

BILL ANALYSIS

Senate Research Center

H.B. 1535
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Investor-owned utilities outside the Electric Reliability Council of Texas (ERCOT) are obligated to invest to meet growth in both population and industry and to replace aging infrastructure. These “non-ERCOT” utilities operate under an outdated regulatory model that produces “regulatory lag,” an extended time period between the date that infrastructure is placed in service and the date investors may start recovering their investment. Bond rating agencies cite regulatory lag when they assign lower bond ratings to non-ERCOT utilities than they assign to ERCOT utilities and utilities in neighboring states.

H.B. 1535 would encourage investment in the non-ERCOT areas of the state by reducing regulatory lag and allowing non-ERCOT utilities to recover investments closer to the time that customers benefit from those investments. Reducing regulatory lag will help non-ERCOT utilities keep up with the public's infrastructure needs and improve reliability.

H.B. 1535 amends current law relating to rates of and certificates of convenience and necessity for certain non-ERCOT electric utilities and authorizes a surcharge.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission in SECTION 3 (Section 36.212, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 36, Utilities Code, by adding Section 36.112, as follows:

Sec. 36.112. COST RECOVERY AND RATE ADJUSTMENT STANDARDS AND PROCEDURES FOR CERTAIN NON-ERCOT UTILITIES. (a) Provides that this section applies only to an electric utility that operates solely outside of the Electric Reliability Council of Texas (ERCOT).

(b) Requires the regulatory authority, in establishing the base rates of the electric utility under this subchapter or Subchapter D (Rate Changes Proposed by Regulatory Authority), to determine the utility's revenue requirement based on, at the election of the utility:

(1) information submitted for a test year; or

(2) information submitted for a test year, updated to include information that reflects the most current actual or estimated information regarding increases and decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales.

(c) Requires an electric utility that elects to provide updated information under Subsection (b)(2) to provide the information for a period ending not later than the 30th day before the date the applicable rate proceeding is filed.

(d) Requires an electric utility that includes estimated information in the initial filing of a proceeding to supplement the filing with actual information not later than the 45th day after the date the initial filing was made. Requires the regulatory authority to extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing, except that the extension period may not exceed 45 days.

(e) Provides that an electric utility that makes an election under Subsection (b) is not precluded from proposing known and measurable adjustments to the utility's historical rate information as permitted by this title and regulatory authority rules.

(f) Requires the regulatory authority, without limiting the availability of known and measurable adjustments described by Subsection (e), to allow an affected electric utility to make a known and measurable adjustment to include in the utility's rates the prudent capital investment, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts, including any offsetting revenue, as determined by the regulatory authority, associated with a newly constructed or acquired natural gas-fired generation facility. Provides that the regulatory authority is required to allow the adjustment only if the facility is in service before the effective date of new rates. Authorizes the adjustment to be made regardless of whether the investment is less than 10 percent of the utility's rate base before the date of the adjustment.

(g) Provides that this section expires September 1, 2023.

SECTION 2. Amends Subchapter E, Chapter 36, Utilities Code, by adding Section 36.211, as follows:

Sec. 36.211. RELATION BACK OF RATES FOR CERTAIN NON-ERCOT UTILITIES. (a) Provides that this section applies only to an electric utility that operates solely outside of ERCOT.

(b) Requires that the final rate set in a proceeding, whether a rate increase or rate decrease, in a rate proceeding under Subchapter D, or if requested by an electric utility in the utility's statement of intent initiating a rate proceeding under Subchapter C (General Procedures for Rate Changes Proposed by Utility), notwithstanding Section 36.109(a) (relating to the regulatory authority establishing temporary rates), be made effective for consumption on and after the 155th day after the date the rate-filing package is filed.

(c) Requires the regulatory authority to:

(1) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 155th day after the date the rate-filing package is filed; or

(2) authorize the electric utility to surcharge bills to recover the amount by which the money collected on or after the 155th day after the date the rate-filing package is filed is less than the money that would have been collected under the rate finally ordered.

(d) Authorizes the regulatory authority to require refunds or surcharges of amounts determined under Subsection (c) over a period not to exceed 18 months, along with appropriate carrying costs. Requires the regulatory authority to make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding.

(e) Prohibits a utility from assessing more than one surcharge authorized by Subsection (c)(2) at the same time.

(f) Provides that this section expires September 1, 2023.

SECTION 3. Amends Subchapter E, Chapter 36, Utilities Code, by adding Section 36.212, as follows:

Sec. 36.212. RATE CASE REQUIREMENT FOR CERTAIN NON-ERCOT UTILITIES. (a) Provides that this section applies only to an electric utility that operates solely outside of ERCOT.

(b) Requires the Public Utility Commission (PUC) to require an electric utility to make the filings with regulatory authorities required by Subchapter B (Rate Determination), Chapter 33, and to file a rate-filing package under Subchapter D (Provisions Applicable to Appeal by Ratepayers Outside Municipality) with PUC to initiate a comprehensive base rate proceeding before all of the utility's regulatory authorities:

(1) on or before the fourth anniversary of the date of the final order in the electric utility's most recent comprehensive base rate proceeding; or

(2) if, before the anniversary described by Subdivision (1), the electric utility earns materially more than the utility's authorized rate of return on investment, on a weather-normalized basis, in the utility's two most recent consecutive PUC earnings monitoring reports.

(c) Requires the electric utility to make the filings described by Subsection (b) not later than the 120th day after the date PUC notifies the utility of the requirement described by Subsection (b). Authorizes the 120-day period to be extended in the manner provided by Section 36.153(b) (relating to the regulatory authority granting an extension).

(d) Authorizes PUC to extend the time period described by Subsection (b)(1) and set a new deadline if PUC determines that a comprehensive base rate case would not result in materially different rates. Requires PUC to give interested parties a reasonable opportunity to present materials and argument before making a determination under this subsection.

(e) Requires PUC to adopt rules implementing this section, including appropriate notice and scheduling requirements.

(f) Provides that this section does not limit the authority of a regulatory authority under Subchapter D.

(g) Provides that this section expires September 1, 2023.

SECTION 4. Amends Subchapter B, Chapter 37, Utilities Code, by adding Section 37.058, as follows:

Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) Provides that this section applies only to an electric utility that operates solely outside of ERCOT.

(b) Authorizes an electric utility to file with PUC a request that PUC:

(1) grant a certificate for an electric generating facility;

(2) make a public interest determination for the purchase of an existing electric generating facility under Section 14.101 (Report of Certain Transactions; Commission Consideration); or

(3) both grant a certificate and make a determination.

(c) Requires PUC, notwithstanding any other law, in a proceeding involving the purchase of an existing electric generating facility, to issue a final order on a certificate for the facility or making a determination on the facility required by Section 14.101, as applicable, not later than the 181st day after the date a request for the certificate or determination is filed with the commission under Subsection (b). Requires that the utility's recoverable invested capital included in rates, for generating facilities granted a certificate under this subsection, notwithstanding Section 36.053 (Components of Invested Capital), be determined by PUC.

(d) Requires PUC, notwithstanding any other law, in a proceeding involving a newly constructed generating facility, to issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with PUC under Subsection (b).

SECTION 5. Provides that the changes in law made by this Act are not intended to affect the exercise of municipal jurisdiction under Chapter 33 (Jurisdiction and Powers of Municipality), Utilities Code.

SECTION 6. Provides that the changes in law made by this Act apply only to a proceeding before the Public Utility Commission of Texas (PUC) or other regulatory authority described by Section 11.003 (Definitions), Utilities Code, that commences on or after the effective date of this Act. Provides that a proceeding before PUC or other regulatory authority described by Section 11.003, Utilities Code, that commenced before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and that law is continued in effect for that purpose.

SECTION 7. Effective date: upon passage or September 1, 2015.