STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2521 By: Smith (Hopper)

COMMITTEE SUBSTITUTE

An Act relating to electric utilities; creating the Oklahoma Electric Restructuring Implementation Act; providing definitions; making statement relating to competition in the sale of electricity; stating purpose of the act; stating goals of the act; providing standards for the restructuring of electric utilities; providing for the powers and authority of the Corporation Commission; directing the Commission to promulgate certain rules; establishing date for promulgation of rules; providing certain criteria for rules; requiring electric utilities to be members of a regional transmission organization; providing conditions for the removal of electric utility generation from rate regulation; requiring the Commission to monitor certain activities; directing the Commission to undertake certain action in certain circumstances; authorizing the Commission to make an assessment upon certain electric utilities; stating amount of the assessment; providing for recovery of the assessment; providing for payment of the assessment; repealing 11 O.S. 1991, Sections 21-121, as last amended by Section 1, Chapter 391, O.S.L. 1998 and 21-222, as amended by Section 2, Chapter 391, O.S.L. 1998 (11 O.S. Supp. 1999, Sections 21-121 and 21-222), which relate to municipal and rural electric systems; repealing Section 1, Chapter 162, O.S.L. 1997, Section 2, Chapter 162, O.S.L. 1997, Section 3, Chapter 162, O.S.L. 1997, as amended by Section 3, Chapter 391, O.S.L. 1998, Section 4, Chapter 162, O.S.L. 1997, as amended by Section 4, Chapter 391, O.S.L. 1998, Section 5, Chapter 162, O.S.L. 1997, as amended by Section 5, Chapter 391, O.S.L. 1998, Section 6, Chapter 162, O.S.L. 1997, as last amended by Section 6, Chapter 391, O.S.L. 1998, Section 7, Chapter 162, O.S.L. 1997, as amended by Section 7, Chapter 391, O.S.L. 1998, Section 8, Chapter 391, O.S.L. 1998, and Section 9, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 1999, Sections 190.1, 190.2, 190.3, 190.4, 190.5, 190.6, 190.7, 190.8 and 190.9), which relate to the Electric Restructuring Act of 1997; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.10 of Title 17, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Electric Restructuring Implementation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.11 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Electric Restructuring Implementation Act:

1. "Commission" means the Corporation Commission;

2. "Distribute", "distributing" or "distribution" of electric energy means the transfer of electric energy through a retail distribution system to a retail customer;

3. "Electric utility" means any entity that generates, transmits or distributes electric energy for use by retail consumers in this state whose rates, charges and terms and conditions of service are subject to the jurisdiction of the Commission;

4. "FERC" means the Federal Energy Regulatory Commission or any successor federal agency;

5. "Generate", "generating" or "generation" of electric energy means the production of electric energy;

6. "Retail consumer" means any person that purchases retail electric energy for its own consumption at one or more metering points or nonmetered points of delivery located in this state;

7. "Retail electric energy" means electric energy sold for ultimate consumption to a retail consumer;

8. "Retail electric energy supplier" means any person or entity who offers to sell or sells electric energy to retail customers, but it does not mean a generator that produces electric energy

exclusively for its own consumption or the consumption of an affiliate; and

9. “Transmit”, “transmitting” or “transmission” of electric energy means the transfer of electric energy through the state’s interconnected transmission grid from a generator to either a distributor or a retail consumer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.12 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. It is in the best interest of the citizens of this state to move forward in an efficient and orderly manner to increased competition in the generation and sale of electric energy. The purposes and goals of the Oklahoma Electric Restructuring Implementation Act are to provide for the implementation, administration, and management of electric utility restructuring that will:

1. Ensure an orderly transition from the current electric power market where retail consumers may purchase only bundled electric services from their electric utility to a more competitive electric power market where retail consumers would be able to purchase unbundled and competitive generated power from multiple retail electric energy suppliers;

2. Reduce the cost of electricity for as many retail consumers as possible, help industry to be more competitive, create more jobs in this state, create new and expanded business opportunities, and encourage the development of increased and enhanced electric energy services;

3. Encourage the development of a competitive electric industry through the unbundling of prices and services of electric utilities and ultimately the separation of generation services of electric utilities from transmission and distribution services and the introduction of consumer choice of retail electric energy suppliers

to enable competitive market forces to determine the cost and quality of generated electricity for retail consumers;

4. Restructure the electric utility industry to provide greater competition through open, equal and comparable access to electric utility transmission and distribution systems and to ensure retail electric energy suppliers are able to engage in fair and equitable competition;

5. Ensure that direct access by retail consumers to competitive generation be implemented in the State of Oklahoma no later than July 1, 2002, in a manner that ensures increased consumer choice and electric generation service at the lowest and most competitive prices; and

6. Ensure that proper standards of safety, reliability and service are maintained in a restructured electric service industry.

