

By: Van de Putte

S.B. No. 1039

A BILL TO BE ENTITLED

AN ACT

relating to demonstration and deployment of fuel cells for electric generation.

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

SECTION 1. Section 31.002, Utilities Code, is amended by adding Subdivision (21) to read as follows:

(21) "Fuel cell" means an electronic device that uses fuel and oxidant to generate electricity continuously.

SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Sections 39.910-39.912 to read as follows:

Sec. 39.910. FUEL CELL ELECTRIC GENERATION DEMONSTRATION AND DEPLOYMENT. (a) This section applies only to an electric utility, electric cooperative, or municipally owned utility that is located in or that serves an area that is in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or an area that is an affected county, as defined in the Health and Safety Code Sec. 386.001(2).

(b) Each electric utility, electric cooperative, and municipally owned utility shall establish a demonstration and deployment program to achieve the generation capacity goals of this subsection by the dates specified by this subsection. The generation capacity goals may be met by the installation of fuel cell electric generation capacity on or off of the electric power grid. The total generation capacity goals for this state are:

- 1           (1) 35 megawatts by January 1, 2005;
- 2           (2) 100 megawatts by January 1, 2006;
- 3           (3) 200 megawatts by January 1, 2007;
- 4           (4) 325 megawatts by January 1, 2008;
- 5           (5) 475 megawatts by January 1, 2009;
- 6           (6) 700 megawatts by January 1, 2010; and
- 7           (7) 1,000 megawatts by January 1, 2011.

8           (c) To meet the generation capacity goals established under  
9 this section, an electric utility, electric cooperative, or  
10 municipally owned utility shall:

- 11           (1) purchase and own fuel cells, to the extent allowed  
12 by law; or
- 13           (2) provide incentives to its customers through  
14 standard-offer programs as provided by commission rule.

15           (d) The incentives under Subsection (c)(2) must be:

- 16           (1) administered in a market-neutral and  
17 nondiscriminatory manner; and
- 18           (2) offered to all customer classes.

19           (e) To provide for implementation of the incentive programs  
20 under this section, the commission shall adopt rules similar to  
21 those governing the design and implementation of efficiency  
22 programs established under Section 39.905. The rules must:

- 23           (1) allow for measures or incentives to encourage  
24 installation of fuel cell electric generation capacity to relieve  
25 present or potential transmission congestion or distribution  
26 congestion;
- 27           (2) be technology-neutral with respect to fuel or fuel

1 cell technology;

2 (3) ensure that a percentage of money is designated  
3 for generators of categories of:

4 (A) less than 10 kilowatts;

5 (B) 10-100 kilowatts; and

6 (c) greater than 100 kilowatts;

7 (4) allow backup or intermittent generation systems;

8 (5) allow customers to select appropriate fuel cell  
9 technologies and products from their chosen providers to meet a  
10 wide variety of potential applications at various scales; and

11 (6) establish a project open to all persons to  
12 receive:

13 (A) comments on the commission's development of  
14 rules under this section;

15 (B) comments on the progress of the incentive  
16 programs toward meeting the goals of this section; and

17 (C) recommendations for changes to the rules,  
18 incentive programs, or incentive levels.

19 (f) The commission by rule shall establish goals for each  
20 electric utility, electric cooperative, and municipally owned  
21 utility that is proportional to its share of the electric  
22 generation load. The commission may exempt small electric  
23 cooperatives or municipally owned utilities from participation  
24 under this section.

25 (g) The commission shall establish incentive levels, with  
26 different incentive levels for different sizes of fuel cells, that  
27 are necessary and sufficient to meet the generation capacity goals

1 by the appropriate dates.

2 Sec. 39.911. TEXAS COUNCIL ON ENVIRONMENTAL TECHNOLOGY  
3 PARTICIPATION IN FUEL CELL ELECTRIC GENERATION DEMONSTRATION AND  
4 DEPLOYMENT. (a) In this section, "council" means the Texas  
5 Council on Environmental Technology.

6 (b) The council shall:

7 (1) provide coordination and support for the Texas  
8 Consortium for Advanced Fuel Cell Research.

9 (2) monitor and evaluate the status of the fuel cell  
10 industry in this state for both mobile and stationary applications  
11 including the general market conditions and other factors that may  
12 affect the introduction of fuel cells and related products to the  
13 market; and

14 (3) develop legislative recommendations for:

15 (A) instituting other means of accelerating the  
16 commercial availability of stationary fuel cell electric  
17 generating capacity in this state;

18 (B) instituting means of fostering the  
19 development or manufacture of fuel cells or related products or  
20 services in this state; and

21 (C) instituting appropriate means to prepare  
22 this state to accept the early introduction of fuel cell vehicles or  
23 other ultra-low-emissions vehicles.

24 SECTION 3. Section 39.002, Utilities Code, is amended to  
25 read as follows:

26 Section 39.002. APPLICABILITY. This chapter, other than  
27 Sections 39.155, 39.157(e), 39.203, 39.903, [~~and~~] 39.904, and

1 39.910, does not apply to a municipality owned utility or an  
2 electric cooperative. Section 39.157(e), 39.203, and 39.904,  
3 however, apply only to a municipally owned utility or an electric  
4 cooperative that is offering customer choice. If there is a  
5 conflict between the specific provisions of this chapter and any  
6 other provisions of this title, except for Chapters 40 and 41, the  
7 provisions of this chapter control.

