

By: King of Parker

H.B. No. 1777

Substitute the following for H.B. No. 1777:

By: King of Parker

C.S.H.B. No. 1777

A BILL TO BE ENTITLED

AN ACT

relating to regulation of the electric power market.

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 technology, make it essential that customers have safeguards

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

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

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

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

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

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

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

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

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

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

11           (4) [~~(5)~~] "Electric utility" has the meaning assigned  
12 by Section 31.002.

13           (5) [~~(6)~~] "Retail electric provider" means a person  
14 that sells electric energy to retail customers in this state after  
15 the legislature authorizes a customer to receive retail electric  
16 service from a person other than a certificated retail electric  
17 utility.

18           (6) [~~(7)~~] "Service provider" means any entity that  
19 offers a product or service to a customer and that directly or  
20 indirectly charges to or collects from a customer's bill an amount  
21 for the product or service on a customer's bill received from a  
22 billing entity [~~utility~~].

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

25           Sec. 42.003 [~~17.003~~]. CUSTOMER AWARENESS. (a) The  
26 commission shall promote public awareness of changes in the  
27 electric market [~~and telecommunications markets~~], provide

1 customers with information necessary to make informed choices about  
2 available options, and ensure that customers have an adequate  
3 understanding of their rights.

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

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

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

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

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

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

26 (3) information in English and Spanish and any other  
27 language as the commission deems necessary concerning rates, key

1 terms and conditions, and the basis for any claim of environmental  
2 benefits of certain production facilities;

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

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

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

14 (7) accuracy of metering and billing;

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

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

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

24 (11) after retail competition begins as authorized by  
25 the legislature, programs provided by retail electric providers  
26 that offer eligible low-income customers energy efficiency  
27 programs, an affordable rate package, and bill payment assistance

1 programs designed to reduce uncollectible accounts.

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

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

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

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

25 (f) The commission shall adopt rules to provide automatic  
26 enrollment of eligible utility customers for [~~lifeline telephone~~  
27 ~~service and~~] reduced electric rates available to low-income

1 households. Each state agency, on the request of the commission,  
2 shall assist in the adoption and implementation of those rules.

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

9 Sec. 42.005 [~~17.005~~]. PROTECTIONS FOR CUSTOMERS OF  
10 MUNICIPALLY OWNED UTILITIES. A municipally owned utility may not  
11 be deemed to be a "service provider" or "billing agent" for purposes  
12 of Sections 42.156(b) [~~17.156(b)~~] and (e). The governing body of a  
13 municipally owned utility shall adopt, implement, and enforce rules  
14 that shall have the effect of accomplishing the objectives set out  
15 in Sections 42.004(a) and (b) and 42.102 [~~17.004(a) and (b) and~~  
16 ~~17.102~~], as to the municipally owned utility within its  
17 certificated service area. The governing body of a municipally  
18 owned utility or its designee shall perform the dispute resolution  
19 function provided for by Section 42.157 [~~17.157~~] for disputes  
20 arising from services provided by the municipally owned utility to  
21 electric customers served within the municipally owned utility's  
22 certificated service area. With respect to electric customers  
23 served by a municipally owned utility outside its certificated  
24 service area or otherwise served through others' distribution  
25 facilities, after retail competition begins as authorized by the  
26 legislature, the provisions of this chapter as administered by the  
27 commission apply. Nothing in this chapter shall be deemed to apply

1 to a wholesale customer of a municipally owned utility.

