

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas; providing a penalty.

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

SECTION 1. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 [~~2005~~].

SECTION 2. Section 12.059, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) A person who is appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 3. Section 12.102, Utilities Code, is amended to read as follows:

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the commission and the management responsibilities of the commission employees.

1 SECTION 4. Section 12.153, Utilities Code, is amended to
2 read as follows:

3 Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person
4 may not serve as a commissioner or be a commission employee who is
5 employed in a "bona fide executive, administrative, or professional
6 capacity," as that phrase is used for purposes of establishing an
7 exemption to the overtime provisions of the federal Fair Labor
8 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), [~~exempt from~~
9 ~~the state's position classification plan or is compensated at or~~
10 ~~above the amount prescribed by the General Appropriations Act for~~
11 ~~step 1, salary group 17, of the position classification salary~~
12 ~~schedule]~~ if the person is:

13 (1) an officer, employee, or paid consultant of a
14 trade association; or

15 (2) the spouse of an officer, manager, or paid
16 consultant of a trade association.

17 SECTION 5. Subchapter A, Chapter 14, Utilities Code, is
18 amended by adding Section 14.0025 to read as follows:

19 Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE
20 DISPUTE RESOLUTION. (a) The commission shall develop and
21 implement a policy to encourage the use of:

22 (1) negotiated rulemaking procedures under Chapter
23 2008, Government Code, for the adoption of commission rules; and

24 (2) appropriate alternative dispute resolution
25 procedures under Chapter 2009, Government Code, to assist in the
26 resolution of internal and external disputes under the commission's
27 jurisdiction.

1 (b) The commission's procedures relating to alternative
2 dispute resolution must conform, to the extent possible, to any
3 model guidelines issued by the State Office of Administrative
4 Hearings for the use of alternative dispute resolution by state
5 agencies.

6 (c) The commission shall designate a trained person to:

7 (1) coordinate the implementation of the policy
8 adopted under Subsection (a);

9 (2) serve as a resource for any training needed to
10 implement the procedures for negotiated rulemaking or alternative
11 dispute resolution; and

12 (3) collect data concerning the effectiveness of those
13 procedures, as implemented by the commission.

14 SECTION 6. Subchapter B, Chapter 14, Utilities Code, is
15 amended by adding Section 14.059 to read as follows:

16 Sec. 14.059. TECHNOLOGY POLICY. The commission shall
17 implement a policy requiring the commission to use appropriate
18 technological solutions to improve the commission's ability to
19 perform its functions. The policy must ensure that the public is
20 able to interact with the commission on the Internet.

21 SECTION 7. Section 15.023, Utilities Code, is amended by
22 amending Subsections (b) and (c) and adding Subsection (d) to read
23 as follows:

24 (b) The penalty for a violation may be in an amount not to
25 exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs
26 is a separate violation for purposes of imposing a penalty.

27 (c) The commission by rule shall establish a classification

1 system for violations that includes a range [~~The amount~~] of [~~an~~]
2 administrative penalties that may be assessed for each class of
3 violation [~~penalty shall be~~] based on:

- 4 (1) the seriousness of the violation, including:
5 (A) the nature, circumstances, extent, and
6 gravity of a prohibited act; and
7 (B) the hazard or potential hazard created to the
8 health, safety, or economic welfare of the public;
9 (2) the economic harm to property or the environment
10 caused by the violation;
11 (3) the history of previous violations;
12 (4) the amount necessary to deter future violations;
13 (5) efforts to correct the violation; and
14 (6) any other matter that justice may require.

15 (d) The classification system established under Subsection
16 (c) shall provide that a penalty in an amount that exceeds \$5,000
17 may be assessed only if the violation is included in the highest
18 class of violations in the classification system.

19 SECTION 8. Subsection (b), Section 15.051, Utilities Code,
20 is amended to read as follows:

21 (b) The commission shall keep for a reasonable period
22 information about each complaint filed with the commission that the
23 commission has authority to resolve. The information shall
24 include:

- 25 (1) the date the complaint is received;
26 (2) the name of the complainant;
27 (3) the subject matter of the complaint;

1 (4) a record of each person contacted in relation to
2 the complaint;

3 (5) a summary of the results of the review or
4 investigation of the complaint; and

5 (6) if the commission took no action on the complaint,
6 an explanation of the reason the complaint was closed without
7 action.

8 SECTION 9. Section 39.151, Utilities Code, is amended by
9 amending Subsections (b) through (e), (g), and (h) and adding
10 Subsections (d-1) and (g-1) to read as follows:

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

19 (c) The commission shall certify an independent
20 organization or organizations to perform the functions prescribed
21 by this section. The commission shall apply the provisions of this
22 section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid
23 conflict with a ruling of a federal regulatory body.