8 SECTION 4. Section 40.004, Utilities Code, is amended to  
9 read as follows:

10 Sec. 40.004. JURISDICTION OF COMMISSION. Except as  
11 specifically otherwise provided in this chapter, the commission has  
12 jurisdiction over municipally owned utilities only for the  
13 following purposes:

14 (1) to regulate wholesale transmission rates and  
15 service, including terms of access, to the extent provided by  
16 Subchapter A, Chapter 35;

17 (2) to regulate certification of retail service areas  
18 to the extent provided by Chapter 37;

19 (3) to regulate rates on appeal under Subchapters D  
20 and E, Chapter 33, subject to Section 40.051(c);

21 (4) to establish a code of conduct as provided by  
22 Section 39.157(e) applicable to anticompetitive activities and to  
23 affiliate activities limited to structurally unbundled affiliates  
24 of municipally owned utilities, subject to Section 40.054;

25 (5) to establish terms and conditions for open access  
26 to transmission and distribution facilities for municipally owned  
27 utilities providing customer choice, as provided by Section 39.203;

1           (6) to require collection of the nonbypassable fee  
2 established under Section 39.903(b) and to administer the renewable  
3 energy credits program under Section 39.904(b), ~~and~~ the natural  
4 gas energy credits program under Section 39.9044(b), and the fuel  
5 cell incentives under Section 39.910; and

6           (7) to require reports of municipally owned utility  
7 operations only to the extent necessary to:

8           (A) enable the commission to determine the  
9 aggregate load and energy requirements of the state and the  
10 resources available to serve that load; or

11           (B) enable the commission to determine  
12 information relating to market power as provided by Section 39.155.

13           SECTION 5. Section 41.001, Utilities Code, is amended to  
14 read as follows:

15           Sec. 41.001. APPLICABLE LAW. Notwithstanding any other  
16 provision of law, except Sections 39.155, 39.157(e), 39.203,  
17 39.903, ~~and~~ 39.904, and 39.910, this chapter governs the  
18 transition to and the establishment of a fully competitive electric  
19 power industry for electric cooperatives. Regarding the regulation  
20 of electric cooperatives, the chapter shall control over any other  
21 provision of this title, except for sections in which the term  
22 "electric cooperative" is specifically used.

23           SECTION 6. Section 41.004, Utilities Code, is amended to  
24 read as follows:

25           Sec. 41.004. JURISDICTION OF COMMISSION. Except as  
26 specifically provided otherwise in this chapter, the commission has  
27 jurisdiction over electric cooperatives only as follows:

1           (1) to regulate wholesale transmission rates and  
2 service, including terms of access, to the extent provided in  
3 Subchapter A, Chapter 35;

4           (2) to regulate certification to the extent provided  
5 in Chapter 37;

6           (3) to establish a code of conduct as provided in  
7 Section 39.157(e) subject to Section 41.054;

8           (4) to establish terms and conditions, but not rates,  
9 for open access to distribution facilities for electric  
10 cooperatives providing customer choice, as provided in Section  
11 39.203; ~~and~~

12           (5) to require reports of electric cooperative  
13 operations only to the extent necessary to:

14                   (A) ensure the public safety;

15                   (B) enable the commission to satisfy its  
16 responsibilities relating to electric cooperatives under this  
17 chapter;

18                   (C) enable the commission to determine the  
19 aggregate electric load and energy requirements in the state and  
20 the resources available to serve that load; or

21                   (D) enable the commission to determine  
22 information relating to market power as provided in Section 39.155;  
23 and

24           (6) to administer the fuel cell demonstration and  
25 deployment programs under Section 39.910.

26           SECTION 7. Chapter 447, Government Code, as amended by  
27 Section 10, Chapter 573, Section 28, Chapter 1158, and Section 1,

1 Chapter 1138, Acts of the 77th Legislature, 2001 is amended by  
2 adding Section 447.012 to read as follows:

3 Sec. 447.012. FUEL CELL DEVELOPMENT. The state energy  
4 conservation office shall undertake to partner with the United  
5 States Department of Energy and other federal agencies or programs  
6 to develop cooperative programs related to research on, development  
7 of, and demonstration of fuel cell technology in this state.

8 SECTION 8. Subchapter H, Chapter 151, Tax Code, is amended  
9 by adding Section 151.356 to read as follows:

10 Sec. 151.356. STATIONARY FUEL CELLS. (a) The sale of  
11 stationary fuel cells is exempted from the taxes imposed by this  
12 chapter.

13 (b) This section expires January 1, 2011.

14 SECTION 9. Not later than September 1, 2004, the Texas  
15 Council on Environmental Technology shall present the speaker of  
16 the house of representatives, the lieutenant governor, and the  
17 Public Utility Commission of Texas with a report on the status of  
18 the fuel cell industry in this state. The report must include  
19 recommendations:

20 (1) for any changes to the fuel cell demonstration and  
21 deployment incentive program under Section 39.910, Utilities Code,  
22 as added by this Act;

23 (2) for any other steps this state may take to prepare  
24 this state for the introduction of fuel cell vehicles or other  
25 ultra-low-emissions vehicles;

26 (3) regarding research and development programs at  
27 universities and private research centers in this state to advance



1 fuel cell research and development in this state and to attract  
2 federal and industry funding of fuel cell research and development;  
3 and

4 (4) regarding training and education necessary for  
5 developing professional services required to install and service  
6 fuel cells installed in this state.

7 SECTION 10. The Public Utility Commission of Texas shall  
8 adopt rules under Section 39.910, Utilities Code, as added by this  
9 Act, before January 1, 2004.

10 SECTION 11. This Act takes effect September 1, 2003.