B. The following standards shall govern and control the administration, management, direction and execution of restructuring of electric utilities in this state and the orderly implementation of such restructuring:

1. Ensure the continuance of safe and reliable electric service to all retail consumers in this state;

2. Electric utility rates shall be unbundled to provide clear price information on the components of generation, transmission and distribution and any other ancillary charges. Electric bills for all classes shall be unbundled utilizing line itemization to reveal the various component costs of providing electrical services. Charges for public benefit programs currently authorized by statute or the Commission, or both, shall be unbundled and appear in line item format on electric bills for all classes of retail consumers;

3. Following unbundling of electric utility rates and subject to the other provisions of this act, remove generation services from rate regulation; provided, that these services are structurally

separated from transmission and distribution services which shall remain rate regulated;

4. Consumers of electric utilities shall be allowed to choose among retail electric energy suppliers. A process shall be established to allow all retail consumers to have customer choice by July 1, 2002. Customer choice means that retail consumers shall be allowed to purchase different levels and quality of electric supply from a variety of retail electric energy suppliers and that every seller and purchaser of electric energy shall deliver and receive that electricity through direct and open access to electric transmission and distribution services in a nondiscriminatory manner;

5. Consumer access to alternative suppliers of electricity requires direct and open access to the transmission and distribution systems of electric utilities. Comparability shall be assured for retail electric energy suppliers competing with affiliates of entities supplying transmission and/or distribution services, and electric utilities shall give no preferential treatment of any kind to any of their affiliates engaged in any manner in the wholesale or retail electric sales or service business;

6. Retail electric energy suppliers shall, to the extent determined by the Commission, be required to meet certain minimum standards designed to ensure reliability and financial integrity and to be licensed and/or registered with the Commission;

7. Ensure protection of the retail electric consumer by development of appropriate safeguards and policies that educate, secure and enhance the understanding of electric restructuring and its benefits. Minimum residential and commercial consumer service safeguards and protections shall be ensured including programs and mechanisms that enable residential consumers with limited incomes to obtain affordable essential electric service;

8. A default electric service provider or providers shall be established for any retail consumer of an electric utility who has not chosen an alternative retail electric service provider. Such default service provider(s) shall remain in effect for a period not less than the transition period referenced in paragraph 9 of this subsection;

9. A defined period for the transition to a restructured electric utility industry shall be established. This transition period shall reflect a time frame for a fully restructured and competitive industry to develop, which period shall not be less than five (5) years. During this transition period, each electric utility shall have a continuing obligation to provide all services it provided to retail consumers prior to the date of consumer choice under paragraph 4 of this subsection, at the rates being charged for such services prior to such date, subject to adjustments for changes in actual fuel costs;

10. Interconnection standards shall be established to ensure that there are not barriers to connection of generation or retail consumer facilities to transmission and/or distribution systems. These standards shall include the ability of retail consumers capable of being served from transmission systems:

a. to connect directly to such transmission systems, and

b. where such retail consumers are served from a substation of an electric utility utilized principally to serve such consumer, receive transmission only service;

11. No agreements between electric utilities and their suppliers or customers shall be abrogated, modified, amended or otherwise adversely affected by electric restructuring under this act, including, without limitation, federally mandated cogeneration contracts and electric retail sales or service contracts;

12. Electric utilities have traditionally had an obligation to provide service to consumers within their established service territories and have entered into long-term investments and federally mandated cogeneration contracts to meet the needs of consumers. These investments and contracts have resulted in costs which may not be recoverable in a competitive restructured market and thus may be "stranded". Procedures shall be established for identifying and quantifying such stranded costs and for recovery of prudently incurred, unmitigable and verifiable stranded costs, net of all benefits from any below-market-value generation or other assets or contracts of the electric utility in this state utilized to provide electric service prior to the date of this act; and

13. Any transfer by an electric utility of electric utility assets at below-market value shall not be permitted without Commission approval, following notice and hearing.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.13 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission shall have all power and authority to perform any and all acts, and to prescribe, issue, make, amend and rescind such orders or rules to carry out the provisions of this act.

