

SUBJECT: Securitization to recover non-ERCOT entities' weatherization costs

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P.
King, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

1 absent — Lucio

WITNESSES: For — JP Urban, AECT; Lino Mendiola, Association of Electric
Companies of Texas; Tom Glass, Protect the Texas Grid; Matthew
McFarlane, Python and Patriot Power Group; (*Registered, but did not
testify*: Daniel Womack, Dow, Inc.; Cheryl Mele, El Paso Electric;
Deanna Rodriguez, Entergy Texas; Gary Gibbs, Southwestern Electric
Power Company; Katie Coleman, Texas Association of Manufacturers;
Damon Withrow, Xcel Energy)

Against — None

On — Cyrus Reed, Lone Star Chapter Sierra Club; (*Registered, but did
not testify*: Thomas Gleeson, Public Utility Commission of Texas)

BACKGROUND: Utilities Code ch. 36, subch. I establishes the standards and procedures
governing securitization and recovery of system restoration costs by an
electric utility. An electric utility can obtain timely recovery of system
restoration costs and use securitization financing to recover these costs.
The Public Utility Commission is required to 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.

"System restoration costs" means reasonable and necessary costs incurred
by an electric utility due to any activity conducted in connection with the
restoration of service and infrastructure associated with power outages as

the result of any tropical storm or hurricane, ice or snow storm, flood, or other weather-related event or natural disaster that occurred in or after 2008. System restoration costs include mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities. System restoration costs must include reasonable estimates of the costs of such an activity conducted or expected to be conducted by the electric utility, but estimates are subject to true-up and reconciliation after actual costs are known.

DIGEST:

CSHB 1510 would allow an electric utility operating solely outside the ERCOT power region to obtain timely recovery of system restoration costs through securitization and the issuance of transition bonds or system restoration bonds by an issuer other than the electric utility or an affiliated special purpose entity.

The bill would expand the definition of system restoration costs to include reasonable and necessary weatherization and storm-hardening costs incurred, as well as reasonable estimates of costs to be incurred, by the electric utility. Such estimates would be subject to true-up and reconciliation after the actual costs were known.

The same procedures, standards, and protections for securitization authorized under state law would apply to the lower-cost financing mechanism for securitization of transition costs or system restoration costs provided under the bill. Financing of system restoration costs under the bill would be a valid and essential public purpose.

To the extent of any conflict between this bill and other state law, the bill would control.

Texas Electric Utility System Restoration Corporation. The bill would create the Texas Electric Utility System Restoration Corporation as a nonprofit, special purpose public corporation and instrumentality of the state for the essential public purpose of providing a lower-cost, supplemental financing mechanism available to the Public Utility Commission (PUC) and an electric utility to attract low-cost capital to

finance system restoration costs.

Administration. The corporation would have legal existence as a public corporate body and instrumentality of the state but would be separate and distinct from the state. It would have the powers, rights, and privileges provided to nonprofit corporations under state law, and an organizer selected by PUC would have to prepare the corporation's required certificate of formation.

The corporation would be governed by a five-director board appointed by PUC for two-year terms. The corporation could retain professionals, financial advisors, and accountants to fulfill its duties. State officers and agencies would be authorized to render services as requested by PUC or the corporation.

PUC would regulate the corporation consistent with the manner in which it regulates public utilities, and the corporation would have to submit an annual operating budget to PUC for approval.

Funding. The corporation would be self-funded, and its assets could not be considered part of any state fund. The state would be prohibited from budgeting for or providing any state money to the corporation. The corporation's debts, claims, obligations, and liabilities could not be considered to be a debt of the state or a pledge of its credit.

Before the imposition of transition charges or system restoration costs, the corporation could accept and expend money received from any source to finance obligations until it received sufficient transition property to cover its operating expenses and repay any short-term borrowing.

Powers and duties. The corporation could acquire, sell, pledge, or transfer transition property as necessary for the purposes of the bill and agree to such terms and conditions as it deemed proper to:

- acquire transition property and to pledge the property and any other collateral either to secure payment of system restoration bonds,

together with payment of any other qualified costs, or to secure repayment of any borrowing from any other issuer of system restoration bonds; or

- sell the transition property to another issuer, which could in turn pledge that property, together with any other collateral, to the repayment of system restoration bonds issued by the issuer together with any other qualified costs.

The corporation also could:

- issue system restoration bonds on terms and conditions consistent with a financing order;
- borrow funds from an issuer of system restoration bonds to acquire transition property and pledge that property to the repayment of any borrowing from an issuer, together with any related qualified costs, consistent with a financing order;
- sue or be sued in its corporate name;
- intervene as a party before PUC or any court in any matter involving the corporation's powers and duties;
- negotiate and become party to contracts as necessary, convenient, or desirable to carry out the bill; and
- engage in corporate actions or undertakings that were permitted for nonprofit corporations and that were allowed by the bill.

The corporation would have to maintain separate accounts and records relating to each electric utility that collected system restoration charges for all charges, revenues, assets, liabilities, and expenses relating to that utility's related system restoration bond issuances.

