

1-1 By: Schwertner, King S.B. No. 2012
 1-2 (In the Senate - Filed March 9, 2023; March 13, 2023, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 4, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 11, Nays 0; April 4, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 2012 By: Schwertner

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to electricity services; increasing an administrative
 1-24 penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Sections 15.023(b-1) and (f), Utilities Code,
 1-27 are amended to read as follows:

1-28 (b-1) Notwithstanding Subsection (b), the penalty for a
 1-29 violation of a voluntary mitigation plan entered into under
 1-30 Subsection (f) or of a provision of Section 35.0021 or 38.075 may be
 1-31 in an amount not to exceed \$1,000,000 for a violation. Each day a
 1-32 violation continues or occurs is a separate violation for purposes
 1-33 of imposing a penalty.

1-34 (f) The commission and a person may develop and enter into a
 1-35 voluntary mitigation plan relating to a violation of Section 39.157
 1-36 or rules adopted by the commission under that section. The
 1-37 commission may approve the plan only if the commission determines
 1-38 that the plan is in the public interest. The voluntary mitigation
 1-39 plan must be reviewed at least once every two years and not later
 1-40 than the 90th day after the implementation date of a wholesale
 1-41 market design change. As part of the review, the commission must
 1-42 determine whether the voluntary mitigation plan remains in the
 1-43 public interest. If the commission determines that the voluntary
 1-44 mitigation plan is no longer in the public interest, the commission
 1-45 and the person must agree to a modification of the plan or the
 1-46 commission must terminate the plan. Adherence [If the commission
 1-47 and a person enter into a voluntary mitigation plan, adherence] to
 1-48 the plan may be considered in determining whether a violation
 1-49 occurred and, if so, the penalty to be assessed [constitutes an
 1-50 absolute defense against an alleged violation with respect to
 1-51 activities covered by the plan].

1-52 SECTION 2. The heading to Section 39.159, Utilities Code,
 1-53 as added by Chapter 426 (S.B. 3), Acts of the 87th Legislature,
 1-54 Regular Session, 2021, is amended to read as follows:

1-55 Sec. 39.159. POWER REGION RELIABILITY AND DISPATCHABLE
 1-56 GENERATION.

1-57 SECTION 3. Section 39.159, Utilities Code, as added by
 1-58 Chapter 426 (S.B. 3), Acts of the 87th Legislature, Regular
 1-59 Session, 2021, is amended by amending Subsection (b) and adding
 1-60 Subsections (b-1) and (b-2) to read as follows:

2-1 (b) The commission shall ensure that the independent
2-2 organization certified under Section 39.151 for the ERCOT power
2-3 region:

2-4 (1) establishes requirements to meet the reliability
2-5 needs of the power region;

2-6 (2) periodically, but at least annually, determines
2-7 the quantity and characteristics of ancillary or reliability
2-8 services necessary to ensure appropriate reliability during
2-9 extreme heat and extreme cold weather conditions and during times
2-10 of low non-dispatchable power production in the power region;

2-11 (3) procures ancillary or reliability services on a
2-12 competitive basis to ensure appropriate reliability during extreme
2-13 heat and extreme cold weather conditions and during times of low
2-14 non-dispatchable power production in the power region;

2-15 (4) develops appropriate qualification and
2-16 performance requirements for providing services under Subdivision
2-17 (3), including appropriate penalties for failure to provide the
2-18 services; ~~and~~

2-19 (5) sizes the services procured under Subdivision (3)
2-20 to prevent prolonged rotating outages due to net load variability
2-21 in high demand and low supply scenarios; and

2-22 (6) allocates the cost of providing ancillary services
2-23 and reliability services procured under this section on a
2-24 semiannual basis among dispatchable generation facilities,
2-25 non-dispatchable generation facilities, and load serving entities
2-26 in proportion to their contribution to unreliability during the
2-27 highest net load hours in the preceding six months, as determined by
2-28 the commission based on a number of hours adopted by the commission
2-29 for that six-month period, as follows:

