

By: King of Parker

H.B. No. 1777

A BILL TO BE ENTITLED

AN ACT

relating to regulation of the electric power market and energy efficiency.

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

SECTION 1. Section 15.024(c), Utilities Code, as amended by Chapters 1212 and 1579, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

(c) A penalty may not be assessed under this section if the person against whom the penalty may be assessed remedies the violation before the 31st day after the date the person receives the notice under Subsection (b). A person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent. This subsection does not apply to a violation of Chapter 42, [~~17 or~~] 55, or 64.

SECTION 2. Chapter 17, Utilities Code, is transferred to Subtitle B, Title 2, Utilities Code, redesignated as Chapter 42, Utilities Code, and amended to read as follows:

CHAPTER 42 [~~17~~]. CUSTOMER PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001 [~~17.001~~]. CUSTOMER PROTECTION POLICY. (a) The legislature finds that new developments in [~~telecommunications services and~~] the production and delivery of electricity, as well as changes in market structure, marketing techniques, and

1 technology, make it essential that customers have safeguards
2 against fraudulent, unfair, misleading, deceptive, or
3 anticompetitive business practices and against businesses that do
4 not have the technical and financial resources to provide adequate
5 service.

6 (b) The purpose of this chapter is to establish retail
7 customer protection standards and confer on the commission
8 authority to adopt and enforce rules to protect retail customers
9 from fraudulent, unfair, misleading, deceptive, or anticompetitive
10 practices.

11 (c) Nothing in this section shall be construed to abridge
12 customer rights set forth in commission rules in effect at the time
13 of the enactment of this chapter.

14 (d) This chapter does not limit the constitutional,
15 statutory, and common law authority of the office of the attorney
16 general.

17 (e) Nothing in this chapter authorizes a customer to receive
18 retail electric service from a person other than a certificated
19 retail electric utility.

20 Sec. 42.002 [~~17.002~~]. DEFINITIONS. In this chapter:

21 (1) "Billing agent" means any entity that submits
22 charges to the billing entity [~~utility~~] on behalf of itself or any
23 provider of a product or service.

24 (2) "Billing entity [~~utility~~]" means any
25 [~~telecommunications provider, as defined by Section 51.002,~~]
26 retail electric provider[~~7~~] or electric utility that issues a bill
27 directly to a customer for any [~~telecommunications or~~] electric

1 product or service.

2 (3) [~~"Certificated telecommunications utility" means~~
3 ~~a telecommunications utility that has been granted either a~~
4 ~~certificate of convenience and necessity, a certificate of~~
5 ~~operating authority, or a service provider certificate of operating~~
6 ~~authority.~~

7 [~~(4)~~] "Customer" means any person in whose name
8 [~~telephone or~~] retail electric service is billed, including
9 individuals, governmental units at all levels of government,
10 corporate entities, and any other entity with legal capacity to be
11 billed for [~~telephone or~~] retail electric service.

12 (4) [~~(5)~~] "Electric utility" has the meaning assigned
13 by Section 31.002.

14 (5) [~~(6)~~] "Retail electric provider" means a person
15 that sells electric energy to retail customers in this state after
16 the legislature authorizes a customer to receive retail electric
17 service from a person other than a certificated retail electric
18 utility.

19 (6) [~~(7)~~] "Service provider" means any entity that
20 offers a product or service to a customer and that directly or
21 indirectly charges to or collects from a customer's bill an amount
22 for the product or service on a customer's bill received from a
23 billing entity [~~utility~~].

24 [~~(8) "Telecommunications utility" has the meaning~~
25 ~~assigned by Section 51.002.~~]

26 Sec. 42.003 [~~17.003~~]. CUSTOMER AWARENESS. (a) The
27 commission shall promote public awareness of changes in the

1 electric market [~~and telecommunications markets~~], provide
2 customers with information necessary to make informed choices about
3 available options, and ensure that customers have an adequate
4 understanding of their rights.

5 (b) The commission shall compile a report on customer
6 service at least once each year showing the comparative customer
7 information from reports given to the commission it deems
8 necessary.

9 (c) The commission shall adopt and enforce rules to require
10 a [~~certificated telecommunications utility, a~~] retail electric
11 provider[~~7~~] or an electric utility to give clear, uniform, and
12 understandable information to customers about rates, terms,
13 services, customer rights, and other necessary information as
14 determined by the commission.

15 (d) Customer awareness efforts by the commission shall be
16 conducted in English and Spanish and any other language as
17 necessary.

18 Sec. 42.004 [~~17.004~~]. CUSTOMER PROTECTION STANDARDS. (a)
19 All buyers of [~~telecommunications and~~] retail electric services are
20 entitled to:

21 (1) protection from fraudulent, unfair, misleading,
22 deceptive, or anticompetitive practices, including protection from
23 being billed for services that were not authorized or provided;

24 (2) choice of a [~~telecommunications service provider,~~
25 a] retail electric provider[~~7~~] or an electric utility, where that
26 choice is permitted by law, and to have that choice honored;

27 (3) information in English and Spanish and any other

1 language as the commission deems necessary concerning rates, key
2 terms and conditions, and the basis for any claim of environmental
3 benefits of certain production facilities;

4 (4) protection from discrimination on the basis of
5 race, color, sex, nationality, religion, marital status, income
6 level, or source of income and from unreasonable discrimination on
7 the basis of geographic location;

8 (5) impartial and prompt resolution of disputes with a
9 ~~[certificated telecommunications utility, a]~~ retail electric
10 provider~~[,]~~ or an electric utility ~~[and disputes with a~~
11 ~~telecommunications service provider related to unauthorized~~
12 ~~charges and switching of service];~~

13 (6) privacy of customer consumption and credit
14 information;

15 (7) accuracy of metering and billing;

16 (8) bills presented in a clear, readable format and
17 easy-to-understand language;

18 (9) information in English and Spanish and any other
19 language as the commission deems necessary concerning low-income
20 assistance programs and deferred payment plans;

21 (10) all consumer protections and disclosures
22 established by the Fair Credit Reporting Act (15 U.S.C. Section
23 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601
24 et seq.); and

25 (11) after retail competition begins as authorized by
26 the legislature, programs provided by retail electric providers
27 that offer eligible low-income customers energy efficiency

1 programs, an affordable rate package, and bill payment assistance
2 programs designed to reduce uncollectible accounts.

3 (b) The commission may adopt and enforce rules as necessary
4 or appropriate to carry out this section, including rules for
5 minimum service standards for a [~~certificated telecommunications~~
6 ~~utility, a~~] retail electric provider[~~7~~] or an electric utility
7 relating to customer deposits and the extension of credit,
8 switching fees, levelized billing programs, and termination of
9 service and to energy efficiency programs, an affordable rate
10 package, and bill payment assistance programs for low-income
11 customers. The commission may waive language requirements for good
12 cause.

13 (c) The commission shall request the comments of the office
14 of the attorney general in developing the rules that may be
15 necessary or appropriate to carry out this section.

16 (d) The commission shall coordinate its enforcement efforts
17 regarding the prosecution of fraudulent, misleading, deceptive,
18 and anticompetitive business practices with the office of the
19 attorney general in order to ensure consistent treatment of
20 specific alleged violations.

21 (e) Nothing in this section shall be construed to abridge
22 customer rights set forth in commission rules or to abridge the
23 rights of low-income customers to receive benefits through pending
24 or operating programs in effect at the time of the enactment of this
25 chapter.

26 (f) The commission shall adopt rules to provide automatic
27 enrollment of eligible utility customers for [~~lifeline telephone~~

1 ~~service and~~] reduced electric rates available to low-income
2 households. Each state agency, on the request of the commission,
3 shall assist in the adoption and implementation of those rules.

4 (g) Notwithstanding any other provision of this title, the
5 rules adopted under Subsection (b) shall provide full, concurrent
6 reimbursement for the costs of any programs provided under
7 Subsection (a)(11) and for reimbursement for the difference between
8 any affordable rate package provided under Subsection (a)(11) and
9 any rates otherwise applicable.

10 Sec. 42.005 [~~17.005~~]. PROTECTIONS FOR CUSTOMERS OF
11 MUNICIPALLY OWNED UTILITIES. A municipally owned utility may not
12 be deemed to be a "service provider" or "billing agent" for purposes
13 of Sections 42.156(b) [~~17.156(b)~~] and (e). The governing body of a
14 municipally owned utility shall adopt, implement, and enforce rules
15 that shall have the effect of accomplishing the objectives set out
16 in Sections 42.004(a) and (b) and 42.102 [~~17.004(a) and (b) and~~
17 ~~17.102~~], as to the municipally owned utility within its
18 certificated service area. The governing body of a municipally
19 owned utility or its designee shall perform the dispute resolution
20 function provided for by Section 42.157 [~~17.157~~] for disputes
21 arising from services provided by the municipally owned utility to
22 electric customers served within the municipally owned utility's
23 certificated service area. With respect to electric customers
24 served by a municipally owned utility outside its certificated
25 service area or otherwise served through others' distribution
26 facilities, after retail competition begins as authorized by the
27 legislature, the provisions of this chapter as administered by the

1 commission apply. Nothing in this chapter shall be deemed to apply
2 to a wholesale customer of a municipally owned utility.

