

BILL ANALYSIS

Senate Research Center

S.B. 769
By: Williams et al.
Business & Commerce
9/24/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires that an electric utility file a general rate case to recover the extraordinary costs of restoring its electric system and service following a hurricane or other major weather-related event. An electric utility that seeks to establish or replenish self-insurance reserves that are adequate to cover some or all of its costs following a hurricane or other major weather-related event can do so only in the course of a general rate case proceeding.

S.B. 769 relates to methods for the recovery of system restoration costs incurred by electric utilities following hurricanes, tropical storms, ice or snow storms, floods, and other weather-related events and natural disasters.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 36.405, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 36, Utilities Code, by adding Subchapter I, as follows:

SUBCHAPTER I. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS

Sec. 36.401. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE. (a) Provides that the purpose of this subchapter is to enable an electric utility to obtain timely recovery of system restoration costs and to use securitization financing to recover these costs, because that type of debt will lower the carrying costs associated with the recovery of these costs, relative to the costs that would be incurred using conventional financing methods. Authorizes the proceeds of the transition bonds to be used only for the purposes of reducing the amount of recoverable system restoration costs, as determined by the Public Utility Commission of Texas (PUC) in accordance with this subchapter, including the financing or retirement of utility debt or equity.

(b) Provides that it is the intent of the legislature that:

(1) securitization of system restoration costs will be accomplished using certain procedures, standards, and protections for securitization authorized under Subchapter G (Securitization), Chapter 39 (Restructuring of Electric Utility Industry), as in effect on the effective date of this section, except as provided by this subchapter; and

(2) PUC will ensure that securitization of system restoration costs provides greater tangible and quantifiable benefits to ratepayers than would have been achieved without the issuance of transition bonds.

Sec. 36.402. SYSTEM RESTORATION COSTS; STANDARDS AND DEFINITIONS.

(a) Defines "system restoration costs."

(b) Requires that system restoration costs include carrying costs at the utility's weighted average cost of capital as last approved by PUC in a general rate proceeding from the date on which the system restoration costs were incurred until the date that transition bonds are issued or until system restoration costs are otherwise recovered pursuant to the provisions of this subchapter.

(c) Requires that those amounts, to the extent a utility subject to this subchapter receives insurance proceeds, governmental grants, or any other source of funding that compensate it for system restoration costs, be used to reduce the utility's system restoration costs recoverable from customers. Requires PUC, if the timing of a utility's receipt of those amounts prevents their inclusion as a reduction the system restoration costs that are securitized, or PUC later determines as a result of the true-up and reconciliation provided for in Subsection (a) that the actual costs incurred are less than estimated costs included in the determination of system restoration costs, to take those amounts into account in the utility's next base rate proceeding or any subsequent proceeding, other than a true-up proceeding under Section 39.307 (True-Up), in which PUC considers system restoration costs.

(d) Authorizes PUC, if PUC determines that the insurance proceeds, governmental grants, or other sources of funding that compensate the electric utility for system restoration costs, or the amount resulting from a true-up of estimated restoration costs are of a magnitude to justify a separate tariff rider, to establish a tariff rider to credit such amounts against charges, other than transition charges or system restoration charges as defined in Section 36.403, being collected from customers.

(e) Requires PUC, to the extent that the electric utility receives insurance proceeds, governmental grants, or any other source of funding that is used to reduce system restoration costs, to impute interest on those amounts at the same cost of capital included in the utility's system restoration costs until the date that those amounts are used to reduce the amount of system restoration costs that are securitized or otherwise reflected in the rates of the utility.

Sec. 36.403. STANDARDS AND PROCEDURES GOVERNING SECURITIZATION AND RECOVERY OF SYSTEM RESTORATION COSTS. (a) Provides that the procedures and standards of this subchapter and the provisions of Subchapter G, Chapter 39, govern an electric utility's application for, and PUC's issuance of, a financing order to provide for the securitization of system restoration costs, or to otherwise provide for the recovery of system restoration costs.

(b) Requires PUC, subject to the standards, procedures, and tests contained in this subchapter and Subchapter G, Chapter 39, to adopt a financing order on the application of the electric utility to recover its system restoration costs. Requires PUC, if on its own motion or complaint by an affected person, PUC determines that it is likely that securitization of system restoration costs would meet the tests contained in Section 36.401(b), to require the utility to file an application for a financing order. Provides that on PUC's issuance of a financing order allowing for recovery and securitization of system restoration costs, the provisions of this subchapter and Subchapter G, Chapter 39, continue to govern the financing order and the rights and interests established in the order, and this subchapter and Subchapter G, Chapter 39, continue to govern any transition bonds issued pursuant to the financing order. Provides that to the extent any conflict exists between the provisions of this subchapter and Subchapter G, Chapter 39, in cases involving the securitization of system restoration costs, the provisions of this subchapter control.

(c) Defines "financing order."

(d) Defines "qualified costs."

(e) Defines "transition bonds" and "system restoration bonds."

(f) Defines "transition charges" and "system restoration charges."

