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2015 Texas Legislature and Electric Power Policy: A Recap

In January, we discussed several electric-power policy issues that we thought Texas lawmakers might address during their 2015 regular session. Several of those initiatives drew great attention during the just-concluded session, though not all of them were passed. We look at how the Legislature treated those issues and what lies ahead.

Gov. Greg Abbott signed (or did not veto) bills allowing the Public Utility Commission (“Commission”) to regulate new interconnections between the ERCOT power region and other areas and to regulate certain municipal utility transmission lines.

The Legislature extended the life of the system benefit fund, which provides discounts to low-income retail customers, while making it easier for some utilities outside of ERCOT to obtain timely cost recovery. It also preserved residential property tax breaks for alternative energy use and prohibited many deed restrictions that would have inhibited access to home-based solar systems.

More far-reaching initiatives, such as limiting expansions of the competitive renewable energy zone (CREZ) system and the renewable portfolio standard or eliminating the percentage limitation on ownership of generating capacity, were not approved.

Retail Market

Rep. Sylvester Turner’s HB 1101 implemented the Commission’s recommendation to extend the system benefit fund’s life until 2017. The original 1999 electric restructuring bill created this fund to compensate retailers for providing discounts to low-income customers. The fund was set to expire in 2016, but the Commission projected it would still have a \$247 million

balance. Extending its lifespan will exhaust the fund and extend the low-income discount program another year.

A bill (SB 777) that would require the Commission to deny certification to retailers whose principals were previously involved with retail companies with suspended or revoked certifications did not pass. The Commission, however, had already amended its rules to prevent principals of companies that defaulted in their obligations from owning a share of or controlling other retail companies, so a similar requirement already exists. Rep. Turner also proposed legislation, which did not pass, that would have established far-reaching customer demand response options. HB 3343 would have required the Commission to develop demand response programs and treat those equally with generating resources. It also would have created a new type of market participant – a demand response provider – that would provide demand response services to customers.

Alternatives and Renewables

The major news here involves what did not pass, namely, SB 931 by Sen. Troy Fraser. This bill would have prohibited the Commission from adding new CREZ transmission lines or new zones, would have required ERCOT and utilities to justify wind energy-related transmission expansions under the same standards applicable to any other transmission additions, and would have made the renewable energy credit system mostly voluntary (thereby devaluing existing credits). The Senate passed this bill, but it did not receive a hearing in the House. Sen. Fraser attempted to amend parts of it into energy-related House bills in the Senate, but those attempts failed. Wind energy proponents and environmental groups fought against the legislation, which the Commission had originally recommended.

Another significant bill that did not pass was SB 635 by Sen. Donna Campbell. This bill would have limited the ability of local governments to adopt “limitations of appraised value agreements” that would temporarily reduce a generator’s property taxes in exchange for the generator’s commitments to job creation and major capital investment. Specifically, the bill would have made such agreements unavailable if the generator had received any federal subsidy, such as the production tax credit, for that property during the same tax year.

Finally, legislation did not proceed that would have allowed municipalities to regulate wind turbines and placement. HB 2238 by Rep. Chris Paddie, and SB 882 by Sen. Juan Hinojosa, would have allowed municipalities to extend their ordinances to the extraterritorial jurisdiction, thereby expanding their ability to control wind development. Neither house brought up these bills for a committee hearing. Rep. Byron Cook also proposed HB 3732, which would have made large-scale energy storage (with dispatchable capacity exceeding 250MW that can produce in excess of 5,000/MWh per year) eligible for an ad valorem tax exemption. This bill did not obtain approval.

On the other hand, the Legislature adopted measures to simplify the process to retain tax exemptions for wind and solar generation facilities for on-site generation (HB 706) and to sharply limit the enforcement of deed restrictions that prohibit residential solar devices in developments with fewer than 51 residential units (SB1626).

Generation and Resource Adequacy, and Market Competition

The Legislature failed to adopt any significant legislation related to conventional generation or resource adequacy. We thought it might address the way ERCOT and the Commission forecast future supplies or even how it defines what constitutes adequate generation resources, but it did not take up the issue. This apparently signals that for now the Legislature remains content to let the Commission handle this subject.

Nor did the Legislature enact any changes to the wholesale market structure. Early in the session, Rep. Matt Krause filed a bill that would have prevented the Commission from adopting a capacity market, and that also would have eliminated the 20 percent cap on installed capacity ownership. Although it drew much interest, Krause's bill died in House committee. Rep. Jim Keffer, who has announced he will not run for re-election, proposed to divert all congestion rents, i.e., payments made to congestion rights holders in ERCOT, to building transmission congestion relief projects. That bill also did not advance out of the House committee.

Gov. Abbott vetoed legislation (HB 2647) that would have required water conservation districts to delay curtailing water supplies to generation facilities if doing so would threaten grid reliability. The governor explained that the bill unconstitutionally usurped local government control and forced a statewide solution to local problems.

Transmission and Distribution

The Legislature enacted several measures involving transmission and distribution. It adopted SB 933 by Sen. Fraser, which requires that the Commission approve any new interconnections between ERCOT and other power regions. The bill contains a carve out for the proposed Southern Cross transmission project, requiring the Commission to approve the project but allowing it to specify conditions designed to safeguard the public interest. The Legislature also adopted Sen. Fraser's SB 776, which gives the Commission authority to certify proposed municipal utility transmission lines built outside the utility's service area.

A compromise allows municipal utilities to build such lines without Commission approval within 10 miles outside the utility service area. The Legislature also adopted HB 1535 by Rep. John Frullo, allowing utilities outside of ERCOT to flow through changes in their distribution costs without a full rate case, subject to later review in a full rate case. It also adopted legislation requiring the

Commission to analyze the effect of such “flow through” rates and report to the Legislature by 2019, and to report by 2017 on how other states have implemented alternative ratemaking measures.

Surprisingly, no one proposed to grant the Commission authority to approve a battery storage program along the lines that Oncor Electric Delivery proposed before the session began. We noted that Oncor had commissioned the Brattle Group to study battery storage proposals, and Brattle concluded that up to 5,000MW in distributed battery storage could be used for both distribution system reliability and resource adequacy. But the Legislature would have to change the statute to allow utility storage owners to sell surplus capacity in the wholesale market. Though Oncor advocated for such revisions, no members filed a bill on that subject.

Nor did the Legislature take up the possible sale of Oncor out of the pending EFH bankruptcy proceeding. No such sale occurred during the session, but legislative leaders and the Commission continue to monitor those developments and likely will carefully scrutinize any proposed sale.

Other Issues

Sen. Fraser’s SB 1945 drew extensive attention because it would have exposed Austin Energy to the risk of forced retail deregulation. Sen. Fraser (and others) contended that the city utility assessed excessive customer charges to support transfers to the general city budget. The bill would have allowed one or a group of customers, with aggregate consumption of more than 25 million kWh per year, to petition the Commission for a rate review. If the Commission determined that the rates those customers paid were not just and reasonable, or were not consistent with rates paid by similar customers in areas with retail open access, the Commission would have the option either to revise Austin Energy’s rates for those customers or allow them to obtain power from retail electric providers. The bill passed out of committee but was not brought up in the full Senate. Austin Energy has stated that it will re-examine its rates and services in response to the expressed concerns giving rise to the bill.

Looking Ahead

We do not expect the governor to call any special sessions, and particularly none related to energy. So we do not look for further statutory changes until 2017. The Legislature will soon settle into the interim, in which standing committees will address specific issues identified by the Lieutenant Governor and Speaker of the House for more in depth study.

The session produced extensive discussion on a variety of issues, particularly involving renewable energy. This involved both the proper regulatory framework for renewable energy investment and the broader role of responding to the proposed new federal emissions regulations. We believe the Legislature will closely monitor events involving Oncor, including any sale or restructuring. Finally,

we think legislative leaders will continue to follow the resource adequacy situation, including the Commission's ongoing analysis of the ERCOT reliability standard and how the markets provide incentives for resource development.

Sen. Fraser has announced his retirement, which means the Legislature will lose one of the members who has most significantly affected energy policy. Additionally, PUC Chairman Donna Nelson's term expires in September, so we may see state electric power policies begin to move in different directions, as Gov. Abbott will have the opportunity to appoint his first member to the Commission.

How We Can Help

Husch Blackwell's team of energy regulatory and policy experts provides lobbying, regulatory and legal services to public and private entities in Austin, the state's capital. Our efforts in Texas are led by Chris Reeder, a non-lobbyist who has wide-ranging regulatory experience representing clients in the utilities industry, and Chris Hughes, who has 25 years of energy legislative advocacy experience, including various staff positions with the Texas Governor's Office and the Texas Senate. The firm's local energy team also includes Texas lawmakers, including state Rep. Trey Martinez Fischer and Sen. Kirk Watson.

Our group has represented clients in all sectors of the industry, including renewable and conventional generators, investor-owned and public power utilities, marketers, customers, investors and landowners.