Senate Bill No. 7
Texas Electric Restructuring Act

This summary of Texas' newly enacted electric restructuring law was prepared by the Office of Public Utility Counsel for National Association of State Utility Consumer Advocates (NASUCA) members. This summary sets out a digest of selected parts the bill.

BASIC PROVISIONS

CSSB 7 restructures the electric utility industry in Texas to provide retail competition and customer choice beginning January 1, 2002, for all customers now served by investor-owned utilities. Transmission and distribution of electricity remain regulated by the Public Utility Commission of Texas (PUC). Customers of investor-owned utilities can choose their retail electricity provider beginning January 1, 2002. The PUC has the authority to delay competition if it determines that a power region can not offer fair competition and reliable service to all customers. Municipal utilities and electric cooperatives may choose whether to have retail competition in their service areas.

The bill--which takes effect September 1, 1999--provides a rate freeze from September 1, 1999 through December 31, 2001. After that, residential and small commercial customers in most service areas are guaranteed a rate cut of 6% off the total bundled rate. The reduced rate is made available by the utility's affiliated retail energy provider for a five-year period and is termed "the price to beat" within the utility's service area.

KEY PROVISIONS

1. STRANDED COSTS Electric utilities are permitted to recover stranded costs from customers' electric providers after competition begins. "Stranded costs" are generation assets rendered uneconomic in a competitive market. The allocation of the costs among customer groups is a negotiated compromise which reduces the amount of stranded costs allocated to the residential class. The allocation method is based 50% upon customer class kWh energy use and 50% upon the utilities' previously adopted production demand methodology. In addition, the amount of stranded costs allocated to industrial interruptible customers are required to increase by 150%

SB 7 allows utilities to recover 100% of their net stranded costs incurred in purchasing power and providing electric generation service, as long as those costs could be verified and could not be reduced through mitigation. Recovery would be authorized through a competitive transition charge (CTC) on all existing or future retail customers within the utility's geographical certificated service area as of May 1, 1999. At the end of the rate-freeze period, any costs associated with nuclear decommissioning obligations also would be included as a charge to retail customers.

Each utility would have to file detailed annual financial reports with the PUC. Among other things, the reports would have to describe the determination of annual costs, any positive differences between annual revenues and costs, and the determination of any invested capital. The PUC would use these reports to determine excess profits of each utility during the rate freeze period; the sum of excess profits would be used to reduce stranded costs during the true-up proceeding.

SB 7 would require utilities to pursue commercially reasonable means to reduce their potential stranded costs before the start of competition. This would include good-faith attempts to renegotiate high-cost fuel and purchased power contracts, as well as accelerating depreciation on certain facilities. The PUC would have to consider the utility’s mitigation efforts when determining the final amount of the utility’s stranded costs that could be charged to customers. Furthermore, environmental clean-up costs incurred during the next four years may be added to the final stranded cost amount.

During the rate freeze period, a CTC is developed for each utility as part of the unbundling process associated with the development of transmission/distribution rates. An administrative model will be used to develop stranded costs at this stage. However, ultimately for all but nuclear assets, the utility will be required to use market-based quantification, with the proceeds netted against stranded costs during a true-up proceeding. The utility may continue to use an administrative model to value nuclear assets during that true-up proceeding.

The stranded cost true-up proceeding will occur prior to 2004. In addition to the stranded cost reconciliation noted above, fuel balances will be reconciled, the affiliated retail electric provider's "price to beat" will be reconciled with market prices, and certain securitized assets will be subject to reasonableness review. Any over/under stranded cost adjustments would be reflected through changes to the CTC or adjustments to T&D rates.

SB 7 also would allow a utility (any time after the rate-freeze period) to securitize up to 100% of its regulatory assets and up to 75% of the initial estimate of its stranded costs. SB 7 would require the PUC to review transition charges that would be used to recover securitized costs and to adjust them at least annually to correct any over collections or under collections. The PUC must assure that securitized proceeds are used only to pay off stranded costs, that ratepayer costs are minimized, and that the securitization provides tangible benefits to ratepayers.

2. MARKET POWER As noted previously, two levels of market power are addressed: (1) horizontal market power among generation providers; and (2) retail market power (where the incumbent is expected to hold an advantage among small customers). Prior to 2002, the electric utility must separate its operations into either an affiliated or unaffiliated generation company, retail energy provider company, and T&D utility. The T&D utility may not sell or generate power. The legislation contains detailed requirements for affiliate transaction rules.

Generation Market Power

On the date competition begins, subject to the "exception" noted below, a power generating company can not own and control more than 20% of the ‘installed capacity" located in, or capable of delivering power to, a power region. The PUC can waive or modify the requirement for good cause in a power region not located entirely within the state. The PUC would have to monitor market shares of installed capacity to ensure that the limits were not exceeded. Generation providers found in violation would have to file a market power mitigation plan with the PUC.

At least 60 days before competition begins, each affiliated power generating company must sell at least 15% of the entitlements to its installed generating capacity at auction. This requirement would continue until 40% or more of the affiliated retail provider’s small business and residential load was being served by alternative electricity providers, or 60 months after competition started, whichever came earlier. An electric utility can choose to auction more than the required amount or to continue to auction that load for longer than the required time period.

TXU Electric, the largest generation supplier in Texas, received a potential "exception" to the 20% market share test. TXU owns a number of lignite (coal) plants which are not subject to the Clean Air Act, and in exchange for "retrofitting" these grandfathered units to meet specified environmental requirements, TXU is permitted to excluded these megawatts of capacity from its market share calculation.

The PUC will have to monitor for market power abuses, including actions restricting competition, such as discrimination in providing services or products, linking unregulated products or services to regulated ones, predatory pricing, preventing market entry, or collusion. The commission's remedies for market power abuses would include: (1) seeking an injunction or civil penalties of between $1,000 and $5,000 for each day of each violation; (2) imposing an administrative penalty; or (3) suspending, revoking, or amending a certificate or registration.

Retail Market Power

The principal tools employed against market power at the retail level are: (1) restricting the utility affiliate's pricing flexibility until a sufficient residential and small commercial market share has been lost; (2) capping the utility affiliate's prices in its former service territory; (3) requiring most retail electric providers to serve some part of the residential market; and (4) exposing a utility to stranded cost reduction if its retail affiliate does not lose sufficient market share.

Beginning January 1, 2002, the affiliated retail electricity providers of former monopoly utility companies would continue to serve customers who do not choose an alternative provider. The retail electric providers affiliated with former monopoly utilities must give residential and small business customers a 6% rate reduction from their total bundled frozen rates at the start of competition. This reduced rate would be the "price to beat." The PUC may adjust an affiliated retail electricity provider's price to beat if it threatened the provider's financial integrity or the provider demonstrated that its existing fuel factor was inadequate to reflect significant changes in the market price of natural gas and purchased energy. The law contains a special exception for Entergy Gulf States Utilities, which serves southeast Texas. Entergy's "price to beat" does not include a 6% reduction to customers' bills.

Affiliated retail electricity providers are prohibited from offering a rate different than the "price to beat" within affiliated transmission and distribution service areas until 40% of residential and small business customers are served by alternative providers, or until 36 months after competition, whichever comes earlier. Following the true-up review of stranded cost totals, the PUC would have the authority to adjust the price to beat. An affiliated retail electricity provider will not be able to charge rates higher than its price to beat for five years, except to reflect major fuel price fluctuations.

Two years after competition began, SB 7 would require affiliated retail electricity providers to calculate the difference between the fixed price to beat and the market price of electricity after competition. This rebate would be credited against stranded costs during the true-up proceeding. The rebate cap would be set at $150 per customer, applied to the number of customers remaining with the utility's affiliate, less the number of new customers the utility's affiliated retail electricity provider served outside its home territory.

A retail electric provider serving an aggregate load of more than 300 megawatts would have to sell at least 5% of total energy load to residential consumers for 36 months after retail competition begins. A provider not complying with this requirement would have to pay an amount into the system benefit fund based upon a formula comparing the amount of power actually sold to residential customers and the amount the utility should have sold to residential customers.

SB 7 prohibits electricity providers from selling prepaid electric service to residential customers at a price that is higher than the price charged by the provider of last resort (or to a company designated by the PUC to offer a basic rate package to serve customers that other retail providers did not want to serve).

SB 7 also would require the PUC to establish reasonable and comparable rates for open access to distribution facilities for retail electricity providers on or before January 1, 2002.

3. AUTHORITY OF PUBLIC COUNSEL OPUC's current authority to appeal PUC actions has been amended by SB 7 to provide for:

	participation in administrative dispute resolution proceedings (ADR);
	the right to appear in any judicial proceeding "in which the counselor determines that residential electric consumers or small commercial electricity consumers are in need of representation."

The former provision establishes OPUC's interest in any ADR proceeding between competitors. The latter provision clarifies OPUC's ability to protect ratepayers through the judicial process, even if the action does not arise from an administrative agency decision. The bill charges OPUC with the responsibility to investigate and obtain information regarding "redlining" by electric providers. In addition, the bill establishes a voting membership on the ISO Board for OPUC.

