



HB 1397 by Phelan: Needs some clarifications

HB 1397 is a relatively simple bill: For non-ERCOT vertically-integrated utilities it authorizes an electric utility operating outside of ERCOT to file an application for recovery of generation-related costs through a rate rider. While a simple bill, this represents an important change in how and when utilities can recover costs from ratepayers on generation assets. Normally, such investments would go through a full rate-making process, not a separate specific rider for a specific investment. While it is true that if the bill as filed passed, the Public Utility Commission would still have to develop the rules to implement these sections, and any proposed rider could be rejected by the PUC, the Lone Star Chapter of the Sierra Club does have concerns about how broadly the bill is written. While we do not oppose the bill, we prefer that Chairman Phelan work with stakeholders to make the bill as “tight” as possible. In addition, while not the intention of this bill, we believe the Legislature should explore another non-traditional mechanism used in other states that allows vertically-integrated utilities to actually retire generation assets which are no longer economic while adding newer, cleaner generation. We believe a study could be added to this bill to assess this additional mechanism for use in the Non-ERCOT utilities.

Generation Facility Must Be Clarified.

We would suggest changes, particularly in Section 36.312 (b), to clarify that the riders is for a specific facility, and that notice and an opportunity for a hearing is required. We also believe given the ongoing discussion about the role of electric storage, making a reference to storage is important.

Thus, we would suggest replacing (b) with the following language:

(b) An electric utility may file, and the commission may approve, after notice and an opportunity for hearing, an application for a rider to recover the electric utility’s reasonable and necessary investment in a new power generation facility, including an energy storage facility.

Timing and “Claw-Back” Should be Made Clear.

Similarly in the same section under (d) we would suggest much tighter language on the timing and potential refunding of any clawback be put into the bill’s language. This language has also been suggested by other stakeholders, and we support it.

Here is some suggested language:

(d) Any rider approved under Subsection (b) shall not take effect until the date the power generation facility begins to provide service to the electric utility’s customers. **The rider shall terminate when the commission orders the amount of prudently incurred investment to be included in the utility’s base rates in a general base rate proceeding. Any disallowed amounts previously recovered through a rider shall be refunded to customers.**

Further protection for ratepayers

In the interests of protecting all ratepayers, large and small, we would suggest additional language by adding some language that makes it clear this special rider can not be used to earn the utility more than it would in a normal rate-making process, and that if the rider leads to less risk for the utility (because of the guaranteed recovery on its investment), there should be a corresponding decrease in its return on investment.

Language developed by other stakeholders is suggested below:

(f) The Commission shall not adopt a rider under Subsection (b) if the utility is overearning, or if adopting the rider would cause the utility to over-recover its total generation costs.

(g) In setting the utility's overall base rates, the commission shall reduce the utility's return on equity in proportion to the reduction in the utility's risk as a result this section, both individually and in combination with other rate riders available to the utility.

Securitization Study

While not part of the intent of this bill, we believe there are situations for non-ERCOT utilities where the best interests of ratepayers may be new investment in cleaner generation coupled with retirement of generation assets which while “used and useful” are no longer economic, or have other issues, like substantial water use or large air quality impacts. In some other states, recent legislation has allowed utilities another unique rate-making tool known as “Securitization” which can lead to benefits for ratepayers and utilities. Securitization uses rate-payer backed bonds to roll retirements in with new generation, leading to reductions in rates and new investment. We would suggest that as part of this bill - or as an interim study by this committee- Texas look at the potential for securitization for the non-ERCOT utilities. Some language is suggested below.

On or before August 31, 2021, the Commission shall study the costs and benefits of Texas authorizing the issuance of low-cost securitized ratepayer-backed bonds in non-ERCOT utilities, the proceeds of which could be used:

- (1) To lower rates paid by electric utility customers by reducing financing costs of certain retired electric generating facilities and related costs;
- (2) To provide transition assistance to Texas communities and electric generation facility workers that are directly impacted by the retirement of electric generation facilities;
- (3) To make available capital investment for least-cost electric generation facilities and other supply-side and demand-side resources; and
- (4) For use by the commission and the review by independent credit rating agencies that is necessary to achieve the highest possible bond ratings.

In conducting its study, the Commission may look at the experience of other states that have authorized the use of ratepayer-backed bonds to aid in lowering electric rates while paying the costs of retirement and new generation.

The Sierra Club appreciates the opportunity to make these comments on HB 1397.

While we do not oppose the bills, we believe that additional clarifications and protections are needed for consumers, large and small.

Sincerely,

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