

SUBJECT: Allowing TDUs to lease certain facilities for emergency power restoration

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

1 absent — Lucio

WITNESSES: For — Jeff Stracener, AEP Texas; Joseph DiCamillo, Apr Energy; Jason Ryan, CenterPoint Energy; Liz Jones, Oncor; (*Registered, but did not testify*: Monty Wynn, Texas Municipal League)

Against — Michele Richmond, Texas Competitive Power Advocates (TCPA); (*Registered, but did not testify*: Ray Sullivan, Calpine; Eric Blackwell, NRG; Mance Zachary, Vistra Corporation)

On — Connie Corona, Public Utility Commission of Texas; Katie Coleman, Texas Association of Manufacturers

DIGEST: CSHB 2483 would allow a transmission and distribution utility (TDU), notwithstanding other law, to lease and operate facilities that provided temporary emergency electric energy to aid in restoring power to the utility's distribution customers during a widespread power outage. A TDU that leased facilities could not sell electric energy or ancillary services from those facilities.

The bill also would allow a TDU to procure, own, and operate, or enter into a cooperative agreement with other TDUs to procure, own, and operate jointly, long lead time facilities that would aid in restoring power to the utility's distribution customers following a widespread power outage.

A TDU that leased or that procured facilities would have to include in its

emergency operations plan filed with the Public Utility Commission (PUC) a detailed plan on the utility's use of those facilities.

PUC would permit a TDU that leased or that procured facilities to recover reasonable and necessary associated costs using the rate of return on investment established in PUC's final order in the utility's most recent base rate proceeding. A TDU could request cost recovery through a ratemaking proceeding. A lease for a facility to provide emergency electric energy would have to be treated as a capital lease or finance lease for ratemaking purposes.

PUC would have to authorize a TDU to defer for recovery in a future ratemaking proceeding the incremental operations and maintenance expenses and the return, not otherwise recovered in a rate proceeding, associated with the leasing or procurement of the facilities.

The bill would define a widespread power outage as an event that resulted in a loss of electric power affecting a significant number of distribution customers of a transmission and distribution facility and a risk to public safety.

The bill would take effect September 1, 2021.

**SUPPORTERS  
SAY:**

CSHB 2483 would help transmission and distribution utilities (TDU) reduce the impacts to customers of widespread power outages resulting from an energy emergency. Recent events, including Hurricane Harvey and Winter Storm Uri, have highlighted the need for additional tools to minimize the duration of and aid in the restoration of service after such outages.

During a widespread outage, the main priority is the timely restoration of service to customers to minimize the potential for loss of life and property as a result of the emergency situation. Under the bill, a TDU could lease and operate equipment, such as fuel cells, batteries, or diesel-operated generators, to provide temporary, emergency power to its customers if traditional generation were unavailable during a widespread outage. The

bill also would allow a TDU to own or jointly own long lead time equipment, including auto-transformers, transmission towers, and other items that take a significant amount of time to manufacturer, to aid in the restoration of service following a widespread outage. While there may be other avenues TDUs can take to access temporary power generation, those processes are too slow and inefficient. The bill would provide TDUs a way to prepare in advance of emergencies, ensuring they had resources that could be used immediately.

CSHB 2483 would preserve the structure of Texas' competitive energy market, which separates competitive entities, such as power generation companies, from regulated ones, like TDUs. Under the bill, TDUs would not gain the ability to participate in the wholesale or retail electric markets, as the bill specifically would prohibit TDUs from selling electric energy or ancillary services from those facilities. In addition, the bill would provide only for the provision of temporary, emergency electric energy to aid in restoration of service under limited circumstances that involved a risk to public safety. This limitation further safeguards against impacts to the competitive electricity market.

The bill would ensure that TDUs expenses related to the lease or procurement of facilities or equipment could not be recovered through rates unless they were reasonable and necessary. Any increase in rates associated with the bill likely would be negligible and would not compare to the expenses incurred and costs to human life and property resulting from days-long, widespread power outages, such as Texas experienced in February.

**CRITICS  
SAY:**

CSHB 2483 could open the door for TDUs to compete with generators in the wholesale electricity market, which would affect the market and wholesale power prices. The bill is unnecessary as there already are processes in place to handle the energy emergencies the bill seeks to address. For example, during Hurricane Harvey, PUC and a TDU sought and received the governor's approval to temporarily use a generator to restore service to areas that had sustained significant damage. In any future emergency, TDUs should continue to seek this solution instead of

leasing generation equipment, which would blur the lines of separation between competitive generation companies and regulated TDUs.

In addition, the regulated portion of an electricity customer's bill could increase as a result of a TDU seeking cost recovery for their investments. This increase would be inappropriate as generation capability, including batteries, should be developed only in the competitive market where costs would be borne by investors and shareholders and not customers.

OTHER  
CRITICS  
SAY:

CSHB 2483 should require a TDU to request cost recovery in a ratemaking proceeding at PUC prior to investing in a project to lease or own facilities of equipment, ensuring the investment would benefit customers and any cost was reasonable and necessary.

NOTES:

The bill's author intends to offer a floor amendment that would:

- allow a TDU to aid in restoring power during a widespread power outage only when the independent system operator had ordered the utility to shed load or the utility's distribution facilities were not being fully served by the bulk power system under normal operations;
- specify the types of facilities a TDU could procure or procure jointly were transmission and distribution facilities that had a lead time of at least six months;
- change the definition of a "widespread power outage" to require that the outage had lasted or was expected to last for at least eight hours; and
- require a TDU to use a competitive bidding process when practicable to lease facilities under the bill.

The floor amendment also would specify that facilities leased by a TDU to provide temporary emergency electric energy to aid in power restoration to customers during a widespread power outage had to be operated in isolation from the bulk power system and could not be included in independent system operator locational marginal pricing calculations, pricing, or reliability models.

A TDU that leased and operated facilities would have to ensure that retail customer usage during operation of those facilities was adjusted out of the usage reported for billing purposes by the customer's retail electric provider.