

By: Creighton

S.B. No. 841

A BILL TO BE ENTITLED

AN ACT

relating to rates of and certificates of convenience and necessity
for certain non-ERCOT electric utilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.209, Utilities Code, is amended to
read as follows:

Sec. 36.209. COST RECOVERY AND RATE ADJUSTMENT STANDARDS
AND PROCEDURES FOR [BY] CERTAIN NON-ERCOT UTILITIES [~~OF CERTAIN~~
~~TRANSMISSION COSTS~~]. (a) This section applies only to an electric
utility that operates solely outside of ERCOT [~~in areas of this~~
~~state included in the Southeastern Electric Reliability Council,~~
~~the Southwest Power Pool, or the Western Electricity Coordinating~~
~~Council and that owns or operates transmission facilities~~].

(b) The commission, after notice and opportunity for
hearing, shall [~~may~~] allow an electric utility to adjust its rates
to ensure timely recovery of the utility's [~~recover on an annual~~
~~basis its~~] reasonable and necessary costs [~~expenditures~~] for
transmission investment [~~infrastructure improvement costs~~] and
changes in wholesale transmission charges to the [~~electric~~] utility
under a tariff approved by a federal regulatory authority, to the
extent that the costs or charges have not otherwise been recovered.
The commission may allow the electric utility to recover only the
costs and charges allocable to retail customers in the state and may
not allow the [~~electric~~] utility to over-recover costs or charges.

1 The standards and procedures described in Subsections (c)-(e)
2 exclusively govern a rate adjustment described by this subsection.

3 (c) An electric utility may apply to adjust the utility's
4 transmission rates on an interim basis not more than twice each
5 calendar year to reflect changes in the utility's invested capital
6 and wholesale transmission charges since the test year in the
7 utility's most recent base rate case before the commission. An
8 application is eligible for informal disposition under commission
9 rules and Section 2001.056, Government Code. If the requirements
10 for informal disposition are met, the presiding officer shall issue
11 a notice of approval not later than the 60th day after the date a
12 materially sufficient application is filed, unless good cause
13 exists to extend the deadline or the presiding officer determines
14 that the proceeding should be considered by the commission.

15 (d) If an electric utility elects to adjust the utility's
16 transmission rates under this section, the new rates must reflect
17 the addition and retirement of transmission facilities, including
18 associated depreciation, federal income tax and other associated
19 taxes, and the commission-authorized rate of return on the
20 facilities. The commission shall use load growth during this
21 process only for the purpose of establishing billing determinants
22 to set new rates.

23 (e) An adjustment of an electric utility's transmission
24 rates under this section is subject to reconciliation at the next
25 complete review of the utility's transmission cost of service. As
26 part of the complete review, the commission shall review the costs
27 of the interim transmission plant additions to determine if the

costs were reasonable and necessary. Any amounts resulting from an adjustment, including amounts associated with capital investment expenditures or transmission charges, that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, shall be refunded with carrying costs. For the period beginning on the date the over-recovery is determined to have begun and ending on the effective date of the electric utility's rates set in the complete review of the utility's transmission cost of service, carrying costs shall be calculated using the same rate of return that was applied to the transmission investments included in the adjustment. For the time period that begins on the effective date of the electric utility's rates set in the complete review of the utility's transmission cost of service, carrying costs shall be calculated using the utility's rate of return authorized in the complete review.

(f) In establishing the base rates of an electric utility under Subchapter C, or rates governed by Subsections (b)-(e) or by Section 36.204, 36.205, or 36.210, the regulatory authority otherwise provided with jurisdiction over those rate proceedings shall determine the utility's revenue requirement based on, at the election of the utility:

(1) information submitted for a test year or other applicable historical period for rate proceedings described by this subsection; or

(2) updated information that reflects actual or estimated information for a period ending not later than the earlier of:

1 (A) the last day of the seventh month after the
2 end of the test year or other applicable historical period for rate
3 proceedings described by this subsection; or

4 (B) the 35th day after the date the applicable
5 rate proceeding is filed.

6 (g) An electric utility that elects to update information as
7 authorized by Subsection (f) is not precluded from proposing other
8 known and measurable changes to the utility's historical rate
9 information. If the utility proposes a known and measurable change
10 to the information, the utility must provide a reasonable estimate
11 or projection of the annualized effects of the change on the
12 utility's operating expenses, invested capital, and revenues
13 during the first 12 months the rates are expected to be in effect.
14 For the purposes of this subsection, a known and measurable change
15 is:

16 (1) anticipated to occur not later than during the
17 first 12 months the rates are expected to be in effect;

18 (2) a change in the level of an electric utility's
19 operating expenses, invested capital, or revenues; and

20 (3) a change whose existence is known, is reflected in
21 a reasonable budget estimate, or is otherwise the subject of a
22 reasonable estimate or projection.