24 (d) The commission shall adopt and enforce rules [~~An
25 independent organization certified by the commission for a power
26 region shall establish and enforce procedures, consistent with this
27 title and the commission's rules,~~] relating to the reliability of

1 the regional electrical network and accounting for the production
2 and delivery of electricity among generators and all other market
3 participants, or may delegate to an independent organization
4 responsibilities for establishing or enforcing such rules. Any
5 such rules adopted by an independent organization and any
6 enforcement actions taken by the organization are [~~The procedures~~
7 ~~shall be~~] subject to commission oversight and review. An
8 independent organization certified by the commission is directly
9 responsible and accountable to the commission. The commission has
10 complete authority to oversee and investigate the organization's
11 finances, budget, and operations as necessary to ensure the
12 organization's accountability and to ensure that the organization
13 adequately performs the organization's functions and duties. The
14 organization shall fully cooperate with the commission in the
15 commission's oversight and investigatory functions. The
16 commission may take appropriate action against an organization that
17 does not adequately perform the organization's functions or duties
18 or does not comply with this section, including decertifying the
19 organization or assessing an administrative penalty against the
20 organization. The commission by rule shall adopt procedures
21 governing decertification of an independent organization,
22 selecting and certifying a successor organization, and
23 transferring assets to the successor organization to ensure
24 continuity of operations in the region. The commission may not
25 implement, by order or by rule, a requirement that is contrary to an
26 applicable federal law or rule.

27 (d-1) The commission may:

1 (1) require an independent organization to provide
2 reports and information relating to the independent organization's
3 performance of the functions prescribed by this section and
4 relating to the organization's revenues, expenses, and other
5 financial matters;

6 (2) prescribe a system of accounts for an independent
7 organization;

8 (3) conduct audits of an independent organization's
9 performance of the functions prescribed by this section or relating
10 to its revenues, expenses, and other financial matters and may
11 require an independent organization to conduct such an audit;

12 (4) inspect an independent organization's facilities,
13 records, and accounts during reasonable hours and after reasonable
14 notice to the independent organization;

15 (5) assess administrative penalties against an
16 independent organization that violates this title or a rule or
17 order adopted by the commission and, at the request of the
18 commission, the attorney general may apply for a court order to
19 require an independent organization to comply with commission rules
20 and orders in the manner provided by Chapter 15; and

21 (6) resolve disputes between an affected person and an
22 independent organization and adopt procedures for the efficient
23 resolution of such disputes.

24 (e) The commission may authorize an independent
25 organization that is certified under this section to charge a
26 reasonable and competitively neutral rate to wholesale buyers and
27 sellers to cover the independent organization's costs. The

1 commission shall investigate the organization's cost efficiencies,
2 salaries and benefits, and use of debt financing and may require the
3 organization to provide any information needed to effectively
4 evaluate the organization's budget and the reasonableness and
5 neutrality of a rate or proposed rate or to evaluate the
6 effectiveness or efficiency of the organization. The commission
7 shall work with the organization to establish the detail of
8 information, both current and historical, and the time frames the
9 commission needs to effectively evaluate a rate or a rate request.

10 (g) To maintain certification as an independent
11 organization under this section, an organization's [~~If it amends~~
12 ~~its governance rules to provide that its governing body is composed~~
13 ~~as prescribed by this subsection, the existing independent system~~
14 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~
15 ~~with respect to ensuring access to the transmission systems for all~~
16 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~
17 ~~the reliability of the regional electrical network. To comply with~~
18 ~~this subsection, the] governing body must be composed of persons
19 specified by this section and selected in accordance with formal
20 bylaws or protocols of the organization. The bylaws or protocols
21 must be approved by the commission and must reflect the input of the
22 commission. The bylaws must specify the process by which
23 appropriate stakeholders elect members and, for unaffiliated
24 members, prescribe professional qualifications for selection as a
25 member. The bylaws must require the use of a professional search
26 firm to identify candidates for membership of unaffiliated members.
27 The process must allow for commission input in identifying~~

1 candidates. The governing body must be composed of:

2 (1) the chairman of the commission as an ex officio
3 nonvoting member;

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

6 (3) the chief executive officer [~~director~~] of the
7 independent organization [~~system operator~~] as an ex officio voting
8 member;

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

11 (A) one representing independent generators;

12 (B) one representing investor-owned utilities;

13 (C) one representing power marketers;

14 (D) one representing retail electric providers;

15 (E) one representing municipally owned
16 utilities; and

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

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

23 (6) one member representing large commercial consumer
24 interests selected in accordance with the bylaws to serve a
25 one-year term [~~four representatives of the power sales sector as~~
26 ~~voting members~~]; and

27 (7) five members unaffiliated with any market segment

1 and selected by the other members of the governing body to serve
2 three-year terms [~~the following people as voting members, appointed~~
3 ~~by the commission.~~