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

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

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

25       Sec. 42.051 [~~17.051~~]. ADOPTION OF RULES. (a) The  
26 commission shall adopt rules relating to certification,  
27 registration, and reporting requirements for a [~~certificated~~



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

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

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

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

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

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

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

22 (4) suspend or revoke certificates or registrations  
23 for repeated violations of this chapter or commission rules, except  
24 that the commission may not revoke a certificate of convenience and  
25 necessity of an electric utility except as provided by Section  
26 37.059 ~~[or a certificate of convenience and necessity of a~~  
27 ~~telecommunications utility except as provided by Section 54.008]~~;

1 and

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

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

11 SUBCHAPTER C. CUSTOMER'S RIGHT TO CHOICE

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

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

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

26 (2) provide for clear, easily understandable  
27 identification, in each bill sent to a customer, of all

1 ~~[telecommunications service providers,~~] retail electric  
2 providers~~[,]~~ or electric utilities submitting charges on the bill;

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

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

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

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

21 SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES

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

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

27 (1) the service provider offering the product or

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

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

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

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

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

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

27 (1) written authorization from the customer;

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

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

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

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

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

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

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

1 unauthorized, the service provider shall cease to charge the  
2 customer for the unauthorized product or service.

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

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

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

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

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

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

27 (5) maintain for at least 24 months a record of every

1 customer who has experienced any unauthorized charge for a product  
2 or service on the customer's [~~telephone or~~] electric bill and who  
3 has notified the billing entity [~~utility~~] of the unauthorized  
4 charge.

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

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

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

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

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

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

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

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

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

27 Sec. 42.153 [~~17.153~~]. RECORDS OF DISPUTED CHARGES. (a)

1 Every service provider shall maintain a record of every disputed  
2 charge for a product or service placed on a customer's bill.

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

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

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

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

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

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

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

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

27 Sec. 42.155 [~~17.155~~]. PROVIDING COPY OF RECORDS. A billing



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

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

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

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

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

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

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

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

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

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

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

24 (2) require that all contracts, bills, and other  
25 communications from a billing entity ~~[utility]~~, service provider,  
26 retail electric provider, or electric utility display a working  
27 toll-free telephone number that customers may call with complaints

1 and inquiries;

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

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

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

16 (6) investigate an alleged violation.

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

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

24 Sec. 42.159. COMPLAINT REGARDING RECREATIONAL VEHICLE PARK  
25 OWNER. (a) An affected person may complain to the regulatory  
26 authority in writing describing an act or omission by a  
27 recreational vehicle park owner who provides metered electric

1 service under Subchapter C, Chapter 184, in violation or claimed  
2 violation of a law that the regulatory authority has jurisdiction  
3 to administer or of an order, ordinance, or rule of the regulatory  
4 authority.

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

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

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

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

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

24 SECTION 4. Section 36.201, Utilities Code, is amended to  
25 read as follows:

26 Sec. 36.201. AUTOMATIC ADJUSTMENT FOR CHANGES IN COSTS.  
27 Except as permitted by Section 36.204 or 36.209, the commission may

1 not establish a rate or tariff that authorizes an electric utility  
2 to automatically adjust and pass through to the utility's customers  
3 a change in the utility's fuel or other costs.

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

6 Sec. 36.209. RECOVERY BY CERTAIN NON-ERCOT UTILITIES OF  
7 CERTAIN TRANSMISSION COSTS. (a) This section applies only to an  
8 electric utility that operates solely outside of ERCOT in areas of  
9 this state not included in the Southeastern Electric Reliability  
10 Council on January 1, 2005, and that owns or operates transmission  
11 facilities.

12 (b) The commission may establish a mechanism to permit an  
13 electric utility to which this section applies to timely and  
14 periodically recover transmission infrastructure improvement costs  
15 and changes in wholesale transmission charges to the electric  
16 utility under a tariff approved by a federal regulatory authority.  
17 A mechanism adopted under this subsection may allow the utility to  
18 recover only the costs allocable to retail customers in this state  
19 and may not allow the utility to over-recover costs.

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

22 Sec. 38.001. GENERAL STANDARD. An electric utility, a  
23 municipally owned utility, an independent organization certified  
24 under Section 39.151, and an electric cooperative shall furnish  
25 service, instrumentalities, and facilities that are safe,  
26 adequate, efficient, and reasonable.