3 Sec. 42.006 [~~17.006~~]. PROTECTIONS FOR CUSTOMERS OF
4 ELECTRIC COOPERATIVES. An electric cooperative shall not be deemed
5 to be a "service provider" or "billing agent" for purposes of
6 Sections 42.156(b) [~~17.156(b)~~] and (e). The electric cooperative
7 shall adopt, implement, and enforce rules that shall have the
8 effect of accomplishing the objectives set out in Sections
9 42.004(a) and (b) and 42.102 [~~17.004(a) and (b) and 17.102~~]. The
10 board of directors of the electric cooperative or its designee
11 shall perform the dispute resolution function provided for by
12 Section 42.157 [~~17.157~~] for electric customers served by the
13 electric cooperative within its certificated service area. With
14 respect to electric customers served by an electric cooperative
15 outside its certificated service area or otherwise served through
16 others' distribution facilities, after the legislature authorizes
17 retail competition, the provisions of this chapter as administered
18 by the commission shall apply. Nothing in this chapter shall be
19 deemed to apply to a wholesale customer of an electric cooperative.

20 Sec. 42.007 [~~17.007~~]. ELIGIBILITY PROCESS FOR CUSTOMER
21 SERVICE DISCOUNTS. The commission by rule shall provide for an
22 [~~integrated~~] eligibility process for customer service discounts,
23 including discounts under Section [~~Sections~~] 39.903 [~~and 55.015~~].

24 SUBCHAPTER B. CERTIFICATION, REGISTRATION,
25 AND REPORTING REQUIREMENTS

26 Sec. 42.051 [~~17.051~~]. ADOPTION OF RULES. (a) The
27 commission shall adopt rules relating to certification,

1 registration, and reporting requirements for a [~~certificated~~
2 ~~telecommunications utility, a~~] retail electric provider[~~7~~] or an
3 electric utility, as well as all [~~telecommunications utilities that~~
4 ~~are not dominant carriers, pay telephone providers,~~] qualifying
5 facilities that are selling capacity into the wholesale or retail
6 market, exempt wholesale generators, and power marketers.

7 (b) The rules adopted under Subsections (a) and (c) shall be
8 consistent with and no less effective than federal law and may not
9 require the disclosure of highly sensitive competitive or trade
10 secret information.

11 (c) The commission shall adopt rules governing the local
12 registration of retail electric providers under Section 39.358.

13 Sec. 42.052 [~~17.052~~]. SCOPE OF RULES. The commission may
14 adopt and enforce rules to:

15 (1) require certification or registration with the
16 commission as a condition of doing business in this state, except
17 that this requirement does not apply to municipally owned
18 utilities;

19 (2) amend certificates or registrations to reflect
20 changed ownership and control;

21 (3) establish rules for customer service and
22 protection;

23 (4) suspend or revoke certificates or registrations
24 for repeated violations of this chapter or commission rules, except
25 that the commission may not revoke a certificate of convenience and
26 necessity of an electric utility except as provided by Section
27 37.059 [~~or a certificate of convenience and necessity of a~~

1 ~~telecommunications utility except as provided by Section 54.008];~~
2 and

3 (5) order [~~disconnection of a pay telephone service~~
4 ~~provider's pay telephones or~~] revocation of certification or
5 registration for repeated violations of this chapter or commission
6 rules.

7 Sec. 42.053 [~~17.053~~]. REPORTS. The commission may require
8 a [~~telecommunications service provider, a~~] retail electric
9 provider[~~7~~] or an electric utility to submit reports to the
10 commission concerning any matter over which it has authority under
11 this chapter.

12 SUBCHAPTER C. CUSTOMER'S RIGHT TO CHOICE

13 Sec. 42.101 [~~17.101~~]. POLICY. It is the policy of this
14 state that all customers be protected from the unauthorized
15 switching of a [~~telecommunications service provider, a~~] retail
16 electric provider[~~7~~] or an electric utility selected by the
17 customer to provide service, where choice is permitted by law.

18 Sec. 42.102 [~~17.102~~]. RULES RELATING TO CHOICE. The
19 commission shall adopt and enforce rules that:

20 (1) ensure that customers are protected from deceptive
21 practices employed in obtaining authorizations of service and in
22 the verification of change orders, including negative option
23 marketing, sweepstakes, and contests that cause customers to
24 unknowingly change their [~~telecommunications service provider, a~~]
25 retail electric provider[~~7~~] or electric utility, where choice is
26 permitted by law;

27 (2) provide for clear, easily understandable

1 identification, in each bill sent to a customer, of all
2 [~~telecommunications service providers,~~] retail electric
3 providers~~[,]~~ or electric utilities submitting charges on the bill;

4 (3) ensure that every service provider submitting
5 charges on the bill is clearly and easily identified on the bill
6 along with its services, products, and charges;

7 (4) provide that unauthorized changes in service be
8 remedied at no cost to the customer within a period established by
9 the commission;

10 (5) require refunds or credits to the customer in the
11 event of an unauthorized change; and

12 (6) provide for penalties for violations of commission
13 rules adopted under this section, including fines and revocation of
14 certificates or registrations, by this action denying the
15 [~~certificated telecommunications utility, the~~] retail electric
16 provider~~[,]~~ or the electric utility the right to provide service in
17 this state, except that the commission may not revoke a certificate
18 of convenience and necessity of an electric utility except as
19 provided by Section 37.059 [~~or a certificate of convenience and~~
20 ~~necessity of a telecommunications utility except as provided by~~
21 ~~Section 54.008~~].

22 SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES

23 Sec. 42.151 [~~17.151~~]. REQUIREMENTS FOR SUBMITTING CHARGES.

24 (a) A service provider, retail electric provider, or billing agent
25 may submit charges for a new product or service to be billed on a
26 customer's [~~telephone or~~] retail electric bill on or after the
27 effective date of this section only if:

1 (1) the service provider offering the product or
2 service has thoroughly informed the customer of the product or
3 service being offered, including all associated charges, and has
4 explicitly informed the customer that the associated charges for
5 the product or service will appear on the customer's [~~telephone or~~
6 electric bill;

7 (2) the customer has clearly and explicitly consented
8 to obtain the product or service offered and to have the associated
9 charges appear on the customer's [~~telephone or~~] electric bill and
10 the consent has been verified as provided by Subsection (b); and

11 (3) the service provider offering the product or
12 service and any billing agent for the service provider:

13 (A) has provided the customer with a toll-free
14 telephone number the customer may call and an address to which the
15 customer may write to resolve any billing dispute and to answer
16 questions; and

17 (B) has contracted with the billing entity
18 [~~utility~~] to bill for products and services on the billing entity's
19 [~~utility's~~] bill as provided by Subsection (c).

20 (b) The customer consent required by Subsection (a)(2) must
21 be verified by the service provider offering the product or service
22 by authorization from the customer. A record of the customer
23 consent, including verification, must be maintained by the service
24 provider offering the product or service for a period of at least 24
25 months immediately after the consent and verification have been
26 obtained. The method of obtaining customer consent and
27 verification must include one or more of the following:

1 (1) written authorization from the customer;

2 (2) toll-free telephonic [~~electronic~~] authorization
3 [~~placed from the telephone number that is the subject of the product~~
4 ~~or service~~];

5 (3) oral authorization obtained by an independent
6 third party; or

7 (4) any other method of authorization approved by the
8 commission [~~or the Federal Communications Commission~~].

9 (c) The contract required by Subsection (a)(3)(B) must
10 include the service provider's name, business address, and business
11 telephone number and shall be maintained by the billing entity
12 [~~utility~~] for as long as the billing for the products and services
13 continues and for the 24 months immediately following the permanent
14 discontinuation of the billing.

15 (d) A service provider offering a product or service to be
16 charged on a customer's [~~telephone or~~] electric bill and any
17 billing agent for the service provider may not use any fraudulent,
18 unfair, misleading, deceptive, or anticompetitive marketing
19 practice to obtain customers, including the use of negative option
20 marketing, sweepstakes, and contests.

21 (e) Unless verification is required by federal law or rules
22 implementing federal law, Subsection (b) does not apply to
23 customer-initiated transactions with [~~a certified~~
24 ~~telecommunications provider or~~] an electric utility for which the
25 service provider has the appropriate documentation.

26 (f) If a service provider is notified by a billing entity
27 [~~utility~~] that a customer has reported to the billing entity

1 [utility] that a charge made by the service provider is
2 unauthorized, the service provider shall cease to charge the
3 customer for the unauthorized product or service.

4 [~~(g) This section does not apply to message~~
5 ~~telecommunications services charges that are initiated by dialing~~
6 ~~1+, 0+, 0-, 1010XXX, or collect calls and charges for video services~~
7 ~~if the service provider has the necessary call detail record to~~
8 ~~establish the billing for the call or service.]~~

9 Sec. 42.152 [~~17.152~~]. RESPONSIBILITIES OF BILLING ENTITY
10 [~~UTILITY~~]. (a) If a customer's [~~telephone or~~] retail electric bill
11 is charged for any product or service without proper customer
12 consent or verification, the billing entity [~~utility~~], on its
13 knowledge or notification of any unauthorized charge, shall
14 promptly, not later than 45 days after the date of knowledge or
15 notification of the charge:

16 (1) notify the service provider to cease charging the
17 customer for the unauthorized product or service;

18 (2) remove any unauthorized charge from the customer's
19 bill;

20 (3) refund or credit to the customer all money that has
21 been paid by the customer for any unauthorized charge, and if the
22 unauthorized charge is not adjusted within three billing cycles,
23 shall pay interest on the amount of the unauthorized charge;

24 (4) on the customer's request, provide the customer
25 with all billing records under its control related to any
26 unauthorized charge within 15 business days after the date of the
27 removal of the unauthorized charge from the customer's bill; and

1 (5) maintain for at least 24 months a record of every
2 customer who has experienced any unauthorized charge for a product
3 or service on the customer's [~~telephone or~~] electric bill and who
4 has notified the billing entity [~~utility~~] of the unauthorized
5 charge.