B. The Commission is hereby directed and authorized to promulgate rules implementing the restructuring of electric utilities pursuant to and in accordance with the purposes, goals and standards set forth in this act, and to otherwise implement, administer and manage electric utility restructuring in a manner consistent with the provisions of this act:

1. Such rules shall be promulgated by the Commission not later than March 31, 2001; and

2. Such rules shall require that each electric utility shall file with the Commission not later than July 1, 2001, or such

earlier date as the Commission may determine, an application to determine its rates, charges and conditions of service for providing unbundled generation, transmission and distribution service and other related services to retail consumers in this state. Such application shall include:

a. a new cost-of-service study based on the unbundled assets and costs of generation, transmission and distribution and related services, and

b. such other information as the Commission may require.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.14 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Every electric utility that owns, controls or operates transmission facilities in this state must be a member of a regional transmission organization approved by the Federal Energy Regulatory Commission.

B. Notwithstanding any other provision of this act, electric utility generation shall not be removed from rate regulation until the later of (i) July 1, 2002 or (ii) a determination by the Commission, following notice and hearing, of the following:

1. There exists a fully functional regional transmission organization approved by the FERC which has been in operation for a sufficient period to demonstrate that there is the free and unconstrained movement of electricity between all of its members with a resulting competitive regional market for electric generation. This free and unconstrained movement of electricity must occur in such a manner that the delivered price of electricity out of such regional transmission organization's system is competitive (e.g., there should not be multiple transmission rates to move electricity across the regional transmission organization's system). All of the entities specified in subsection A of this section must be members of such organization;

2. There are a sufficient number of electric generators who have the ability (e.g., they are not physically or contractually constrained) to provide for robust competition for the sale and purchase of electricity in this state; and

3. No entity has market power which would enable them to artificially influence the price in this state for generated electric power.

C. The Corporation Commission shall monitor market power associated with the generation, transmission, distribution and sale of electricity in this state. Such monitoring shall include the performance of a market power study by an expert which shall be completed by March 1, 2001, and each March 1st thereafter until electric utility generation is removed from rate regulation pursuant to subsection B of this section. On a finding that market power abuses exist, the Commission shall require reasonable mitigation of the market power by ordering construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or remedy the market power abuse or violation, by imposing an administrative penalty, or by ordering such other actions as the Commission determines to be appropriate under the circumstances.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.15 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Effective November 1, 2000, the Corporation Commission is hereby directed and authorized to assess upon each electric utility doing business in this state, a fee for the purpose of implementing the provisions of this act, including, without limitation, developing and implementing a process for consumer education regarding retail electric consumer choice.

B. The assessment directed and authorized by this section shall be borne by the electric utility in an amount not to exceed twenty-

five cents ($.25) per month for every retail consumer served by an electric utility doing business in this state.

C. Any assessment levied pursuant to this section by an electric utility shall be recovered as an operating expense and shall be included in base rates or a monthly service charge. The Commission shall take such action as is necessary to ensure recovery of the assessment during the period for which it was levied.

D. The Commission may provide that the assessment levied by this section be paid monthly, quarterly or annually. The amount assessed shall be paid to the Commission for use by it in implementing the provisions of this act, including, without limitation, for use in consumer education regarding retail electric consumer choice and electric restructuring.

SECTION 7. REPEALER 11 O.S. 1991, Sections 21-121, as last amended by Section 1, Chapter 391, O.S.L. 1998 and 21-222, as amended by Section 2, Chapter 391, O.S.L. 1998 (11 O.S. Supp. 1999, Sections 21-121 and 21-222), are hereby repealed.

SECTION 8. REPEALER Section 1, Chapter 162, O.S.L. 1997, Section 2, Chapter 162, O.S.L. 1997, Section 3, Chapter 162, O.S.L. 1997, as amended by Section 3, Chapter 391, O.S.L. 1998, Section 4, Chapter 162, O.S.L. 1997, as amended by Section 4, Chapter 391, O.S.L. 1998, Section 5, Chapter 162, O.S.L. 1997, as amended by Section 5, Chapter 391, O.S.L. 1998, Section 6, Chapter 162, O.S.L. 1997, as last amended by Section 6, Chapter 391, O.S.L. 1998, Section 7, Chapter 162, O.S.L. 1997, as amended by Section 7, Chapter 391, O.S.L. 1998, Section 8, Chapter 391, O.S.L. 1998, and Section 9, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 1999, Sections 190.1, 190.2, 190.3, 190.4, 190.5, 190.6, 190.7, 190.8 and 190.9), are hereby repealed.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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