

By: Estes

S.B. No. 940

A BILL TO BE ENTITLED

AN ACT

1
2 relating to competition in the electric utility market of certain
3 municipalities.

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

5 SECTION 1. Section 40.003, Utilities Code, is amended by
6 amending Subsection (a) and adding Subsection (g) to read as
7 follows:

8 (a) Municipally owned utilities, other than those required
9 to initiate customer choice under Section 40.051(d), and river
10 authorities may adopt and use securitization provisions having the
11 effect of the provisions provided by Subchapter G, Chapter 39, to
12 recover through appropriate charges their stranded costs, at a
13 recovery level deemed appropriate by the municipally owned utility
14 or river authority up to 100 percent, under rules and procedures
15 that shall be established:

16 (1) in the case of a municipally owned utility subject
17 to this subsection, by the municipal governing body or a body vested
18 with the power to manage and operate the municipally owned utility,
19 including procedures providing for rate orders of the governing
20 body having the effect of financing orders, providing for a
21 separate nonbypassable charge approved by the governing body, in
22 the nature of a transition charge, to be collected from all retail
23 electric customers of the municipally owned utility, identified as
24 of a date determined by the governing body, to fund the recovery of

1 the stranded costs of the municipally owned utility and of all
2 reasonable related expenses, as determined by the governing body,
3 and providing for the issuance of bonds, having a term and other
4 characteristics as determined by the governing body, as necessary
5 to recover the amount deemed appropriate by the governing body
6 through securitization financing; and

7 (2) in the case of a river authority, by the
8 commission.

9 (g) A municipally owned utility required to initiate
10 customer choice under Section 40.051(d) may recover its stranded
11 costs through securitization provisions:

12 (1) having the effect of Subchapter G, Chapter 39; and

13 (2) under rules and procedures established by the
14 commission.

15 SECTION 2. Section 40.051, Utilities Code, is amended by
16 amending Subsection (a) and adding Subsection (d) to read as
17 follows:

18 (a) Except as provided by Subsection (d), the ~~[The]~~
19 municipal governing body or a body vested with the power to manage
20 and operate a municipally owned utility has the discretion to
21 decide when or if the municipally owned utility will provide
22 customer choice.

23 (d) Not later than 365 days after the date the body vested
24 with the power to manage and operate a municipally owned utility
25 receives notice under Section 2165.059, Government Code, that the
26 utility's certificated retail service area includes three million
27 square feet of state-owned office space, the utility shall:

- 1 (1) initiate customer choice; and
2 (2) except as otherwise provided by this chapter, be
3 subject to the provisions of this subtitle that apply to a
4 municipally owned utility that chooses to participate in customer
5 choice under Subsection (b).

6 SECTION 3. Section 40.054, Utilities Code, is amended by
7 amending Subsection (e) and adding Subsection (g) to read as
8 follows:

9 (e) The commission does not have jurisdiction to require
10 unbundling of services or functions of~~[, or to regulate the~~
11 ~~recovery of stranded investment of,~~ a municipally owned utility
12 or, except as provided by this section, jurisdiction with respect
13 to the rates, terms, and conditions of service for retail customers
14 of a municipally owned utility within the utility's certificated
15 service area.

16 (g) Except as provided by Section 40.003(g), the commission
17 does not have jurisdiction to regulate the recovery of stranded
18 investment of a municipally owned utility.

19 SECTION 4. Subsection (a), Section 40.055, Utilities Code,
20 is amended to read as follows:

21 (a) The municipal governing body or a body vested with the
22 power to manage and operate a municipally owned utility has
23 exclusive jurisdiction to:

- 24 (1) set all terms of access, conditions, and rates
25 applicable to services provided by the municipally owned utility,
26 subject to Sections 40.054 and 40.056, including nondiscriminatory
27 and comparable rates for distribution but excluding wholesale

1 transmission rates, terms of access, and conditions for wholesale
2 transmission service set by the commission under this subtitle,
3 provided that the rates for distribution access established by the
4 municipal governing body shall be comparable to the distribution
5 access rates that apply to the municipally owned utility and the
6 municipally owned utility's affiliates;

