

BILL ANALYSIS

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H.B. 163
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Hurricane Rita struck the service territory of Entergy Gulf States, Inc. (Entergy) in southeast Texas in September 2005. The storm caused catastrophic damage to Entergy's electric utility system and left hundreds of thousands of Texans without electric service. Entergy spent substantial amounts of money to restore electric service and reconstruct utility infrastructure. The cost regarding the manner and timing of cost recovery have created concern as to the company's financial strength and its ability to respond effectively to another disaster of the magnitude of Hurricane Rita. Conventional rate setting mechanisms for recovery of the Hurricane Rita costs are inadequate, since Entergy remains in a base rate freeze until at least June 2008. Providing for timely recovery of these costs will address these concerns and support continued reliable utility service in southeast Texas.

H.B. 163 addresses these concerns by providing for timely current recovery of Hurricane Rita costs, through a special financing mechanism known as "securitization." Securitization allows the costs to be recovered through the sale of bonds with very high credit quality and, accordingly, favorable interest rates. These bonds impose no financial obligation on the State of Texas. Securitization is expected to result in significant savings to customers, compared to the rates customers would pay if the Hurricane Rita costs were recovered through conventional means, such as their inclusion in a base rate proceeding.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 39.452(b) and (d), Utilities Code, as follows:

(b) Prohibits a person, except for certain adjustments and except for certain proceedings and cost recovery mechanisms, from filing a proceeding to change, altering, or revoking any rate offered or charged by an electric utility subject to this subchapter before June 30, 2007, with an effective date no earlier than June 30, 2008, notwithstanding Subsection (a).

(d) Provides that the provisions of Subchapter G that pertain to the recovery and securitization of hurricane reconstruction costs are excepted from the provision that this chapter does not apply to an electric utility subject to this subchapter until the date the utility implements customer choice.

SECTION 2. Amends Subchapter J, Chapter 39, Utilities Code, by adding Sections 39.458-39.463, as follows:

Sec. 39.458. RECOVERY AND SECURITIZATION OF HURRICANE RECONSTRUCTION COSTS; PURPOSE. (a) Provides that the purpose of this section and of Sections 39.459-39.463 is to enable an electric utility subject to this subchapter to obtain timely recovery of hurricane reconstruction 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 hurricane reconstruction 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 hurricane reconstruction costs, as determined by the commission in accordance with this subchapter, through the refinancing or retirement of utility debt or equity.

(b) Sets forth the intent of the legislature relating to securitization of hurricane reconstruction costs.

Sec. 39.459. HURRICANE RECONSTRUCTION COSTS. (a) Defines "hurricane reconstruction costs" and "Hurricane Rita."

(b) Authorizes hurricane reconstruction costs, if the Public Utility Commission (commission) determines it to be appropriate, to include carrying costs from the date on which the hurricane reconstruction costs were incurred until the date that transition bonds are issued.

(c) Provides that to the extent a utility subject to this subchapter receives insurance proceeds, governmental grants, or any other source of funding that compensates it for hurricane reconstruction costs, those amounts are required to be used to reduce the utility's hurricane reconstruction costs recoverable from customers. Requires the commission, if the timing of a utility's receipt of those amounts prevents their inclusion as a reduction to the hurricane reconstruction costs that are securitized, to take those amounts into account in the utility's next base rate proceeding or any proceeding in which the commission considers hurricane reconstruction costs.

Sec. 39.460. STANDARDS AND PROCEDURES GOVERNING SECURITIZATION OF HURRICANE RECONSTRUCTION COSTS. (a) Provides that the procedures and standards of this subchapter and the provisions of Subchapter G (Securitization) govern the application for, and the commission's issuance of, a financing order to provide for the securitization of hurricane reconstruction costs by an electric utility subject to this subchapter.

(b) Requires the commission, subject to the standards, procedures, and tests contained in this subchapter and Subchapter G, to adopt a financing order on the application of the utility to recover its hurricane reconstruction costs. Provides that on the commission's issuance of a financing order allowing for recovery and securitization of hurricane reconstruction costs, the provisions of this subchapter and Subchapter G continue to govern the financing order and the rights and interests established in the order, and this subchapter and Subchapter G 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 in cases involving the securitization of hurricane reconstruction costs, the provisions of this subchapter control.

(c) Defines "financing order."

(d) Defines "qualified costs." Provides that for purposes of this subchapter, the term also includes the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under this subchapter.

(e) Defines "transition bonds." Authorizes transition bonds issued to securitize hurricane reconstruction costs to be called "hurricane reconstruction bonds" or to be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(f) Defines "transition charges."

(g) Requires hurricane reconstruction costs to be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the utility's current base rates, notwithstanding a certain section of the utilities code.

(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 any tax obligation of the electric utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, to be recovered by the electric utility through the commission's implementation of Section 39.458, Section 39.459, this section, and Sections 39.461-39.463.

(i) Requires the commission, if it determines that recovery of all or any portion of an electric utility's hurricane reconstruction 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 permit the electric utility to recover the entirety of the hurricane reconstruction costs through an appropriate customer surcharge mechanism, including appropriate carrying costs, provided that the electric utility has not securitized any portion of its hurricane reconstruction costs. Prohibits a rate proceeding under Chapter 36 (Rates) from being required to determine and implement this surcharge mechanism. Requires a rider adopted under this subsection to expire on the implementation of rates resulting from the filing of a Subchapter C (General Procedures for Rate Changes Proposed by Utility), Chapter 36, rate proceeding.

Sec. 39.461. NONBYPASSABLE CHARGES. Authorizes the commission to include terms in the financing order to ensure that the imposition and collection of transition charges associated with the recovery of hurricane reconstruction costs are nonbypassable by imposing restrictions on bypassability of the type provided for in this chapter or by alternative means of ensuring nonbypassability, as the commission considers appropriate, consistent with the purposes of securitization.

Sec. 39.462. DETERMINATION OF HURRICANE RECONSTRUCTION COSTS. (a) Entitles an electric utility subject to this subchapter to recover hurricane reconstruction costs consistent with the provisions of this subchapter and to seek recovery of amounts not recovered under this subchapter, including hurricane reconstruction 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, Chapter 36.

(b) Requires the commission to issue an order determining the amount of hurricane reconstruction costs eligible for recovery and securitization not later than the 150th day after the date an electric utility subject to this subchapter files an application seeking that determination. 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.

(c) Provides that on issuance by the commission of an order determining the amount of eligible hurricane reconstruction costs, an electric utility subject to this subchapter may file an application for a financing order, which is required to be governed by the procedures in Subchapter G.

(d) Provides that to the extent the commission has made a determination of the eligible hurricane reconstruction costs of an electric utility subject to this subchapter before the effective date of this section, that determination is authorized to provide the basis for the utility's application for a financing order pursuant to this subchapter and Subchapter G. Provides that a previous commission determination does not preclude the utility from requesting recovery of additional hurricane reconstruction costs eligible for recovery under this subchapter, but not previously authorized by the commission.

(e) Provides that a rate proceeding under Chapter 36 is not required to determine the amount of recoverable hurricane reconstruction costs as provided by this section.

Sec. 39.463. SEVERABILITY. Provides that effective on the date the first utility transition bonds associated with hurricane reconstruction 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 as it applies to an electric utility subject 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 those provisions to remain in full force and effect.

SECTION 3. Effective date: upon adjournment or the 91st day after adjournment.