

Energy Marketing Conference 14

Completing The Transition To Electric Choice For The Rest Of Texas: Statutory Considerations

By Paul Ring

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Owner, RetailEnergyJobs.com

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Texas Investor-Owned Utilities Without Retail Electric Choice

Southwestern Electric Power Company (SWEPCO, AEP)

187,600 customers, primarily East Texas with portion in Panhandle; SPP

Entergy Texas

461,000 customers, parts of Houston suburbs to East Texas; MISO

El Paso Electric

325,000 customers in El Paso, parts of West Texas; No RTO, WECC

Southwestern Public Service Company (SPS, Xcel Energy)

267,000 customers, Texas Panhandle; SPP

Southwestern Electric Power Company (SWEPCO)

SWEPCO Rates - Residential customers (1,000 kWh):

- ❑ October 2020 monthly average total bill: \$104.78 (10.4¢/kWh)
- ❑ Proposed rate increase: proposed monthly average total bill: \$120.49 (12.4¢/kWh) (Docket 51415)

ERCOT Retail Market Rates (Oncor) (1,000 kWh):

- ❑ Lowest Oncor service area 12-month no-gimmick (no usage credits) fixed rate on Power to Choose: 6.6¢/kWh (multiple REPs)
- ❑ There are about 20 12-month no-gimmick fixed offers lower than 7.5¢/kWh (10/29/20)

SWEPSCO Transition To Competition

- ❑ Governed by PURA § 39.501 et seq., Subchapter K
- ❑ Generally leaves to PUC decision to initiate and determine any transition to competition (TTC), subject to statutorily prescribed stages. Notably, no transition-killing temporal or other hurdles
- ❑ Specifically, PURA § 39.503 prescribes five "stages" for SWEPSCO TTC
- ❑ PUC can undertake Stages in any order but may not alter their substance

Stage 1 - SWEPCO Transition To Competition

Stage 1 requires:

(1) approval of an RTO by FERC

(2) development of retail market protocols to facilitate retail competition

- None established in SPP
- However, in stating that it could serve as the Qualified Power Region for Entergy Texas in 2007, SPP testified that it would be capable of providing retail customer services such as customer switching and meter profiling, either by SPP or by contract, within a "reasonable" period of time (PUC Docket 33687, Dillahunty Testimony, April 27, 2007). SPP later said ERCOT would provide such retail market services under contract (Docket 33687, SPP - ETI QPR Study Report, December 17, 2008)

(3) completion of an expedited proceeding to develop non-bypassable delivery rates for a customer choice pilot project

Stage 2 - SWEPCO Transition To Competition

Stage 2 requires:

- (1) initiation of the customer choice pilot project in accordance with PURA § 39.104
- (2) development of a balancing energy market, a market for ancillary services, and a market-based congestion management system for the wholesale market in the power region in which the regional transmission organization operates; and
- (3) implementation of a seams agreement with adjacent power regions to, "reduce barriers to entry and facilitate competition."

Stage 3 - SWEPCO Transition To Competition

Stage 3 requires (among other things):

(A) an application for business separation in accordance with PURA § 39.051

(B) an application for unbundled transmission and distribution rates in accordance with PURA § 39.201

(C) an application for certification of a qualified power region in accordance with PURA § 39.152

(D) an application for price-to-beat rates in accordance with PURA § 39.202

Stage 3 - SWEPCO Transition To Competition

Qualified Power Regions - PURA § 39.152

- ❑ PURA Sec. 39.152(a)(3), in defining the requirements for a power region, requires that, "no person owns and controls more than 20 percent of the installed generation capacity located in or capable of delivering electricity to a power region."
- ❑ Largest capacity owner in SPP, Evergy, has about 14,700 MWs of owned generating capacity and renewable purchased power agreements. Installed capacity in SPP as of Jan. 2020 was 90,466 MW. Largest supplier Evergy has a 16% market share.
- ❑ PURA § 39.152(d) further provides, "For a power region outside of ERCOT, a power generation company that is affiliated with an electric utility may elect to demonstrate that it meets the requirements of Subsection (a)(3) by showing that it does not own and control more than 20 percent of the installed capacity in a geographic market that includes the power region, using the guidelines, standards, and methods adopted by the Federal Energy Regulatory Commission."
- ❑ PURA § 39.152(b): "In determining whether a power region not entirely within the state meets the requirements of this section, the commission shall consider the extent to which the available transmission facilities limit the delivery of electricity from generators located outside the state to areas of the power region within the state."

