

Amend Amendment No. 1 by P. King to **CSSB 483** (house committee printing) by striking the text of the amendment after page 1, line 2, and substituting the following:

(1) Add the following appropriately numbered items to read as follows:

(___) In the recital to SECTION 1 of the bill (page 1, line 6), strike "adding Subsection (a-1)" and substitute "adding Subsections (a-1) and (a-2)".

(___) In Section 39.152(a)(2), Utilities Code, as amended by SECTION 1 of the bill (page 1, line 15), strike "and" and substitute "[~~and~~]".

(___) In Section 39.152(a)(3), Utilities Code, as amended by SECTION 1 of the bill (page 1, line 19), strike the period and substitute the following:

; and

(4) no person owns, controls, or owns and controls in any combination more than 40 percent of the installed generation capacity located in an ERCOT zone as provided by Subsection (a-2) and as determined according to Section 39.154(a)(2).

(___) In Section 39.152, Utilities Code, as amended by SECTION 1 of the bill (page 2, between lines 4 and 5), insert the following:

(a-2) For purposes of Subsection (a)(4), the ERCOT zones are the congestion zones determined by the ERCOT independent organization and in effect as of January 1, 2007. This zonal restriction expires on the later of the first anniversary of the date of the implementation of the ERCOT nodal market or December 31, 2009. In determining the percentage of installed generation capacity owned or controlled by a person under Subsection (a)(4), the commission shall, for purposes of calculating the numerator and notwithstanding any other provision of this chapter, exclude capacity:

(1) from a generating facility that uses nuclear energy to generate electricity for sale and that is constructed after January 1, 2007;

(2) from a coal-fired generating facility that uses integrated gasification combined cycle technology or undiluted

high-flame temperature oxygen combustion technology that excludes air; or

(3) from a generating facility that uses a renewable energy technology, as that term is defined by Section 39.904(d), and that is not dispatchable;

(4) from a generating facility owned by a municipally owned utility or electric cooperative, provided that if the facility is owned only partly by the municipally owned utility or electric cooperative, the commission shall exclude only the proportion of that capacity that is equal to the proportion the municipality's or electric cooperative's ownership bears to the total ownership;

(5) in an amount equivalent to the sum of firm bilateral energy or capacity sales for delivery in the relevant ERCOT zone that are not indexed to real time energy clearing prices and that are for a term of, or consecutive or overlapping terms adding up to, 12 months or longer by the power generation company or through its marketing affiliate to unaffiliated third parties as reduced by firm bilateral energy or capacity purchases for delivery in the same ERCOT zone that are not indexed to real time energy clearing prices for a term of, or consecutive or overlapping terms adding up to, 12 months or longer, provided that the power generation company and marketing affiliate shall certify to the commission each month the amounts excluded under this subdivision; and

(6) from generating facilities that were mothballed as of January 1, 2007, and remain mothballed.

(___) In Section 39.152(a-1), Utilities Code, as added by SECTION 1 of the bill (page 1, lines 20-24), strike "Notwithstanding Subsection (a)(3), the commission may certify a power region in which a person owns, controls, or owns and controls in any combination more than 20 percent of the installed generation capacity located in or capable of delivering electricity to the power region" and substitute "Notwithstanding Subsections (a)(3) and (4), the commission may certify a power region in which a person owns, controls, or owns and controls in any combination more than 20 percent of the total installed generation capacity located in or

capable of delivering electricity to the power region".

(2) On page 1 of the amendment, strike lines 15 and 16 and substitute the following:

(3) In the recital to SECTION 3 of the bill (page 4, line 19), strike "Subsections (a) and (c) and adding Subsection (a-1)" and substitute "Subsections (a), (c), and (e), and adding Subsections (a-1) and (a-2)".

(3) Add the following appropriately numbered items and renumber subsequent items accordingly:

(___) In Section 39.154(a), Utilities Code, as amended by SECTION 3 of the bill (page 4, lines 23-25), strike "control in any combination more than 20 percent of the installed generation capacity located in, or capable of delivering electricity to, a power region." and substitute:

control in any combination more than:

(1) 20 percent of the installed generation capacity located in, or capable of delivering electricity to, a power region; or

(2) 40 percent of the installed generation capacity located in an ERCOT zone as provided by Subsection (a-2).