7 (2) determine whether to unbundle any energy-related
8 activities and, if the municipally owned utility chooses to
9 unbundle, whether to do so structurally or functionally;

10 (3) except for a municipally owned utility required to
11 initiate customer choice under Section 40.051(d), reasonably
12 determine the amount of the municipally owned utility's stranded
13 investment;

14 (4) establish nondiscriminatory transition charges
15 reasonably designed to recover the stranded investment over an
16 appropriate period of time, provided that recovery of retail
17 stranded costs shall be from all existing or future retail
18 customers, including the facilities, premises, and loads of those
19 retail customers, within the utility's geographical certificated
20 service area as it existed on May 1, 1999;

21 (5) determine the extent to which the municipally
22 owned utility will provide various customer services at the
23 distribution level, including other services that the municipally
24 owned utility is legally authorized to provide, or will accept the
25 services from other providers;

26 (6) manage and operate the municipality's electric
27 utility systems, including exercise of control over resource

1 acquisition and any related expansion programs;

2 (7) establish and enforce service quality and
3 reliability standards and consumer safeguards designed to protect
4 retail electric customers, including safeguards that will
5 accomplish the objectives of Sections 39.101(a) and (b), consistent
6 with this chapter;

7 (8) determine whether a base rate reduction is
8 appropriate for the municipally owned utility;

9 (9) determine any other utility matters that the
10 municipal governing body or body vested with power to manage and
11 operate the municipally owned utility believes should be included;

12 (10) make any other decisions affecting the
13 municipally owned utility's participation in customer choice that
14 are not inconsistent with this chapter; and

15 (11) determine the extent to which the municipally
16 owned utility offers energy efficiency programs and how the
17 programs are administered by the utility, except as provided by
18 Section 39.9051(e).

19 SECTION 5. Subchapter B, Chapter 40, Utilities Code, is
20 amended by adding Section 40.061 to read as follows:

21 Sec. 40.061. ENFORCEMENT OF CUSTOMER CHOICE. (a) In this
22 section, "governing body" means the body vested with the power to
23 manage and operate a municipally owned utility.

24 (b) If the commission determines that a municipally owned
25 utility is not adequately offering customer choice 90 days after
26 the date customer choice was to be initiated under Section
27 40.051(d), the utility becomes subject to the oversight authority

1 of the commission for matters related to the implementation of
2 customer choice.

3 (c) The commission shall make a determination under
4 Subsection (b), if any, as soon as practicable after the expiration
5 of the 90-day period. The commission assumes oversight authority
6 over the municipally owned utility on the date a determination is
7 made, and this authority encompasses any portions of the authority
8 vested with the governing body of the utility under this subchapter
9 that the commission determines is necessary.

10 (d) The governing body shall work cooperatively with the
11 commission in offering customer choice.

12 (e) The oversight authority under this section continues
13 until the date the commission determines that the municipally owned
14 utility:

15 (1) has completed the transition to customer choice;
16 and

17 (2) is prepared to continue to provide customer choice
18 in a manner consistent with the competitive market.

19 (f) On the date the commission makes an affirmative
20 determination under Subsection (e), the management of the
21 municipally owned utility returns to the control of its governing
22 body.

23 SECTION 6. Subchapter B, Chapter 2165, Government Code, is
24 amended by adding Section 2165.059 to read as follows:

25 Sec. 2165.059. LIST BASED ON CERTAIN STATE-OWNED OFFICE
26 SPACE. (a) On the second Monday in September of each calendar
27 year, the commission shall:

1 (1) create a list of the municipally owned utilities
2 in whose certificated retail service area the commission manages at
3 least three million square feet of state-owned office space; and

4 (2) for each utility that appears on the list for the
5 first time, notify the Public Utility Commission of Texas and the
6 body vested with the power to manage and operate the utility of the
7 utility's addition to the list.

8 (b) The Public Utility Commission of Texas shall assist the
9 commission as necessary in performing the duties under Subsection

10 (a).

11 SECTION 7. The Texas Facilities Commission shall create the
12 list described by Section 2165.059, Government Code, as added by
13 this Act, beginning September 12, 2011.

14 SECTION 8. 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, 2011.