(g) Requires that system restoration costs, notwithstanding Section 39.303(c) (relating to requiring that transition charges be collected and allocated among customers in the same manner as competition transition charges) be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the electric utility's current base rates. Requires that, for an electric utility operating within the Electric Reliability Council of Texas, system restoration costs that are properly includable in the transmission cost of service mechanism adopted under Section 35.004 (Provision of Transmission Service) and associated deferred costs not included under Section 35.004 be recovered under the method of pricing provided for in that section and PUC rules promulgated under that section; provided, however, that an electric utility operating under a rate freeze or other limitation on its ability to pass through wholesale costs to its customers is authorized to defer such costs and accrue carrying costs at its weighted average cost of capital as last approved by PUC in a general rate proceeding until such time as the freeze or limitation expires.

(h) Prohibits the amount of any accumulated deferred federal income taxes offset, used to determine the securitization total, from being considered in future rate proceedings. Requires that any tax obligation of the electric utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, be recovered by the electric utility through PUC's implementation of this subchapter.

(i) Entitles an electric utility, notwithstanding a rate freeze or limitations on an electric utility's ability to change rates authorized or imposed by any other provision of this title or by a regulatory authority, to recover system restoration costs consistent with the provisions of this subchapter.

(j) Requires PUC, if in the course of a proceeding to adopt a financing order PUC determines that the recovery of all or any portion of an electric utility's system restoration costs, using securitization, is not beneficial to ratepayers of the electric utility, under one or more of the tests applied to determine those benefits, to nonetheless use the proceeding to issue an order permitting the electric utility to recover the remainder of its system restoration costs through an appropriate customer surcharge mechanism, including carrying costs at the electric utility's weighted average cost of capital as last approved by PUC in a general rate proceeding, to the extent that the electric utility has not securitized those costs. Requires that a rate proceeding under Subchapter C (General Procedures for Rate Changes Proposed by Utility) or D (Rate Changes Proposed by Regulatory Authority) not be required to determine and implement this surcharge mechanism. Requires that a rider or surcharge mechanism adopted under this subsection, on the final implementation of rates resulting from the filing of a rate proceeding under Subchapter C or D that provides for the recovery of all remaining system restoration costs, expire. Provides that this subsection is limited to instances in which an electric utility has incurred system restoration costs of \$100 million or more in any calendar year after January 1, 2008.

Sec. 36.404. **NONBYPASSABLE CHARGES.** Requires PUC to include terms in the financing order to ensure that the imposition and collection of transition charges associated with the recovery of system restoration costs are nonbypassable by imposing restrictions on bypassability of the type provided for in Chapter 39 or by alternative means of ensuring nonbypassability, as PUC considers appropriate, consistent with the purposes of securitization.

Sec. 36.405. **DETERMINATION OF SYSTEM RESTORATION COSTS.** (a) Entitles an electric utility to recover system restoration costs consistent with the provisions of this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including system restoration costs not yet incurred at the time an application

is filed under Subsection (b), in its next base rate proceeding or through any other proceeding authorized by Subchapter C or D.

(b) Authorizes an electric utility to file an application with PUC seeking a determination of the amount of system restoration costs eligible for recovery and securitization. Authorizes PUC by rule to prescribe the form of the application and the information reasonably needed to support the application; provided, however, that if such a rule is not in effect, the electric utility is prohibited from being precluded from filing its application and such application cannot be rejected as being incomplete.

(c) Requires PUC to issue an order determining the amount of system restoration costs eligible for recovery and securitization not later than the 150th day after the date an electric utility files its application. Provides that the 150-day period begins on the date the electric utility files the application, even if the filing occurs before the effective date of this section.

(d) Authorizes an electric utility to file an application for a financing order prior to the expiration of the 150-day period provided for in Subsection (c). Requires PUC to issue a financing order not later than 90 days after the utility files its request for a financing order; provided, however, that PUC need not issue the financing order until it has determined the amount of system restoration costs eligible for recovery and securitization.

(e) Authorizes that a determination, to the extent PUC has made a determination of the eligible system restoration costs of an electric utility before the effective date of this section, provide the basis for the utility's application for a financing order pursuant to this subchapter and Subchapter G, Chapter 39. Provides that a previous PUC determination does not preclude the utility from requesting recovery of additional system restoration costs eligible for recovery under this subchapter, but not previously authorized by PUC.

(f) Prohibits a rate proceeding under Subchapter C or D from being required to determine the amount of recoverable system restoration costs, as provided by this section, or for the issuance of a financing order.

(g) Provides that a PUC order under this subchapter is not subject to rehearing. Authorizes a PUC order to be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the order is signed by PUC. Authorizes that judgment of the district court be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. Requires that all appeals be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Requires that review on appeal be based solely on the record before PUC and briefs to the court and be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of PUC under this chapter.

Sec. 36.406. SEVERABILITY. Provides that effective on the date the first utility transition bonds associated with system restoration costs are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter, Subchapter G, Chapter 39, as it applies to this subchapter, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, and requires that those provisions remain in full force and effect.

SECTION 2. Effective date: upon passage or September 1, 2009.