

Amend CSSB 483 (House Committee Report) as follows:

(1) In SECTION 1 of the bill, added Section 39.152(a-1)(2), Utilities Code (page 2, line 4), strike "the commission has approved the agreement" and substitute "the person has submitted the agreement under Subdivision (1) to the commission for approval and the agreement is approved as the person's market power mitigation plan in accordance with Section 39.156(f) or (f-4)".

(2) In SECTION 2 of the bill, added Section 39.153(a-2)(2), Utilities Code (page 3, line 1), strike "the commission has approved the agreement" and substitute "the utility or company has submitted the agreement under Subdivision (1) to the commission for approval and the agreement is approved as the utility's or company's market power mitigation plan in accordance with Section 39.156(f) or (f-4)".

(3) In the recital to SECTION 3 of the bill (page 4, line 19), strike "(a) and (c)" and substitute "(a), (c), and (e)".

(4) In SECTION 3 of the bill, added Section 39.154(a-1)(2), Utilities Code (page 5, line 4), strike "the commission has approved the agreement" and substitute "the power generation company has submitted the agreement under Subdivision (1) to the commission for approval and the agreement is approved as the company's market power mitigation plan in accordance with Section 39.156(f) or (f-4)".

(5) In SECTION 3 of the bill, in amended Section 39.154, Utilities Code (page 5, between lines 12 and 13), insert the following:

(e) In determining the percentage shares of installed generation capacity owned, controlled, or owned and controlled in any combination by a power generation company under this section and Section 39.156, the commission shall, for purposes of calculating the numerator, reduce the installed generation capacity owned, controlled, or owned and controlled in any combination by that power generation company by the installed generation capacity from wind generation renewable energy technologies built or acquired by ~~[of any "grandfathered facility" within an ozone nonattainment area as of September 1, 1999, for which]~~ that power generation company after January 1, 2006 ~~[has~~

~~commenced complying or made a binding commitment to comply with Section 39.264. This subsection applies only to a power generation company that is affiliated with an electric utility that owned and controlled more than 27 percent of the installed generation capacity in the power region on January 1, 1999].~~

(6) In SECTION 5 of the bill (page 6, lines 2 and 3), strike "Sections 39.156(a), (b), (f), and (g), Utilities Code, are amended" and substitute "Section 39.156, Utilities Code, is amended by amending Subsections (a), (b), (f), and (g) and adding Subsections (f-1), (f-2), (f-3), and (f-4)".

(7) In SECTION 5 of the bill, strike added Section 39.156(a)(2), Utilities Code (page 6, lines 10 and 11), and substitute the following:

(2) an agreement with the wholesale electric market monitor to mitigate the potential for market power abuse.

(8) In SECTION 5 of the bill, in amended Section 39.156(b), Utilities Code (page 6, lines 16 and 17), strike "utility's or company's" and substitute "utility or company knew or should have known that its".

(9) In SECTION 5 of the bill, in amended Section 39.156(b)(1), Utilities Code (page 6, line 19), between "mitigation plan" and "with the", insert "described by Subsection (a)(1)".

(10) In SECTION 5 of the bill, in amended Section 39.156(b)(2), Utilities Code (page 6, lines 22 and 23), strike "enter into an agreement to mitigate the potential for market power abuse with the wholesale electric power monitor" and substitute "file a market power mitigation plan described by Subsection (a)(2) with the commission".

(11) In SECTION 5 of the bill, strike amended Section 39.156(f), Utilities Code (page 6, line 26 through page 7, line 5), and substitute the following:

(f) The commission shall approve~~[, modify,]~~ or reject a plan within 90 ~~[180]~~ days after the date ~~[of]~~ a utility or company files a plan ~~[filing]~~ under Subsection (b)(1) or (2) ~~[(b)]~~.

(f-1) In determining whether to approve or reject a plan under Subsection (f), the commission shall give substantial deference to a plan described by Subsection (a)(2), and may reject

that plan only if the commission finds by clear and convincing evidence that the plan does not reduce the utility's or company's ability to influence prices.

(f-2) If the commission rejects a plan under Subsection (f), the commission shall issue an order that includes specific findings identifying all changes to the plan that would be required for commission approval, provided that the [The] commission may not [modify a plan to] require divestiture or auction of generation capacity by the electric utility or the power generation company if the divestiture or auction was not included in the plan filed by the utility or company.

(f-3) An electric utility or power generation company does not violate this chapter if the utility or company operates in accordance with a plan described by Subsection (a)(2) that is subsequently rejected by the commission if the utility or company ceases to operate in accordance with the plan not later than the 45th day after the date the commission issues an order rejecting the plan.

(f-4) If the commission does not approve or reject a plan within 90 days after the date the plan is filed with the commission, the plan is considered to be approved.

(12) In SECTION 6 of the bill, in amended Section 39.157(a), Utilities Code (page 8, line 8), between "disgorgement of" and "revenues received" insert "excess".

(13) In SECTION 6 of the bill, in amended Section 39.157(a), Utilities Code (page 8, line 10), between "capacity" and ", by imposing" insert "if the person does not agree to a market power mitigation plan under Section 39.156(b)".

