

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1922

By: Rice

COMMITTEE SUBSTITUTE

An Act relating to energy and utility regulation; amending Section 2, Chapter 162, O.S.L. 1997, 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 and Section 7, Chapter 162, O.S.L. 1997, as amended by Section 7, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Sections 190.2, 190.4, 190.5, 190.6 and 190.7), which relates to the Electric Restructuring Act of 1997; amending Section 2, Chapter 391, O.S.L. 1998 (11 O.S. Supp. 2000, Section 21-222), which relates to condemnation proceedings relating to rural electric cooperatives or electric public utilities; changing certain restructuring deadline; defining the transition period; authorizing the Corporation Commission to take certain action; deleting certain language relating to the restructuring; deleting certain restriction on electric rates; changing certain date relating to transition charges; modifying certain committee names; extending termination date for the Joint Electric Utility Task Force; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 162, O.S.L. 1997 (17 O.S. Supp. 2000, Section 190.2), is amended to read as follows:

Section 190.2 The purpose of this act is provide for the orderly restructuring of the electric utility industry in the State of Oklahoma in order to allow direct access by retail consumers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system in this state.

A competitive and diverse retail electric market should result in lower electricity prices for consumers, create business opportunities, and encourage the development of increased and enhanced services.

Monopoly utility regulation has been used as a substitute for competition in the supply of electricity, but recent changes in the energy marketplace and technology as well as the passage of the National Energy Policy Act of 1992 and implementation of Order No. 888 by the Federal Energy Regulatory Commission have resulted in increased competition in the electric generation industry. The introduction of consumer choice in retail electric energy suppliers will result in market forces rather than regulation determining the cost and quality of electricity for all consumers.

Restructuring of the electric utility industry to provide greater competition and more efficient regulation is a national trend and the State of Oklahoma must ~~aggressively~~ pursue restructuring and increased consumer choice in order to provide electric generation service at the lowest and most competitive rates.

The primary goals of a restructured electric utility industry are as follows:

1. To reduce the cost of electricity for as many consumers as possible, helping industry to be more competitive, to create more jobs in this state and help lower the cost of government by reducing the amount and type of regulation now paid for by taxpayers;
2. To encourage the development of a competitive electricity industry through the unbundling of prices and services and separation of generation services from transmission and distribution services;
3. To enable retail electric energy suppliers to engage in fair and equitable competition through open, equal and comparable access

to transmission and distribution systems and to avoid wasteful duplication of facilities;

4. To ensure that direct access by retail consumers to the competitive market for generation be implemented in the State of Oklahoma ~~by July 1, 2002~~ no sooner than January 1, 2004; and

5. To ensure that proper standards of safety, reliability and service are maintained in a restructured electric service industry.

It is in the best interest of the citizens of this state to efficiently ~~and expeditiously~~ move forward to increased competition in the generation and sale of electric energy. To ensure a successful transition to a competitive marketplace, a thorough assessment of issues and consequences associated with restructuring shall be undertaken as provided by this act.

SECTION 2. AMENDATORY Section 4, Chapter 162, O.S.L. 1997, as amended by Section 4, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.4), is amended to read as follows:

Section 190.4 A. To ensure an orderly and equitable restructuring of the electric utility industry in this state and achieve the goals outlined in Section 190.2 of this title, the Legislature hereby directs the Joint Electric Utility Task Force to undertake a study of all relevant issues relating to restructuring the electric utility industry in this state including, but not limited to, those issues set forth in this section, and develop a proposed electric utility industry restructuring framework for the State of Oklahoma. The Joint Electric Utility Task Force shall address appropriate steps to achieve an orderly transition to a competitive market and may include in addition to the directives in this act other provisions as the task force shall deem necessary and appropriate to expedite the transition to full consumer choice. The Corporation Commission shall assist the task force in achieving the goals outlined in the Electric Restructuring Act of 1997; ~~provided,~~ ~~however,~~ during. During the transition period ~~to full consumer~~

choice which shall be the period of time beginning April 25, 1997, until retail consumer choice is implemented by the Legislature on or before January 1, 2004, the Corporation Commission is expressly prohibited from promulgating any rules or issuing any orders relating to the restructuring of Oklahoma's electric utility industry without prior express authorization by the Oklahoma State Legislature. During the transition period as herein defined, the Commission and other appropriate ratemaking entities may conduct ratemaking hearings and issue orders to determine electric utility rates as provided for by law.