4 [~~(A) one representative of residential~~
5 ~~customers,~~

6 [~~(B) one representative of commercial customers,~~
7 ~~and~~

8 [~~(C) one representative of industrial customers.~~

9 [~~The four representatives specified in each of Subdivisions~~
10 ~~(4), (5), and (6) shall be selected in a manner that ensures~~
11 ~~equitable representation for the various sectors of industry~~
12 ~~participants].~~

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

15 (h) The ERCOT independent system operator may meet the
16 criteria relating to the other functions of an independent
17 organization provided by Subsection (a) by adopting procedures and
18 acquiring resources needed to carry out those functions, consistent
19 with any rules or orders of the commission.

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

23 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN
24 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of
25 an independent organization certified under Section 39.151 and
26 meetings of a subcommittee that includes a member of the governing
27 body must be open to the public. The bylaws of the independent

1 organization and the rules of the commission may provide for the
2 governing body or subcommittee to enter into executive session
3 closed to the public to address sensitive matters such as
4 confidential personnel information, contracts, lawsuits,
5 competitively sensitive information, or other information related
6 to the security of the regional electrical network.

7 (b) The bylaws of the independent organization and rules of
8 the commission must ensure that a person interested in the
9 activities of the independent organization has an opportunity to
10 obtain at least seven days' advance notice of meetings and the
11 planned agendas of the meetings and an opportunity to comment on
12 matters under discussion at the meetings. The bylaws and
13 commission rules governing meetings of the governing body may
14 provide for a shorter period of advance notice and for meetings by
15 teleconference technology for governing body meetings to take
16 action on urgent matters. The bylaws and rules must require actions
17 taken on short notice or at teleconference meetings to be ratified
18 at the governing body's next regular meeting. The notice
19 requirements may be met by a timely electronic posting on the
20 Internet.

21 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE
22 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN
23 DECISION. (a) If a matter comes before the governing body of an
24 independent organization certified under Section 39.151 and a
25 member has a direct interest in that matter or is employed by or has
26 a substantial financial interest in a person who has a direct
27 interest in that matter, that member shall publicly disclose the

1 fact of that interest to the governing body at a public meeting of
2 the body. The member shall recuse himself or herself from the
3 governing body's deliberations and actions on the matter and may
4 not vote on the matter or otherwise participate in a governing body
5 decision on the matter.

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

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

11 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An
12 independent organization certified under Section 39.151 shall
13 contract with an entity selected by the commission to act as the
14 commission's wholesale electric market monitor to detect and
15 prevent market manipulation strategies and recommend measures to
16 enhance the efficiency of the wholesale market.

17 (b) The independent organization shall provide to the
18 personnel of the market monitor:

19 (1) full access to the organization's main operations
20 center and the organization's records that concern operations,
21 settlement, and reliability; and

22 (2) other support and cooperation the commission
23 determines is necessary for the market monitor to perform the
24 market monitor's functions.

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

1 (d) The commission is responsible for ensuring that the
2 market monitor has the resources, expertise, and authority
3 necessary to monitor the wholesale electric market effectively and
4 shall adopt rules and perform oversight of the market monitor as
5 necessary. The market monitor shall operate under the supervision
6 and oversight of the commission. The commission shall retain all
7 enforcement authority conferred under this title, and this section
8 may not be construed to confer enforcement authority on the market
9 monitor or to authorize the commission to delegate the commission's
10 enforcement authority to the market monitor. The commission by
11 rule shall define:

12 (1) the market monitor's monitoring responsibilities,
13 including reporting obligations and limitations;

14 (2) the standards for funding the market monitor,
15 including staffing requirements;

16 (3) qualifications for personnel of the market
17 monitor; and

18 (4) ethical standards for the market monitor and the
19 personnel of the market monitor.

20 (e) In adopting rules governing the standards for funding
21 the market monitor, the commission shall consult with a
22 subcommittee of the independent organization's governing body to
23 receive information on how money is or should be spent for
24 monitoring functions. Rules governing ethical standards must
25 include provisions designed to ensure that the personnel of the
26 market monitor are professionally and financially independent from
27 market participants. The commission shall develop and implement

1 policies that clearly separate the policymaking responsibilities
2 of the commission and the monitoring, analysis, and reporting
3 responsibilities of the market monitor.

4 (f) The market monitor immediately shall report directly to
5 the commission any potential market manipulations and any
6 discovered or potential violations of commission rules or rules of
7 the independent organization.

8 (g) The personnel of the market monitor may communicate with
9 commission staff on any matter without restriction.

10 (h) The market monitor annually shall submit to the
11 commission and the independent organization a report that
12 identifies market design flaws and recommends methods to correct
13 the flaws. The commission and the independent organization shall
14 review the report and evaluate whether changes to rules of the
15 commission or the independent organization should be made.

16 SECTION 11. Subsection (e), Section 39.903, Utilities Code,
17 as amended by Chapters 1394, 1451, and 1466, Acts of the 77th
18 Legislature, Regular Session, 2001, is reenacted and amended to
19 read as follows:

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

23 (1) programs to:

24 (A) assist low-income electric customers by
25 providing the 10 percent reduced rate prescribed by Subsection (h);
26 and

27 (B) provide one-time bill payment assistance to

1 electric customers who are or who have in their households one or
2 more seriously ill or disabled low-income persons and who have been
3 threatened with disconnection for nonpayment;

4 (2) customer education programs, administrative
5 expenses incurred by the commission in implementing and
6 administering this chapter, and expenses incurred by the office
7 under this chapter;

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

11 (4) the school funding loss mechanism provided by
12 Section 39.901;

13 (5) programs to assist low-income electric customers
14 by providing the 20 percent reduced rate prescribed by Subsection
15 (h); and

16 (6) reimbursement to the commission and the Health and
17 Human Services Commission [~~Texas Department of Human Services~~] for
18 expenses incurred in the implementation and administration of an
19 integrated eligibility process created under Section 17.007 for
20 customer service discounts relating to retail electric service,
21 including outreach expenses the commission determines are
22 reasonable and necessary.

23 SECTION 12. Section 39.903, Utilities Code, is amended by
24 adding Subsection (j-1) to read as follows:

25 (j-1) The commission shall adopt rules governing the bill
26 payment assistance program provided under Subsection (e)(1)(B).
27 The rules must provide that a customer is eligible to receive the

1 assistance only if the assistance is necessary to prevent the
2 disconnection of service for nonpayment of bills and the electric
3 customer is or has in the customer's household one or more seriously
4 ill or disabled low-income persons whose health or safety may be
5 injured by the disconnection. The commission may prescribe the
6 documentation necessary to demonstrate eligibility for the
7 assistance and may establish additional eligibility criteria. The
8 Health and Human Services Commission, on request of the commission,
9 shall assist in the adoption and implementation of these rules.

10 SECTION 13. (a) The Public Utility Commission of Texas
11 shall conduct a comprehensive review of the reporting requirements
12 relating to telecommunications providers that are prescribed by
13 statute or commission rules.

14 (b) In conducting the review, the Public Utility Commission
15 of Texas shall:

16 (1) solicit input and assistance from appropriate
17 affected persons, as that term is defined by Section 11.003,
18 Utilities Code; and

19 (2) consider:

20 (A) the manner in which information included in a
21 report is used;

22 (B) whether information included in a report is
23 duplicative of information included in a different report; and

24 (C) whether the requirements relating to a report
25 the commission determines is necessary can be changed to make the
26 reporting process more efficient.

27 (c) The Public Utility Commission of Texas shall conclude

1 the review required by this section not later than September 30,
2 2006, and shall report to the legislature on the results of the
3 review. The report must include:

4 (1) specific recommendations on which reports the
5 commission determines are necessary and which are not necessary;

6 (2) for a report the commission determines is
7 necessary, whether the requirements relating to the report can be
8 changed to make the reporting process more efficient; and

9 (3) the actions the commission has taken or will take
10 to amend commission rules to reflect the results of the review.

11 (d) If the Public Utility Commission of Texas determines
12 that legislation is necessary or appropriate to eliminate or change
13 reporting requirements prescribed by statute, the commission shall
14 include those recommendations in the biennial report to the
15 legislature required by Section 52.006, Utilities Code.

16 SECTION 14. Section 52.254, Utilities Code, is repealed.

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

26 SECTION 16. The change in law made by this Act to Section
27 15.023, Utilities Code, applies only to a violation committed on or

1 after the effective date of this Act. A violation committed before
2 the effective date of this Act is governed by the law in effect when
3 the violation was committed, and the former law is continued in
4 effect for that purpose.

5 SECTION 17. An independent organization certified by the
6 Public Utility Commission of Texas before September 1, 2005, shall
7 modify the organization's governing body to comply with Subsection
8 (g), Section 39.151, Utilities Code, as amended by this Act, not
9 later than September 1, 2006. On or after September 1, 2006, the
10 Public Utility Commission of Texas may decertify an independent
11 organization whose governing body does not comply with Subsection
12 (g), Section 39.151, Utilities Code, as amended by this Act.

13 SECTION 18. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 408 passed the Senate on May 3, 2005, by the following vote: Yeas 31, Nays 0; May 26, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 29, 2005, House granted request of the Senate; May 29, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 408 passed the House, with amendments, on May 23, 2005, by a non-record vote; May 29, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor