

By: Martinez Fischer

H.B. No. 3328

A BILL TO BE ENTITLED

AN ACT

1
2 relating to oversight and accountability of independent system
3 operators.

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

5 SECTION 1. Section 39.151, Utilities Code, is amended by
6 amending subsections (b), (c), (d) and (e), and adding Subsections
7 (d-1) and (e-1), to read as follows:

8 (b) "Independent organization" means an [~~independent~~]
9 electric system operator or other person that is sufficiently
10 independent of any producer or seller of electricity that its
11 decisions will not be unduly influenced by any producer or seller.
12 ~~[An entity will be deemed to be independent if it is governed by a~~
13 ~~board that has three representatives from each segment of the~~
14 ~~electric market, with the consumer segment being represented by one~~
15 ~~residential customer, one commercial customer, and one industrial~~
16 ~~retail customer.] The commission shall make a determination by
17 December 1 of each even numbered year on the sufficiency of the
18 operator's independence.~~

19 (c) The commission shall certify an independent
20 organization or organizations to perform the functions prescribed
21 by this section. The commission may decertify an independent
22 organization or organizations in accordance with this section.

23 (d) An independent organization certified by the commission
24 for a power region shall establish and enforce procedures,

1 consistent with this title and the commission's rules, relating to
2 the reliability of the regional electrical network and accounting
3 for the production and delivery of electricity among generators and
4 all other market participants. The procedures shall be subject to
5 commission oversight and review. An independent organization
6 certified by the commission is directly accountable to the
7 commission. The commission shall have authority to oversee and
8 investigate the organization's finances, budget, operations,
9 rates, revenues and expenditures as necessary to ensure the
10 organization's accountability and to ensure that the organization
11 adequately performs the organization's functions and duties in the
12 public interest. The organization shall fully cooperate with the
13 commission in the commission's oversight and investigatory
14 functions. The commission may request assistance from the
15 comptroller of public accounts in exercising the oversight and
16 investigatory functions required by this subsection. The
17 commission may decertify an organization that does not adequately
18 perform the organization's functions or duties or does not comply
19 with this section.

20 (d-1) The organization and the commission shall make all
21 information regarding the organization's finances, budget,
22 operations, rates, revenues and expenditures available to the
23 comptroller immediately upon the comptroller's request. If the
24 comptroller should make recommendations designed to improve the
25 organization's structure, finances or accountability to electric
26 consumers served by the organization, the organization and the
27 commission shall either implement the recommendations immediately

1 or shall advise the comptroller in writing within 30 days of receipt
2 of the recommendation of the reasons such implementation is not
3 feasible or not in the public interest. This section expires
4 September 1, 2007.

5 (e) The commission may authorize an independent
6 organization that is certified under this section to charge a
7 reasonable and competitively neutral rate to wholesale buyers and
8 sellers to cover the independent organization's costs. The
9 commission shall review the organization's financial and
10 operational records, including budgets, accounts, debt
11 instruments, leases, contracts, employee and contractor records
12 and expenditures, and may require the organization to provide any
13 information necessary to effectively evaluate the organization's
14 budget and the reasonableness and neutrality of a rate or proposed
15 rate. The independent organization must file a petition or
16 application with the commission seeking to establish or change a
17 rate under this subsection. Public notice of such rate or rate
18 adjustment shall be published in the Texas Register and interested
19 parties shall have fifteen (15) days from the date of publication to
20 intervene and request a hearing. If a hearing is requested, the
21 proceeding shall be deemed a contested case and shall be heard and
22 decided in accordance with Chapter 2001, Government Code.

23 (e-1) At any time, the commission may audit the books and
24 records of an independent organization to determine if an approved
25 rate remains reasonable. If the commission finds upon audit that a
26 rate approved within the past four years produced revenue for the
27 independent organization in excess of reasonable costs, the

1 commission shall order the independent organization to provide
2 refunds of any excess amounts to its members, who shall in turn be
3 required to refund immediately such excess amounts pro rata to
4 ratepayers, consumers or customers who have been assessed the rate.
5 The commission shall require that electric utility members of the
6 independent organization who supply electricity to ratepayers,
7 consumers or customers must indicate on each bill the amount
8 charged to the ratepayer, consumer or customer and paid to the
9 independent operator. Failure to comply with this subsection may
10 result in the revocation, suspension, or amendment of a certificate
11 as provided by Section 39.356 or in the imposition of an
12 administrative penalty as provided by Section 39.357.

13 (f) In implementing this section, the commission may
14 ~~[cooperate with]~~ seek the assistance of the comptroller of public
15 accounts and the utility regulatory ~~[commission]~~ agencies of
16 another state or the federal government and may hold a joint hearing
17 or make a joint investigation with ~~that~~ those ~~[commission]~~ agencies
18 and hold such other hearings as may be necessary to ensure full
19 implementation.

20 SECTION 2. The commission shall promulgate rules to
21 implement the oversight and accountability provisions of Section 1
22 on or before December 31, 2005.

23 SECTION 3. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect on September 1, 2005.