6 (b) A record required by Subsection (a)(5) shall contain for
7 each unauthorized charge:

8 (1) the name of the service provider that offered the
9 product or service;

10 (2) any affected [~~telephone numbers or~~] addresses;

11 (3) the date the customer requested that the billing
12 entity [~~utility~~] remove the unauthorized charge;

13 (4) the date the unauthorized charge was removed from
14 the customer's [~~telephone or~~] electric bill; and

15 (5) the date any money that the customer paid for the
16 unauthorized charges was refunded or credited to the customer.

17 (c) A billing entity [~~utility~~] may not:

18 (1) disconnect or terminate [~~telecommunications or~~]
19 electric service to any customer for nonpayment of an unauthorized
20 charge; or

21 (2) file an unfavorable credit report against a
22 customer who has not paid charges the customer has alleged were
23 unauthorized unless the dispute regarding the unauthorized charge
24 is ultimately resolved against the customer, except that the
25 customer shall remain obligated to pay any charges that are not in
26 dispute, and this subsection does not apply to those undisputed
27 charges.

1 Sec. 42.153 [~~17.153~~]. RECORDS OF DISPUTED CHARGES. (a)
2 Every service provider shall maintain a record of every disputed
3 charge for a product or service placed on a customer's bill.

4 (b) The record required under Subsection (a) shall contain
5 for every disputed charge:

6 (1) any affected [~~telephone numbers or~~] addresses;

7 (2) the date the customer requested that the billing
8 entity [~~utility~~] remove the unauthorized charge;

9 (3) the date the unauthorized charge was removed from
10 the customer's [~~telephone or~~] retail electric bill; and

11 (4) the date action was taken to refund or credit to
12 the customer any money that the customer paid for the unauthorized
13 charges.

14 (c) The record required by Subsection (a) shall be
15 maintained for at least 24 months following the completion of all
16 steps required by Section 42.152(a) [~~17.152(a)~~].

17 Sec. 42.154 [~~17.154~~]. NOTICE. (a) A billing entity
18 [~~utility~~] shall provide notice of a customer's rights under this
19 section in the manner prescribed by the commission.

20 (b) Each [~~Notice of a customer's rights must be provided by~~
21 ~~mail to each residential and retail business customer within 60~~
22 ~~days of the effective date of this section or by inclusion in the~~
23 ~~publication of the telephone directory next following the effective~~
24 ~~date of this section. In addition, each~~] billing entity [~~utility~~]
25 shall send [~~the~~] notice of a customer's rights to new customers at
26 the time service is initiated or to any customer at that customer's
27 request.

1 Sec. 42.155 [~~17.155~~]. PROVIDING COPY OF RECORDS. A billing
2 entity [~~utility~~] shall provide a copy of records maintained under
3 Sections 42.151(c), 42.152, and 42.154 [~~17.151(c), 17.152, and~~
4 ~~17.154~~] to the commission staff on request. A service provider
5 shall provide a copy of records maintained under Sections 42.151(b)
6 and 42.153 [~~17.151(b) and 17.153~~] to the commission on request.

7 Sec. 42.156 [~~17.156~~]. VIOLATIONS. (a) If the commission
8 finds that a billing entity [~~utility~~] violated this subchapter, the
9 commission may implement penalties and other enforcement actions
10 under Chapter 15.

11 (b) If the commission finds that any other service provider
12 or billing agent subject to this subchapter has violated this
13 subchapter or has knowingly provided false information to the
14 commission on matters subject to this subchapter, the commission
15 may enforce the provisions of Chapter 15 against the service
16 provider or billing agent as if it were regulated by the commission.

17 (c) Neither the authority granted under this section nor any
18 other provision of this subchapter shall be construed to grant the
19 commission jurisdiction to regulate service providers or billing
20 agents who are not otherwise subject to commission regulation,
21 other than as specifically provided by this chapter.

22 (d) If the commission finds that a billing entity [~~utility~~]
23 or service provider repeatedly violates this subchapter, the
24 commission may, if the action is consistent with the public
25 interest, suspend, restrict, or revoke the registration or
26 certificate of the [~~telecommunications service provider,~~]
27 electric provider[~~7~~] or electric utility, by this action denying

1 the [~~telecommunications service provider,~~] retail electric
2 provider[~~7~~] or electric utility the right to provide service in
3 this state, except that the commission may not revoke a certificate
4 of convenience and necessity of an electric utility except as
5 provided by Section 37.059 [~~or a certificate of convenience and~~
6 ~~necessity of a telecommunications utility except as provided by~~
7 ~~Section 54.008~~].

8 (e) If the commission finds that a service provider or
9 billing agent has repeatedly violated any provision of this
10 subchapter, the commission may order the billing entity [~~utility~~]
11 to terminate billing and collection services for that service
12 provider or billing agent.

13 (f) Nothing in this subchapter shall be construed to
14 preclude a billing entity [~~utility~~] from taking action on its own to
15 terminate or restrict its billing and collection services.

16 Sec. 42.157 [~~17.157~~]. DISPUTES. (a) The commission may
17 resolve disputes between a retail customer and a billing entity
18 [~~utility~~], service provider, [~~telecommunications utility,~~] retail
19 electric provider, or electric utility.

20 (b) In exercising its authority under Subsection (a), the
21 commission may:

22 (1) order a billing entity [~~utility~~], service
23 provider, retail electric provider, or electric utility to produce
24 information or records;

25 (2) require that all contracts, bills, and other
26 communications from a billing entity [~~utility~~], service provider,
27 retail electric provider, or electric utility display a working

1 toll-free telephone number that customers may call with complaints
2 and inquiries;

3 (3) require a billing entity [~~utility~~], service
4 provider, retail electric provider, or electric utility to refund
5 or credit overcharges or unauthorized charges with interest if the
6 billing entity [~~utility~~], service provider, retail electric
7 provider, or electric utility has failed to comply with commission
8 rules or a contract with the customer;

9 (4) order appropriate relief to ensure that a
10 customer's choice of a [~~telecommunications service provider, a~~]
11 retail electric provider[~~r~~] or an electric utility that encompasses
12 a geographic area in which more than one provider has been
13 certificated is honored;

14 (5) require the continuation of service to a
15 residential or small commercial customer while a dispute is pending
16 regarding charges the customer has alleged were unauthorized; and

17 (6) investigate an alleged violation.

18 (c) The commission shall adopt procedures for the
19 resolution of disputes in a timely manner, which in no event shall
20 exceed 60 days.

21 Sec. 42.158 [~~17.158~~]. CONSISTENCY WITH FEDERAL LAW. Rules
22 adopted by the commission under this subchapter shall be consistent
23 with and not more burdensome than applicable federal laws and
24 rules.

25 Sec. 42.159. COMPLAINT REGARDING RECREATIONAL VEHICLE PARK
26 OWNER. (a) An affected person may complain to the regulatory
27 authority in writing describing an act or omission by a

1 recreational vehicle park owner who provides metered electric
2 service under Subchapter C, Chapter 184, in violation or claimed
3 violation of a law that the regulatory authority has jurisdiction
4 to administer or of an order, ordinance, or rule of the regulatory
5 authority.

6 (b) The commission shall keep for a reasonable period an
7 information file about each complaint filed with the commission
8 relating to a recreational vehicle park owner.

9 (c) The commission, at least quarterly and until final
10 disposition of the written complaint, shall notify the parties to
11 the complaint of the status of the complaint unless the notice would
12 jeopardize an undercover investigation.

13 SECTION 3. Section 33.023, Utilities Code, is amended by
14 amending Subsection (b) and adding Subsection (c) to read as
15 follows:

16 (b) The electric utility in the ratemaking proceeding shall
17 reimburse the governing body of the municipality for the reasonable
18 and necessary cost of the services of a person engaged under
19 Subsection (a) to the extent the applicable regulatory authority
20 determines the cost is reasonable and necessary.

21 (c) In determining whether attorney's fees to be recovered
22 under this section are reasonable and necessary, the applicable
23 regulatory authority shall consider the factors prescribed by Rule
24 1.04, Texas Disciplinary Rules of Professional Conduct.

