

By: Fraser

S.B. No. 743

A BILL TO BE ENTITLED

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AN ACT

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

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

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

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

(d) The commission has the general power to regulate and supervise the business of an independent organization in ERCOT and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction. The commission, by order or rule, may not implement a requirement that is contrary to an applicable federal law or rule. The commission may:

(1) require an independent organization to provide

1 reports and information relating to the independent organization's
2 performance of the functions prescribed by this section and
3 relating to its revenues, expenses, and other financial matters;

4 (2) prescribe a system of accounts for an independent
5 organization;

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

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

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

19 (6) resolve disputes between an affected person and an
20 independent organization and may adopt procedures for the efficient
21 resolution of such disputes; and

22 (7) adopt and enforce rules [~~An independent~~
23 ~~organization certified by the commission for a power region shall~~
24 ~~establish and enforce procedures, consistent with this title and~~
25 ~~the commission's rules,~~] relating to the reliability of the
26 regional electrical network and accounting for the production and
27 delivery of electricity among generators and all other market

1 participants, or may delegate to an independent organization
2 responsibilities for establishing and enforcing such rules. Any
3 such rules adopted by an independent organization and any
4 enforcement actions taken by it [~~The procedures~~] shall be subject
5 to commission oversight and review.

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

24 (1) the chairman of the commission as an ex officio
25 nonvoting member;

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

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

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

5 (A) one representing independent generators;

6 (B) one representing investor-owned utilities;

7 (C) one representing power marketers;

8 (D) one representing retail electric providers;

9 (E) one representing municipally owned
10 utilities; and

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

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

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

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

25 [~~(A) one representative of residential~~
26 ~~customers,~~

27 [~~(B) one representative of commercial customers,~~

1 and

2 ~~[(C) one representative of industrial~~
3 ~~customers].~~

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

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

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

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

18 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN
19 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of
20 the independent organization certified under Section 39.151 and
21 meetings of a subcommittee of the governing body must be open to the
22 public. The bylaws of the independent organization and the rules of
23 the commission may provide for the governing body or subcommittee
24 to enter into executive session closed to the public to address
25 sensitive matters such as confidential personnel information,
26 contracts, lawsuits, competitively sensitive information, or other
27 information related to the security of the regional electrical

1 network.

2 (b) The bylaws of the independent organization and rules of
3 the commission must ensure that a person interested in the
4 activities of the independent organization has an opportunity to
5 obtain at least seven days' advance notice of meetings and the
6 planned agendas of the meetings and an opportunity to comment on
7 matters under discussion at the meetings.

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

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

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

24 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An
25 independent organization certified under Section 39.151 shall
26 contract with a private person selected by the commission to act as
27 the state's wholesale electric market monitor and to detect and

1 prevent market manipulation strategies.

2 (b) The independent organization shall provide to the
3 personnel of the market monitor:

4 (1) full access to the organization's main operations
5 center; and

6 (2) other support and cooperation the commission
7 determines is necessary for the market monitor to perform the
8 market monitor's functions.

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

12 (d) The commission is responsible for ensuring that the
13 market monitor has the resources, expertise, and authority
14 necessary to monitor the wholesale electric market effectively and
15 shall adopt rules and perform oversight of the market monitor as
16 necessary. The commission by rule shall define:

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

18 (2) the standards for funding the market monitor,
19 including staffing requirements;

20 (3) qualifications for personnel of the market
21 monitor; and

22 (4) ethical standards for the market monitor and the
23 personnel of the market monitor.

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

1 monitoring functions. Rules governing ethical standards must
2 include provisions designed to ensure that the personnel of the
3 market monitor are professionally and financially independent from
4 market participants. The commission shall develop and implement
5 policies that clearly separate the policymaking responsibilities
6 of the commission and the operational responsibilities of the
7 market monitor.

8 (f) The market monitor shall immediately report directly to
9 the commission any potential market manipulations and any
10 discovered or potential violations of commission rules or rules of
11 the independent organization.

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

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

20 SECTION 3. An independent organization certified by the
21 Public Utility Commission of Texas before September 1, 2005, shall
22 modify the organization's governing body to comply with Subsection
23 (g), Section 39.151, Utilities Code, as amended by this Act, not
24 later than September 1, 2006. On or after September 1, 2006, the
25 Public Utility Commission of Texas may decertify an independent
26 organization whose governing body does not comply with Subsection
27 (g), Section 39.151, Utilities Code, as amended by this Act.

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