B. It is the intent of the Legislature that the following principles and directives be adhered to in developing a framework for a restructured industry:

1. Reliability and safety. Appropriate rules shall be promulgated, in accordance with the provisions of this act, ensuring that reliable and safe electric service is maintained;

2. Competition. Competitive markets are to be encouraged to the greatest extent possible. Regulation should serve as a substitute only in those circumstances where competition cannot provide results that serve the best interests of all consumers;

3. Consumer choice. Consumers shall be allowed to choose among retail electric energy suppliers to help ensure fully competitive and innovative markets. A process should be established whereby all retail consumers are permitted to choose their retail electric energy suppliers ~~by July 1, 2002~~ no sooner than January 1, 2004.

Consumer choice means that retail electric 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 of electric generation in the retail market shall have nondiscriminatory open access to the electric distribution system of every retail electric service distributor, subject to this act. The Corporation Commission should ensure that consumer confusion will be

minimized and consumers will be well informed about changes resulting from restructuring and increased choice;

4. Regulation and unbundling of services. Entities which own both transmission and distribution, as well as generation facilities, shall not be allowed to use any monopoly position in these services as a barrier to competition. Generation services may be subject to minimal regulation and shall be functionally separated from transmission and distribution services, which services shall remain regulated. All retail electric energy suppliers shall be required to meet certain minimum standards designed to ensure reliability and financial integrity, and be registered with the Corporation Commission;

5. Unbundling of rates. When consumer choice is introduced, 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 cost 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 consumers;

6. Open access to transmission and distribution facilities. Consumer access to alternative suppliers of electricity requires open access to the transmission grid and the distribution system. Comparability shall be assured for retail electric energy suppliers competing with affiliates of entities supplying transmission and distribution services. The Corporation Commission shall monitor companies providing transmission and distribution services and take necessary measures to ensure that no supplier of such services has an unfair advantage in offering and pricing such services;

7. Obligation to connect and establishment of firm service territories. An entity providing distribution services shall be

relieved of its traditional obligation to provide electric supply but shall have a continuing obligation to provide distribution service for all consumers in its service territory. As part of the restructuring process firm service territories shall be fixed by a date certain, if not currently established by law in order to avoid wasteful duplication of distribution facilities;

8. Independent system planning committee. The benefits associated with implementing an independent system planning committee composed of owners of electric distribution systems to develop and maintain planning and reliability criteria for distribution facilities shall be evaluated;

9. Consumer safeguards. Minimum residential 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, and the establishment of a default provider or providers for any distribution customer who has not chosen an alternative retail electric energy supplier;

10. Establishment of a transition period. ~~A defined~~ The period of time for the transition to a restructured electric utility industry shall be established. ~~The transition period shall reflect a suitable time frame for full compliance with the requirements of a restructured utility industry~~ beginning April 25, 1997, until retail consumer choice is implemented by the Legislature on or before January 1, 2004;

11. Rates for service. ~~Electric rates for all consumer classes shall not rise above current levels throughout the transition period.~~ If possible, electric rates for all consumers shall be lowered when feasible as markets become more efficient in a restructured industry;

12. Establishment of a distribution access fee. The task force shall consider the establishment of a distribution access fee to be assessed to all consumers in the State of Oklahoma connected to

electric distribution systems regulated by the Corporation Commission. This fee shall be charged to cover social costs, capital costs, operating costs, and other appropriate costs associated with the operation of electric distribution systems and the provision of electric service to the retail consumer;

13. Recovery of stranded costs. Electric utilities have traditionally had an obligation to provide service to consumers within their established service territories and have entered into contracts, long-term investments and federally mandated co-generation 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 stranded investments and for allocating costs ~~and mechanisms~~. Mechanisms shall be proposed for recovery of an appropriate amount of prudently incurred, unmitigable and verifiable stranded costs and investments. As part of this process, each entity shall be required to propose a recovery plan which establishes its unmitigable and verifiable stranded costs and investments and a limited recovery period designed to recover such costs expeditiously, provided that the recovery period and the amount of qualified transition costs shall yield a transition charge which shall not cause the total price for electric power, including transmission and distribution services, for any consumer to exceed the cost per kilowatt-hour paid on ~~April 25, 1997, during the transition period~~ January 1, 2004. The transition charge shall be applied to all consumers including direct access consumers, and shall not disadvantage one class of consumer or supplier over another, nor impede competition and shall be allocated over a period of not less than three (3) years nor more than seven (7) years; and

14. Transition costs. All transition costs shall be recovered by virtue of the savings generated by the increased efficiency in

markets brought about by restructuring of the electric utility industry. All classes of consumers shall share in the transition costs.