23 (h) In a rate proceeding authorized by this subchapter or
24 Subchapter C, notwithstanding Section 36.109(a), the regulatory
25 authority with jurisdiction shall establish temporary rates on the
26 application of the electric utility at a level that is 70 percent of
27 the utility's requested increase, effective for consumption on and

1 after the 35th day after the date the utility files to initiate the
2 rate proceeding. The temporary rates shall remain in effect during
3 any applicable suspension period until final rates become
4 effective. On issuance of a final order that establishes new rates:

5 (1) money collected under the temporary rates in
6 excess of the rate finally ordered is subject to refund; and

7 (2) the electric utility may surcharge bills to
8 recover the amount by which the money collected under the temporary
9 rates is less than the money that would have been collected under
10 the rate finally ordered.

11 (i) If the electric utility does not apply for temporary
12 rates under Subsection (h), the final rate set in a rate proceeding
13 under this subchapter or Subchapter C shall be made effective for
14 consumption on and after the 35th day after the date the utility
15 filed to initiate the rate proceeding. The regulatory authority
16 shall:

17 (1) require the electric utility to refund to
18 customers money collected in excess of the rate finally ordered on
19 or after the 35th day after the date the utility filed to initiate
20 the rate proceeding; or

21 (2) authorize the electric utility to surcharge bills
22 to recover the amount by which the money collected on or after the
23 35th day after the date the utility filed to initiate the rate
24 proceeding is less than the money that would have been collected
25 under the rate finally ordered.

26 (j) An electric utility is entitled to file an application
27 with the commission to recover, through a rate rider mechanism, a

1 return of and on the prudent and reasonable capital expenditures,
2 the reasonable and necessary operation and maintenance expenses,
3 and the taxes associated with either the acquisition of an existing
4 generating facility or the construction of a new generating
5 facility. A rate proceeding under Subchapter C is not required to
6 establish or adjust the rider. In a proceeding brought under this
7 subsection to establish the initial rider, the commission shall
8 issue a final order before the 181st day after the date the electric
9 utility files the application with the commission. If the
10 commission does not issue a final order before that date, the
11 application is considered approved. An approved rider becomes
12 effective on the date the generating facility begins to provide
13 service to the electric utility's retail customers in this state,
14 and continues in effect until the effective date of new base rates
15 that allow the utility to recover the costs of the new generating
16 facility from the utility's retail customers in this state. The
17 electric utility may use both actual historical cost information
18 and reasonable cost estimates as the basis for recovery under the
19 initial rider. The rider must use the return on equity most
20 recently approved by the commission in the electric utility's base
21 rate proceedings.

22 (k) In the case of the acquisition of an existing generating
23 facility, an electric utility may file the application for approval
24 of a rider described by Subsection (j) in the same proceeding in
25 which it seeks issuance of a certificate of convenience and
26 necessity for the facility under Chapter 37. Notwithstanding
27 Section 36.053, the utility's recoverable invested capital shall be

based on the purchase price for the newly acquired facility. In the case of a newly constructed generating facility, the utility may file its application for approval of a rider described by Subsection (j) not earlier than 180 days before the expected commercial operation date of the new facility.

(l) Once established, a rider described by Subsection (j) is subject to annual adjustment, so that the rider reflects historical costs from the most recent 12-month period available before the filing of an application to make the adjustment. An adjustment under the rider takes effect as a temporary rate, subject to refund based on the final commission decision, not later than the 35th day after the date of filing of an application to make the adjustment. The commission shall take final action on an application to make an adjustment not later than the 90th day after the date of filing. If the commission does not take final action before that date, the application is considered approved.

(m) A rider described by Subsection (j) is subject to a periodic true-up. A true-up must cover at least a 12-month period. In a true-up proceeding, the electric utility shall reconcile the revenues recovered by the utility under the rider with the actual prudent, reasonable, and necessary level of costs, and the rider shall be further adjusted as necessary to reflect the outcome of the reconciliation.

SECTION 2. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.058 to read as follows:

Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) This

section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility may file with the commission a request that the commission:

(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; or

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

(c) The commission may grant a request described by Subsection (b).

(d) Notwithstanding any other law, in a proceeding involving the purchase of an existing electric generating facility, the commission shall 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). If the commission does not issue a final order before that date, the application is considered approved. For generating facilities granted a certificate under this subsection, notwithstanding Section 36.053, the utility's recoverable invested capital included in rates shall be based on the purchase price for the newly acquired facility.

(e) Notwithstanding any other law, in a proceeding involving a newly constructed generating facility, the commission shall issue a final order on a certificate for the facility not

1 later than the 366th day after the date a request for the
2 certificate is filed with the commission under Subsection (b). If
3 the commission does not issue a final order before that date, the
4 application is considered approved.

5 SECTION 3. The changes in law made by this Act apply only to
6 a proceeding before the Public Utility Commission of Texas or other
7 regulatory authority described by Section 11.003, Utilities Code,
8 that commences on or after the effective date of this Act. A
9 proceeding before the Public Utility Commission of Texas or other
10 regulatory authority described by Section 11.003, Utilities Code,
11 that commenced before the effective date of this Act is governed by
12 the law in effect on the date the proceeding commenced, and that law
13 is continued in effect for that purpose.

14 SECTION 4. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2015.