25 SECTION 4. Section 35.004(e), Utilities Code, is amended to
26 read as follows:

27 (e) The commission shall ensure that ancillary services

1 necessary to facilitate the transmission of electric energy are
 2 made available by suppliers and acquired by the independent
 3 organization at reasonable prices with terms and conditions that
 4 are not unreasonably preferential, prejudicial, discriminatory,
 5 predatory, or anticompetitive. In this subsection, "ancillary
 6 services" means services necessary to facilitate the transmission
 7 of electric energy including load following, standby power, backup
 8 power, reactive power, and any other services as the commission may
 9 determine by rule. [~~On the introduction of customer choice in the~~
 10 ~~ERCOT power region, acquisition of generation-related ancillary~~
 11 ~~services on a nondiscriminatory basis by the independent~~
 12 ~~organization in ERCOT on behalf of entities selling electricity at~~
 13 ~~retail shall be deemed to meet the requirements of this~~
 14 ~~subsection.~~]

15 SECTION 5. Subchapter E, Chapter 36, Utilities Code, is
 16 amended by adding Section 36.209 to read as follows:

17 Sec. 36.209. RECOVERY BY CERTAIN NON-ERCOT UTILITIES OF
 18 CERTAIN TRANSMISSION COSTS. (a) This section applies only to an
 19 electric utility that operates solely outside of ERCOT in areas of
 20 this state included in the Southwest Power Pool and that owns or
 21 operates transmission facilities.

22 (b) Notwithstanding Section 36.201, after notice and
 23 hearing, the commission may allow an electric utility to recover on
 24 an annual basis its reasonable and necessary expenditures for
 25 transmission infrastructure improvement costs and changes in
 26 wholesale transmission charges to the electric utility under a
 27 tariff approved by a federal regulatory authority to the extent

1 that the costs or charges have not otherwise been recovered. The
2 commission may allow the electric utility to recover only the costs
3 allocable to retail customers in this state and may not allow the
4 electric utility to over-recover costs.

5 SECTION 6. Section 38.001, Utilities Code, is amended to
6 read as follows:

7 Sec. 38.001. GENERAL STANDARD. An electric utility, a
8 municipally owned utility, an independent organization certified
9 under Section 39.151, and an electric cooperative shall furnish
10 service, instrumentalities, and facilities that are safe,
11 adequate, efficient, and reasonable.

12 SECTION 7. Section 38.005, Utilities Code, is amended by
13 amending Subsection (a) and adding Subsections (g) and (h) to read
14 as follows:

15 (a) The commission shall adopt and enforce rules as
16 necessary or appropriate to ensure ~~[implement]~~ service quality and
17 reliability ~~[standards]~~ relating to the delivery of electricity to
18 retail customers by electric utilities and transmission and
19 distribution utilities. The commission by rule shall develop
20 reliability standards, including:

21 (1) the system-average interruption frequency index
22 (SAIFI);

23 (2) the system-average interruption duration index
24 (SAIDI);

25 (3) achievement of average response time for customer
26 service requests or inquiries; or

27 (4) other standards that the commission finds

1 reasonable and appropriate.

2 (g) This section does not authorize the commission to:

3 (1) establish or enforce quality standards for local
4 distribution service provided by a municipally owned utility or an
5 electric cooperative; or

6 (2) require reporting of local distribution service
7 quality by a municipally owned utility or an electric cooperative.

8 (h) An electric utility, transmission and distribution
9 utility, municipally owned utility, electric cooperative, or
10 independent organization certified under Section 39.151, and any
11 other person scheduling power or operating an electrical facility
12 on behalf of such persons, shall observe all reliability, security,
13 and emergency management rules and orders adopted or issued by the
14 commission. The commission may:

15 (1) take any enforcement action against a person who
16 does not comply with this subsection that is authorized by
17 Subchapter B, Chapter 15; or

18 (2) suspend, revoke, or amend an electric utility's or
19 transmission and distribution utility's certificate of public
20 convenience and necessity.

21 SECTION 8. Subchapter D, Chapter 38, Utilities Code, is
22 amended by adding Section 38.072 to read as follows:

23 Sec. 38.072. ELECTRIC TECHNOLOGY IMPROVEMENT. (a) The
24 commission shall adopt rules for the recovery of costs that
25 utilities incur for research and development of technologies and
26 business practices related to the production, transmission,
27 distribution, storage, metering, and use of electricity,

1 mitigating risks in competitive energy markets, minimizing the
2 environmental impacts of production and delivery of electricity,
3 and developing uniform commercial standards for the energy
4 industry.

5 (b) The rules shall encourage utilities to take advantage of
6 the research and development resources in this state and its
7 institutions with the objective of providing to the state and its
8 citizens the benefits of advanced electricity technologies,
9 systems, and processes, increased efficiency and reliability in the
10 production, delivery, and use of electricity, reduced cost of
11 providing electricity, and reduced environmental impact of
12 electricity production and delivery while contributing to economic
13 development and job creation.

14 SECTION 9. Section 39.002, Utilities Code, is amended to
15 read as follows:

16 Sec. 39.002. APPLICABILITY. This chapter, other than
17 Sections 39.151(j), 39.155, 39.157(a) and (e) [~~39.157(e)~~], 39.203,
18 39.903, and 39.904, does not apply to a municipally owned utility or
19 an electric cooperative. Sections 39.157(e), 39.203, and 39.904,
20 however, apply only to a municipally owned utility or an electric
21 cooperative that is offering customer choice. Section 39.157(a)
22 applies to a municipally owned utility or electric cooperative only
23 in relation to a wholesale market transaction. If there is a
24 conflict between the specific provisions of this chapter and any
25 other provisions of this title, except for Chapters 40 and 41, the
26 provisions of this chapter control.

27 SECTION 10. Section 39.151, Utilities Code, is amended by

1 amending Subsections (b), (c), (d), (e), (g), and (j) and adding
2 Subsections (g-1), (g-2), (n), (o), and (p) to read as follows:

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

11 (c) The commission shall certify an independent
12 organization or organizations to perform the functions prescribed
13 by this section. The commission has complete authority to oversee,
14 require the commission's approval of, and order modifications of
15 any part of the finances, budget, or administration of an
16 independent organization certified under this section.

17 (d) An independent organization certified by the commission
18 for a power region shall establish and enforce procedures,
19 consistent with this title and the commission's rules, relating to
20 the reliability of the regional electrical network and accounting
21 for the production and delivery of electricity among generators and
22 all other market participants. The procedures shall be subject to
23 commission oversight and review. An independent organization
24 certified by the commission is directly responsible and accountable
25 to the commission. The organization shall fully cooperate with the
26 commission in the commission's oversight and investigatory
27 functions. The commission may decertify an organization that does

1 not adequately perform the organization's functions or duties or
2 does not comply with this section.

3 (e) The commission by rule shall require an independent
4 organization certified under this section to provide the commission
5 with sufficiently detailed information to allow the commission to
6 review and approve or disapprove the independent organization's
7 budget for cost efficiencies and for the reasonableness and
8 necessity of budget items. The rules must include a timetable for
9 an independent organization to file its budget for review under the
10 rules. The commission's budget review must include a review of
11 salaries, employee benefits, and the independent organization's
12 use of debt financing. After determining the overall
13 reasonableness and necessity of an independent organization's
14 budget, the [The] commission, in the same proceeding, may authorize
15 the [an] independent organization [~~that is certified under this~~
16 ~~section~~] to charge [~~a reasonable and competitively neutral rate~~] to
17 wholesale buyers and sellers a reasonable and competitively neutral
18 rate determined by the commission to allow [~~cover~~] the independent
19 organization a reasonable opportunity to take in a reasonable and
20 necessary amount of revenue, as determined by the commission in the
21 budget review process. The independent organization may change the
22 rate established by the commission in the budget review process
23 only with the commission's approval. On the commission's own
24 initiative or on receiving a complaint, the commission may inquire
25 into the reasonableness of an independent organization's budget or
26 rate [~~costs~~].

27 (g) To maintain certification as an independent

1 organization under this section, an organization's [~~If it amends~~
2 ~~its governance rules to provide that its governing body is composed~~
3 ~~as prescribed by this subsection, the existing independent system~~
4 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~
5 ~~with respect to ensuring access to the transmission systems for all~~
6 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~
7 ~~the reliability of the regional electrical network. To comply with~~
8 ~~this subsection, the~~] governing body must be composed of persons
9 specified by this section and selected in accordance with formal
10 bylaws or protocols of the organization. The process must allow for
11 commission input in identifying candidates. The governing body
12 must be composed of:

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

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

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

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

21 (A) one representing independent generators;

22 (B) one representing investor-owned utilities;

23 (C) one representing power marketers;

24 (D) one representing retail electric providers;

25 (E) one representing municipally owned
26 utilities; and

27 (F) one representing electric cooperatives [~~four~~

1 ~~representatives of the power generation sector as voting members];~~

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

6 (6) one member representing large commercial consumer
7 interests selected by the outgoing large commercial consumer
8 representative to serve a one-year term [~~four representatives of~~
9 ~~the power sales sector as voting members]; and~~

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

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

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

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

20 [~~The four representatives specified in each of Subdivisions~~
21 ~~(4), (5), and (6) shall be selected in a manner that ensures~~
22 ~~equitable representation for the various sectors of industry~~
23 ~~participants.]~~

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

26 (g-2) The governing body and its members are subject to
27 Chapter 551, Government Code, in the same manner as that chapter

1 applies to a governmental body and the members of a governmental
2 body, except that the requirements pertaining to executive sessions
3 of the governing body, to advance notice of meetings and planned
4 agendas of the meetings, and the opportunity to comment on matters
5 under discussion at the meetings contained in the independent
6 organization's bylaws apply in lieu of conflicting requirements of
7 that chapter.