27 SECTION 7. Section 38.005, Utilities Code, is amended by

1 amending Subsection (a) and adding Subsections (g) and (h) to read  
2 as follows:

3 (a) The commission shall adopt and enforce rules as  
4 necessary or appropriate to ensure ~~[implement]~~ service quality and  
5 reliability ~~[standards]~~ relating to the delivery of electricity to  
6 retail customers by electric utilities and transmission and  
7 distribution utilities. The commission by rule shall develop  
8 reliability standards, including:

9 (1) the system-average interruption frequency index  
10 (SAIFI);

11 (2) the system-average interruption duration index  
12 (SAIDI);

13 (3) achievement of average response time for customer  
14 service requests or inquiries; or

15 (4) other standards that the commission finds  
16 reasonable and appropriate.

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

18 (1) establish or enforce quality standards for local  
19 distribution service provided by a municipally owned utility or an  
20 electric cooperative; or

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

23 (h) An electric utility, transmission and distribution  
24 utility, municipally owned utility, electric cooperative, or  
25 independent organization certified under Section 39.151, and any  
26 other person scheduling power or operating an electrical facility  
27 on behalf of such persons, shall observe all reliability, security,

1 and emergency management rules and orders adopted or issued by the  
2 commission. The commission may:

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

6 (2) suspend, revoke, or amend an electric utility's or  
7 transmission and distribution utility's certificate of public  
8 convenience and necessity.

9 SECTION 8. Section 39.002, Utilities Code, is amended to  
10 read as follows:

11 Sec. 39.002. APPLICABILITY. This chapter, other than  
12 Sections 39.151(j), 39.155, 39.157(a) and (e) [~~39.157(e)~~], 39.203,  
13 39.903, and 39.904, does not apply to a municipally owned utility or  
14 an electric cooperative. Sections 39.157(e), 39.203, and 39.904,  
15 however, apply only to a municipally owned utility or an electric  
16 cooperative that is offering customer choice. Section 39.157(a)  
17 applies to a municipally owned utility or electric cooperative only  
18 in relation to a wholesale market transaction. If there is a  
19 conflict between the specific provisions of this chapter and any  
20 other provisions of this title, except for Chapters 40 and 41, the  
21 provisions of this chapter control.

22 SECTION 9. Section 39.151, Utilities Code, is amended by  
23 amending Subsections (b), (c), (d), (e), (g), and (j) and adding  
24 Subsections (g-1), (g-2), and (n) to read as follows:

25 (b) "Independent organization" means an independent system  
26 operator or other person that is sufficiently independent of any  
27 producer or seller of electricity that its decisions will not be

1 unduly influenced by any producer or seller. [~~An entity will be~~  
2 ~~deemed to be independent if it is governed by a board that has three~~  
3 ~~representatives from each segment of the electric market, with the~~  
4 ~~consumer segment being represented by one residential customer, one~~  
5 ~~commercial customer, and one industrial retail customer.~~]

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

12 (d) An independent organization certified by the commission  
13 for a power region shall establish and enforce procedures,  
14 consistent with this title and the commission's rules, relating to  
15 the reliability of the regional electrical network and accounting  
16 for the production and delivery of electricity among generators and  
17 all other market participants. The procedures shall be subject to  
18 commission oversight and review. An independent organization  
19 certified by the commission is directly responsible and accountable  
20 to the commission. The organization shall fully cooperate with the  
21 commission in the commission's oversight and investigatory  
22 functions. The commission may decertify an organization that does  
23 not adequately perform the organization's functions or duties or  
24 does not comply with this section.

