Chapter 1

S.B. No. 769

AN ACT

relating to methods for the recovery of system restoration costs
incurred by electric utilities following hurricanes, tropical
storms, ice or snow storms, floods, and other weather-related
events and natural disasters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 36, Utilities Code, is amended by adding
Subchapter I to read as follows:

SUBCHAPTER I. SECURITIZATION FOR RECOVERY OF SYSTEM

RESTORATION COSTS

Sec. 36.401. SECURITIZATION FOR RECOVERY OF SYSTEM

RESTORATION COSTS; PURPOSE. (a) The purpose of this subchapter is
to enable an electric utility to obtain timely recovery of system
restoration costs and to use securitization financing to recover
these costs, because that type of debt will lower the carrying costs
associated with the recovery of these costs, relative to the costs
that would be incurred using conventional financing methods. The
proceeds of the transition bonds may be used only for the purposes
of reducing the amount of recoverable system restoration costs, as
determined by the commission in accordance with this subchapter,
including the refinancing or retirement of utility debt or equity.

(b) It is the intent of the legislature that:

(1) securitization of system restoration costs will be

accomplished using the same procedures, standards, and protections

1
for securitization authorized under Subchapter G, Chapter 39, as in
effect on the effective date of this section, except as provided by
this subchapter; and

(2) the commission will ensure that securitization of
system restoration costs provides greater tangible and
quantifiable benefits to ratepayers than would have been achieved
without the issuance of transition bonds.

Sec. 36.402. SYSTEM RESTORATION COSTS; STANDARDS AND
DEFINITIONS. (a) In this subchapter, "system restoration costs"
means reasonable and necessary costs, including costs expensed,
charged to self-insurance reserves, deferred, capitalized, or
otherwise financed, that are incurred by an electric utility due to
any activity or activities conducted by or on behalf of the electric
utility in connection with the restoration of service and
infrastructure associated with electric power outages affecting
customers of the electric utility as the result of any tropical
storm or hurricane, ice or snow storm, flood, or other
weather-related event or natural disaster that occurred in calendar
year 2008 or thereafter. System restoration costs include
mobilization, staging, and construction, reconstruction,
replacement, or repair of electric generation, transmission,
distribution, or general plant facilities. System restoration
costs shall include reasonable estimates of the costs of an
activity or activities conducted or expected to be conducted by or
on behalf of the electric utility in connection with the
restoration of service or infrastructure associated with electric
power outages, but such estimates shall be subject to true-up and
reconciliation after the actual costs are known.

(b) System restoration costs shall include carrying costs at the electric utility's weighted average cost of capital as last approved by the commission in a general rate proceeding from the date on which the system restoration costs were incurred until the date that transition bonds are issued or until system restoration costs are otherwise recovered pursuant to the provisions of this subchapter.

(c) To the extent a utility subject to this subchapter receives insurance proceeds, governmental grants, or any other source of funding that compensate it for system restoration costs, those amounts shall be used to reduce the utility's system restoration costs recoverable from customers. If the timing of a utility's receipt of those amounts prevents their inclusion as a reduction to the system restoration costs that are securitized, or the commission later determines as a result of the true-up and reconciliation provided for in Subsection (a) that the actual costs incurred are less than estimated costs included in the determination of system restoration costs, the commission shall take those amounts into account in:

(1) the utility's next base rate proceeding; or
(2) any subsequent proceeding, other than a true-up proceeding under Section 39.307, in which the commission considers system restoration costs.

(d) If the commission determines that the insurance proceeds, governmental grants, or other sources of funding that compensate the electric utility for system restoration costs, or
the amount resulting from a true-up of estimated system restoration
costs are of a magnitude to justify a separate tariff rider, the
commission may establish a tariff rider to credit such amounts
against charges, other than transition charges or system
restoration charges as defined in Section 36.403, being collected
from customers.

(e) To the extent that the electric utility receives
insurance proceeds, governmental grants, or any other source of
funding that is used to reduce system restoration costs, the
commission shall impute interest on those amounts at the same cost
of capital included in the utility's system restoration costs until
the date that those amounts are used to reduce the amount of system
restoration costs that are securitized or otherwise reflected in
the rates of the utility.

Sec. 36.403. STANDARDS AND PROCEDURES GOVERNING
SECURITIZATION AND RECOVERY OF SYSTEM RESTORATION COSTS. (a) The
procedures and standards of this subchapter and the provisions of
Subchapter G, Chapter 39, govern an electric utility's application
for, and the commission's issuance of, a financing order to provide
for the securitization of system restoration costs, or to otherwise
provide for the recovery of system restoration costs.