2-30 (A) for each dispatchable generation facility,
2-31 the difference between the forced outage rate of the facility and
2-32 the forced outage rate of the facility during the corresponding
2-33 season for the three years prior to the current season, multiplied
2-34 by the installed capacity of the facility;

2-35 (B) for non-dispatchable generation facilities,
2-36 the difference between the mean of the lowest quartile generation
2-37 for each non-dispatchable generation facility and the mean
2-38 generation of the facility; and

2-39 (C) for load serving entities, the difference
2-40 between the mean of the highest quartile of total load and the mean
2-41 of total load in the ERCOT power region, allocated to each load
2-42 serving entity on a load ratio share basis.

2-43 (b-1) Subsection (b)(6) applies only to a generation
2-44 facility or load serving entity that has participated in the ERCOT
2-45 market for at least one year, including a load serving entity whose
2-46 parent company or affiliate has participated in the ERCOT market
2-47 for at least one year.

2-48 (b-2) Subsection (b)(6) does not apply to electric energy
2-49 storage.

2-50 SECTION 4. Subchapter D, Chapter 39, Utilities Code, is
2-51 amended by adding Sections 39.1595 and 39.1596 to read as follows:

2-52 Sec. 39.1595. RELIABILITY PROGRAM. (a) Under Section
2-53 39.159(b), as added by Chapter 426 (S.B. 3), Acts of the 87th
2-54 Legislature, Regular Session, 2021, or other law, the commission
2-55 may not adopt a reliability program for the ERCOT power region that
2-56 requires the purchase of capacity credits earned by generators to
2-57 support a reserve margin mandate unless the commission ensures
2-58 that:

2-59 (1) the cost to the ERCOT market of the credits does
2-60 not exceed \$500 million annually;

2-61 (2) credits are available only for dispatchable
2-62 generation, excluding load resources and electric energy storage;

2-63 (3) the cost of credits is assigned to generation
2-64 facilities and load serving entities according to Section
2-65 39.159(b)(6), as added by Chapter 426 (S.B. 3), Acts of the 87th
2-66 Legislature, Regular Session, 2021;

2-67 (4) the program includes appropriate penalties for a
2-68 failure to perform during a reliability event caused by factors
2-69 within the reasonable control of the generator, including a