25 (e) The commission by rule shall require an independent  
26 organization certified under this section to provide the commission  
27 with sufficiently detailed information to allow the commission to



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

22 (g) To maintain certification as an independent  
23 organization under this section, an organization's [If it amends  
24 its governance rules to provide that its governing body is composed  
25 as prescribed by this subsection, the existing independent system  
26 operator in ERCOT will meet the criteria provided by Subsection (a)  
27 with respect to ensuring access to the transmission systems for all

1 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~  
2 ~~the reliability of the regional electrical network. To comply with~~  
3 ~~this subsection, the~~ governing body must be composed of persons  
4 specified by this section and selected in accordance with formal  
5 bylaws or protocols of the organization. The process must allow for  
6 commission input in identifying candidates. The governing body  
7 must be composed of:

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

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

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

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

16 (A) one representing independent generators;

17 (B) one representing investor-owned utilities;

18 (C) one representing power marketers;

19 (D) one representing retail electric providers;

20 (E) one representing municipally owned  
21 utilities; and

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

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

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

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

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

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

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

15           [~~The four representatives specified in each of Subdivisions~~  
16 ~~(4), (5), and (6) shall be selected in a manner that ensures~~  
17 ~~equitable representation for the various sectors of industry~~  
18 ~~participants.~~]

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

21           (g-2) The governing body and its members are subject to  
22 Chapter 551, Government Code, in the same manner as that chapter  
23 applies to a governmental body and the members of a governmental  
24 body, except that the requirements pertaining to executive sessions  
25 of the governing body, to advance notice of meetings and planned  
26 agendas of the meetings, and the opportunity to comment on matters  
27 under discussion at the meetings contained in the independent

1 organization's bylaws apply in lieu of conflicting requirements of  
2 that chapter.

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

17 (n) Subsections (a), (b), (f), (k), (l), and (m) apply to an  
18 independent organization established to serve areas located  
19 outside of the ERCOT power region. Subsections (c), (d), (e), (g),  
20 (h), (i), and (j) do not apply to an independent organization  
21 established to serve areas located outside of the ERCOT power  
22 region. The commission, however, may certify an independent  
23 organization or organizations outside of ERCOT to perform the  
24 functions described by Subsection (a).

25 SECTION 10. Subchapter D, Chapter 39, Utilities Code, is  
26 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as  
27 follows:

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

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

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

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

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

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

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

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

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

27       (b) The independent organization shall provide to the

1 personnel of the market monitor:

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

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

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

9 (d) The commission is responsible for ensuring that the  
10 market monitor has the resources, expertise, and access to  
11 information necessary to monitor effectively the wholesale  
12 electric market administered by the independent organization and  
13 shall adopt rules and perform oversight of the market monitor as  
14 necessary. The market monitor shall operate under the supervision  
15 and oversight of the commission. The commission shall retain all  
16 enforcement authority conferred under this title and this section  
17 may not be construed to confer enforcement authority on the market  
18 monitor or to authorize the commission to delegate the commission's  
19 enforcement authority to the market monitor. The commission by  
20 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 and to a market participant that  
23 is the subject of the report any potential market power abuses and  
24 any discovered or potential violations of commission rules or rules  
25 of the independent organization that involve markets administered  
26 by the independent organization.

27           (g) The personnel of the market monitor may communicate with



1 any person, including the commission, in accordance with commission  
2 rules and with independent organization procedures.

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

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

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

20 SECTION 11. Section 39.155(a), Utilities Code, is amended  
21 to read as follows:

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

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

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

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

19 SECTION 12. Section 39.157(a), Utilities Code, is amended  
20 to read as follows:

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

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

24 SECTION 13. Section 39.205, Utilities Code, is amended to  
25 read as follows:

26 Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD.  
27 At the conclusion of the freeze period, any remaining costs

1 associated with nuclear decommissioning obligations continue to be  
2 subject to cost of service rate regulation and shall be included as  
3 a nonbypassable charge to retail customers. The commission may  
4 adopt rules necessary to ensure that money for decommissioning is  
5 prudently collected, managed, and spent for its intended purpose  
6 and that money that remains unspent after decommissioning is  
7 completed is returned to retail customers.

