

BILL ANALYSIS

C.S.S.B. 743
By: Fraser
Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, there is ambiguity surrounding the regulatory authority of the Public Utility Commission of Texas (commission) in relation to an independent organization operating in the Electric Reliability Council of Texas (ERCOT). This ambiguity has led to several problems at the organization, some of which have evolved into indictments from the attorney general.

This legislation provides the commission the authority to regulate and supervise the business of an independent organization. The bill allows the commission to require reports, prescribe systems of accounts, conduct audits, inspect facilities, assess penalties, resolve disputes, and adopt and enforce rules of an independent organization. The bill also amends the composition of the board of directors and provides requirements for the presiding officer and requires that meetings of the organization be open to the public and that members disclose any interest in matters before the governing body. Finally, the legislation provides for a wholesale market monitor operating at the organization.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 39.151, Utilities Code) and SECTION 2 (Section 39.1512, Section 39.1515, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 39.151, Utilities Code, by amending Subsections (b), (c), (d), (e), (g), and (j) and adds Subsections (g-1), (g-2) and (n) as follows:

(b) Redefines “independent organization.”

(c) Provides that the Public Utilities Commission of Texas (commission) has complete authority to oversee, require the commission’s approval of, and order modifications of any part of the finances, budget, or administration of an independent organization.

(d) Provides that an independent organization is directly responsible and accountable to the commission and that the organization shall fully cooperate with the commission in its oversight and investigatory functions. Gives the commission authority to decertify an independent organization for not adequately performing their functions or if they do not comply with this section.

(e) Requires an independent organization to provide the commission sufficiently detailed information to allow the commission to review and approve or disapprove the independent organization’s budget. Provides rulemaking authority to the commission for the budget information and timetable of the budget review. Once the commission has determined the overall reasonableness and necessity of the budget request, they may authorize the independent organization to charge a reasonable and competitively neutral rate to take in a reasonable and necessary amount of revenue. Provides that the independent organization may change the rate only with commission approval. Also allows the commission to inquire into the reasonableness of an independent organization’s budget or rate.

(g) Requires an organization, to maintain certification as an independent organization under this section, to have a governing body composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. Deletes existing text

relating to the composition of the governing body. Sets forth requirements for said bylaws and protocols and sets forth new and amends existing requirements for the composition of the governing body.

(g-1) Requires that the presiding officer of the governing body must be one of the independent members.

(g-2) Sets forth a requirement that subjects the governing body and its members to open meetings requirements under Chapter 551, Governmental Code, except for certain instances addressed and contained in the organization's bylaws.

(j) Provides that any person participating in a market operated by the independent system operator in ERCOT shall observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT. Provides that the commission may require refunds or disgorgement of unjust profits that accrue from violations of this subsection.

(n) Subsections (a), (b), (f), (k), (l) and (m) apply to independent organizations outside of ERCOT and subsections (c), (d), (e), (g), (h), (i), and (j) do not apply to independent organizations outside of ERCOT. Provides that the commission can certify an independent organization outside of ERCOT to perform functions in subsection (a).

SECTION 2. Amends Subchapter D, Chapter 39, Utilities Code, by adding Sections 39.1511, 39.1512, and 39.1515, as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. Requires that bylaws of the independent organization and rules of the commission provide for executive sessions for certain circumstances. Requires the bylaws of the independent organization and rules of the commission to 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 meetings and an opportunity to comment on matters under discussion at the meeting. Also allows an emergency item to be added to agendas. Provides that this section does not apply to an independent organization outside of ERCOT.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. Requires a member, if a matter comes before the governing body and a member or a person that member represents has a direct interest in that matter, to publicly disclose that information at a public meeting of the body and recuse himself or herself from the governing body's deliberations and actions on the matter, including voting or otherwise participating in a governing body decision on the matter. Requires said disclosure to be entered into the minutes of the meeting at which the disclosure is made and provides that 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. This section does not apply to an independent organization outside of ERCOT.

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) Requires an independent organization to contract with a private person selected by the commission to act as the state's wholesale electric market monitor and to detect and prevent market power abuses, potential market power abuses and other violations of this subchapter.

(b) Requires the independent organization to provide to the personnel of the market monitor certain access, support, and cooperation.

