

By: Chisum

H.B. No. 1960

Substitute the following for H.B. No. 1960:

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C.S.H.B. No. 1960

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to authorizing the Texas Commission on Environmental  
3 Quality to enter into voluntary emissions reduction agreements with  
4 owners of stationary sources or groups of stationary sources.

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

6 SECTION 1. Chapter 382, Health and Safety Code, is amended  
7 by adding Subchapter H to read as follows:

8 SUBCHAPTER H. VOLUNTARY EMISSIONS REDUCTION AGREEMENTS

9 Sec. 382.251. DEFINITION. In this subchapter, "voluntary  
10 agreement" means a voluntary emissions reduction agreement.

11 Sec. 382.252. APPLICABILITY. This subchapter applies only  
12 to an investor-owned electric utility operating solely outside of  
13 the Electric Reliability Council of Texas region.

14 Sec. 382.253. VOLUNTARY EMISSIONS REDUCTION AGREEMENTS.

15 (a) The commission may enter into a voluntary emissions reduction  
16 agreement with the owner of a stationary source or group of  
17 stationary sources under which the owner agrees to reduce emissions  
18 or emission rates at the source or group of sources according to an  
19 emissions reduction plan and the commission grants the owner a  
20 regulatory assurance period for the source or group of sources. The  
21 emissions reduction plan and the regulatory assurance period are  
22 part of the agreement. Any stationary source that is part of the  
23 plan must be in the electric utility's regulated rate base.

24 (b) The commission shall evaluate the regulatory assurance

1 period according to:

2 (1) the environmental benefits of the proposed  
3 voluntary agreement and their significance;

4 (2) the time necessary to achieve the proposed  
5 emissions reductions;

6 (3) the capital, operating, and other costs associated  
7 with achieving the emissions reductions; and

8 (4) the proposal's energy and environmental impacts  
9 not associated with air quality.

10 (c) The commission shall structure a voluntary agreement to  
11 minimize the costs and, to the extent consistent with minimizing  
12 the costs, maximize the flexibility available to the owner of a  
13 stationary source or group of stationary sources who seeks to enter  
14 into the voluntary agreement by using methods that include the use  
15 of:

16 (1) numeric emissions limits;

17 (2) annual emissions limits; or

18 (3) emissions averaging across several stationary  
19 sources or groups of stationary sources.

20 (d) The commission shall evaluate a proposed voluntary  
21 agreement to ensure that the agreement will:

22 (1) result in:

23 (A) reductions in emissions or emission rates;

24 and

25 (B) substantially greater emissions reductions  
26 than required by law;

27 (2) protect human health and the environment; and

1           (3) result in the selection of the most cost-effective  
2 options after consideration of alternative measures.

3           (e) The commission shall conduct and shall include as  
4 attachments to an approved voluntary agreement the commission's  
5 analysis of:

6                   (1) the proposed emissions reduction plan;

7                   (2) the agreement's compliance with the requirements  
8 of this section and Sections 382.254 and 382.255; and

9                   (3) the estimated costs of the plan and expected  
10 benefits from executing the plan.

11           Sec. 382.254. EMISSIONS REDUCTION PLAN. An emissions  
12 reduction plan must include for the stationary source or group of  
13 stationary sources that is the subject of the plan:

14                   (1) each air pollutant emissions of which are to be  
15 reduced under the plan;

16                   (2) a description of planned emissions reduction  
17 projects to be used to implement the plan;

18                   (3) activities and schedules associated with each  
19 project;

20                   (4) the amount of emissions reductions estimated to be  
21 achieved for each pollutant under the plan;

22                   (5) the estimated date on which the source or group of  
23 sources that is the subject of the plan will achieve compliance with  
24 the terms of the plan;

25                   (6) the estimated costs of the plan and expected  
26 benefits from executing the plan; and

27                   (7) any other information the commission by rule may

1 require.

2 Sec. 382.255. REGULATORY ASSURANCE PERIOD. (a) The  
3 commission shall grant an owner of a stationary source or group of  
4 stationary sources who enters into a voluntary agreement a  
5 regulatory assurance period as provided by this section. The  
6 period begins on the date that the source or group of sources  
7 achieves compliance with the voluntary agreement and ends not later  
8 than the 15th anniversary of that date.

9 (b) During a regulatory assurance period, the commission  
10 may not require the owner of a stationary source or group of  
11 stationary sources that is the subject of the voluntary agreement  
12 to install pollution control equipment or to implement pollution  
13 control strategies at the source or group of sources in addition to  
14 equipment or strategies that are part of the voluntary agreement if  
15 the purpose of the equipment or strategies is to further reduce  
16 emissions of an air pollutant emissions of which are to be reduced  
17 under the voluntary agreement in order to comply with a state  
18 regulatory requirement that:

- 19 (1) is based exclusively on state authority; and  
20 (2) directly or indirectly requires reductions in the  
21 air pollutant emissions of which are to be reduced under the  
22 voluntary agreement.