8 SECTION 14. Section 39.262(c), Utilities Code, is amended  
9 to read as follows:

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

22 SECTION 15. Section 39.301, Utilities Code, is amended to  
23 read as follows:

24 Sec. 39.301. PURPOSE. The purpose of this subchapter is to  
25 enable utilities to use securitization financing to recover  
26 regulatory assets, all other amounts determined under Section  
27 39.262, and any amounts being recovered under a competition

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

24 SECTION 16. Section 39.302(4), Utilities Code, is amended  
25 to read as follows:

26 (4) "Qualified costs" means 100 percent of an electric  
27 utility's regulatory assets and 75 percent of its recoverable costs

1 determined by the commission under Section 39.201 and any remaining  
2 amounts [~~stranded costs~~] determined under Section 39.262 together  
3 with the costs of issuing, supporting, and servicing transition  
4 bonds and any costs of retiring and refunding the electric  
5 utility's existing debt and equity securities in connection with  
6 the issuance of transition bonds. The term includes the costs to  
7 the commission of acquiring professional services for the purpose  
8 of evaluating proposed transactions under Section 39.201 and this  
9 subchapter.

10 SECTION 17. Sections 39.303(a) and (b), Utilities Code, are  
11 amended to read as follows:

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

21 (b) The financing order shall detail the amount of  
22 regulatory assets and other amounts [~~stranded costs~~] to be  
23 recovered and the period over which the nonbypassable transition  
24 charges shall be recovered, which period may not exceed 15 years.

25 SECTION 18. Chapter 39, Utilities Code, is amended by  
26 adding Subchapter K to read as follows:

1           SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN

2                           AREAS OUTSIDE OF ERCOT

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

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

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

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

22           (c) In accordance with Section 39.904, an electric utility  
23 subject to this subchapter shall obtain, at a minimum, renewable  
24 energy credits in an amount sufficient to meet the requirements for  
25 the compliance period beginning January 1, 2006, and for each  
26 compliance period after that date.

27           (d) In accordance with Section 39.905, an electric utility

1 subject to this subchapter shall begin administering energy  
2 efficiency programs on January 1, 2006. The utility shall meet, at  
3 a minimum, five percent of its growth in demand through energy  
4 efficiency savings resulting from those programs by January 1,  
5 2007, and 10 percent of its growth in demand by January 1, 2008, and  
6 each year after that date.

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

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

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

22 (2) development of retail market protocols to  
23 facilitate retail competition; and

24 (3) completion of an expedited proceeding to develop  
25 non-bypassable delivery rates for the customer choice pilot project  
26 to be implemented under Subsection (c)(1).

27 (c) The second stage for the transition to competition



1 consists of the following activities:

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

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

8 (3) implementation of a seams agreement with adjacent  
9 power regions to reduce barriers to entry and facilitate  
10 competition.

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

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

14 (A) an application for business separation in  
15 accordance with Section 39.051;

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

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

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

22 (2) the commission:

23 (A) approving a business separation plan for the  
24 utility;

25 (B) setting unbundled transmission and  
26 distribution rates for the utility;

27 (C) certifying a qualified power region, which

1 includes conducting a formal evaluation of wholesale market power  
2 in the region, in accordance with Section 39.152;

3 (D) setting price-to-beat rates for the utility;  
4 and

5 (E) determining which competitive energy  
6 services must be separated from regulated utility activities in  
7 accordance with Section 39.051; and

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

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

16 (1) commission evaluation of the results of the pilot  
17 project;

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

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

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

27 (1) evaluation by the commission of whether the power

1 region that includes the electric utility can offer fair  
2 competition and reliable service to all retail customer classes,  
3 and:

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

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

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

16 SECTION 19. Section 39.902(c), Utilities Code, is amended  
17 to read as follows:

18 (c) After the opening of the retail electric market, the  
19 commission shall conduct ongoing customer education designed to  
20 help customers make informed choices of electric services and  
21 retail electric providers. As part of ongoing education, the  
22 commission shall ~~may~~ provide or may make available to customers  
23 information concerning specific retail electric providers,  
24 including instances of complaints against them and records relating  
25 to quality of customer service.

26 SECTION 20. Section 39.903(a), Utilities Code, as amended  
27 by Chapters 211 and 1296, Acts of the 78th Legislature, Regular

1 Session, 2003, is reenacted and amended to read as follows:

2 (a) The system benefit fund is an account in the general  
3 revenue fund. Money in the account may be appropriated only for the  
4 purposes provided by this section [~~or other law~~]. Interest earned  
5 on the system benefit fund shall be credited to the fund. Section  
6 403.095, Government Code, does not apply to the system benefit  
7 fund.

8 SECTION 21. Section 39.903(e), Utilities Code, as amended  
9 by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature,  
10 Regular Session, 2001, is reenacted and amended to read as follows:

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

14 (1) programs to assist low-income electric customers  
15 by providing the 10 to 20 percent reduced rate prescribed by  
16 Subsection (h);

17 (2) customer education programs, administrative  
18 expenses incurred by the commission in implementing and  
19 administering this chapter, and expenses incurred by the office  
20 under this chapter;

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

24 (4) the school funding loss mechanism provided by  
25 Section 39.901 [~~+~~

26 [~~(5) programs to assist low-income electric customers~~  
27 ~~by providing the 20 percent reduced rate prescribed by Subsection~~

1 ~~(h), and~~

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

8 SECTION 22. Section 39.903, Utilities Code, is amended by  
9 adding Subsection (e-1) to read as follows:

10 (e-1) In addition to the purposes and priorities provided by  
11 Subsection (e), the commission may use money from the system  
12 benefit fund to educate residential and small business customers of  
13 available benefits of the fund. The purpose for which money may be  
14 used under this subsection has the same priority as the purpose  
15 prescribed by Subsection (e)(1). This subsection expires August  
16 31, 2006.

17 SECTION 23. Section 39.903(j), Utilities Code, is amended  
18 to read as follows:

19 (j) The commission shall adopt rules providing for methods  
20 of enrolling customers eligible to receive reduced rates under  
21 Subsection (h). The rules must provide for automatic enrollment as  
22 one enrollment option. The Health and Human Services Commission  
23 ~~[Texas Department of Human Services]~~, on request of the commission,  
24 shall assist in the adoption and implementation of these rules. The  
25 commission and the Health and Human Services Commission ~~[Texas~~  
26 ~~Department of Human Services]~~ shall enter into a memorandum of  
27 understanding establishing the respective duties of the agencies

1 ~~[commission and the department]~~ in relation to the automatic  
2 enrollment. The commission shall establish a goal under this  
3 subsection of enrolling at least 95 percent of customers eligible  
4 to receive reduced rates under Subsection (h). Not later than  
5 December 1 of each even-numbered year, the commission shall  
6 estimate the total number of customers who are eligible for the  
7 reduced rates and shall compare the number of enrolled customers to  
8 that goal. If the goal has not been met, the commission shall use  
9 money from the fund that is available to the commission for  
10 administrative purposes to provide education and outreach  
11 concerning programs available under this section until the goal is  
12 met. The commission shall prepare a report each calendar quarter  
13 with information concerning the enrollment of customers eligible  
14 for the reduced rates and efforts to meet the goal prescribed by  
15 this subsection. The commission shall compile the information into  
16 an annual report to be published for public distribution not later  
17 than January 1 of each odd-numbered year. The commission shall send  
18 a copy of each quarterly and annual report to each member of the  
19 legislature and the electric utility restructuring legislative  
20 oversight committee. In estimating under this subsection the  
21 number of customers who are eligible for the reduced rates, the  
22 commission shall use information provided by the Health and Human  
23 Services Commission regarding persons who meet the definition of  
24 "low-income electric customer," according to household income or  
25 participation in a program described by Subsection (1). The Health  
26 and Human Services Commission shall provide the information to the  
27 commission each calendar quarter.

