

BILL ANALYSIS

Senate Research Center

C.S.S.B. 965
By: Armbrister
State Affairs
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Committee Report (Substituted)

DIGEST

Currently, the powers and the duties of the Public Utility Commission of Texas (PUC) are set out in Article 1446c-0, V.T.C.S., the Public Utility Regulatory Act of 1995. The electric and telecommunications industries are currently in a period of regulatory transition. The Texas Performance Review, in a report entitled "Light Years: The Future of the Public Utility Commission of Texas," concluded that PUC needs new tools to effectively and efficiently regulate these two industries through this period of regulatory transition. This bill would implement some of those tools suggested by the report. C.S.S.B. 965 would allow PUC to streamline its regulatory operations through the use of proposed orders, staff reports, and alternative dispute resolution processes. This bill would clarify legislative priorities; give PUC certain reliability and customer protection authority over new parties participating in the market; and amend provisions to bring the employment/post-employment restrictions for PUC and the Office of the Public Utility Counsel in line with other state regulatory agencies. Finally, this bill would require a report to be created by the comptroller and PUC on the structure of gross receipts tax imposed under Section 1.351, Article 1446c-0, V.T.C.S., and the potential effects that deregulation would have on the revenue generated by the tax over the next decade.

PURPOSE

As proposed, C.S.S.B. 965 revises the powers and duties of the Public Utility Commission of Texas under Article 1446c-0, V.T.C.S., the Public Utility Regulatory Act of 1995.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Public Utility Commission of Texas in SECTION 10 (Sections 1.105-1.107, Article 1446c-0, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Article 1446c-0, V.T.C.S. (Public Utility Regulatory Act of 1995), to require the Public Utility Commission of Texas (PUC) to promote public awareness of changes in the electric and telecommunications markets, provide customers with information necessary to make informed choices about available options, and ensure that customers have an adequate understanding of their rights.

SECTION 2. Amends Section 1.003, Article 1446c-0, V.T.C.S., by amending Subdivision (14) and by adding Subdivision (19), to redefine "rate" and to define "alternative dispute resolution."

SECTION 3. Amends Sections 1.023(d), (e), and (f), Article 1446c-0, V.T.C.S., to prohibit a person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of PUC from serving as the public utility counsel, commissioner, or executive director of PUC. Removes language referring to the general counsel to PUC.

SECTION 4. Amends Title IB, Article 1446c-0, V.T.C.S., by adding Sections 1.0235, 1.0241, and 1.0245, as follows:

Sec. 1.0235. PROHIBITION ON SEEKING ANOTHER OFFICE. Prohibits a person from

seeking nomination or election to another civil office of this state or of the United States while serving as commissioner of PUC. Provides that if a commissioner files for nomination or election to another civil office of this state or of the United States, the person's office as commissioner immediately becomes vacant, and requires the governor to appoint a successor.

Sec. 1.0241. PROHIBITED ACTIVITIES. Sets forth the activities which, during a period of service with PUC or the State Office of Administrative Hearings (office), a commissioner, PUC employee, or employee of the office involved in hearing utility cases is prohibited from performing. Prohibits a rate regulated entity, direct competitor, or affected entity from giving or offering to give a gift, gratuity, employment, or entertainment to a commissioner or a PUC employee. Provides that it is not a violation of this section if a commissioner, PUC employee, or employee of the office, on becoming the owner of stocks, bonds, or another pecuniary interest in a rate regulated entity, direct competitor, or affected entity otherwise than voluntarily, informs PUC or office, and the attorney general of the ownership and divests the ownership or interest within a reasonable time. Provides that it is not a violation of this section if a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund that in the normal course of business invests in diverse securities independently of the control of the commissioner, PUC employee, or employee of the office. Provides that this section does not apply to a contract for a product or service of a rate regulated entity, direct competitor, or affected entity, or for equipment for use of such a product or service, when a commissioner, PUC employee, or employee of the office is acting as a consumer. Defines "affected entity," "direct competitor," "participated," "particular matter," "pecuniary interest," and "rate regulated entity."

Sec. 1.0245. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. Requires the executive director of PUC or the executive director's designee to provide the commissioners and PUC employees information regarding certain qualifications and responsibilities.

SECTION 5. Amends Section 1.026(a), Article 1446c-0, V.T.C.S., to provide that it is a ground for removal from PUC if a member, among other items, violates a prohibition established, among other sections, by Section 1.0235 or 1.0241, rather than 1.024 or 1.025, of this Act.

SECTION 6. Amends Sections 1.028(a), (c), and (d), Article 1446c-0, V.T.C.S., to delete a reference in regard to a general counsel in a provision that requires PUC to employ an executive director and such officers and other employees to carry out this Act. Provides that PUC staff, rather than the general counsel and his staff, is responsible for the gathering of information relating to all matters within the authority of PUC. Sets forth the duties of PUC staff, rather than the general counsel, to include, among other items, the preparation of proposed orders under Section 1.105 of this Act; and preparation of staff reports under Section 1.106 of this Act. Makes conforming changes.