(c) Requires the independent organization to use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) Provides that the commission is responsible for ensuring that the market monitor has the resources, expertise, and access to information necessary to monitor the wholesale electric market successfully. Clarifies that the market monitor shall operate under the supervision and oversight of the commission and that the commission retains all enforcement authority. Requires

the commission to adopt rules and perform oversight of the market monitor as necessary and, by rule, to define certain guidelines for the market monitor.

(e) Sets forth requirements for rules adopted by the commission under this section and requires the commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the operational responsibilities of the market monitor.

(f) Requires the market monitor to confidentially report directly to the commission and to a market participant that is the subject of the report any potential market power abuses and any discovered or potential violations of commission rules or rules of the independent organization.

(g) Authorizes the personnel of the market monitor to communicate with any person, including commission staff in accordance with commission rules and with independent organization procedures.

(h) Requires the market monitor to submit annually to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. Requires the commission and the independent organization to review the report and evaluate whether changes to rules of the commission or the independent organization should be made. Requires the report to be made available to the public.

(i) Requires the market monitor to comply with this title, commission rules and orders and bylaws of the independent organization. Requires the market monitor to ensure the confidentiality information that is customer proprietary, competitively sensitive, or otherwise confidential.

(j) This section does not apply to an independent organization outside of ERCOT.

SECTION 3. Requires an independent organization certified by the Public Utility Commission of Texas before September 1, 2005, to modify the organization's governing body to comply with Section 39.151(g), Utilities Code, as amended by this Act, not later than September 1, 2006. Authorizes the Public Utility Commission of Texas, on or after September 1, 2006, to decertify an independent organization whose governing body does not comply with Section 39.151(g), Utilities Code, as amended by this Act.

SECTION 4. Effective date: September 1, 2005.

EFFECTIVE DATE

This Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In Section 1, the Substitute adds language to Section 39.151 (c) Utilities Code to state that the commission has complete authority over an independent organization's finance, budget or administration. As originally proposed the bill amended 39.151 (d) to state that the commission had general power to regulate and supervise the business of an independent organization in ERCOT and detailed specific oversight responsibilities of the commission. The substitute gives the commission broader oversight and allows the commission to decertify an independent operator for non-compliance. The substitute amends Section 39.151 (e) to give the commission rulemaking and approval authority over an independent organization's budget. In Section 39.151 (g) the original states that the commission must approve the bylaws or protocols of the independent organization and prescribed certain requirements regarding members to be part of those bylaws or protocols, which is not included in the substitute. In Section 39.151 (g) the substitute adds open records requirements to the governing body the members of the independent organization. The original amended Section 39.151 (h) to add "consistent with any rules or orders of the commission" and the substitute does not amend this subsection. The substitute amends Section 39.151 (j) to add that any person who participates a market operated by ERCOT shall observe all ERCOT policies, rules and guidelines and adds that the commission may require refunds or disgorgement of unjust profits that may accrue as a result of violations. The

substitute adds Section 39.151 (n) which clarifies which subsections apply to independent organizations outside of the ERCOT power region.

In Section 2, both versions add a new Section 39.1511 Utilities Code, however Section 39.1511 (a) of the original has additional language on open meetings of independent organizations, which the substitute addresses in Section 39.151 (g). The substitute states that the bylaws of an independent organization may provide for executive sessions, where the substitute mandates that those bylaws provide for executive sessions. The substitute adds Section 39.1511 (c) which allows for emergency agenda items and Section 39.1511 (d) which states that this section does not apply to an independent organization outside of ERCOT. The Substitute adds (d) to Section 39.1512 to state that this section does not apply to an independent organization outside of ERCOT. In Section 39.1515 the original states that the market monitor should detect and prevent “market manipulation strategies” however the substitute says that the market monitor should detect and prevent “potential market power abuses.” Also in Section 39.1515 the original that the commission shall ensure that the market monitor has the “resources expertise and access to information necessary” monitor the wholesale electric market and the substitute replaces “authority” with “access to information.” In Section 39.1515 (d) the substitute adds additional items to the list of items that the commission by rule shall define regarding the market monitor’s communication with the commission, nature and timing of reports and procedures for the market monitor to observe in complying with Subsection (i).