3-1 requirement for a generator to buy back credits that the generator
 3-2 sold but for which the generator did not provide the required
 3-3 capacity;
 3-4 (5) the independent organization certified under
 3-5 Section 39.151 for the ERCOT power region begins implementing real
 3-6 time co-optimization of energy and ancillary services in the ERCOT
 3-7 wholesale market before the program is implemented;
 3-8 (6) all elements of the program are initially
 3-9 implemented on a single starting date;
 3-10 (7) the terms of the program and any associated market
 3-11 rules do not assign costs, credit, or collateral for the program in
 3-12 a manner that provides a cost advantage to load serving entities who
 3-13 own, or whose affiliates own, generation facilities;
 3-14 (8) generators who receive credits may not
 3-15 self-arrange credit exchanges with any affiliated competitive
 3-16 retail electric providers;
 3-17 (9) secured financial credit and collateral
 3-18 requirements are adopted for the program to ensure that other
 3-19 market participants do not bear the risk of nonperformance or
 3-20 nonpayment;
 3-21 (10) qualifying generators do not receive credits that
 3-22 exceed the amount of generation bid into the forward market on an
 3-23 individual resource basis; and
 3-24 (11) the wholesale electric market monitor has the
 3-25 authority and necessary resources to investigate potential
 3-26 instances of market manipulation by program participants,
 3-27 including financial and physical actions, and recommend penalties
 3-28 to the commission.
 3-29 (b) This section does not require the commission to adopt a
 3-30 reliability program that requires an entity to purchase capacity
 3-31 credits.
 3-32 (c) The commission and the independent organization
 3-33 certified under Section 39.151 for the ERCOT power region shall
 3-34 consider comments and recommendations from a technical advisory
 3-35 committee established under the bylaws of the independent
 3-36 organization that includes market participants when adopting and
 3-37 implementing a program described by Subsection (a), if any.
 3-38 (d) If the commission adopts a program described by
 3-39 Subsection (a), not later than January 1, 2029, the commission
 3-40 shall require the wholesale electric market monitor to submit to
 3-41 the commission and the legislature a report on the costs and
 3-42 benefits of continuing the program. This subsection expires
 3-43 September 1, 2029.
 3-44 Sec. 39.1596. GRID RELIABILITY LEGISLATIVE OVERSIGHT
 3-45 COMMITTEE. (a) In this section, "committee" means the Grid
 3-46 Reliability Legislative Oversight Committee established under this
 3-47 section.
 3-48 (b) The Grid Reliability Legislative Oversight Committee is
 3-49 created to oversee the commission's implementation of Section
 3-50 35.004, Sections 39.159 and 39.160, as added by Chapter 426 (S.B.
 3-51 3), Acts of the 87th Legislature, Regular Session, 2021, and
 3-52 Section 39.1595.
 3-53 (c) The committee is composed of eight members as follows:
 3-54 (1) three members of the senate, appointed by the
 3-55 lieutenant governor;
 3-56 (2) three members of the house of representatives,
 3-57 appointed by the speaker of the house of representatives;
 3-58 (3) the chair of the committee of the senate having
 3-59 primary jurisdiction over matters relating to the generation of
 3-60 electricity; and
 3-61 (4) the chair of the committee of the house having
 3-62 primary jurisdiction over matters relating to the generation of
 3-63 electricity.
 3-64 (d) An appointed member of the committee serves at the
 3-65 pleasure of the appointing official.
 3-66 (e) The committee members described by Subsections (c)(3)
 3-67 and (4) serve as presiding co-chairs.
 3-68 (f) A member of the committee may not receive compensation
 3-69 for serving on the committee but is entitled to reimbursement for

4-1 travel expenses incurred by the member while conducting the
4-2 business of the committee as provided by the General Appropriations
4-3 Act.

4-4 (g) The committee shall meet at least twice each year at the
4-5 call of either co-chair and shall meet at other times at the call of
4-6 either co-chair, as that officer determines appropriate.

4-7 (h) Chapter 551, Government Code, applies to the committee.

4-8 (i) The committee shall submit a report to the governor,
4-9 lieutenant governor, speaker of the house of representatives, and
4-10 legislature not later than December 1 of each even-numbered year.
4-11 The report must include an update on the progress of and issues
4-12 related to the commission's implementation of the laws under the
4-13 committee's oversight as provided by Subsection (b).

4-14 SECTION 5. Subchapter D, Chapter 39, Utilities Code, is
4-15 amended by adding Section 39.166 to read as follows:

4-16 Sec. 39.166. RETAIL SALES REPORT. (a) Each retail electric
4-17 provider that offers electricity for sale shall report to the
4-18 commission:

4-19 (1) its annual retail sales in this state;

4-20 (2) the annual retail sales of its affiliates by
4-21 number of customers, kilowatts per hour sold, and revenue from
4-22 kilowatts per hour sold by customer class; and

4-23 (3) any other information the commission requires
4-24 relating to affiliations between retail electric providers.

4-25 (b) The commission by rule shall prescribe the nature and
4-26 detail of the reporting requirements. The commission may accept
4-27 information reported under other law to satisfy the requirements of
4-28 this section. Information reported under this section is
4-29 confidential and not subject to disclosure if the information is
4-30 competitively sensitive information. The commission shall
4-31 administer the reporting requirements in a manner that ensures the
4-32 confidentiality of competitively sensitive information.