SECTION 7. Amends Section 1.0512, Article 1446c-0, V.T.C.S., as follows:

Sec. 1.0512. New heading: PROHIBITION OF REPRESENTATION. Prohibits a counselor or an employee, during the time the counselor or an employee of the Office of Public Utility Counsel (office) is associated with the office, from representing a person, corporation, or other business entity before, among others, the State Office of Administrative Hearings or a court in a particular matter in which the counselor or employee was personally involved while associated with the office. Deletes previous provisions relating to prohibition of employment and restrictions on representation. Defines "particular matter." Makes conforming changes.

SECTION 8. Amends Section 1.052, Article 1446c-0, V.T.C.S., to delete text relating to prohibited employment of the chief executive of the Office of Public Utility Counsel after termination of such employment.

SECTION 9. Amends Section 1.054(a), Article 1446c-0, V.T.C.S., to authorize the office of Public Utility Counsel to appear or intervene as a matter of right as a party or otherwise on behalf of

residential consumers, as a class in all proceedings before PUC, including a proceeding involving an alternative dispute resolution procedure. Makes conforming changes.

SECTION 10. Amends Title ID, Article 1446c-0, V.T.C.S., by adding Sections 1.105-1.109, as follows:

Sec. 1.105. **PROPOSED ORDERS.** Requires PUC, by rule, to adopt procedures by which PUC staff may issue a proposed order to resolve all or part of a contested case before a hearing. Set forth the conditions by which the rules must comply. Provides that a proposed order or a part of a proposed order to which a party does not object becomes final with PUC approval.

Sec. 1.106. **STAFF REPORTS.** Requires PUC, by rule, to adopt procedures by which PUC staff may prepare staff reports detailing the information and evidence the staff would have presented in a contested case hearing to protect and represent the public interest and to effect the objectives and purposes stated in this Act. Sets forth the conditions by which the rules must comply. Provides that notwithstanding any other provision of this Act, PUC staff is not required to respond to a request for discovery or for information from a party to a contested case while the staff is preparing a staff report relating to that case.

Sec. 1.107. **ALTERNATIVE DISPUTE RESOLUTION.** Requires PUC, by rule, to adopt procedures by which PUC may use an alternative dispute resolution procedure to resolve a pending issue or proceeding. Sets forth the conditions by which the rules must comply. Authorizes PUC to use an alternative dispute resolution procedure if PUC does not receive a timely objection or if PUC determines that an objection does not have a reasonable basis. Authorizes a residential or small commercial consumer who brings a complaint or other action before PUC in which the value does not exceed \$10,000 to choose whether to use a contested case proceeding or an alternative dispute resolution proceeding to resolve the complaint or action. Provides that a deadline for a PUC decision prescribed by another provision of this Act, including Sections 2.2011, 2.211, 2.212, 3.211, 3.212, 3.2135, 3.2531, and 3.2532, is suspended during the pendency of an alternative dispute resolution procedure.

Sec. 1.108. **JURISDICTION TO ESTABLISH SERVICE QUALITY AND RELIABILITY AND CUSTOMER SERVICE AND PROTECTION.** Provides that PUC has jurisdiction over a person required to register under Title II of this Act, except qualifying facilities, or to obtain a certificate under Title III of this Act to the extent necessary to establish and ensure service quality and reliability and customer service and protection.

Sec. 1.109. **CONSUMER EDUCATION.** Authorizes PUC to educate and provide information to consumers to assist them in making an informed decision regarding electric and telecommunications services; and providers of electric and telecommunications services relating to the providers' responsibilities under state laws and regulations.

SECTION 11. Amends Section 1.3215(e), Article 1446c-0, V.T.C.S., to delete a provision relating to notice and cure of a violation prior to a penalty being assessed under this section.

SECTION 12. Amends Section 1.323, Article 1446c-0, V.T.C.S., as follows:

Sec. 1.323. New heading: **PENALTY FOR VIOLATING SECTION 1.0235 OR 1.0241 OF THIS ACT.** Requires any member of PUC or any officer or director of a public utility or affiliated interest to be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 1.0235 or 1.0241, rather than 1.024, of this Act. Makes conforming changes.

SECTION 13. Amends Section 1.401, Article 1446c-0, V.T.C.S., by adding Subsection (d), to require PUC to submit to the legislature a report on complaints received from consumers during the previous two years by January 15 of each odd-numbered year. Sets forth the required contents of the report.

SECTION 14. Amends Section 2.003, Article 1446c-0, V.T.C.S., to require a report authored by PUC for the legislature on the scope of competition in electric markets and the impact of competition and industry restructuring on customers to include, among other items, a report on complaints received from consumers relating to electric service or electric utilities during the previous two years. Makes conforming changes.

SECTION 15. Amends Section 2.053(b), Article 1446c-0, V.T.C.S., to provide that PUC has the jurisdiction over exempt wholesale generators and power marketers that sell electric energy in this state, among other options, to require registration as provided by this section as a condition of doing business in this state; and to revoke a registration for repeated violations of this Act or PUC rules. Makes conforming changes.

SECTION 16. Amends Section 2.056(b), Article 1446c-0, V.T.C.S., to require a certain committee to submit a certain report to the legislature by May 1, 1998, rather than September 1, 1997, at which time the committee shall be dissolved.

SECTION 17. Amends Section 2.057(b), Article 1446c-0, V.T.C.S., to require rules adopted by PUC and relating to the registration and reporting requirements of qualifying facilities, exempt wholesale generators, and power marketers, to require each qualifying facility, exempt wholesale generator, and power marketer to register with PUC as a condition doing business in this state. Authorizes PUC to revoke a registration for repeated violations of this Act or PUC rules.

SECTION 18. Amends Section 3.051(c), Article 1446c-0, V.T.C.S., to require PUC, except as provided in this section and Section 3.052 of this Act, to only have jurisdiction over all telecommunications utilities who are not dominant carriers to require, among other items, registration as provided in Subsection (d) of this section as a condition of doing business in this state; and to revoke a registration for repeated violations of this Act or PUC rules.

SECTION 19. Amends Section 3.051(s)(1), Article 1446c-0, V.T.C.S., to require PUC, except as otherwise specifically provided by this Act, to have only authority over a holder of a certificate of operating authority or service provider certificate of operating authority, among other things, to establish and ensure service quality and reliability and customer service and protection; and to revoke a certificate under Section 3.263 of this Act.

SECTION 20. Amends Section 3.2625(g), Article 1446c-0, V.T.C.S., to authorize PUC to order disconnection of service or revocation of registration for repeat violations of this Act or PUC rules. Deletes text authorizing the disconnection of service for up to one year.

SECTION 21. Amends Section 3.263(a), Article 1446c-0, V.T.C.S., to authorize PUC to revoke a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority for repeated violations of this Act or PUC rules.

SECTION 22. Requires PUC and the comptroller of public accounts (comptroller) to conduct a joint study of the structure of the gross receipts tax imposed under Section 1.351, Article 1446c-0, V.T.C.S. Requires the study to include an examination of the potential effect of deregulation on the revenue generated by the tax during the next 10 years. Requires PUC and the comptroller to prepare a joint report detailing their findings. Requires the report to include recommendations on any problems or issues PUC and the comptroller determine should be addressed by legislation or agency action. Requires PUC and the comptroller to submit the report required by this section to the 76th Legislature by January 15, 1999.

SECTION 23. Repealers: Sections 1.024 and 1.025, Article 1446c-0, V.T.C.S. (Prohibited Activities and Prohibition of Employment or Representation).

SECTION 24. Effective date: September 1, 1997, except that Section 2.056(b), Article 1446c-0, V.T.C.S., as amended by this Act takes effect on the first day on which it may take effect under Section 39, Article III, Texas Constitution.

SECTION 25. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 1.002, Article 1446c-0, V.T.C.S., to omit proposed changes to Subsection (a) and to omit the first text relating to increased competition in Subsection (b).

SECTION 2.

Amends Section 1.003, Article 1446c-0, V.T.C.S., to make a technical correction in the definition of "rate."

SECTION 8.

Amends Section 1.052, Article 144c-0, to revise guidelines in regard to the chief executive of the Office of Public Utility Counsel. Former SECTION 8 is now SECTION 9.

SECTION 10.

Amends Title ID, Article 1446c-0, V.T.C.S., by adding Sections 1.105-1.109, as previously set forth in SECTION 9. Revises the required rules to be adopted by the commission set out in Sections 1.105 - 1.107, Article 1446c-0, V.T.C.S. Revises Section 1.108, Article 1446c-0, V.T.C.S., to revise the heading and to revise the proposed jurisdiction of the commission.

SECTIONS 11-15.

Previously designated as SECTIONS 10-14, respectively.

SECTION 16.

Amends Section 2.056, Article 1446c-0, V.T.C.S., to change a deadline.

SECTIONS 17-18

Previously designated as SECTIONS 15-16, respectively.

SECTION 19.

Amends Section 3.051(s)(1), Article 1446c-0, V.T.C.S., to revise Subsection (s)(1)(E). Previously designated as SECTION 17.

SECTIONS 20-21.

Previously designated as SECTIONS 18-19. Omits SECTION 20, amending Section 3.608(a), Article 1446c-0, V.T.C.S., relating to the universal service fund.

SECTION 22.

Makes nonsubstantive changes. Previously designated as SECTION 21.

SECTION 23.

Previously designated as SECTION 22.

SECTION 24.

Revises the effective date, previously designated as SECTION 23.

SECTION 25.

Previously designated as SECTION 24.