Stages 4 & 5 - SWEPCO Transition To Competition

Stage 4

Stage 4 requires, among other things:

- Initiation by the electric utility of a capacity auction in accordance with PURA § 39.153 at a time to be determined by the commission
- Separation by the utility of competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy services

Stage 5

- Final PUC review for approval or other disposition

SWEPCO - Customer Choice Pilot

- ❑ East Texas Salt Water Disposal Company (ETSWD) has sought initiation of a pilot choice program at SWEPCO, citing PURA § 39.503 (PUC Docket 51257)
- ❑ As noted, any pilot must conform to PURA § 39.104
- ❑ PURA § 39.104(a): "Customer choice pilot projects may be used to allow the commission to evaluate the ability of each power region and electric utility to implement customer choice."
- ❑ PURA § 39.104(b): Pilot: "...amounting to five percent of the utility's combined load of all customer classes..."
- ❑ PURA § 39.104(c): "The load designated for customer choice under this section shall be distributed among all customer classes"

SWEPCO - Customer Choice Pilot

SWEPCO Opposes Pilot

- ❑ Argues pilot must evaluate entire SPP's readiness for retail choice, not just a single utility, citing PURA § 39.104(a): *"the ability of each power region and electric utility"* (emphasis by SWEPCO)
- ❑ Argues, logistically, Stage 1 must be completed first notwithstanding PUC's authority to undertake stages in any order, as it would be "difficult" to undertake a pilot otherwise (need retail market protocols implemented before pilot). Although not contemplated by Stage 1, SWEPCO also cites that the PUC restructured the existing electric utilities before launching any pilot in ERCOT.

SWEPCO - Customer Choice Pilot

SWEPCO Opposes Pilot (continued)

❑ Argues that pilot can only be initiated as part of a transition to competition process, not as a stand-alone event. SWEPCO states, citing a 2006 PUC order in Project 31104, that, "The Commission has already determined that the portions of Texas within the Southwest Power Pool are not ready to transition to retail competition." Also states that legislature confirmed this finding in 2009 via PURA § 39.503.

❑ Notably, SPP did not operate a balancing market at the time of the 2006 PUC order (launched in 2007), and did not operate a day-2 market until 2014. SPP also previously did not have a form of financial transmission rights, which PUC previously favored as needed versus physical transmission rights

El Paso Electric Transition To Competition

El Paso Electric governed by PURA § 39.553, Subchapter L

□ Generally follows the same five-stage process, with identical stage requirements, which governs the SWEPCO transition to competition

□ One key difference is that the PUC must complete all activities in a stage before the next stage is initiated (essentially hindering the ability to go out of sequence); this text is not in the SWEPCO section (§ 39.503)

□ Largest hurdle is the lack of an organized wholesale market (RTO) for El Paso Electric

Entergy Texas Transition To Competition

Entergy governed by PURA § 39.451 et seq., Subchapter J

❑ PUC retains authority to initiate a proceeding to certify a qualified power region, governed by PURA § 39.152, for Entergy Texas, "when the conditions supporting such a proceeding exist."

❑ Certification of a qualified power region would trigger a deadline by which Entergy must file a transition to competition plan

❑ However, PUC may not approve any transition to competition plan, "until the expiration of four years from the time that the commission certifies a power region..."

Entergy Texas Transition To Competition

- ❑ Moreover, language may be interpreted as only authorizing the PUC to approve a transition to competition plan if Entergy has been shown to be unable to comply with PURA § 38.073 relating to the ability to interconnect and purchase emergency power from neighboring systems due to a natural disaster (hurricane).
- ❑ Sec. 39.452(i) provides: "If after the expiration of four years from the time the commission certifies a power region ... the commission determines ... that the electric utility cannot comply with PURA § 38.073, it shall consider approving a plan [transition to competition plan]."
- ❑ The ability of the Commission to consider approval of a transition to competition, absent a finding of non-compliance with PURA § 38.073, is unclear. The Commission, in a report on PURA § 38.073, did not find that Entergy was unable to comply with PURA § 38.073

Entergy Texas Transition To Competition

Former Entergy Texas Transition To Competition Plan

- ❑ Had sought to join ERCOT, in a proceeding spanning several years through 2009
- ❑ Cost of transmission construction needed for integration became a concern
- ❑ Entergy had in 2009 forecast a residential customer monthly bill under the join-ERCOT option that had the most transmission construction as totaling \$118.35 (1,000 kWh) in 2015¹
- ❑ Jan. 2015 residential bill at Entergy Texas: \$116.50 (1,000 kWh)
- ❑ Oct. 2020 residential bill at Entergy Texas: \$114.77 (1,000 kWh)

¹Entergy Update to its Transition to Competition (TTC) Plan, 4/29/09, PUC Docket 33687

Southwestern Public Service Transition To Competition

SPS governed by PURA § 39.401 et seq., Subchapter I (eye)

❑ Electric choice may only be pursued if SPS chooses to do so

❑ "The legislature finds that circumstances exist that require that areas served by such utilities be treated as competitive development areas in which it is not in the public interest to transition to full retail customer choice at this time."

❑ "On or after January 1, 2007, an electric utility subject to this subchapter may choose to participate in customer choice."

❑ "If an electric utility chooses on or after January 1, 2007, to participate in customer choice, the commission may not authorize customer choice until the applicable power region has been certified as a qualifying power region under Section 39.152(a)."

Non-IOU Areas (Munis / Co-ops)

Munis/co-ops currently decide whether to opt-in to choice

- ❑ Lubbock Power & Light stated intent to adopt retail choice, subject to a consultant's study (pending)
- ❑ Rate dissatisfaction over past several years at Austin Energy
- ❑ Pedernales Electric Co-op (largest co-op): transition to electric choice raised in board elections several years ago
- ❑ 2021 is a legislative session year for Texas

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