23 Sec. 382.256. NOTICE AND HEARING. The commission may not  
24 approve a voluntary agreement unless the commission has first  
25 provided the public notice and the opportunity to comment on the  
26 proposed agreement.

27 Sec. 382.257. DECISION ON AGREEMENT. (a) The commission

1 shall consider any public comment on the agreement in deciding to  
2 approve or reject a proposed voluntary agreement.

3 (b) The commission shall approve a negotiated voluntary  
4 agreement unless it determines that the agreement does not meet the  
5 requirements of this subchapter or rules adopted under this  
6 subchapter.

7 Sec. 382.258. ENFORCEMENT. The commission may enforce a  
8 voluntary agreement in the same manner as it enforces a statute  
9 under its jurisdiction or a rule adopted or an order or permit  
10 issued under such a statute.

11 Sec. 382.259. RULES. The commission shall adopt rules  
12 necessary to implement this subchapter.

13 SECTION 2. Subchapter E, Chapter 36, Utilities Code, is  
14 amended by adding Section 36.2025 to read as follows:

15 Sec. 36.2025. RECOVERY OF AIR QUALITY IMPROVEMENT COSTS.

16 (a) In this section, "air quality improvement costs" means the  
17 incremental life cycle costs, including capital, operating,  
18 maintenance, fuel, and financing costs, incurred in implementing an  
19 approved voluntary emissions reduction agreement under Subchapter  
20 H, Chapter 382, Health and Safety Code.

21 (b) This section applies only to an investor-owned electric  
22 utility operating solely outside of the Electric Reliability  
23 Council of Texas region.

24 (c) The commission on petition of an electric utility shall  
25 provide for a cost recovery rider to the utility's rates to recover  
26 all air quality improvement costs incurred by the utility in  
27 implementing an approved voluntary emissions reduction agreement.

1 The commission shall review all costs to assure that expenditures  
2 in implementing the agreement were prudently made.

3 (d) A petition to the commission under this section must  
4 include:

5 (1) a copy of the approved voluntary emissions  
6 reduction agreement between the electric utility and the Texas  
7 Commission on Environmental Quality;

8 (2) a description of the planned emissions reduction  
9 projects that will be used to comply with the voluntary agreement;

10 (3) the activities and schedule associated with the  
11 project;

12 (4) the proposed cost recovery rider; and

13 (5) a commitment that any revenues the electric  
14 utility receives from selling allowances under Title IV of the  
15 federal Clean Air Act will be credited to the utility's customers to  
16 offset air quality improvement costs if such revenues result from  
17 the voluntary emissions reduction agreement.

18 (e) The commission shall approve a proposed cost recovery  
19 rider that:

20 (1) allows the electric utility to recover all its air  
21 quality improvement costs incurred in implementing an approved  
22 voluntary emissions reduction agreement;

23 (2) allows an appropriate return on investment  
24 consistent with the level established in the electric utility's  
25 last general rate case;

26 (3) allocates air quality improvement costs  
27 appropriately between wholesale customers, retail customers in the

1 state, and retail customers outside the state; and

2 (4) ensures that:

3 (A) the total of all cost recovery riders  
4 approved under this subchapter and in effect at the time the new  
5 cost recovery rider is proposed does not exceed three percent of the  
6 electric utility's total retail rates including fuel; and

7 (B) an individual class of customers does not  
8 experience an increase in total retail rates including fuel greater  
9 than three percent.

10 (f) The commission shall apportion pro rata to each type and  
11 class of service provided by the utility the air quality  
12 improvement costs under this section. The cost recovery rider  
13 remains in effect until all air quality improvement costs have been  
14 recovered or are included in base rates in a general rate case or  
15 until the commission alters the rider under Subsection (g).

16 (g) Each year after the date the original cost recovery  
17 rider takes effect, the commission may review the cost recovery  
18 rider in light of the electric utility's performance in complying  
19 with the voluntary emissions reduction agreement and may alter the  
20 rider as appropriate. The commission may not alter the rider after  
21 the date the electric utility elects to participate in customer  
22 choice.

23 (h) A proceeding under this section is not a rate case under  
24 Subchapter C.

25 SECTION 3. Not later than the 90th day after the effective  
26 date of this Act, the Texas Commission on Environmental Quality and  
27 the Public Utility Commission of Texas shall adopt rules necessary

1 to implement this Act.

2           SECTION 4. This Act takes effect immediately if it receives  
3 a vote of two-thirds of all the members elected to each house, as  
4 provided by Section 39, Article III, Texas Constitution. If this  
5 Act does not receive the vote necessary for immediate effect, this  
6 Act takes effect September 1, 2003.