

By: Chisum

H.B. No. 991

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 I to read as follows:

8 SUBCHAPTER I. VOLUNTARY EMISSIONS REDUCTION AGREEMENTS

9 Sec. 382.351. DEFINITION. In this subchapter, "voluntary
10 agreement" means a voluntary emissions reduction agreement.

11 Sec. 382.352. 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. 382.353. 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 382.354 and 382.355; and

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

11 Sec. 382.354. 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. 382.355. 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. 382.356. 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. 382.357. 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. 382.358. 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. 382.359. 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 36.209 to read as follows:

15 Sec. 36.209. 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 a
19 voluntary emissions reduction agreement approved under Subchapter
20 I, Chapter 382, Health and Safety Code.

21 (b) The commission on petition of an electric utility
22 subject to Subchapter I, Chapter 39, shall provide for a cost
23 recovery rider to the utility's rates to recover all air quality
24 improvement costs incurred by the utility in implementing the
25 voluntary emissions reduction agreement. The commission shall
26 review all costs to assure that expenditures in implementing the
27 agreement were prudently made.

1 (c) A petition to the commission under this section must
2 include:

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

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

8 (3) the activities and schedule associated with the
9 project;

10 (4) the proposed cost recovery rider; and

11 (5) a commitment that any revenues the electric
12 utility receives from selling allowances under Title IV of the
13 federal Clean Air Act (42 U.S.C. Sections 7651-7651o) will be
14 credited to the utility's customers to offset air quality
15 improvement costs if such revenues result from the voluntary
16 agreement.

17 (d) The commission shall approve a proposed cost recovery
18 rider that:

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

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

25 (3) allocates air quality improvement costs
26 appropriately between wholesale customers, retail customers in
27 this state, and retail customers outside of this state; and

1 (4) ensures that the total of all cost recovery riders
2 approved under this section does not exceed five percent of the
3 electric utility's total retail rates including fuel for the
4 calendar year 2004.

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

11 (f) Each year after the date the original cost recovery
12 rider takes effect, the commission may review the cost recovery
13 rider in light of the electric utility's performance in complying
14 with the voluntary emissions reduction agreement and may alter the
15 rider as appropriate.

16 (g) A proceeding under this section is not a rate case under
17 Subchapter C.

18 SECTION 3. Not later than the 90th day after the effective
19 date of this Act, the Texas Commission on Environmental Quality and
20 the Public Utility Commission of Texas shall adopt rules necessary
21 to implement this Act.

22 SECTION 4. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2005.