

By: Fraser

S.B. No. 743

Substitute the following for S.B. No. 743:

By: King of Parker

C.S.S.B. No. 743

A BILL TO BE ENTITLED

1

AN ACT

2 relating to independent organizations in ERCOT and their regulation
3 and certification by the Public Utility Commission of Texas;
4 providing an administrative penalty.

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

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

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

17 (c) The commission shall certify an independent
18 organization or organizations to perform the functions prescribed
19 by this section. The commission has complete authority to oversee,
20 require the commission's approval of, and order modifications of
21 any part of the finances, budget, or administration of an
22 independent organization certified under 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 responsible and accountable
7 to the commission. The organization shall fully cooperate with the
8 commission in the commission's oversight and investigatory
9 functions. The commission may decertify an organization that does
10 not adequately perform the organization's functions or duties or
11 does not comply with this section.

12 (e) The commission by rule shall require an independent
13 organization certified under this section to provide the commission
14 with sufficiently detailed information to allow the commission to
15 review and approve or disapprove the independent organization's
16 budget for cost efficiencies and for the reasonableness and
17 necessity of budget items. The rules must include a timetable for
18 an independent organization to file its budget for review under the
19 rules. The commission's budget review must include a review of
20 salaries, employee benefits, and the independent organization's
21 use of debt financing. After determining the overall
22 reasonableness and necessity of an independent organization's
23 budget, the [The] commission, in the same proceeding, may authorize
24 the [an] independent organization [that is certified under this
25 section] to charge [a reasonable and competitively neutral rate] to
26 wholesale buyers and sellers a reasonable and competitively neutral
27 rate determined by the commission to allow [cover] the independent

1 organization a reasonable opportunity to take in a reasonable and
2 necessary amount of revenue, as determined by the commission in the
3 budget review process. The independent organization may change the
4 rate established by the commission in the budget review process
5 only with the commission's approval. On the commission's own
6 initiative or on receiving a complaint, the commission may inquire
7 into the reasonableness of an independent organization's budget or
8 rate [costs].

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

22 (1) the chairman of the commission as an ex officio
23 nonvoting member;

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

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

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

3 (A) one representing independent generators;

4 (B) one representing investor-owned utilities;

5 (C) one representing power marketers;

6 (D) one representing retail electric providers;

7 (E) one representing municipally owned
8 utilities; and

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

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

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

19 (7) five members unaffiliated with any market segment
20 and selected by the other members of the governing body to serve
21 three-year terms [~~the following people as voting members, appointed~~
22 ~~by the commission~~];

23 [~~(A) one representative of residential~~
24 ~~customers,~~

25 [~~(B) one representative of commercial customers,~~
26 ~~and~~

27 [~~(C) one representative of industrial~~

1 customers].

2 ~~[The four representatives specified in each of Subdivisions~~
3 ~~(4), (5), and (6) shall be selected in a manner that ensures~~
4 ~~equitable representation for the various sectors of industry~~
5 ~~participants.]~~

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

8 (g-2) The governing body and its members are subject to
9 Chapter 551, Government Code, in the same manner as that chapter
10 applies to a governmental body and the members of a governmental
11 body, except that the requirements pertaining to executive sessions
12 of the governing body, to advance notice of meetings and planned
13 agendas of the meetings, and the opportunity to comment on matters
14 under discussion at the meetings contained in the independent
15 organization's bylaws apply in lieu of conflicting requirements of
16 that chapter.

17 (j) A retail electric provider, municipally owned utility,
18 electric cooperative, power marketer, transmission and
19 distribution utility, or power generation company, or any other
20 person who participates in a market operated by the independent
21 system operator in ERCOT, shall observe all scheduling, operating,
22 planning, reliability, and settlement policies, rules, guidelines,
23 and procedures established by the independent system operator in
24 ERCOT. A violation by any person of ~~[Failure to comply with]~~ this
25 subsection may result in the revocation, suspension, or amendment
26 of that person's ~~[a]~~ certificate or registration as provided by
27 Section 39.356 or in the imposition against that person of an

1 administrative penalty [~~as provided by Section 39.357~~]. The
2 commission may require the refunding or disgorgement of unjust
3 profits that accrue as a result of a violation of this subsection.

4 (n) Subsections (a), (b), (f), (k), (l), and (m) apply to an
5 independent organization established to serve areas located
6 outside of the ERCOT power region. Subsections (c), (d), (e), (g),
7 (h), (i), and (j) do not apply to an independent organization
8 established to serve areas located outside of the ERCOT power
9 region. The commission, however, may certify an independent
10 organization or organizations outside of ERCOT to perform the
11 functions described by Subsection (a).

12 SECTION 2. Subchapter D, Chapter 39, Utilities Code, is
13 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as
14 follows:

15 Sec. 39.1511. PUBLIC MEETINGS OF GOVERNING BODY OF
16 INDEPENDENT ORGANIZATION. (a) The bylaws of the independent
17 organization and the rules of the commission shall provide for the
18 governing body or subcommittee to enter into executive session
19 closed to the public to address sensitive matters such as
20 confidential personnel information, contracts, lawsuits,
21 competitively sensitive information, customer proprietary
22 information, or other information that by law is privileged or
23 confidential or that is related to security of the regional
24 electrical network.

25 (b) The bylaws of the independent organization and rules of
26 the commission must ensure that a person interested in the
27 activities of the independent organization has an opportunity to

1 obtain at least seven days' advance notice of meetings of the
2 governing body and the planned agendas of the meetings and an
3 opportunity to comment on matters under discussion at the meetings.

4 (c) In an emergency or if there is an urgent public
5 necessity, the notice of a meeting or the supplemental notice of a
6 subject added as an item to the agenda for a meeting for which
7 notice has been posted in accordance with Subsection (b) is
8 sufficient if the notice is posted for at least two hours before the
9 meeting is convened and if the notice or supplemental notice
10 clearly identifies the emergency or urgent public necessity. An
11 emergency or an urgent public necessity is considered to exist only
12 if immediate action is required of the governing body because of an
13 imminent threat to public health and safety or a reasonably
14 unforeseeable situation.

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

17 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE
18 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN
19 DECISION. (a) If a matter comes before the governing body of an
20 independent organization certified under Section 39.151 and a
21 member or a person that member represents has a direct interest in
22 that matter, the member shall publicly disclose the fact of that
23 interest to the governing body at a public meeting of the body. The
24 member shall recuse himself or herself from the governing body's
25 deliberations and actions on the matter and may not vote on the
26 matter or otherwise participate in a governing body decision on the
27 matter.

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

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

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

8 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An
9 independent organization certified under Section 39.151 shall
10 contract with a private person selected by the commission to act as
11 the wholesale electric market monitor and to detect and prevent
12 market power abuses, potential market power abuses, and other
13 violations of this subchapter.

14 (b) The independent organization shall provide to the
15 personnel of the market monitor:

16 (1) full access to the organization's main operations
17 center; and

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

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

23 (d) The commission is responsible for ensuring that the
24 market monitor has the resources, expertise, and access to
25 information necessary to monitor effectively the wholesale
26 electric market administered by the independent organization and
27 shall adopt rules and perform oversight of the market monitor as

1 necessary. The market monitor shall operate under the supervision
2 and oversight of the commission. The commission shall retain all
3 enforcement authority conferred under this title and this section
4 may not be construed to confer enforcement authority on the market
5 monitor or to authorize the commission to delegate the commission's
6 enforcement authority to the market monitor. The commission by
7 rule shall define:

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

9 (2) the standards for funding the market monitor,
10 including staffing requirements;

11 (3) qualifications for personnel of the market
12 monitor;

13 (4) ethical standards for the market monitor and the
14 personnel of the market monitor;

15 (5) procedures and standards for communications
16 between the market monitor and both the commission and the
17 independent organization;

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

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

23 (e) In adopting rules governing the standards for funding
24 the market monitor, the commission shall consult with a
25 subcommittee of the independent organization's governing body to
26 receive information on how money is or should be spent for
27 monitoring functions. Rules governing ethical standards must

1 include provisions designed to ensure that the personnel of the
2 market monitor are professionally and financially independent from
3 market participants and consumer market segments described by
4 Section 39.151(g). The commission shall develop and implement
5 policies that clearly separate the policy-making responsibilities
6 of the commission and the operational responsibilities of the
7 market monitor.

8 (f) The market monitor immediately shall confidentially
9 report directly to the commission and to a market participant that
10 is the subject of the report any potential market power abuses and
11 any discovered or potential violations of commission rules or rules
12 of the independent organization that involve markets administered
13 by the independent organization.

14 (g) The personnel of the market monitor may communicate with
15 any person, including the commission, in accordance with commission
16 rules and with independent organization procedures.

17 (h) The market monitor annually shall submit to the
18 commission and the independent organization a report that
19 identifies market design flaws and recommends methods to correct
20 the flaws. The commission and the independent organization shall
21 review the report and evaluate whether changes to rules of the
22 commission or the independent organization should be made. The
23 report shall be made available to the public.

24 (i) The market monitor shall comply with this title,
25 commission rules and orders, and bylaws of the independent
26 organization. The market monitor shall perform the monitor's
27 functions in a manner that ensures the confidentiality of

1 information that is customer proprietary information,
2 competitively sensitive, or otherwise confidential or privileged
3 under this title, commission rules or orders, procedures or bylaws
4 of the independent organization, or other law.

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

7 SECTION 3. An independent organization certified by the
8 Public Utility Commission of Texas before September 1, 2005, shall
9 modify the organization's governing body to comply with Section
10 39.151(g), Utilities Code, as amended by this Act, not later than
11 January 1, 2006. On or after January 1, 2006, the Public Utility
12 Commission of Texas may decertify an independent organization whose
13 governing body does not comply with Section 39.151(g), Utilities
14 Code, as amended by this Act.

15 SECTION 4. This Act takes effect September 1, 2005.