

By: Flores

H.B. No. 2724

A BILL TO BE ENTITLED

AN ACT

relating to regulation of electric generation capacity in the electric power market.

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

SECTION 1. Section 39.153, Utilities Code, is amended by amending Subsections (e) and (f) and adding Subsection (a-1) to read as follows:

(a-1) Not later than September 30, 2006, each electric utility subject to this section shall sell at auction or otherwise divest additional entitlements to the utility's Texas jurisdictional installed generation so that a utility does not control more than:

(1) 20 percent of installed generation capacity in ERCOT; or

(2) 20 percent of the installed generation capacity inside an ERCOT zonal boundary or a functional market recognized by the commission.

(e) The commission shall adopt rules by December 31, 2000, that define the scope of the initial capacity entitlements to be auctioned and shall adopt additional rules not later than December 31, 2005, that define the scope of the auctions necessary to comply with Subsection (a-1). Entitlements may be auctioned in blocks of less than 15 percent. The rules shall state the minimum amount of capacity that can be sold at auction as an entitlement. At a

1 minimum, the rules shall provide that the entitlements:

2 (1) may be sold and purchased in periods of not less  
3 than one month nor more than four years;

4 (2) may be resold to any lawful purchaser, except for a  
5 retail electric provider affiliated with the electric utility that  
6 originally auctioned the entitlement;

7 (3) include no possessory interest in the unit from  
8 which the power is produced;

9 (4) include no obligations of a possessory owner of an  
10 interest in the unit from which the power is produced; and

11 (5) give the purchaser the right to designate the  
12 dispatch of the entitlement, subject to planned outages, outages  
13 beyond the control of the utility operating the unit, and other  
14 considerations subject to the oversight of the applicable  
15 independent organization.

16 (f) The commission shall adopt rules by December 31, 2000,  
17 that prescribe the procedure for the auction of the entitlements as  
18 required by Subsection (a). If necessary, the commission may adopt  
19 additional rules that prescribe the procedure for the auction of  
20 the entitlements as required by Subsection (a-1). The rules shall  
21 include:

22 (1) a process for conducting the auction or auctions,  
23 including who shall conduct it, how often it shall be conducted, and  
24 how winning bidders shall be determined;

25 (2) a process for the electric utility to designate  
26 which generation units or combination of units are offered for  
27 auction;

1           (3) a provision for the utility to establish an  
2 opening bid price based on the electric utility's expected cost,  
3 with the commission prescribing the means for determining the  
4 opening bid price, which may not include return on equity; and

5           (4) a provision that allows a bidder to specify the  
6 magnitude and term of the entitlement, subject to the conditions  
7 established in Subsection (e).

8           SECTION 2. Sections 39.154(a) and (c), Utilities Code, are  
9 amended to read as follows:

10           (a) Beginning on the date of introduction of customer  
11 choice, a power generation company may not own and control more than  
12 20 percent of the installed generation capacity located in, or  
13 capable of delivering electricity to, a power region, zone, or  
14 functional market recognized by the commission in a power region.

15           (c) In determining the percentage shares of installed  
16 generation capacity under this section, the commission shall  
17 combine capacity owned and controlled by a power generation company  
18 and any entity that is affiliated with that power generation  
19 company within the power region, zone, or functional market  
20 recognized by the commission in the power region, reduced by the  
21 installed generation capacity of those facilities that are made  
22 subject to capacity auctions under Sections 39.153(a) and (d).

23           SECTION 3. Sections 39.156(b) and (g), Utilities Code, are  
24 amended to read as follows:

25           (b) An electric utility or power generation company that  
26 owns and controls [~~owning and controlling~~] more than 20 percent of  
27 the generation capacity located in, or capable of delivering

1 electricity to, a power region, zone, or functional market  
2 recognized by the commission in the power region shall file a market  
3 power mitigation plan with the commission not later than the 90th  
4 day after the date the electric utility's or power generation  
5 company's generation capacity exceeds the 20 percent limitation  
6 prescribed by this subsection [~~December 1, 2000~~].

7 (g) In reaching its determination under Subsection (f), the  
8 commission shall consider:

9 (1) the degree to which the electric utility's or power  
10 generation company's stranded costs, if any, are minimized;

11 (2) whether on disposition of the generation assets  
12 the reasonable value is likely to be received;

13 (3) the effect of the plan on the electric utility's or  
14 power generation company's federal income taxes;

15 (4) the effect of the plan on current and potential  
16 competitors in the generation market; [~~and~~]

17 (5) whether the plan is consistent with the public  
18 interest;

19 (6) the ownership of generation resources in a zone;

20 (7) the control of generation through the use of  
21 contracts between affiliated retail electric providers and  
22 independent power producers; and

23 (8) the emissions credits owned or controlled in a  
24 nonattainment area for national ambient air quality standards.

25 SECTION 4. Section 39.153(b), Utilities Code, is repealed.

26 SECTION 5. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2005.