C. The study of all relevant issues related to electric industry restructuring shall be divided into four parts, as follows: independent system operator issues, technical issues, financial issues and consumer issues. All studies created pursuant to this section shall be conducted under the direction of the Joint Electric Utility Task Force. The task force shall direct the Corporation Commission, the Oklahoma Tax Commission, any other state agency or consultant as necessary to assist the task force in the completion of such studies.

1. The Commission shall commence the study of independent system operator issues no later than July 1, 1997, and provide a final report to the Joint Electric Utility Task Force no later than February 1, 1998. Such report shall be in writing and shall make recommendations as the Commission deems necessary and appropriate regarding the establishment of an independent system operator in the State of Oklahoma or the appropriate region.

2. No later than July 1, 1998, the Joint Electric Utility Task Force shall commence the study of technical issues related to the restructuring of the electric utility industry. Such study shall include, but is not limited to, the examination of:

- a. reliability and safety,
- b. unbundling of generation, transmission and distribution services,
- c. market power,
- d. open access to transmission and distribution,
- e. transition issues, and
- f. any other technical issues the task force deems appropriate.

A final report shall be completed by the Joint Electric Utility Task Force no later than October 1, 1999.

3. No later than July 1, 1998, the Joint Electric Utility Task Force shall commence the study of financial issues related to restructuring of the electric utility industry. Such study shall include, but is not limited to, the examination of:

- a. rates and charges,
- b. access and transition costs and fees,
- c. stranded costs and their recovery,
- d. stranded benefits and their funding,
- e. municipal financing,
- f. cooperative financing,
- g. investor-owned utility financing, and
- h. any other financial issues the task force deems appropriate.

A final report shall be completed by the Joint Electric Utility Task Force no later than October 1, 1999.

4. No later than September 1, 1998, the Joint Electric Utility Task Force shall commence the study of consumer issues related to restructuring of the electric utility industry. Such study shall include, but is not limited to, the examination of:

- a. service territories,
- b. the obligation to serve,
- c. the obligation to connect,
- d. consumer safeguards,
- e. rates for regulated services,
- f. consumer choices,
- g. competition,
- h. licensing of retail electric energy suppliers, and
- i. any other consumer issues the task force finds appropriate.

A final report shall be completed by the Joint Electric Utility Task Force no later than October 1, 1999.

D. The Joint Electric Utility Task Force may, if it deems necessary, by a majority vote of the members combine or modify any of the studies required by this act. Provided, however, the task force shall not eliminate any of the issues required to be studied herein.

SECTION 3. AMENDATORY Section 5, Chapter 162, O.S.L. 1997, as amended by Section 5, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.5), is amended to read as follows:

Section 190.5 To ensure full evaluation and consideration of the impact of restructuring of the electric utility industry on municipal and state tax revenues the Legislature hereby directs the Joint Electric Utility Task Force to study and fully assess the impact of restructuring on state tax revenues and all other facets of the current utility tax structure both on the state and all other political subdivisions of the state. The task force shall direct the Oklahoma Tax Commission to assist the task force in completion of this study. The Oklahoma Tax Commission is hereby authorized to retain such consultants and experts as may be necessary to complete this study. The study shall include the feasibility of establishing a uniform consumption tax or other method of taxation which may be applied in a restructured industry and shall also assess means of ensuring that tax revenues derived by municipalities will not be adversely impacted as a result of restructuring. A final report shall be completed by the task force no later than October 1, 1999. During the transition period ~~prior to full consumer choice~~ as defined in Section 190.4 of this title, the Oklahoma Tax Commission is expressly prohibited from promulgating any rule or issuing any order relating to methods of taxation to be applied to a restructured electric industry without prior express authorization

by the Oklahoma State Legislature or the Joint Electric Utility Task Force.

Notwithstanding any other provisions contained in this act, a uniform tax policy which allows all competitors to be taxed on a fair and equal basis shall be established on or before ~~July 1, 2002~~ January 1, 2004.

SECTION 4. AMENDATORY Section 6, Chapter 162, O.S.L. 1997, as last amended by Section 6, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.6), is amended to read as follows:

Section 190.6 A. There is hereby created the Joint Electric Utility Task Force which shall be composed of fourteen (14) members of the Oklahoma Legislature, seven each to be selected by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The chair of the task force shall be the chair of the Senate ~~Energy, Environmental Resources and Regulatory Affairs Committee~~ committee charged with overseeing utility issues and the vice-chair of the task force shall be the chair of the House ~~Energy, Environment and Natural Resources Committee~~ committee charged with overseeing utility issues.

