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The Lone Star Report

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Volume 11, Issue 24

A weekly publication of the Lone Star Foundation

February 9, 2007

Fraser, King bills to make customers choose electric company

by William Lutz

One of the major debates of the upcoming legislative session will pertain to the structure of the Texas electric market and the question of whether the current system works for residential consumers.

Some lawmakers believe electric rates are too high. Electricity has become a common cause of constituent phone calls, particularly for North Texas legislators. Other industry experts believe competition is keeping rates low, and that electric rates have not risen as sharply as natural gas prices.

Sen. **Troy Fraser** (R-Horseshoe Bay) held a news conference Feb. 7 to unveil a package of utility bills, SBs 482-485. Fraser is chairman of the Senate Business and Commerce Committee, which oversees electric utility matters.

Fraser was joined at the news conference by Rep. **Phil King** (R-Weatherford), chairman of the House Regulated Industries Committee, who has filed HB 1189-1192, which are

identical to the Fraser bills, as well as HB 1202, an antitrust bill.

Sens. **Chris Harris** (R-Arlington) and **Royce West** (D-Dallas) spoke at the press conference, and Reps. **Sylvester Turner** (D-Houston) and **Wayne Christian** (R-Center) attended. (Turner and Christian are members of Regulated Industries, and Harris sits on Business and Commerce.)

"We have experienced success throughout the commercial and industrial market, but that success has not translated to the residential side," Fraser said. "The legislation filed today will strengthen competitive forces and improve the residential electric market... Our goal is to expand competition in the marketplace by providing choices and lower prices for consumers."

The industry has decided to study the bills more carefully before commenting further. "Although the AECT has not had the opportunity to review the legislation filed by Sen. Troy Fraser and Rep. Phil King, we look forward to working with

them and their committees to ensure the market continues to work for all Texans," said **John Fainter**, president of the Association of Electric Companies of Texas. "We share the same goal: a robust competitive market which provides reliable, affordable electricity to our state."

The package aims at encouraging residential customers to pick their electric provider and at reducing the concentration of electric companies. Many of the bills' provisions are also part of the Public Utility Commission's legislative recommendations.

SB 485 will likely be the easiest bill to pass. It prohibits use of the System Benefit Fund for any other purpose other than subsidies for low-income consumers or customer education. The System Benefit Fund is a charge on electric bills that the Legislature diverted in 2005 to balance the budget.

In a year with a large budget surplus, the goal of restoring the System Benefit Fund

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Critical policy issues debated at annual TPPF forum

by Christine DeLoma

Government spending, taxation, appraisal reform. You guessed it: the Texas Public Policy Foundation (TPPF) was taking its annual long-look at state issues for the benefit of policymakers and the merely interested.

TPPF's 5th annual policy orientation Feb. 7-8 looked more than ever like a must-attend occasion for lawmakers and their staffs. Roundtable discussions of the crucial issues facing the 80th legislative session filled meeting rooms and ears.

Among other issues addressed: Medicaid long-term care, telecommunications, and electric deregulation.

Constitutional spending cap

One of the session's most important issues is the constitutional spending cap. The state is expected to exceed the cap by at least \$4 billion just to pay for \$14 billion in state spending over the next biennium for property tax cuts passed last year.

Last month, the Legislative Budget Board discussed measures to get around the cap, easiest of which would be passage of an emergency resolution by majority vote to allow appropriations tied to property tax relief to exceed the constitutional limit.

A second option, requiring a two-thirds vote, is a constitutional amendment to exempt tax cuts from the limit.

Although legislative leaders and Gov. **Rick Perry** have argued that the property tax cut should not be counted as increased government spending under the cap, maverick freshman Sen. **Dan Patrick** (R-Houston) sees the issue differently.

"We must reduce [government] spending," Patrick said at the TPPF forum. "They passed the tax cut, but they did not tell the folks that we have to increase spending to get the tax cut... they're not even reducing the budget to pay for the tax cut. No, they're taking new money, taxing businesses to give homeowners

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enjoys widespread support. SB 484 makes minor adjustments to the duties of the legislative oversight committee on electric utility restructuring.

SB 483 pertains mainly to the wholesale electric market. When the state deregulated the retail electric market in 1999's SB 7, it prohibited any one company from having more than 20 percent of the installed generation capacity in the ERCOT region of Texas, which includes all the state except for the South Plains, the Panhandle, El Paso, and parts of Northeast and Southeast Texas.

SB 7 required companies to sell generation capacity if they owned more than 20 percent of the power in ERCOT. SB 483 takes that mandate one step further. Not only is a utility prohibited from owning 20 percent of generation in ERCOT, but a single company is barred from owning more than 20 percent of installed generation capacity in a zonal or functional market (i.e. a region of the state).

"In November," said Fraser, "I warned the electric providers that they needed to start competing outside of their territory, which would have caused prices to come down. I don't think they heard my concerns... so today I have filed these four bills which will continue the promise of a competitive market we made to the public in Senate Bill 7."

The lawmakers hope that limiting concentration in the market will increase competition and ultimately reduce rates.

Some industry experts, however, aren't so sure. "Everybody is saying, 'I like a concentration standard because the concentration standard is an indicator that there is a threat,' but [there's] very little evidence for it and very little economic modeling behind it," said economist **Robert Michaels**, an electric utility expert working with the Texas Public Policy Foundation. "... The link between concentration and profits is all over the board."

Michaels said that modern generation technology has reduced the barriers to entry that used to restrain competition. "I'm not worried [about concentration] at either wholesale or retail, particularly in the Texas climate, where I've got what I think is a track record of wholesale competition in generation, and I've got at least since 2002 a pretty steady growth in retail suppliers and in the variety of plans that they're operating."

SB 482 is another bill likely to become contentious. It pertains to competition in the retail market.

The first thing it does is require a breakup of some electric utilities, notably TXU. SB 7 required "unbundling" of formerly vertically integrated utilities.

In other words, it separated the company that owned and managed the electric wires – which remained regulated – from the company that produced the power that traveled over those wires – which became competitive.

But SB 7 allowed the same company to own both companies, as long as the wires company did not discriminate between retail electric providers. SB 482 would prohibit the wires company from being owned by the same entity as a retail electric provider.

The bill would also take more direct government action to encourage residential customers to elect a provider. The bill authorizes the Public Utility Commission to order a ballot be sent to customers who have not affirmatively chosen an electric provider. If they make no choice, the commission is authorized to assign them a provider at random.

The bill also authorizes the release of customer information for those customers who have not chosen a provider.

SB 482 also reinstates the "retail clawback" provisions of SB 7, which have expired. At the beginning of competition in SB 7, the retail affiliate of the incumbent (formerly vertically integrated and regulated) utility paid a penalty. The amount of the penalty was based on the difference between the number of customers it had in its historic service territory and the number of customers it had outside its historic service territory. In other words, lawmakers tried to use financial penalties to encourage utilities to compete outside their historic territories (Dallas for TXU, Houston for Reliant Energy, etc.)

It also includes a "trigger" provision that allows the Public Utility Commission to put a cap on electric rates, if it determines rates are unreasonably high or a threat to public safety. It requires a review of rates if requested by a city or by one of the two committees of the legislature with jurisdiction over utilities.

Fraser denied he was trying to re-regulate the industry. "We're giving the PUC a hammer, very small hammer. But we give them the ability – if there are market abuses to address. This is not a move toward re-regulation. It is not a move toward rate of return... We want to promote competition."

Expect this package of bills to be one of the most lobbied of the upcoming legislative session. Lawmakers said they are not targeting any one company, but this issue seems to have

attracted more public attention in North Texas than in other regions of the state.

The affiliated retail provider in that area, TXU Energy, said it looks forward to working with legislators on these issues. "When compared to both other competitive retail electric markets and other competitive industries – like telecommunications – Texas' market has matured more quickly than any of those," said company spokeswoman **Lisa Singleton**. "As of January 31, 2007, there were more than 100 Retail Electric Providers certified by the PUC to serve residential, commercial and/or industrial customers in Texas, and over 75 percent of consumers have made some kind of observable choice in selecting either their electric provider or their plan. These facts suggest that competition in Texas is a success and that the market is working as it should – prices are falling, consumers have choices and they are making choices that best meet their needs."

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on these important issues," Perry said. "By designating these issues emergency items, the Legislature can begin working on them very soon."

SBOE elects officers, appoints committees

The State Board of Education held its first meeting of the year Feb. 7. The board swore in three new members and five who were re-elected (the 15 board members serve four-year staggered terms.) Joining the board this year are **Rick Agosto** (D-San Antonio), former Rep. **Ken Mercer** (R-San Antonio), and **Cynthia Dunbar** (R-Fort Bend County).

After the swearing-in, the Board also elected **David Bradley** (R-Beaumont) as its vice-chairman. The board elected Agosto as its secretary. The chair of the board, currently Miller is an appointee of the governor. Bradley was elected 10-3 over Nunez. Agosto was elected 8-6 over **Mavis Knight** (D-Dallas). The three officers make the committee assignments.

The State Board of Education has appointed its committees for the next two years.

The committees are as follows:

* School Finance/Permanent School Fund: Miller, Nunez, **Don McLeroy** (R-Bryan), Agosto, and **Pat Hardy** (R-Fort Worth).

* Instruction: **Mary Helen Berlanga** (D-Corpus Christi), **Terri Leo** (R-Spring), Dunbar, **Barbara Cargill** (R-The Woodlands), and Allen.

* Planning: Bradley, Knight, Craig, Mercer, and **Gail Lowe** (R-Lampasas). ☐