(b) Subject to the standards, procedures, and tests
contained in this subchapter and Subchapter G, Chapter 39, the
commission shall adopt a financing order on the application of the
electric utility to recover its system restoration costs. If on its
own motion or complaint by an affected person, the commission
determines that it is likely that securitization of system
S.B. No. 769

restoration costs would meet the tests contained in Section
36.401(b), the commission shall require the utility to file an
application for a financing order. On the commission's issuance of
a financing order allowing for recovery and securitization of
system restoration costs, the provisions of this subchapter and
Subchapter G, Chapter 39, continue to govern the financing order
and the rights and interests established in the order, and this
subchapter and Subchapter G, Chapter 39, continue to govern any
transition bonds issued pursuant to the financing order. To the
extent any conflict exists between the provisions of this
subchapter and Subchapter G, Chapter 39, in cases involving the
securitization of system restoration costs, the provisions of this
subchapter control.

(c) For purposes of this subchapter, "financing order," as
defined by Section 39.302 and as used in Subchapter G, Chapter 39,
includes a financing order authorizing the securitization of system
restoration costs.

(d) For purposes of this subchapter, "qualified costs," as
defined by Section 39.302 and as used in Subchapter G, Chapter 39,
includes 100 percent of the electric utility's system restoration
costs, net of any insurance proceeds, governmental grants, or other
source of funding that compensates the utility for system
restoration costs, received by the utility at the time it files an
application for a financing order. Qualified costs also include
the costs of issuing, supporting, and servicing transition bonds
and any costs of retiring and refunding existing debt and equity
securities of an electric utility subject to this subchapter in
connection with the issuance of transition bonds. For purposes of
this subchapter, the term qualified costs also includes:

(1) the costs to the commission of acquiring
professional services for the purpose of evaluating proposed
transactions under this subchapter; and

(2) costs associated with ancillary agreements such as
any bond insurance policy, letter of credit, reserve account,
surety bond, swap arrangement, hedging arrangement, liquidity or
credit support arrangement, or other financial arrangement entered
into in connection with the issuance or payment of transition
bonds.

(e) For purposes of this subchapter, "transition bonds," as
defined by Section 39.302 and as used in Subchapter G, Chapter 39,
includes transition bonds issued in association with the recovery
of system restoration costs. Transition bonds issued to securitize
system restoration costs may be called "system restoration bonds"
or may be called by any other name acceptable to the issuer and the
underwriters of the transition bonds.

(f) For purposes of this subchapter, "transition charges," as
defined by Section 39.302 and as used in Subchapter G, Chapter
39, includes nonbypassable amounts to be charged for the use of
electric services, approved by the commission under a financing
order to recover system restoration costs, that shall be collected
by an electric utility, its successors, an assignee, or other
collection agents as provided for in the financing order. Transition charges approved by the commission under a financing
order to recover system restoration costs may be called "system
restoration charges" or may be called by any other name acceptable
to the issuer and the underwriters of the transition bonds.

(q) Notwithstanding Section 39.303(c), system restoration
costs shall be functionalized and allocated to customers in the
same manner as the corresponding facilities and related expenses
are functionalized and allocated in the electric utility's current
base rates. For an electric utility operating within the Electric
Reliability Council of Texas, system restoration costs that are
properly includable in the transmission cost of service mechanism
adopted under Section 35.004 and associated deferred costs not
included under Section 35.004 shall be recovered under the method
of pricing provided for in that section and commission rules
promulgated under that section; provided, however, that an electric
utility operating under a rate freeze or other limitation on its
ability to pass through wholesale costs to its customers may defer
such costs and accrue carrying costs at its weighted average cost of
capital as last approved by the commission in a general rate
proceeding until such time as the freeze or limitation expires.

(h) The amount of any accumulated deferred federal income
taxes offset, used to determine the securitization total, may not
be considered in future rate proceedings. Any tax obligation of the
electric utility arising from its receipt of securitization bond
proceeds, or from the collection and remittance of transition
charges, shall be recovered by the electric utility through the
commission's implementation of this subchapter.

(i) Notwithstanding a rate freeze or limitations on an
electric utility's ability to change rates authorized or imposed by
any other provision of this title or by a regulatory authority, an
electric utility is entitled to recover system restoration costs
consistent with the provisions of this subchapter.

(j) If in the course of a proceeding to adopt a financing
order the commission determines that the recovery of all or any
portion of an electric utility's system restoration costs, using
securitization, is not beneficial to ratepayers of the electric
utility, under one or more of the tests applied to determine those
benefits, the commission shall nonetheless use the proceeding to
issue an order permitting the electric utility to recover the
remainder of its system restoration costs through an appropriate
customer surcharge mechanism, including carrying costs at the
electric utility's weighted average cost of capital as last
approved by the commission in a general rate proceeding, to the
extent that the electric utility has not securitized those costs. A
rate proceeding under Subchapter C or D shall not be required to
determine and implement this surcharge mechanism. On the final
implementation of rates resulting from the filing of a rate
proceeding under Subchapter C or D that provides for the recovery of
all remaining system restoration costs, a rider or surcharge
mechanism adopted under this subsection shall expire. This
subsection is limited to instances in which an electric utility has
incurred system restoration costs of $100 million or more in any
calendar year after January 1, 2008.

Sec. 36.404. NONBYPASSABLE CHARGES. The commission shall
include terms in the financing order to ensure that the imposition
and collection of transition charges associated with the recovery
of system restoration costs are nonbypassable by imposing restrictions on bypassability of the type provided for in Chapter 39 or by alternative means of ensuring nonbypassability, as the commission considers appropriate, consistent with the purposes of securitization.

Sec. 36.405. DETERMINATION OF SYSTEM RESTORATION COSTS.

(a) An electric utility is entitled to recover system restoration costs consistent with the provisions of this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including system restoration costs not yet incurred at the time an application is filed under Subsection (b), in its next base rate proceeding or through any other proceeding authorized by Subchapter C or D.

(b) An electric utility may file an application with the commission seeking a determination of the amount of system restoration costs eligible for recovery and securitization. The commission may by rule prescribe the form of the application and the information reasonably needed to support the application; provided, however, that if such a rule is not in effect, the electric utility shall not be precluded from filing its application and such application cannot be rejected as being incomplete.

(c) The commission shall issue an order determining the amount of system restoration costs eligible for recovery and securitization not later than the 150th day after the date an electric utility files its application. The 150-day period begins on the date the electric utility files the application, even if the filing occurs before the effective date of this section.
S.B. No. 769

(d) An electric utility may file an application for a financing order prior to the expiration of the 150-day period provided for in Subsection (c). The commission shall issue a financing order not later than 90 days after the utility files its request for a financing order; provided, however, that the commission need not issue the financing order until it has determined the amount of system restoration costs eligible for recovery and securitization.

(e) To the extent the commission has made a determination of the eligible system restoration costs of an electric utility before the effective date of this section, that determination may provide the basis for the utility's application for a financing order pursuant to this subchapter and Subchapter G, Chapter 39. A previous commission determination does not preclude the utility from requesting recovery of additional system restoration costs eligible for recovery under this subchapter, but not previously authorized by the commission.

(f) A rate proceeding under Subchapter C or D shall not be required to determine the amount of recoverable system restoration costs, as provided by this section, or for the issuance of a financing order.

(g) A commission order under this subchapter is not subject to rehearing. A commission order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of
S.B. No. 769

judgment. All appeals shall be heard and determined by the district
court and the Supreme Court of Texas as expeditiously as possible
with lawful precedence over other matters. Review on appeal shall
be based solely on the record before the commission and briefs to
the court and shall be limited to whether the order conforms to the
constitution and laws of this state and the United States and is
within the authority of the commission under this chapter.

Sec. 36.406. SEVERABILITY. Effective on the date the first
utility transition bonds associated with system restoration costs
are issued under this subchapter, if any provision in this title or
portion of this title is held to be invalid or is invalidated,
superseded, replaced, repealed, or expires for any reason, that
occurrence does not affect the validity or continuation of this
subchapter, Subchapter G, Chapter 39, as it applies to this
subchapter, or any part of those provisions, or any other provision
of this title that is relevant to the issuance, administration,
payment, retirement, or refunding of transition bonds or to any
actions of the electric utility, its successors, an assignee, a
collection agent, or a financing party, and those provisions shall
remain in full force and effect.

SECTION 2. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2009.
S.B. No. 769

David Dewhurst
President of the Senate

I hereby certify that S.B. No. 769 passed the Senate on March 25, 2009, by the following vote: Yeas 31, Nays 0.

Saige Nord
Speaker of the House

I hereby certify that S.B. No. 769 passed the House on April 7, 2009, by the following vote: Yeas 146, Nays 0, one present not voting.

Robert Hanvey
Secretary of the Senate

Chief Clerk of the House

Approved:

4.16.09

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
4.45m clock

APR 16 2009

Secretary of State