(14) In SECTION 6 of the bill, in added Section 39.157(j), Utilities Code (page 14, line 6), between "competitive affiliate" and "may not" insert "and a utility".

(15) In SECTION 6 of the bill, in added Section 39.157(j), Utilities Code (page 14, line 7), strike "utility's corporate" and substitute "same".

(16) In SECTION 6 of the bill, in added Section 39.157(j), Utilities Code (page 14, line 8), strike "utility's corporate" and substitute "same".

(17) On page 16, lines 16 and 17, strike all of SECTION 9 and substitute "SECTION 9. Section 39.153(b), Utilities Code, is repealed."

(18) Add the following appropriately numbered SECTIONS to read as follows:

SECTION \_\_\_\_\_. Chapter 31, Utilities Code, is amended by adding Section 31.006 to read as follows:

Sec. 31.006. ELECTRIC ENERGY AND ENVIRONMENTAL IMPACT TASK FORCE. (a) In this section, "task force" means the electric energy and environmental impact task force.

(b) The task force shall meet quarterly to:

(1) study the state's long-term demand for electric generation capacity and the infrastructure and technology available and necessary for meeting that demand;

(2) study the environmental effects of existing and proposed electric generating facilities;

(3) inventory all existing electric generating facilities operating in this state; and

(4) review changes to state statutes, administrative rules and regulations, judicial decisions, and executive branch policies regarding electric energy generation.

(c) The task force is composed of:

(1) a member of the commission appointed by the chairman of the commission;

(2) a member of the Texas Commission on Environmental Quality appointed by the chairman of the Texas Commission on Environmental Quality; and

(3) the president and chief executive officer of ERCOT.

(d) The members of the task force shall elect a presiding officer from among the members and shall adopt rules governing the operation of the task force.

(e) All meetings of the task force shall be conducted in accordance with Chapter 551, Government Code.

SECTION \_\_\_\_\_. Not later than October 1, 2007, the electric energy and environmental impact task force established under Section 31.006, Utilities Code, as added by this Act, shall conduct

an organizational meeting.

SECTION \_\_\_\_\_. Section 37.057, Utilities Code, is amended to read as follows:

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. (a) Except as provided by Section 37.0575, the [The] commission must approve or deny an application for a certificate for a new transmission facility not later than the first anniversary of the date the application is filed. If the commission does not approve or deny the application on or before that date, a party may seek a writ of mandamus in a district court of Travis County to compel the commission to decide on the application.

SECTION \_\_\_\_\_. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0575 to read as follows:

Sec. 37.0575. FACILITIES THAT ARE CRITICAL FOR RESOURCE ADEQUACY. (a) The commission may designate certain transmission facility projects as projects critical for resource adequacy if the project seeks to connect to ERCOT electric generation facilities in this state that were in operation on January 1, 2007. In determining whether the commission should designate a project as a project critical for resource adequacy, the commission shall consider:

(1) the estimates of future electric reserve margins published by the ERCOT independent system operator;

(2) the amount of electricity the proposed project could potentially add to the reserve margins in ERCOT; and

(3) how quickly the proposed transmission facility project can be constructed to add that electricity to the ERCOT market.

(b) The commission must approve or deny an application for a certificate of convenience and necessity for a transmission facility project the commission designates as a project critical for resource adequacy not later than the 180th day after the date a complete application is filed unless good cause is shown for extending that deadline. If the commission does not approve or deny the application on or before that date, a party may seek a writ of mandamus in a district court of Travis County to compel the commission to decide on the application.

(c) This section expires September 1, 2009.

SECTION \_\_\_\_\_. (a) The legislature finds that:

(1) the "filed rate" doctrine is at odds with the intent of the state legislature to restructure the electric industry in this state;

(2) the "filed rate" doctrine in a private right of action for a violation of Section 39.157, Utilities Code, or of Sections 15.01 through 15.26, Business & Commerce Code, is abolished; and

(3) the deregulated wholesale and retail markets in ERCOT are the relevant markets for the purposes of determining standing to sue and the existence of market power abuses under Section 39.157, Utilities Code.

(b) Section 39.157, Utilities Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) To prevent market power abuses or other violations of this section, the [~~The~~] commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power abuses or other violations of this section are occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15, by imposing an administrative penalty as authorized by Chapter 15, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356. Section 15.024(c) does not apply to an administrative penalty imposed under this section. For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. A

violation of the code of conduct provided by Subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this sentence shall not affect the application of state and federal antitrust laws.

(a-1) Notwithstanding any other law, a qualifying person may pursue a private right of action under Section 39.158(b) or under Sections 15.01 through 15.26, Business & Commerce Code, based on a violation of this section, for damages or for injunctive relief, against a power generation company, a power marketer, a retail electric provider, or any other supplier of wholesale or retail electricity, other than a transmission and distribution utility, operating in ERCOT. A qualifying person is not required to bring an administrative action before pursuing a private right of action. In this subsection, "qualifying person" means a retail electric provider that meets the requirements for standing to sue for market power abuses under Sections 15.01 through 15.26, Business & Commerce Code.

(19) Renumber SECTIONS of the bill accordingly.