1 SECTION 24. Section 39.903(1), Utilities Code, is amended  
2 to read as follows:

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

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

7 (2) who:

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

10 (B) receives federal housing assistance; or

11 (C) has a child enrolled in the national school  
12 lunch program of free or reduced-price lunches [~~Texas Department of~~  
13 ~~Human Services or medical assistance from a state agency~~  
14 ~~administering a part of the medical assistance program].~~

15 SECTION 25. Section 39.904(d), Utilities Code, is amended  
16 to read as follows:

17 (d) In this section, "renewable energy technology" means  
18 any technology that exclusively relies on an energy source that is  
19 naturally regenerated over a short time and derived directly from  
20 the sun, indirectly from the sun, or from moving water or other  
21 natural movements and mechanisms of the environment. Renewable  
22 energy technologies include those that rely on energy derived  
23 directly from the sun, on wind, geothermal, hydroelectric, wave,  
24 gasification of municipal solid waste, or tidal energy, or on  
25 biomass or biomass-based waste products, including landfill gas. A  
26 renewable energy technology does not rely on energy resources  
27 derived from fossil fuels, waste products from fossil fuels, or

1 waste products from inorganic sources, other than gasification of  
2 municipal solid waste. In this subsection, "municipal solid waste"  
3 means nondurable goods, containers and packaging, food wastes, yard  
4 trimmings, and miscellaneous organic wastes from residential,  
5 commercial, and industrial nonprocess sources.

6 SECTION 26. Section 40.001(a), Utilities Code, is amended  
7 to read as follows:

8 (a) Notwithstanding any other provision of law, except  
9 Sections 39.151(j), 39.155, 39.157(a) and (e) [~~39.157(e)~~], 39.203,  
10 39.903, and 39.904, this chapter governs the transition to and the  
11 establishment of a fully competitive electric power industry for  
12 municipally owned utilities. With respect to the regulation of  
13 municipally owned utilities, this chapter controls over any other  
14 provision of this title, except for sections in which the term  
15 "municipally owned utility" is specifically used.

16 SECTION 27. Section 41.001, Utilities Code, is amended to  
17 read as follows:

18 Sec. 41.001. APPLICABLE LAW. Notwithstanding any other  
19 provision of law, except Sections 39.151(j), 39.155, 39.157(a) and  
20 (e) [~~39.157(e)~~], 39.203, 39.903, and 39.904, this chapter governs  
21 the transition to and the establishment of a fully competitive  
22 electric power industry for electric cooperatives. Regarding the  
23 regulation of electric cooperatives, this chapter shall control  
24 over any other provision of this title, except for sections in which  
25 the term "electric cooperative" is specifically used.

26 SECTION 28. Section 52.254, Utilities Code, is repealed.

27 SECTION 29. The change in law made by this Act relating to



1 qualifications and eligibility to serve as a commissioner or to be  
2 employed with the Public Utility Commission of Texas applies only  
3 to a commissioner or employee appointed or employed after the  
4 effective date of this Act. A commissioner or employee of the  
5 Public Utility Commission of Texas who is serving or employed on the  
6 effective date of this Act is governed by the law as it existed  
7 immediately before the effective date of this Act, and the former  
8 law is continued in effect for that purpose.

9 SECTION 30. An independent organization certified by the  
10 Public Utility Commission of Texas before September 1, 2005, shall  
11 modify the organization's governing body to comply with Section  
12 39.151(g), Utilities Code, as amended by this Act, not later than  
13 January 1, 2006. On or after January 1, 2006, the Public Utility  
14 Commission of Texas may decertify an independent organization whose  
15 governing body does not comply with Section 39.151(g), Utilities  
16 Code, as amended by this Act.

17 SECTION 31. The system benefit fund described by Section  
18 39.903, Utilities Code, as amended by this Act, is re-created as a  
19 separate account in the general revenue fund, and money in the  
20 account is rededicated for the purposes described by that section.

21 SECTION 32. The Public Utility Commission of Texas shall  
22 adopt rules required by Section 39.903, Utilities Code, as amended  
23 by this Act, not later than January 1, 2006.

24 SECTION 33. This Act takes effect September 1, 2005.