CONSUMER SAFEGUARDS AND LOW-INCOME PROTECTION

The PUC must enact protections for retail customers before January 1, 2002, including the right to:

- Safe, reliable, and reasonably priced electricity;
- Protection against service disconnections in extreme weather or in cases of medical emergency or or nonpayment of bills for unrelated services;
- Privacy of customer consumption and credit information;
- Bills presented in a clear format and in understandable language;
- The option to have all electric services on a single bill, except for instances where multiple bills were allowed for customers of municipally-owned utilities and electric cooperatives;
- Information in a standard format allowing customers to compare prices and services offered;
- Protection from discrimination;
- Accuracy of metering and billing;
- Information in English and Spanish and other languages as necessary concerning rates, terms, and conditions of service and the environmental impact of certain generating facilities;
- Information in those languages concerning low-income assistance programs and deferred payment plans;
- Protection from unfair, misleading, or deceptive practices;
- Protection against billing for services not authorized or provided;
- Impartial and prompt resolution of disputes with companies; and
- The same quality of service after restructuring that was provided as of December 31, 1999.

The PUC will have to maintain a "no-call" list for utility customers who do not wish to be contacted by telephone solicitors about electric service. The PUC will have to determine the fee for customers who desire to be on the list, but the fee can be no more than $5.

SB 7 requires the PUC to develop and implement an educational program by January 1, 2002, to inform customers about customer choice of electricity providers, low-income programs, and the pilot program. The education program could not be targeted toward areas served by municipally-owned utilities and electric cooperatives that had not adopted customer choice. As part of ongoing customer education, the PUC could provide information about specific retail electricity providers, including instances of complaints against them and records relating to quality of customer service.

SB 7 creates a system benefit fund to subsidize lower electric rates for low-income people, to establish customer education programs, and to make up property tax losses to school districts. The fund would be financed by a non-bypassable fee. Municipal utility and electric cooperative customers will not have to pay the fee unless they opt into the competitive system.

The fund provides assistance to low-income electric customers that would include reduced electric rates and targeted energy efficiency programs in coordination with existing weatherization programs. Retail electricity providers could not charge customers a fee for participating in the low-income program.

The PUC will have to designate a provider of last resort by June 1, 2002, for areas of the state in which customer choice would be in effect. The provider of last resort is required to provide a basic retail service package at a fixed rate that could not be discounted to any customer requesting it. The provider of last resort must ensure that customers receive the basic package--with no interruption in service--in the event that a provider fails to provide such service.

ENVIRONMENT & RENEWABLES

Passage of SB 7 eliminates the state's integrated resource planning process, **effective** ***September 1, 1999***.

Goal for Renewable Energy (Section 39.904):

	Provides that by January 1, 2009, an additional 2,000 megawatts of generating capacity from renewable technologies will have been installed in Texas (i.e., estimated to be 3% of the state total) and lists specified deadlines for installation of the renewable capacity (i.e., timetable);
	Requires PUC to establish a renewable energy credits trading program. Requires a retail electric provider, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using renewable energy technologies to purchase sufficient renewable energy credits to satisfy the requirements by holding renewable energy credits in lieu of capacity from renewable energy technologies;
	Requires PUC, no later than January 1, 2000, to adopt rules necessary to administer and enforce this section. Requires the rules to at a minimum achieve the enumerated goals;
	Defines "renewable energy technology" (specifically biomass products, geothermal, hydroelectric, solar, wind, wave, or tidal energy). Energy resources derived from fossil fuels or waste products from inorganic sources are excluded;
	Authorizes a municipally-owned utility operating a gas distribution system to credit toward satisfaction of the requirements of this section any production or acquisition of landfill gas supplied to the gas distribution system based on a certain conversion calculation.

Goal for Natural Gas (Section 39.9044):

	Provides that 50% of the megawatts of generating capacity installed after January 1, 2000 use natural gas. Requires PUC, to the extent permitted by law, to establish a program to encourage utilities to comply with this section by using natural gas produced in this state as the preferential fuel. Provides that this section does not apply to generating capacity for renewable technologies. This provision is expected to have little immediate effect since most generation currently is gas-fired (e.g., for 1998, the electric utility natural gas generating capability in Texas is 61%);
	Requires PUC to establish a natural gas energy credits trading program. Requires any power generation company, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using natural gas technologies to purchase sufficient natural gas energy credits in lieu of capacity from natural gas energy technologies;
	Authorizes PUC, not later than January 1, 2000, to adopt rules necessary to administer and enforce this section and to perform any necessary studies in cooperation with the Railroad Commission of Texas (RC). Requires the rules, at a minimum, to achieve the specified provisions; and
	Authorizes PUC, with the assistance of the RC, to adopt rules allowing and encouraging retail electric providers and municipally-owned utilities and electric cooperatives that have adopted customer choice to market electricity generated using natural gas produced in Texas as "environmentally beneficial". Requires the rules to allow a provider, municipally-owned utility, or cooperative to achieve the specified provisions.

Retail energy providers are required to inform customers regarding the environmental emissions of the generating sources of the providers' power. As noted previously, a utility's environmental clean-up costs are eligible for stranded cost treatment. In addition, NO_2 (50% reduction of 1997 emission level by May 1, 2003) and SO_2 (25% reduction of 1997 emission level by May 1, 2003) emission reduction regulations for "grandfathered" units are established, accompanied by an in-state emission credit trading program.