4-33 SECTION 6. Chapter 39, Utilities Code, is amended by adding
4-34 Subchapter O to read as follows:

4-35 SUBCHAPTER O. CONSTRUCTION OF DISPATCHABLE GENERATION FACILITIES
4-36 FOR RELIABILITY

4-37 Sec. 39.701. CAPACITY EVALUATION. (a) The commission
4-38 annually shall determine whether there is dispatchable generating
4-39 capacity sufficient to ensure the reliability and adequacy of the
4-40 regional electrical network installed in the ERCOT power region.

4-41 (b) If the commission determines that dispatchable
4-42 generating capacity sufficient to ensure the reliability and
4-43 adequacy of the regional electrical network is not installed in the
4-44 ERCOT power region, the commission shall select entities to install
4-45 new dispatchable generation capacity under Section 39.702.

4-46 (c) If the commission determines in two consecutive years
4-47 that dispatchable generating capacity sufficient to ensure the
4-48 reliability and adequacy of the regional electrical network is not
4-49 installed in the ERCOT power region, the commission shall
4-50 discontinue any reliability program described by Section 39.1595 in
4-51 operation on the date of the second determination.

4-52 Sec. 39.702. CONSTRUCTION OF DISPATCHABLE GENERATION
4-53 FACILITIES FOR RELIABILITY. (a) In this section, "entity" means an
4-54 electric cooperative, a municipally owned utility, a transmission
4-55 and distribution utility or affiliate, or a power generation
4-56 company.

4-57 (b) Notwithstanding any other law, the commission shall,
4-58 after a determination under Section 39.701(b), through a
4-59 competitive bid process, select entities to install a sufficient
4-60 amount of new dispatchable generation capacity to address the
4-61 projected shortfall determined under Section 39.701.

4-62 (c) Costs incurred by an entity under this section related
4-63 to the provision of additional dispatchable generation must be
4-64 allocated to load-serving entities on a load-ratio share basis
4-65 through administrative charges assessed by the independent
4-66 organization certified under Section 39.151 for the ERCOT power
4-67 region on load-serving entities following a cost recovery
4-68 proceeding before the commission. The commission by rule shall
4-69 adopt procedures for an entity to recover the entity's costs

5-1 incurred in installing a dispatchable generation facility that are
5-2 similar to procedures used under Section 36.214.

5-3 (d) If the commission selects an entity to install new
5-4 dispatchable generation capacity under this section, the
5-5 commission shall find that the generation facilities are used and
5-6 useful to the entity in providing service for purposes of this
5-7 section, regardless of the extent of the entity's actual use of the
5-8 facilities.

5-9 (e) Notwithstanding any other law, a transmission and
5-10 distribution utility that installs dispatchable generation
5-11 capacity under this section shall register as a power generation
5-12 company.

5-13 (f) The commission shall waive the requirements of Section
5-14 39.154 for a generation facility installed under this section.

5-15 SECTION 7. (a) The changes in law made by this Act to
5-16 Chapter 15, Utilities Code, apply only to a violation committed on
5-17 or after the effective date of this Act. A violation committed
5-18 before the effective date of this Act is governed by the law in
5-19 effect when the violation was committed, and the former law is
5-20 continued in effect for that purpose.

5-21 (b) Not later than September 1, 2024, the Public Utility
5-22 Commission of Texas shall implement the changes in law made by this
5-23 Act to Section 39.159(b), Utilities Code, as added by Chapter 426
5-24 (S.B. 3), Acts of the 87th Legislature, Regular Session, 2021.

5-25 (c) The Public Utility Commission of Texas shall make the
5-26 first determination required by Section 39.701(a), Utilities Code,
5-27 as added by this Act, not later than the fourth anniversary of the
5-28 date a program described by Section 39.1595, Utilities Code, as
5-29 added by this Act, is implemented.

5-30 SECTION 8. This Act takes effect September 1, 2023.

5-31 * * * * *