

Amend Amendment No. 1 by King to CSSB 408 as follows:

(1) On page 2, strike lines 29 through 31.

(2) Strike pages 3 through 8.

(3) On page 9, strike lines 1 through 11.

(4) Add the following new SECTIONS and renumber accordingly:

SECTION _____. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) The commission shall adopt and enforce rules ~~[An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules,]~~ relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are ~~[The procedures shall be]~~ subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization

adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient

resolution of such disputes.

(e) The commission may authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate a rate or a rate request.

(g) To maintain certification as an independent organization under this section, an organization's ~~[If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the]~~ governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;

(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer ~~[director]~~ of the independent organization ~~[system operator]~~ as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives ~~[four representatives of the power generation sector as voting members];~~

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term ~~[four representatives of the transmission and distribution sector as voting members];~~

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term ~~[four representatives of the power sales sector as voting members]; and~~

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms ~~[the following people as voting members, appointed by the commission:~~

~~[(A) one representative of residential customers,~~

~~[(B) one representative of commercial customers,~~
and

~~[(C) one representative of industrial customers].~~

~~[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]~~

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION _____. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511 and 39.1512, to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has

a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

SECTION _____. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.