8 (j) A retail electric provider, municipally owned utility,
9 electric cooperative, power marketer, transmission and
10 distribution utility, or power generation company, or any other
11 person who participates in a market operated by the independent
12 system operator in ERCOT, shall observe all scheduling, operating,
13 planning, reliability, and settlement policies, rules, guidelines,
14 and procedures established by the independent system operator in
15 ERCOT. A violation by any person of [~~Failure to comply with~~] this
16 subsection may result in the revocation, suspension, or amendment
17 of that person's [~~a~~] certificate or registration as provided by
18 Section 39.356 or in the imposition against that person of an
19 administrative penalty [~~as provided by Section 39.357~~]. The
20 commission may require the refunding or disgorgement of unjust
21 profits that accrue as a result of a violation of this subsection.

22 (n) Subsections (a), (b), (f), (k), (l), and (m) apply to an
23 independent organization established to serve areas located
24 outside of the ERCOT power region. Subsections (c), (d), (e), (g),
25 (h), (i), and (j) do not apply to an independent organization
26 established to serve areas located outside of the ERCOT power
27 region. The commission, however, may certify an independent

1 organization or organizations outside of ERCOT to perform the
2 functions described by Subsection (a).

3 (o) An independent organization certified under this
4 section is subject to Chapter 552, Government Code, as if it were a
5 governmental body under that chapter.

6 (p) Information is excepted from the requirements of
7 Section 552.021, Government Code, if the information is collected,
8 assembled, or maintained by or for the independent organization:

9 (1) as part of the duty of the organization to support
10 wholesale and retail electric markets and the information is
11 competitively sensitive information of a third party that provides
12 electric service within the transmission system managed by the
13 independent organization that if disclosed, would give advantage to
14 competitors or prospective competitors of the third party;

15 (2) for the purpose of maintaining the reliability of
16 an electric transmission system that if disclosed, could provide
17 information about security measures of the independent
18 organization or information about the transmission system or a
19 related control or communication system that could aid acts of
20 terrorism or other criminal activity against the independent
21 organization or the electric transmission system; or

22 (3) in relation to the development or construction of
23 a system used by the independent organization to maintain the
24 security and reliability of the transmission grid or in support of
25 market systems or processes of the independent organization.

26 SECTION 11. Subchapter D, Chapter 39, Utilities Code, is
27 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as

1 follows:

2 Sec. 39.1511. PUBLIC MEETINGS OF GOVERNING BODY OF
3 INDEPENDENT ORGANIZATION. (a) The bylaws of the independent
4 organization and the rules of the commission shall provide for the
5 governing body or subcommittee to enter into executive session
6 closed to the public to address sensitive matters such as
7 confidential personnel information, contracts, lawsuits,
8 competitively sensitive information, customer proprietary
9 information, or other information that by law is privileged or
10 confidential or that is related to security of the regional
11 electrical network.

12 (b) The bylaws of the independent organization and rules of
13 the commission must ensure that a person interested in the
14 activities of the independent organization has an opportunity to
15 obtain at least seven days' advance notice of meetings of the
16 governing body and the planned agendas of the meetings and an
17 opportunity to comment on matters under discussion at the meetings.

18 (c) In an emergency or if there is an urgent public
19 necessity, the notice of a meeting or the supplemental notice of a
20 subject added as an item to the agenda for a meeting for which
21 notice has been posted in accordance with Subsection (b) is
22 sufficient if the notice is posted for at least two hours before the
23 meeting is convened and if the notice or supplemental notice
24 clearly identifies the emergency or urgent public necessity. An
25 emergency or an urgent public necessity is considered to exist only
26 if immediate action is required of the governing body because of an
27 imminent threat to public health and safety or a reasonably

1 unforeseeable situation.

2 (d) This section does not apply to an independent
3 organization established to serve areas located outside of ERCOT.

4 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE
5 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN
6 DECISION. (a) If a matter comes before the governing body of an
7 independent organization certified under Section 39.151 and a
8 member or a person that member represents has a direct interest in
9 that matter, the member shall publicly disclose the fact of that
10 interest to the governing body at a public meeting of the body. The
11 member shall recuse himself or herself from the governing body's
12 deliberations and actions on the matter and may not vote on the
13 matter or otherwise participate in a governing body decision on the
14 matter.

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

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

20 (d) This section does not apply to an independent
21 organization established to serve areas located outside ERCOT.

22 Sec. 39.1515. WHOLESAL ELEC TRIC MARKET MONITOR. (a) An
23 independent organization certified under Section 39.151 shall
24 contract with a private person selected by the commission to act as
25 the wholesale electric market monitor and to detect and prevent
26 market power abuses, potential market power abuses, and other
27 violations of this subchapter.

1 (b) The independent organization shall provide to the
2 personnel of the market monitor:

3 (1) full access to the organization's main operations
4 center; and

5 (2) other support and cooperation necessary for the
6 market monitor to perform the market monitor's functions.

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

10 (d) The commission is responsible for ensuring that the
11 market monitor has the resources, expertise, and access to
12 information necessary to monitor effectively the wholesale
13 electric market and shall adopt rules and perform oversight of the
14 market monitor as necessary. The market monitor shall operate
15 under the supervision and oversight of the commission. The
16 commission shall retain all enforcement authority conferred under
17 this title and this section may not be construed to confer
18 enforcement authority on the market monitor or to authorize the
19 commission to delegate the commission's enforcement authority to
20 the market monitor. The commission by rule shall define:

21 (1) the market monitor's monitoring responsibilities;

22 (2) the standards for funding the market monitor,
23 including staffing requirements;

24 (3) qualifications for personnel of the market
25 monitor;

26 (4) ethical standards for the market monitor and the
27 personnel of the market monitor;

1 (5) procedures and standards for communications
2 between the market monitor and both the commission and the
3 independent organization;

4 (6) the nature and timing of reports the commission
5 determines the market monitor shall provide to the commission,
6 market participants, and the independent organization; and

7 (7) procedures for the market monitor to observe in
8 complying with Subsection (i).

9 (e) In adopting rules governing the standards for funding
10 the market monitor, the commission shall consult with a
11 subcommittee of the independent organization's governing body to
12 receive information on how money is or should be spent for
13 monitoring functions. Rules governing ethical standards must
14 include provisions designed to ensure that the personnel of the
15 market monitor are professionally and financially independent from
16 market participants and consumer market segments described by
17 Section 39.151(g). The commission shall develop and implement
18 policies that clearly separate the policy-making responsibilities
19 of the commission and the operational responsibilities of the
20 market monitor.

21 (f) The market monitor immediately shall confidentially
22 report directly to the commission any potential market power abuses
23 and any discovered or potential violations of commission rules or
24 rules of the independent organization that involve markets
25 administered by the independent organization.

26 (g) The personnel of the market monitor may communicate with
27 any person, including the commission, in accordance with commission

1 rules and with independent organization procedures.

2 (h) The market monitor annually shall submit to the
3 commission and the independent organization a report that
4 identifies market design flaws and recommends methods to correct
5 the flaws. The commission and the independent organization shall
6 review the report and evaluate whether changes to rules of the
7 commission or the independent organization should be made. The
8 report shall be made available to the public.

9 (i) The market monitor shall comply with this title,
10 commission rules and orders, and bylaws of the independent
11 organization. The market monitor shall perform the monitor's
12 functions in a manner that ensures the confidentiality of
13 information that is customer proprietary information,
14 competitively sensitive, or otherwise confidential or privileged
15 under this title, commission rules or orders, procedures or bylaws
16 of the independent organization, or other law.

17 (j) This section does not apply to an independent
18 organization established to serve areas located outside of ERCOT.

19 SECTION 12. Section 39.155(a), Utilities Code, is amended
20 to read as follows:

21 (a) Each person, municipally owned utility, electric
22 cooperative, and river authority that owns generation facilities
23 and offers electricity for sale in this state shall report to the
24 commission its installed generation capacity, the total amount of
25 capacity available for sale to others, the total amount of capacity
26 under contract to others, the total amount of capacity dedicated to
27 its own use, its annual wholesale power sales in the state, its

1 annual retail power sales in the state, and any other information
2 necessary for the commission to assess market power or the
3 development of a competitive retail market in the state. The
4 commission shall by rule prescribe the nature and detail of the
5 reporting requirements and shall administer those reporting
6 requirements in a manner that ensures the confidentiality of
7 competitively sensitive information. This subsection does not
8 affect the applicability of Chapter 552, Government Code. The
9 commission, after a contested case hearing or an opportunity for a
10 contested case hearing, and after allowing a reasonable period for
11 judicial review under Subchapter A, Chapter 15, may release to the
12 public any information in the commission's possession if the
13 commission finds that:

14 (1) the information is not competitively sensitive or
15 privileged or confidential by law; and

16 (2) the release of the information is in the public
17 interest.