(___) In Section 39.154, Utilities Code, as amended by SECTION 3 of the bill (page 5, between lines 4 and 5), insert the following:

(a-2) For purposes of Subsection (a)(2), the ERCOT zones are the congestion zones determined by the ERCOT independent organization and in effect as of January 1, 2007. This zonal restriction expires on the later of the first anniversary of the date of the implementation of the ERCOT nodal market or December 31, 2009. In determining the percentage of total installed generation capacity owned or controlled by a power generation company under Subsection (a)(2), the commission shall, for purposes of calculating the numerator and notwithstanding any other provision of this chapter, exclude capacity:

(1) from a generating facility that uses nuclear energy to generate electricity for sale and that is constructed after January 1, 2007;

(2) from a coal-fired generating facility that uses

integrated gasification combined cycle technology;

(3) from a generating facility that uses a renewable energy technology, as that term is defined by Section 39.904(d), and that is not dispatchable;

(4) from a generating facility owned by a municipally owned utility or electric cooperative, provided that if the facility is owned only partly by the municipally owned utility or electric cooperative, the commission shall exclude only the proportion of that capacity that is equal to the proportion the municipality's or electric cooperative's ownership bears to the total ownership;

(5) in an amount equivalent to the sum of firm bilateral energy or capacity sales for delivery in the relevant ERCOT zone that are not indexed to real time energy clearing prices and that are for a term of, or consecutive or overlapping terms adding up to, 12 months or longer by the power generation company or through its marketing affiliate to unaffiliated third parties as reduced by firm bilateral energy or capacity purchases for delivery in the same ERCOT zone that are not indexed to real time energy clearing prices for a term of, or consecutive or overlapping terms adding up to, 12 months or longer, provided that the power generation company and marketing affiliate shall certify to the commission each month the amounts excluded under this subdivision; and

(6) from generating facilities that were mothballed as of January 1, 2007, and remain mothballed.

(___) In Section 39.154(c), Utilities Code, as amended by SECTION 3 of the bill (page 5, line 9), between "power region" and ", reduced", insert "or the ERCOT zone".

(4) On page 2, line 18 of the amendment, between "Subsections" and "(f-1)", insert "(b-1),".

(5) On page 3 of the amendment, strike lines 2-5 and substitute the following:

"enter into an agreement to mitigate the potential for market power abuse with the wholesale electric market monitor" and substitute "file a market power mitigation plan described by Subsection (a)(2) with the commission, which shall apply to generation capacity

offered into any market operated by the independent organization and must be designed to provide recovery for incremental costs, including operational and start-up costs, provided that this subsection does not restrict a person subject to a mitigation plan from receiving the market clearing price for services offered in any market operated by the independent organization,".

(6) Add the following appropriately numbered item to read as follows and renumber subsequent items accordingly:

(___) In Section 39.156, Utilities Code, as amended by SECTION 5 of the bill (page 6, between lines 25 and 26), insert the following:

(b-1) An electric utility or power generation company that owns, controls, or owns and controls in any combination more than 40 percent of the total installed generation capacity located in an ERCOT zone, as defined by Section 39.154(a)(2), not later than the 90th day after the date the utility or company knew or should have known that its generation capacity exceeds the 40 percent limitation prescribed by this subsection, shall file a market power mitigation plan described by Subsection (b)(2). Subsections (f), (f-1), (f-2), (f-3), and (f-4) apply to the filing. The commission may not require divestiture or auction of installed generation capacity described by this subsection or take any action under this section that prohibits an electric utility or power generation company from constructing additional generating facilities. For purposes of this subsection, the ERCOT zones are the congestion zones determined by the ERCOT independent organization and in effect as of January 1, 2007. This zonal restriction expires on the later of the first anniversary of the date of the implementation of the ERCOT nodal market or December 31, 2009. In determining the percentage of total installed generation capacity owned or controlled by a power generation company under this subsection, the commission shall, for purposes of calculating the numerator and notwithstanding any other provision of this chapter, exclude capacity:

(1) from a generating facility that uses nuclear energy to generate electricity for sale and that is constructed after January 1, 2007;

(2) from a coal-fired generating facility that uses integrated gasification combined cycle technology;

(3) from a generating facility that uses a renewable energy technology, as that term is defined by Section 39.904(d), and that is not dispatchable;

(4) from a generating facility owned by a municipally owned utility or electric cooperative, provided that if the facility is owned only partly by the municipally owned utility or electric cooperative, the commission shall exclude only the proportion of that capacity that is equal to the proportion the municipality's or electric cooperative's ownership bears to the total ownership;

(5) in an amount equivalent to the sum of firm bilateral energy or capacity sales for delivery in the relevant ERCOT zone that are not indexed to real time energy clearing prices and that are for a term of, or consecutive or overlapping terms adding up to, 12 months or longer by the power generation company or through its marketing affiliate to unaffiliated third parties as reduced by firm bilateral energy or capacity purchases for delivery in the same ERCOT zone that are not indexed to real time energy clearing prices for a term of, or consecutive or overlapping terms adding up to, 12 months or longer, provided that the power generation company and marketing affiliate shall certify to the commission each month the amounts excluded under this subdivision; and

(6) from generating facilities that were mothballed as of January 1, 2007, and remain mothballed.