

AN ACT

relating to the transition to competition of certain electric utilities outside of ERCOT.

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

SECTION 1. Chapter 39, Utilities Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. TRANSITION TO COMPETITION IN CERTAIN
NON-ERCOT AREAS

Sec. 39.451. APPLICABILITY. This subchapter applies only to an investor-owned electric utility that is operating solely outside of ERCOT in areas of this state that were included in the Southeastern Electric Reliability Council on January 1, 2005.

Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO COMPETITION. (a) Until the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice under Section 39.453, the rates of the electric utility shall be regulated under traditional cost-of-service regulation and the electric utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37.

(b) Notwithstanding Subsection (a), except for adjustments authorized by Sections 36.203, 39.454, 39.455, and 39.456, a person may not file a proceeding to change, alter, or revoke any rate offered or charged by an electric utility subject to this

1 subchapter before June 30, 2007, with an effective date no earlier
2 than June 30, 2008. As part of a Subchapter C, Chapter 36, rate
3 proceeding, the utility shall propose a competitive generation
4 tariff to allow eligible customers the ability to contract for
5 competitive generation. The commission shall approve, reject, or
6 modify the proposed tariff. The tariffs subject to this subsection
7 may not be considered to offer a discounted rate or rates under
8 Section 36.007, and the utility's rates shall be set, in the
9 proceeding in which the tariff is adopted, to recover any costs
10 unrecovered as a result of the implementation of the tariff.

11 (c) That portion of any commission order issued before the
12 effective date of this section requiring the electric utility to
13 comply with a provision of this chapter is void.

14 (d) Until the date on which an electric utility subject to
15 this subchapter implements customer choice:

16 (1) the provisions of this chapter do not apply to that
17 electric utility, other than this subchapter, Sections 39.904 and
18 39.905, and the provisions relating to the duty to obtain a permit
19 from the Texas Commission on Environmental Quality for an electric
20 generating facility and to reduce emissions from an electric
21 generating facility; and

22 (2) the electric utility is not subject to a rate
23 freeze and, subject to the limitation provided by Subsection (b),
24 may file for rate changes under Chapter 36 and for approval of one
25 or more of the rate rider mechanisms authorized by Sections 39.454
26 and 39.455.

27 (e) An electric utility subject to this subchapter may

1 proceed with and complete jurisdictional separation to establish
2 two vertically integrated utilities, one of which is solely subject
3 to the retail jurisdiction of the commission and one of which is
4 solely subject to the retail jurisdiction of the Louisiana Public
5 Service Commission.

6 (f) Not later than January 1, 2006, an electric utility
7 subject to this subchapter shall file a plan with the commission for
8 identifying the applicable power region or power regions,
9 enumerating the steps to achieve the certification of a power
10 region in accordance with Section 39.453, and specifying the
11 schedule for achieving the certification of a power region. The
12 utility may amend the plan as appropriate. The commission may, on
13 its own motion or the motion of any affected person, initiate a
14 proceeding to certify a qualified power region under Section 39.152
15 when the conditions supporting such a proceeding exist.

16 (g) Not later than the earlier of January 1, 2007, or the
17 90th day after the date the applicable power region is certified in
18 accordance with Section 39.453, the electric utility shall file a
19 transition to competition plan. The transition to competition plan
20 must:

21 (1) identify how the electric utility intends to
22 mitigate market power and to achieve full customer choice,
23 including specific alternatives for constructing additional
24 transmission facilities, auctioning rights to generation capacity,
25 divesting generation capacity, or any other measure that is
26 consistent with the public interest;

27 (2) include a provision to reinstate a customer choice

1 pilot project and to establish a price to beat for residential
2 customers and commercial customers having a peak load of 1,000
3 kilowatts or less; and

4 (3) include any other additional information or
5 provisions that the commission may require.

6 (h) The commission shall approve, modify, or reject a plan
7 filed under Subsection (g) not later than the 180th day after the
8 date the plan is filed unless a hearing is requested by any party to
9 the proceeding. A modification to the plan by the commission may
10 not be in conflict with the jurisdiction or orders of the Federal
11 Energy Regulatory Commission or result in significant additional
12 cost without allowing for timely recovery for that cost. If a
13 hearing is requested, the 180-day deadline is extended one day for
14 each day of the hearing. The transition to competition plan shall
15 be updated or amended annually, subject to commission approval,
16 until the initiation of customer choice by an electric utility
17 subject to this subchapter. Consistent with its jurisdiction, the
18 commission shall have the authority in approving or modifying the
19 transition to competition plan to require the electric utility to
20 take reasonable steps to facilitate the development of a wholesale
21 generation market within the boundaries of the electric utility's
22 service territory.

23 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND
24 RELATED MATTERS. (a) The commission may not authorize customer
25 choice until the commission certifies the applicable power region
26 as a qualifying power region under Section 39.152(a). Sections
27 39.152(b)-(d) also apply to the electric utility and commission in

1 determining whether to certify the applicable power region.

2 (b) The commission shall certify that the requirement of
3 Section 39.152(a)(3) is met for an electric utility subject to this
4 subchapter only if the commission finds that the total capacity
5 owned and controlled by the electric utility and the utility's
6 affiliates does not exceed 20 percent of the total installed
7 generation capacity within the power region of that utility.

8 Sec. 39.454. RECOUPMENT OF TRANSITION TO COMPETITION COSTS.
9 An electric utility subject to this subchapter is entitled to
10 recover, as provided by this section, all reasonable and necessary
11 expenditures made or incurred before the effective date of this
12 section to comply with this chapter, to the extent the costs have
13 not otherwise been recovered. The electric utility may file with
14 the commission an application for recovery that gives details of
15 the amounts spent or incurred. After notice and hearing, the
16 commission shall review the amounts and, if the amounts are found to
17 be reasonable and necessary and not otherwise previously recovered,
18 approve a transition to competition retail rate rider mechanism for
19 the recovery of the approved transition to competition costs. A
20 rate proceeding under Chapter 36 is not required to implement the
21 rider. A rate rider implemented to recover approved transition to
22 competition costs shall provide for recovery of those costs over a
23 period not to exceed 15 years, with appropriate carrying costs.

24 Sec. 39.455. RECOVERY OF INCREMENTAL CAPACITY COSTS. An
25 electric utility subject to this subchapter is entitled to recover,
26 through a rate rider mechanism, reasonable and necessary costs of
27 incremental resources required to meet load requirements to the

1 extent those costs result in the utility expending more for
2 capacity costs under purchase power agreements than were included
3 in the utility's last base rate case, adjusted for load growth. Any
4 rider under this section shall be implemented after review and
5 approval by the commission, after notice and opportunity for
6 hearing. Following the initial implementation of the rider, an
7 electric utility subject to this subchapter may request revisions
8 semiannually, after notice and opportunity for hearing, on the
9 dates provided in the commission's rules for filing petitions to
10 revise the utility's fuel factor. In conjunction with the utility's
11 fuel reconciliation proceedings, the commission shall reconcile
12 the costs recovered under the rider and the actual incremental
13 capacity costs eligible for recovery under this section. The rider
14 shall expire on the introduction of customer choice or on the
15 implementation of rates resulting from the filing of a Subchapter
16 C, Chapter 36, rate proceeding. In no event may the amount
17 recovered annually under the rider exceed five percent of the
18 utility's annual base rate revenues.

19 Sec. 39.456. FRANCHISE AGREEMENTS. A municipality, with
20 the agreement of an electric utility, may accelerate the expiration
21 date of a franchise agreement that was in existence on September 1,
22 1999. Any new franchise agreement must be approved by the governing
23 body of the municipality. To the extent that a new franchise
24 agreement would result in an increase in the payment of franchise
25 fees to the municipality, and subject to the terms of the franchise
26 agreement, either the electric utility or the municipality, without
27 the need for a rate proceeding under Chapter 36, may file with the

1 commission for approval of a rider for the electric utility's
2 recovery of franchise payments resulting from the agreement, so
3 long as such rider is collected only from customers of the electric
4 utility that are located within the boundaries of the municipality.

5 Sec. 39.457. CONTRACTUAL RIGHTS. In the event that the
6 electric utility subject to this subchapter either merges,
7 consolidates, or otherwise becomes affiliated with another owner of
8 electric generation, or completes the jurisdictional separation
9 authorized by Section 39.452(e) and the resulting vertically
10 integrated utility proposes to join a regional transmission
11 organization, and either action adversely affects the rights or
12 obligations of an electric cooperative under a wholesale generation
13 or transmission agreement entered into before the effective date of
14 this subchapter or otherwise adversely affects the electric
15 cooperative's access to its existing generation resources under
16 said agreements, then the utility shall submit a proposal agreeable
17 to the cooperative and the utility for addressing such rights and
18 obligations in the appropriate regulatory proceeding. Such
19 proposal shall be consistent with applicable law regarding the
20 rights and obligations of the electric cooperative and the utility
21 under such existing generation or transmission agreements.

22 SECTION 2. 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.

H.B. No. 1567

President of the Senate

Speaker of the House

I certify that H.B. No. 1567 was passed by the House on April 21, 2005, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1567 on May 26, 2005, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1567 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor