time of enactment of this chapter. Provides that this chapter does not limit the constitutional, statutory, and common law authority of the Office of the Attorney General.

Amends Section 17.002, Title 2A, Utilities Code, to redefine “billing utility,” and “customer,” and to define “service provider.”

Amends Section 17.004, Title 2A, Utilities Code, to establish that all buyers of telecommunications and electric services have certain entitlements, rather than rights. Deletes text granting rulemaking authority to the PUC to adopt and enforce rules for service quality for certificated telecommunications utilities and electric utilities. Authorizes the commission to waive language requirements for a good cause. Requires the commission to request the comments of the OAG in developing the rules necessary to carry out this section. Requires the commission to coordinate its enforcement efforts with the OAG. Provides that nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter. Makes conforming changes.

Adds Section 17.005, Title 2A, Utilities Code, to prohibit a municipally owned utility from being deemed a “service provider” for purposes of Sections 17.156(b) and 17.156(e). Grants rulemaking authority to the governing body of a municipally owned utility to adopt, implement, and enforce rules to accomplish objectives set out in Sections 17.004(a) and (b) and Section 17.102. Requires the governing body of a municipally owned utility or its designate to perform the dispute resolution function provided for by Section 17.157 for customers served within its certificated service area.

Amends the heading of Subchapter B to read “CERTIFICATION, REGISTRATION, AND REPORTING REQUIREMENTS.”

Amends Section 17.051, Title 2A, Utilities Code, to delete text granting rulemaking authority to the PUC regarding licensing for a certificated telecommunications utility or electric utility. Includes qualifying facilities that are selling capacity into the wholesale or retail market among those entities for which PUC has rulemaking authority relating to certification, registration, and reporting requirements. Prohibits requiring the disclosure of highly-sensitive competitive or trade secret information.

Amends Section 17.052, Title 2A, Utilities Code, to make conforming changes.

Amends Section 17.053, Title 2A, Utilities Code, to require a telecommunications service provider, rather than a telecommunications utility, to submit reports to the PUC.

Amends Section 17.101, Title 2A, Utilities Code, to make conforming changes.

Amends Section 17.102, Title 2A, Utilities Code, to make conforming changes.

Amends Section 17.151, Title 2A, Utilities Code, to require a record of the customer consent to be maintained by the service provider for at least 24 months after the consent and verification have been obtained. Requires the contract required by Subsection (a)(3)(b) to be maintained by the billing utility for a certain period of time. Prohibits the use of any fraudulent, unfair, misleading, deceptive, or anticompetitive marketing practices, including the use of negative option marketing, sweepstakes, and contests, by any billing agent or service provider, other than the billing utility. Provides that this section does not apply to customer initiated transactions for which the service provider has appropriate documentation. Makes conforming changes.

Amends Section 17.152, Title 2A, Utilities Code, to prohibit a billing utility from disconnecting or terminating service to any customer for nonpayment of an unauthorized charge, or from filing an unfavorable credit report against a customer who has not paid charges the customer has alleged were unauthorized unless the dispute regarding the unauthorized charge is ultimately resolved against the customer. Requires the customer to remain obligated to pay any charges that are not in dispute, and provides that this subsection does not apply to those undisputed charges. Makes conforming changes.

Amends Section 17.153, Title 2A, Utilities Code, to require the record of every disputed charge on a customer's bill to be kept for at least 24 months, rather than 12 months, following the completion of all steps required by Section 17.152(a). Makes conforming changes.

Amends Section 17.154, Title 2A, Utilities Code, to require notice to customers of their rights to be provided by mail within a certain time period or to be included in the next telephone directory publication.

Amends Section 17.156, Title 2A, Utilities Code, to make conforming changes.

Amends Section 17.157, Title 2A, Utilities Code, to require the PUC to adopt procedures for resolution of disputes in a timely manner which in no event shall exceed 60 days. Makes conforming changes.