B. The chair or vice-chair shall record the members present at each meeting of the task force. If any member is absent from two consecutive meetings, the position of such member may be declared vacant and the position reappointed by the original appointing authority.

C. A majority of the members serving on the task force shall constitute a quorum. The task force shall meet at such times and places as it deems necessary to perform its duties as specified herein. Meetings shall be at the call of the chair.

D. The task force may appoint advisory councils made up of representatives of various utility companies, regulatory agencies, industrial and residential consumers or any other persons as needed

to advise the task force in any matter they deem to be appropriate and necessary.

E. Members of the task force shall be reimbursed by their appointing authorities for necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes. Advisory council members appointed pursuant to this section shall not be authorized to claim travel expenses.

F. The Senate and the House of Representatives shall provide such staff support as is required by the task force and shall be authorized to employ any legal counsel, independent consultants, or other persons as necessary and approved by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

G. The duties of the task force shall be to direct and oversee the studies as provided for in Sections 190.4 and 190.5 of this title and may include, but shall not be limited to, any duties previously authorized by Enrolled Senate Joint Resolution No. 29 of the 1st Session of the 45th Oklahoma Legislature and Senate Concurrent Resolution No. 37 of the 2nd Session of the 45th Oklahoma Legislature and any other duties required to carry out the provisions and directives of this act. The task force may make final recommendations to the Governor and the Legislature. The Legislature shall review any reports developed by the Joint Electric Utility Task Force. Final authority relating to the implementation of any recommended statutory revisions shall reside with the Legislature.

H. The task force shall remain in effect and operate as herein directed until its termination which shall be no later than January 1, ~~2003~~ 2005. The task force may elect, by majority vote, to terminate its operations at an earlier date if it deems such action appropriate.

SECTION 5. AMENDATORY Section 7, Chapter 162, O.S.L. 1997, as amended by Section 7, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.7), is amended to read as follows:

Section 190.7 A. Electric distribution providers governed by the Retail Electric Supplier Certified Territory Act, Section 158.21 et seq. of this title or municipal corporations or beneficial trusts thereof owning or operating a retail electric distribution system or the Grand River Dam Authority shall not furnish retail electric service to an electric consuming facility which is currently being served, or which was being served and the permanent electric facilities are in place to render such service, by a municipal corporation or beneficial trust thereof, a rural electric cooperative or an investor-owned electric utility or the Grand River Dam Authority until ~~full~~ implementation of retail consumer choice, ~~July 1, 2002~~ on or before January 1, 2004, unless the entities involved have agreed by mutual consent, in writing, to such transaction. For the purpose of this section, "electric distribution providers" shall mean the same as "retail electric service distributors" as defined by Section 190.3 of this title.

B. Any municipal corporation or beneficial trust thereof offering retail electric distribution service from a municipally or trust-owned electric distribution system that decides not to participate in the provisions of this act as outlined in Section 190.3 of this title shall be prohibited from extending a retail electric distribution primary feeder system beyond its corporate limits with the exception that it may continue to offer retail electric distribution service through the addition of secondary service drops from the primary feeder system it owned outside the corporate limits of such municipality on April 25, 1997. Provided, however, nothing contained in this section shall be construed to prohibit system maintenance, repairs or upgrades to such primary distribution feeder system outside the corporate limits except that

secondary service drops shall not be upgraded to primary distribution lines.

SECTION 6. AMENDATORY Section 2, Chapter 391, O.S.L. 1998 (11 O.S. Supp. 2000, Section 21-222), is amended to read as follows:

Section 21-222. There is hereby declared a moratorium on all municipal condemnation proceedings instituted pursuant to Section 437.2 of Title 18 of the Oklahoma Statutes, initiated prior to ~~July 1, 2002~~ January 1, 2004. The moratorium shall also apply to all municipalities or public trusts thereof which attempt to condemn the facilities of electric public utilities or rural electric cooperatives for the purpose of utilizing such facilities for the delivery of electric power and energy. If ~~full~~ retail consumer choice in the supply of electric power and energy is implemented in this state on or before ~~July 1, 2002~~ January 1, 2004, the municipal condemnation provisions authorizing municipalities with electric utilities to condemn the facilities of rural electric cooperatives contained in Section 437.2 of Title 18 of the Oklahoma Statutes is hereby repealed. If retail consumer choice is not implemented in this state on or before ~~July 1, 2002~~ January 1, 2004, this moratorium shall become null and void. The moratorium provided for herein shall have prospective and retroactive application.

SECTION 7. 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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