18 SECTION 13. Section 39.157(a), Utilities Code, is amended
19 to read as follows:

20 (a) The commission shall monitor market power associated
21 with the generation, transmission, distribution, and sale of
22 electricity in this state. On a finding that market power abuses or
23 other violations of this section are occurring, the commission
24 shall require reasonable mitigation of the market power by ordering
25 the construction of additional transmission or distribution
26 facilities, by seeking an injunction or civil penalties as
27 necessary to eliminate or to remedy the market power abuse or

1 violation as authorized by Chapter 15, by imposing an
2 administrative penalty as authorized by Chapter 15, requiring
3 refunds or disgorgement of unjust profits received as a result of
4 market power abuse, or [~~by~~] suspending, revoking, or amending a
5 certificate or registration as authorized by Section 39.356.
6 Section 15.024(c) does not apply to an administrative penalty
7 imposed under this section. For purposes of this subchapter,
8 market power abuses are practices by persons possessing market
9 power that are unreasonably discriminatory or tend to unreasonably
10 restrict, impair, or reduce the level of competition, including
11 practices that tie unregulated products or services to regulated
12 products or services or unreasonably discriminate in the provision
13 of regulated services. For purposes of this section, "market power
14 abuses" include predatory pricing, withholding of production,
15 precluding entry, and collusion. A violation of the code of conduct
16 provided by Subsection (d) that materially impairs the ability of a
17 person to compete in a competitive market shall be deemed to be an
18 abuse of market power. The possession of a high market share in a
19 market open to competition may not, of itself, be deemed to be an
20 abuse of market power; however, this sentence shall not affect the
21 application of state and federal antitrust laws.

22 SECTION 14. Section 39.203, Utilities Code, is amended by
23 adding Subsection (i) to read as follows:

24 (i) A power generation company that was operating in this
25 state on January 1, 2005, is not subject to a commission requirement
26 to pay all or part of the cost of any new transmission facility
27 necessary to transmit power from an upgrade of, repowering of, or

1 addition to a generating facility in this state operated by the
2 power generation company on January 1, 2005. This subsection
3 expires September 1, 2010.

4 SECTION 15. Section 39.205, Utilities Code, is amended to
5 read as follows:

6 Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD.
7 At the conclusion of the freeze period, any remaining costs
8 associated with nuclear decommissioning obligations continue to be
9 subject to cost of service rate regulation and shall be included as
10 a nonbypassable charge to retail customers. The commission may
11 adopt rules necessary to ensure that money for decommissioning is
12 prudently collected, managed, and spent for its intended purpose
13 and that money that remains unspent after decommissioning is
14 completed is returned to retail customers.

15 SECTION 16. Section 39.262(c), Utilities Code, is amended
16 to read as follows:

17 (c) After January 10, 2004, at a schedule and under
18 procedures to be determined by the commission, each transmission
19 and distribution utility, its affiliated retail electric provider,
20 and its affiliated power generation company shall jointly file to
21 finalize stranded costs under Subsections (h) and (i) and reconcile
22 those costs with the estimated stranded costs used to develop the
23 competition transition charge in the proceeding held under Section
24 39.201. Any resulting difference shall be applied to the
25 nonbypassable delivery rates of the transmission and distribution
26 utility, except that at the utility's option, any or all of the
27 amounts recovered under this section [~~remaining stranded costs~~] may

1 be securitized under Subchapter G.

2 SECTION 17. Section 39.301, Utilities Code, is amended to
3 read as follows:

4 Sec. 39.301. PURPOSE. The purpose of this subchapter is to
5 enable utilities to use securitization financing to recover
6 regulatory assets, all other amounts determined under Section
7 39.262, and any amounts being recovered under a competition
8 transition charge determined as a result of a proceeding under
9 Section 39.201 or 39.262. This ~~and stranded costs, because this~~
10 type of debt will lower the carrying costs of the assets relative to
11 the costs that would be incurred using conventional utility
12 financing methods. The proceeds of the transition bonds shall be
13 used solely for the purposes of reducing the amount of recoverable
14 regulatory assets and other amounts ~~[stranded costs]~~, as determined
15 by the commission in accordance with this chapter, through the
16 refinancing or retirement of utility debt or equity. The
17 commission shall ensure that securitization provides tangible and
18 quantifiable benefits to ratepayers, greater than would have been
19 achieved absent the issuance of transition bonds. The commission
20 shall ensure that the structuring and pricing of the transition
21 bonds result in the lowest transition bond charges consistent with
22 market conditions and the terms of the financing order. The amount
23 securitized may not exceed the present value of the revenue
24 requirement over the life of the proposed transition bond
25 associated with the regulatory assets or stranded costs sought to
26 be securitized. The present value calculation shall use a discount
27 rate equal to the proposed interest rate on the transition bonds.

1 SECTION 18. Section 39.302(4), Utilities Code, is amended
2 to read as follows:

3 (4) "Qualified costs" means 100 percent of an electric
4 utility's regulatory assets and 75 percent of its recoverable costs
5 determined by the commission under Section 39.201 and any remaining
6 amounts [~~stranded costs~~] determined under Section 39.262 together
7 with the costs of issuing, supporting, and servicing transition
8 bonds and any costs of retiring and refunding the electric
9 utility's existing debt and equity securities in connection with
10 the issuance of transition bonds. The term includes the costs to
11 the commission of acquiring professional services for the purpose
12 of evaluating proposed transactions under Section 39.201 and this
13 subchapter.

14 SECTION 19. Sections 39.303(a) and (b), Utilities Code, are
15 amended to read as follows:

16 (a) The commission shall adopt a financing order, on
17 application of a utility to recover the utility's regulatory assets
18 and other amounts determined [~~eligible stranded costs~~] under
19 Section 39.201 or 39.262, on making a finding that the total amount
20 of revenues to be collected under the financing order is less than
21 the revenue requirement that would be recovered over the remaining
22 life of the stranded costs using conventional financing methods and
23 that the financing order is consistent with the standards in
24 Section 39.301.

25 (b) The financing order shall detail the amount of
26 regulatory assets and other amounts [~~stranded costs~~] to be
27 recovered and the period over which the nonbypassable transition

1 charges shall be recovered, which period may not exceed 15 years.

2 SECTION 20. Chapter 39, Utilities Code, is amended by
3 adding Subchapter K to read as follows:

4 SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN
5 AREAS OUTSIDE OF ERCOT

6 Sec. 39.501. APPLICABILITY. (a) This subchapter applies
7 to any multistate electric utility operating solely outside of
8 ERCOT that is serving customers in areas of this state within the
9 Western Electricity Coordinating Council.

10 (b) The legislature finds that the power region in which an
11 electric utility subject to this subchapter provides electric
12 service is unable at this time to offer fair competition and
13 reliable service to all retail customer classes in this state. As a
14 result, the introduction of retail competition for the portions of
15 that power region in this state is delayed until fair competition
16 and reliable service are available to all retail customer classes.

17 Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Until the
18 date on which an electric utility subject to this subchapter is
19 authorized by the commission to implement retail customer choice,
20 the rates of the utility are subject to regulation under Chapter 36.

21 (b) Until the date on which an electric utility subject to
22 this subchapter implements customer choice, the provisions of this
23 chapter, other than this subchapter and Sections 39.903(g), 39.904,
24 and 39.905, do not apply to that utility.

25 (c) In accordance with Section 39.904, an electric utility
26 subject to this subchapter shall obtain, at a minimum, renewable
27 energy credits in an amount sufficient to meet the requirements for

1 the compliance period beginning January 1, 2006, and for each
2 compliance period after that date.

3 (d) In accordance with Section 39.905, an electric utility
4 subject to this subchapter shall begin administering energy
5 efficiency programs on January 1, 2006. The utility shall meet, at
6 a minimum, five percent of its growth in demand through energy
7 efficiency savings resulting from those programs by January 1,
8 2007, and 10 percent of its growth in demand by January 1, 2008, and
9 each year after that date.

10 Sec. 39.503. TRANSITION TO COMPETITION. (a) The sequence
11 of events prescribed by Subsections (b)-(f) shall be followed to
12 introduce retail competition in the service area of an electric
13 utility subject to this subchapter. All listed items in a
14 subsection must be completed before the events provided by the next
15 subsection are initiated. Full retail competition may not begin in
16 the service area of the utility until all actions prescribed by
17 those subsections are completed.

18 (b) The first stage for the transition to competition
19 consists of the following activities:

20 (1) approval of a regional transmission organization
21 by the Federal Energy Regulatory Commission for the power region
22 that includes the electric utility's service area and commencement
23 of independent operation of the transmission network under the
24 approved regional transmission organization;

25 (2) development of retail market protocols to
26 facilitate retail competition; and

27 (3) completion of an expedited proceeding to develop

1 non-bypassable delivery rates for the customer choice pilot project
2 to be implemented under Subsection (c)(1).

3 (c) The second stage for the transition to competition
4 consists of the following activities:

5 (1) initiation of the customer choice pilot project in
6 accordance with Section 39.104;

7 (2) development of a balancing energy market, a market
8 for ancillary services, and a market-based congestion management
9 system for the wholesale market in the power region in which the
10 regional transmission organization operates; and

11 (3) implementation of a seams agreement with adjacent
12 power regions to reduce barriers to entry and facilitate
13 competition.

14 (d) The third stage for the transition to competition
15 consists of the following activities:

16 (1) the electric utility filing with the commission:

17 (A) an application for business separation in
18 accordance with Section 39.051;

19 (B) an application for unbundled transmission
20 and distribution rates in accordance with Section 39.201;

21 (C) an application for certification of a
22 qualified power region in accordance with Section 39.152; and

23 (D) an application for price-to-beat rates in
24 accordance with Section 39.202;

25 (2) the commission:

26 (A) approving a business separation plan for the
27 utility;

1 (B) setting unbundled transmission and
2 distribution rates for the utility;

3 (C) certifying a qualified power region, which
4 includes conducting a formal evaluation of wholesale market power
5 in the region, in accordance with Section 39.152;

6 (D) setting price-to-beat rates for the utility;
7 and

8 (E) determining which competitive energy
9 services must be separated from regulated utility activities in
10 accordance with Section 39.051; and

11 (3) completion of the testing of retail and wholesale
12 systems, including those systems necessary for switching customers
13 to the retail electric provider of their choice and for settlement
14 of wholesale market transactions, by the regional transmission
15 organization, the statewide registration agent, and market
16 participants.

