



Business

April 4, 2007, 12:31AM

Mom and pop businesses may suffer if power rules change

Measure aims to remove state in electricity disputes

By TOM FOWLER
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A bill expected to be up for a vote in the Texas House today would take away state regulators' power to intervene in disputes between companies and power retailers, leaving mom-and-pop businesses to take their complaints to the courts.

Most of the language in the bill — HB 1189 authored by Rep. Phil King, which is mirrored by SB 482 introduced by Sen. Troy Fraser — is focused on encouraging big electric retailers like Reliant and TXU to compete for customers.

But a small section in each of the bills changes the language of the law defining the authority of the Public Utility Commission. The bills insert the word "residential" before the word "customers" four times in the utility code and delete the phrase "small commercial" in another instance.

If made into law, the changes would mean businesses with disputes over their power service, such as billing problems or unexpected changes in terms, could not ask regulators to intervene but would have to either take the issue to court or resolve it some other way.

The changes to the law are intended to "focus the limited resources of the PUC on what we consider the most important element of the retail market, the residential side," said Trey Trainor, general counsel of the Regulated Industries Committee that King chairs.

That may not be a problem for large companies with in-house lawyers and the resources to take disputes to court. But for thousands of small businesses in Texas, it's another story, said Karim Dhukani, a Spring convenience food store owner and president of the Greater Houston Retailers Cooperative Association, which represents some 1,400 stores.

"Small-business owners can't afford to fight in court every time they face \$50 in overcharges, but those charges can hurt the business over time," Dhukani said.

The negotiation factor

Trainor said the change wouldn't leave small businesses without protection, because businesses like dry cleaners and convenience stores have the ability to negotiate with electric retailers in ways residential customers cannot.

"If I'm a small commercial customer, I can pick up the phone, tell a retailer how many kilowatts I use, and they can tailor a plan for me," Trainor said.

Disputes over that contract should be just like any other business transaction, such as buying janitorial services or supplies, Trainor said, in the courts.

Not all are big and savvy

A number of market observers say the possible effect of the bills surprised them.

"I think the legislators forget that small businesses are often mom-and-pop operations that are not much more sophisticated than the average residential customer," said Patricia Dolese, the former head of consumer protection at the commission who now runs the consulting firm Regulatory Compliance Services. "They are in need of protection, too."

Business-related complaints are a relatively small percentage of all PUC electric complaints, Dolese said, less than 9 percent of all complaints in 2006. A little over 10 percent of all complaints that were determined to be violations of rules came from businesses, according to PUC data.

Members of the Public Utility Commission declined to comment on the proposed legislation.

A spokesman for Fraser said the language to remove business protections came from King's office and was added to the Senate bill after it was passed by the Senate.

"It's an issue we will likely have to look at when the house bill is passed and it comes back over to a conference committee," said Fraser's press secretary, Daniel Womack.

Two cases at hand

If the bills are successful, they would prevent the PUC from getting involved in cases similar to two currently before them, between electric retailer Tara Energy, and two retail trade groups, the Greater Houston Retailers Cooperative Association and the North Texas Trade Association, a Dallas-area convenience food store group.

According to documents filed with the PUC, both trade groups signed fixed-price, long-term electric contracts on behalf of their members with Tara several years ago. In 2005, Tara told the stores their rates would be increased via a "fuel adjustment." The stores argued the increases weren't allowed under the contracts and initiated the complaints with the PUC.

Letter to PUC

In December, King wrote a letter to the PUC arguing against its involvement in the Dallas-area case.

"While the commission should maintain protections against activities such as slamming or attempted imposition of unauthorized charges, the commission should reflect a laissez-faire posture in lieu of procedural or substantive intervention in business-to-business contract disputes," King wrote.

In a filing made with the PUC this week the head of the North Texas Association said he now believes Tara had the right to make the changes and that the complaint will likely be dropped.

A spokeswoman for Tara said Tuesday the company supported the legislation because it would let the PUC focus its resources on helping residential customers and "true small businesses that do not have the benefit of professional legal advice and do not possess the collective buying power required to negotiate contractual terms with energy companies and/or retain brokers or consultants who can represent their interests."

Proposal called unusual

Precluding state utility commissions completely from getting involved in business-to-business disputes in areas such as electricity is unusual, said Barbara Alexander, an independent consumer affairs consultant who previously ran the consumer complaint division for the state of Maine's Public Utility Commission.

"They may have more specific rules for dealing with residential complaints and not get as many from businesses, but I can't remember that authority ever being taken away," Alexander said.

A public utility commission is also the government body that issues licenses to electric retail companies to sell power in the state, Alexander notes.

"To have the body that licenses a business not be able to look at complaints from part of their customers, that would be not so good," Alexander said.

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