The bill would require adequate protection and provision to have been made for the payment of outstanding bonds before the board could authorize any rehabilitation, liquidation, or dissolution of the corporation. In the event of any such action, the assets of the corporation would be applied first to pay all debts, liabilities, and obligations, and all remaining funds would be applied and distributed as provided by PUC.

The corporation could not file a voluntary petition or become a debtor under federal bankruptcy law until two years and one day after the corporation no longer had any payment obligation to any system restoration bonds. These restrictions would not be limited or altered by the state and would be part of the contractual obligation that was subject to the state pledge for the benefit and protection of financing parties and electric utilities.

Financing order. A financing order issued by PUC under the bill would have to:

- require the sale, assignment, or other transfer to the corporation of certain specified transition property created by the order, and, following that sale, assignment, or transfer, require that system restoration charges paid under any financing order be created, assessed, and collected as the property of the corporation, subject to subsequent sale, assignment, or transfer by the corporation as authorized under the bill; and
- authorize the electric utility to serve as agent to collect the system restoration charges and transfer them to the corporation, the issuer, or a financing party.

The financing order also would have to authorize:

- the issuance of system restoration bonds by the corporation secured by a pledge of specified transition property, and the application of the proceeds of those bonds, net of issuance costs, to the acquisition of the transition property from the electric utility; or
- the acquisition of specified transition property from the electric utility by the corporation financed either by a loan by an issuer to the corporation of the proceeds of system restoration bonds, net of issuance costs, secured by a pledge of the specified transition property or by the acquisition by an issuer from the corporation of the transition property financed from the net proceeds of transition bonds issued by the issuer.

After issuance of the financing order, the corporation would have to arrange for the issuance of system restoration bonds as specified in the order by it or another issuer selected by the corporation and approved by PUC. System restoration bonds issued pursuant to the order would be secured only by the related transition property and any other funds pledged under the bond documents. No assets of the state or electric utility would be subject to claims by bondholders. Following assignment of the transition property, the electric utility would not have any beneficial interest or claim of right in such system restoration charges or in any transition property.

Other provisions. In approving securitization under the bill, PUC would have to ensure that customers were not harmed as a result of any financing through the corporation and that any financial savings or other benefits were appropriately reflected in customer rates.

System restoration bonds solely would be the obligation of the issuer and the corporation as borrower and would not be a debt of or a pledge of the faith and credit of the state. The bonds would be nonrecourse to the credit of any assets of the state and PUC.

The bill would not limit or impair PUC's jurisdiction to regulate the rates charged and the services rendered by electric utilities.

An electric utility that received proceeds of securitization financing under the bill would not be required to provide utility services to the corporation or the state as a result, except in the role of the corporation or the state as a utility customer. The bill would not create an obligation of the corporation or an issuer to provide electric services to the utility or its customers.

Severability. Effective on the date the first system restoration bonds were issued under the bill, if any provision of the Public Utility Regulatory Act was held to be invalid or was invalidated, superseded, replaced, repealed, or expired for any reason, that occurrence would not affect the validity or continuation of the bill or other provisions of state law relevant to the issuance, administration, payment, retirement, or refunding of system

restoration bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, the corporation, an issuer, or a financing party. Those provisions would remain in full force and effect.

Certificate of convenience and necessity. The bill would allow but not require an electric utility operating solely outside of the ERCOT power region to obtain a certificate of convenience and necessity to install, own, or operate a generation facility with a capacity of 10 megawatts or less. PUC would be required to consider any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside of the ERCOT power region when granting a certificate of convenience and necessity.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 1510 would promote cost-effective measures to enhance the weatherization of non-ERCOT utility facilities, while limiting the impact to customers through low-cost securitization funding. The winter storm in February demonstrated the need to make investments in the state's electricity infrastructure to better withstand and mitigate the effects of future extreme weather events.

PUC previously has used utility securitization financing to allow timely recovery of system restoration costs associated with storm-related expenses. Securitization is a low-cost financial tool that allows for low interest rates on bonds and provides greater quantifiable benefits to ratepayers than conventional financing methods. This bill would supplement the current securitization mechanism in statute by allowing weatherization and storm-hardening costs to be recoverable system restoration costs and by allowing the utility to transfer its rights under the financing order to another entity. This transfer would allow the utility to eliminate the securitization debt from its balance sheet, supporting the utility's credit, lowering the cost of debt, and benefiting ratepayers.

The bill also would enhance grid resiliency by encouraging generation investment. By allowing non-ERCOT utilities to bypass the certificate of convenience and necessity (CCN) regulatory process to deploy small-scale generation on their system, the bill would provide these utilities with the flexibility to quickly meet intermittent generation shortages. By requiring the PUC to consider economic or reliability benefits of dual fuel and fuel storage capabilities when considering a CCN for a generation facility, the bill would encourage utilities to pursue such investment, which can provide reliability and cost savings during fuel shortages.

CRITICS
SAY:

No concerns identified.