17 (e) The fourth stage for the transition to competition
18 consists of the following activities:

19 (1) commission evaluation of the results of the pilot
20 project;

21 (2) initiation by the electric utility of a capacity
22 auction in accordance with Section 39.153 at a time to be determined
23 by the commission; and

24 (3) separation by the utility of competitive energy
25 services from its regulated utility activities, in accordance with
26 the commission order approving the separation of competitive energy
27 services.

1 (f) The fifth stage for the transition to competition
2 consists of the following activities:

3 (1) evaluation by the commission of whether the power
4 region that includes the electric utility can offer fair
5 competition and reliable service to all retail customer classes,
6 and:

7 (A) if the commission concludes that the power
8 region can offer fair competition and reliable service to all
9 retail customer classes, the commission issuing an order initiating
10 retail competition for the utility; and

11 (B) if the commission determines that the power
12 region cannot offer fair competition and reliable service to all
13 retail customer classes, the commission issuing an order further
14 delaying retail competition for the utility; and

15 (2) on the issuance of an order from the commission
16 initiating retail competition for the utility, completion by the
17 utility of the business separation and unbundling in accordance
18 with the commission order approving the unbundling.

19 (g) After the requirements of Subsection (b) are fully
20 completed and upon a finding of good cause, as determined by the
21 commission after notice and hearing, the sequence for retail
22 competition set forth in this section may be modified by commission
23 order.

24 SECTION 21. Section 39.902(c), Utilities Code, is amended
25 to read as follows:

26 (c) After the opening of the retail electric market, the
27 commission shall conduct ongoing customer education designed to

1 help customers make informed choices of electric services and
2 retail electric providers. As part of ongoing education, the
3 commission shall ~~may~~ provide or may make available to customers
4 information concerning specific retail electric providers,
5 including instances of complaints against them and records relating
6 to quality of customer service.

7 SECTION 22. Section 39.903(a), Utilities Code, as amended
8 by Chapters 211 and 1296, Acts of the 78th Legislature, Regular
9 Session, 2003, is reenacted and amended to read as follows:

10 (a) The system benefit fund is an account in the general
11 revenue fund. Money in the account may be appropriated only for the
12 purposes provided by this section ~~[or other law]~~. Interest earned
13 on the system benefit fund shall be credited to the fund. Section
14 403.095, Government Code, does not apply to the system benefit
15 fund.

16 SECTION 23. Section 39.903(e), Utilities Code, as amended
17 by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature,
18 Regular Session, 2001, is reenacted and amended to read as follows:

19 (e) Money in the system benefit fund may be appropriated to
20 provide funding solely for the following ~~[regulatory]~~ purposes,
21 ~~[and]~~ in the following order of priority:

22 (1) programs to assist low-income electric customers
23 by providing the 10 to 20 percent reduced rate prescribed by
24 Subsection (h);

25 (2) customer education programs, administrative
26 expenses incurred by the commission in implementing and
27 administering this chapter, and expenses incurred by the office

1 under this chapter;

2 (3) programs to assist low-income electric customers
3 by providing the targeted energy efficiency programs described by
4 Subsection (f)(2); and

5 (4) the school funding loss mechanism provided by
6 Section 39.901 [~~+~~

7 ~~[(5) programs to assist low-income electric customers
8 by providing the 20 percent reduced rate prescribed by Subsection
9 (h); and~~

10 ~~[(6) reimbursement to the commission and the Texas
11 Department of Human Services for expenses incurred in the
12 implementation and administration of an integrated eligibility
13 process created under Section 17.007 for customer service discounts
14 relating to retail electric service, including outreach expenses
15 the commission determines are reasonable and necessary].~~

16 SECTION 24. Section 39.903, Utilities Code, is amended by
17 adding Subsection (e-1) to read as follows:

18 (e-1) In addition to the purposes and priorities provided by
19 Subsection (e), the commission may use money from the system
20 benefit fund to educate residential and small business customers of
21 available benefits of the fund. The purpose for which money may be
22 used under this subsection has the same priority as the purpose
23 prescribed by Subsection (e)(1). This subsection expires August
24 31, 2006.

25 SECTION 25. Section 39.903(g), Utilities Code, is amended
26 to read as follows:

27 (g) Until customer choice is introduced in a power region,

1 an electric utility may not reduce, in any manner, programs already
2 offered to assist low-income electric customers. Notwithstanding
3 any other provision of this chapter, this subsection applies to an
4 electric utility operating outside ERCOT.

5 SECTION 26. Section 39.903(j), Utilities Code, is amended
6 to read as follows:

7 (j) The commission shall adopt rules providing for methods
8 of enrolling customers eligible to receive reduced rates under
9 Subsection (h). The rules must provide for automatic enrollment as
10 one enrollment option. The Health and Human Services Commission
11 [~~Texas Department of Human Services~~], on request of the commission,
12 shall assist in the adoption and implementation of these rules. The
13 commission and the Health and Human Services Commission [~~Texas~~
14 ~~Department of Human Services~~] shall enter into a memorandum of
15 understanding establishing the respective duties of the agencies
16 [~~commission and the department~~] in relation to the automatic
17 enrollment. The commission shall establish a goal under this
18 subsection of enrolling at least 95 percent of customers eligible
19 to receive reduced rates under Subsection (h). Not later than
20 December 1 of each even-numbered year, the commission shall
21 estimate the total number of customers who are eligible for the
22 reduced rates and shall compare the number of enrolled customers to
23 that goal. If the goal has not been met, the commission shall use
24 money from the fund that is available to the commission for
25 administrative purposes to provide education and outreach
26 concerning programs available under this section until the goal is
27 met. The commission shall prepare a report each calendar quarter

1 with information concerning the enrollment of customers eligible
2 for the reduced rates and efforts to meet the goal prescribed by
3 this subsection. The commission shall compile the information into
4 an annual report to be published for public distribution not later
5 than January 1 of each odd-numbered year. The commission shall send
6 a copy of each quarterly and annual report to each member of the
7 legislature and the electric utility restructuring legislative
8 oversight committee. In estimating under this subsection the
9 number of customers who are eligible for the reduced rates, the
10 commission shall use information provided by the Health and Human
11 Services Commission regarding persons who meet the definition of
12 "low-income electric customer," according to household income or
13 participation in a program described by Subsection (1). The Health
14 and Human Services Commission shall provide the information to the
15 commission each calendar quarter.

16 SECTION 27. Section 39.903(1), Utilities Code, is amended
17 to read as follows:

18 (1) For the purposes of this section, a "low-income electric
19 customer" is an electric customer:

20 (1) whose household income is not more than 125
21 percent of the federal poverty guidelines; or

22 (2) who:

23 (A) receives food stamps or medical assistance
24 from the Health and Human Services Commission;

25 (B) receives federal housing assistance; or

26 (C) has a child enrolled in the national school
27 lunch program of free or reduced-price lunches [~~Texas Department of~~

1 ~~Human Services or medical assistance from a state agency~~
2 ~~administering a part of the medical assistance program].~~

3 SECTION 28. Section 39.904(d), Utilities Code, is amended
4 to read as follows:

5 (d) In this section, "renewable energy technology" means
6 any technology that exclusively relies on an energy source that is
7 naturally regenerated over a short time and derived directly from
8 the sun, indirectly from the sun, or from moving water or other
9 natural movements and mechanisms of the environment. Renewable
10 energy technologies include those that rely on energy derived
11 directly from the sun, on wind, geothermal, hydroelectric, wave,
12 gasification of municipal solid waste, or tidal energy, or on
13 biomass or biomass-based waste products, including landfill gas. A
14 renewable energy technology does not rely on energy resources
15 derived from fossil fuels, waste products from fossil fuels, or
16 waste products from inorganic sources. In this subsection,
17 "municipal solid waste" means nondurable goods, containers and
18 packaging, food wastes, yard trimmings, and miscellaneous biomass
19 wastes from residential, commercial, and industrial nonprocess
20 sources. Renewable energy credits may not be issued for nondurable
21 goods or containers and packaging.

22 SECTION 29. Section 40.001(a), Utilities Code, is amended
23 to read as follows:

24 (a) Notwithstanding any other provision of law, except
25 Sections 39.151(j), 39.155, 39.157(a) and (e) [~~39.157(e)~~], 39.203,
26 39.903, and 39.904, this chapter governs the transition to and the
27 establishment of a fully competitive electric power industry for

1 municipally owned utilities. With respect to the regulation of
2 municipally owned utilities, this chapter controls over any other
3 provision of this title, except for sections in which the term
4 "municipally owned utility" is specifically used.

5 SECTION 30. Section 41.001, Utilities Code, is amended to
6 read as follows:

7 Sec. 41.001. APPLICABLE LAW. Notwithstanding any other
8 provision of law, except Sections 39.151(j), 39.155, 39.157(a) and
9 (e) [~~39.157(e)~~], 39.203, 39.903, and 39.904, this chapter governs
10 the transition to and the establishment of a fully competitive
11 electric power industry for electric cooperatives. Regarding the
12 regulation of electric cooperatives, this chapter shall control
13 over any other provision of this title, except for sections in which
14 the term "electric cooperative" is specifically used.

15 SECTION 31. Subtitle D, Title 16, Property Code, is amended
16 by adding Chapter 431 to read as follows:

17 CHAPTER 431. ENERGY-EFFICIENT BUILDING PROGRAM

18 Sec. 431.001. DEFINITION. In this chapter, "National
19 Housing Act" means Section 203(b), (i), or (k) of the National
20 Housing Act (12 U.S.C. Sections 1709(b), (i), and (k)).

21 Sec. 431.002. ENERGY-EFFICIENT BUILDING ACCREDITATION
22 PROGRAM. (a) The commission, in consultation with the Energy
23 Systems Laboratory at the Texas Engineering Experiment Station of
24 The Texas A&M University System, the Texas Commission on
25 Environmental Quality, and an advisory committee appointed by the
26 commission, may establish an energy-efficient building
27 accreditation program for buildings that exceed the building energy

1 performance standards under Section 388.003, Health and Safety
2 Code, by 15 percent or more.

3 (b) If the commission establishes a program under this
4 chapter, the commission, in consultation with the Energy Systems
5 Laboratory, shall update the program on or before December 1 of each
6 even-numbered year using the best available energy-efficient
7 building practices.

8 (c) If the commission establishes a program under this
9 chapter, the program must include a checklist system to produce an
10 energy-efficient building scorecard to help:

11 (1) home buyers compare potential homes and, by
12 providing a copy of the completed scorecard to a mortgage lender,
13 qualify for energy-efficient mortgages under the National Housing
14 Act; and

15 (2) communities qualify for emissions reduction
16 credits by adopting codes that meet or exceed the energy-efficient
17 building or energy performance standards established under Chapter
18 388, Health and Safety Code.

19 Sec. 431.003. PUBLIC INFORMATION PROGRAM. The commission
20 may establish a public information program to inform homeowners,
21 sellers, buyers, and others regarding energy-efficient building
22 ratings.

23 Sec. 431.004. MEASUREMENT SYSTEM FOR REDUCTION IN ENERGY
24 AND EMISSIONS. If the commission establishes a program under this
25 chapter, the Energy Systems Laboratory shall establish a system to
26 measure the reduction in energy and emissions produced under the
27 energy-efficient building program and report those savings to the

1 commission.

2 Sec. 431.005. CERTIFICATION FEE. If the commission
3 establishes a program under this chapter, the commission may set a
4 certification fee sufficient to cover the cost of administering the
5 program and pay for any education efforts conducted under this
6 chapter.

7 SECTION 32. Section 52.254, Utilities Code, is repealed.

8 SECTION 33. Section 388.009, Health and Safety Code, as
9 added by Section 17, Chapter 1331, Acts of the 78th Legislature,
10 Regular Session, 2003, is repealed.

11 SECTION 34. The change in law made by this Act relating to
12 qualifications and eligibility to serve as a commissioner or to be
13 employed with the Public Utility Commission of Texas applies only
14 to a commissioner or employee appointed or employed after the
15 effective date of this Act. A commissioner or employee of the
16 Public Utility Commission of Texas who is serving or employed on the
17 effective date of this Act is governed by the law as it existed
18 immediately before the effective date of this Act, and the former
19 law is continued in effect for that purpose.

20 SECTION 35. An independent organization certified by the
21 Public Utility Commission of Texas before September 1, 2005, shall
22 modify the organization's governing body to comply with Section
23 39.151(g), Utilities Code, as amended by this Act, not later than
24 January 1, 2006. On or after January 1, 2006, the Public Utility
25 Commission of Texas may decertify an independent organization whose
26 governing body does not comply with Section 39.151(g), Utilities
27 Code, as amended by this Act.

1 SECTION 36. The system benefit fund described by Section
2 39.903, Utilities Code, as amended by this Act, is re-created as a
3 separate account in the general revenue fund, and money in the
4 account is rededicated for the purposes described by that section.

5 SECTION 37. The Public Utility Commission of Texas shall
6 adopt rules required by Section 39.903, Utilities Code, as amended
7 by this Act, not later than January 1, 2006.

8 SECTION 38. Before implementing a new wholesale
9 transmission and distribution market design, the Public Utility
10 Commission of Texas shall provide to the Senate Committee on
11 Business and Commerce and the House Committee on Regulated
12 Industries a report that contains:

13 (1) an executive summary and detailed description of
14 the changes in the wholesale transmission and distribution market
15 that the commission has ordered, including the effect the new
16 market design is anticipated to have on local congestion costs;

17 (2) a list of entities, associations, and groups that
18 have submitted comments to the commission on the new market design,
19 classified by whether the comments indicated support for or
20 opposition to the new market design;

21 (3) a comparison of the new market design to any
22 similar market design adopted in any other state;

23 (4) a timeline for the implementation of the new
24 market design, including estimated costs of implementation;

25 (5) the estimated increases in wholesale and retail
26 electricity prices that will be caused in each county in this state
27 by the new market design, projected over the first five years after

1 the date the new design will be implemented; and

2 (6) the names, business addresses, and telephone
3 numbers of the members of the Texas Nodal Team and of any other
4 quasi-official working group that recommends to the commission the
5 adoption of the new market design.

6 SECTION 39. (a) It is the policy of this state to ensure
7 that all electric customers in ERCOT, including low-income
8 customers and customers in rural and other high-cost areas, have
9 access to electric energy service at reasonable rates.

10 (b) The Public Utility Commission of Texas shall conduct a
11 study to determine methods or mechanisms to ensure that residential
12 customers who are currently being served by an affiliated retail
13 electric provider at the "price-to-beat" rate will continue to have
14 default electric service available at reasonable rates. On
15 September 1, 2005, the commission shall begin the review required
16 by this subsection. The review must include the methods other
17 competitive regions, including Ohio, Maine, Maryland,
18 Massachusetts, and New Jersey, use to provide default services to
19 residential customer classes at reasonable rates.

20 (c) The study required by Subsection (b) of this section
21 must:

22 (1) evaluate:

23 (A) extending or modifying the "price-to-beat";

24 (B) local governmental aggregation, including
25 municipal "opt-out" mechanisms; and

26 (C) competitive procurement load auctions; and

27 (2) compare, regarding various mechanisms or methods

1 considered:

2 (A) resulting prices for service at wholesale;

3 (B) resulting prices for service at retail;

4 (C) key features of each mechanism or method and
5 key differences between the mechanisms or methods;

6 (D) the level of wholesale supplier competition
7 under each mechanism or method, measured by factors such as:

8 (i) numbers of participants;

9 (ii) volumes bid; or

10 (iii) other relevant factors; and

11 (E) any other factors or variables the commission
12 considers necessary to arrive at a conclusion and to make
13 recommendations under this section.

14 (d) The Public Utility Commission of Texas shall conclude
15 the study under this section not later than February 1, 2006, and
16 shall determine at that time a mechanism by which residential
17 customers served by an affiliated retail electric provider will be
18 able to receive the lowest cost default electric service on and
19 after January 1, 2007.

20 (e) The Public Utility Commission of Texas shall present a
21 report of the study and the recommendations made as a result of the
22 study to the Joint Electric Utility Restructuring Legislative
23 Oversight Committee on or before March 1, 2006.

24 (f) The Joint Electric Utility Restructuring Legislative
25 Oversight Committee shall hold hearings on the study and
26 recommendations in each region of the state served by an affiliated
27 retail electric provider and, following the hearings, shall make

1 recommendations to the 80th Legislature on the best means to
2 provide residential customers default electric service at the
3 lowest cost.

4 SECTION 40. The Public Utility Commission of Texas shall
5 conduct a study of the effects of a utility controlling 20 percent
6 or more of the installed generation capacity inside an ERCOT zonal
7 boundary or a functional market recognized by that commission on
8 the price of electricity to consumers, including consumers in the
9 zonal boundary and throughout ERCOT. The Public Utility Commission
10 of Texas shall submit a report of the study to the legislature on or
11 before January 1, 2007.

12 SECTION 41. (a) The Public Utility Commission of Texas, as
13 a part of the commission's continuing analysis of reserve margins
14 and capacity needs for the ERCOT system, shall consider creating
15 and may establish a new alternative market mechanism to allow a
16 potential interruptible industrial load that is greater than one
17 megawatt and that will not be participating in the ERCOT market to
18 be treated as a "load acting as a resource" and to allow
19 compensation for that treatment.

20 (b) The legislature finds that Texas businesses that are
21 able to participate in an alternative interruptible service compete
22 in interstate and global markets and that the opportunity for the
23 businesses to be compensated for their interruptible loads is
24 essential to the businesses' ability to remain competitive and to
25 provide significant benefits to the economy of this state. The
26 Public Utility Commission of Texas shall consider these economic
27 benefits in analyzing the potential of interruptible service. Not

1 later than January 1, 2006, the Public Utility Commission of Texas
2 shall report any actions taken regarding interruptible service and
3 the results of its analysis of interruptible service to the
4 governor, lieutenant governor, speaker of the house of
5 representatives, and presiding officers of each legislative
6 committee with jurisdiction over electric services.

7 SECTION 42. This Act takes effect September 1, 2005.