

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 483  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the statute regarding generation market share limit provides that a power generation company is prohibited from owning and controlling more than 20 percent of the installed generation capacity within Electric Reliability Council of Texas (ERCOT). A company that owns a large share of the generation capacity in a market may be able to exercise market power and, particularly with transmission congestion, exercise market power within a zone smaller than the entire ERCOT market.

C.S.S.B. 483 prohibits a utility from owning or controlling more than 20 percent of the generation capacity in ERCOT or more than 25 percent of a zonal boundary of ERCOT or a functional market recognized by the commission and requires a utility to sell at auction or otherwise divest additional entitlements to meet this cap. Furthermore, this bill requires the refund of any revenues received as a result of market power abuses. Finally, this bill prohibits a utility from implying that reliability may be impacted based on a customer's choice of provider and provides that after January 1, 2008, a competitive affiliate may not use a utility's corporate name, trademark, brand, or logo.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 2 (Section 39.153, Utilities Code) and SECTION 6 (Section 39.157, Utilities Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 39.152(a) and (d), Utilities Code, as follows: (a) Requires the Public Utility Commission of Texas (PUC) to certify a power region if, among other certain requirements, no person owns or controls, or any combination thereof, rather than owns and controls, more than 20 percent of the installed generation capacity located in or capable of delivering electricity to a power region, as determined by Section 39.154 (Limitation of Ownership of Installed Capacity).

(d) Makes conforming changes.

SECTION 2. Amends Section 39.153, Utilities Code, by adding Subsection (a-1) and amending Subsections (e) and (f), as follows:

(a-1) Requires each electric utility subject to this section to sell at auction or otherwise divest additional entitlements, not later than September 30, 2008, to the utility's Texas jurisdictional installed generation capacity so that a utility does not control more than 20 percent of installed generation capacity in ERCOT, or 25 percent of the installed generation capacity inside an ERCOT zonal boundary or a functional market recognized by PUC.

(e) Requires PUC to adopt additional rules not later than December 31, 2007, that define the scope of the auctions necessary to comply with Subsection (a-1). Makes a conforming change.

(f) Authorizes PUC to adopt additional rules that prescribe the procedure for the auction of the entitlements as required by Subsection (a-1), if necessary.

SECTION 3. Amends Sections 39.154, Utilities Code, by amending Subsections (a) and (c) and adding Subsection (f), as follows:

(a) Prohibits a power generation company from owning or controlling, or any combination thereof, rather than owning and controlling, more than 20 percent of the installed generation capacity located in, or capable of delivering electricity to a power region, zone, or functional market recognized by PUC in the power region.

(c) Makes conforming changes.

(f) Prohibits PUC from including any capacity generated from integrated gasification combined cycle or other similar clean coal technologies in determining the percentage market shares of installed generation capacity owned or controlled by a power generation company under this section and Section 39.156.

SECTION 4. Amends Section 39.155(a), Utilities Code, by including that each person, municipally owned utility, electric cooperative, and river authority that controls generation facilities and offers electricity for sale in this state is required to report certain information to PUC.

SECTION 5. Amends Sections 39.156(a), (b), and (g), Utilities Code, as follows:

(a) Redefines "market power mitigation plan" and "plan."

(b) Requires an electric utility or power generation company owning or controlling, or any combination thereof, rather than owning and controlling, more than 20 percent of the generation capacity located in, or capable of delivering electricity to a power region, zone, or functional market recognized by PUC in the power region to file a market power mitigation plan with PUC by the 90th day after the date the electric utility's or power generation company's generation capacity exceeds the 20 percent limitation prescribed by this subsection, rather than by December 1, 2000.

(g) Includes certain additional criteria that PUC is required to consider in reaching its determination under Subsection (f) (regarding approving, modifying or rejecting a market power mitigation plan).

SECTION 6. Amends Section 39.157, Utilities Code, by amending Subsections (a), (b), and (d) and adding Subsection (j), as follows:

(a) Includes requiring refunds or disgorgement of revenues received as a result of market power abuses as a method by which PUC institutes, as required, reasonable mitigation of the market power upon finding that market power abuses or other violations of this section are occurring.

(b) Includes that a person who controls generation facilities is prohibited from owning transmission or distribution facilities in this state, beginning on the date of introduction of customer choice, except under certain exceptions. Makes a conforming change.

(d) Includes that PUC must adopt a rule that ensures a utility providing electric transmission or distribution services does not act in a manner that in any way suggests or implies that reliability of electric service, or restoration of service to a customer following an outage, is dependent upon a customer receiving service from a competitive affiliate of a utility. Amends that PUC must adopt a rule that ensures a utility does not conduct joint advertising or promotional activities with a competitive affiliate by deleting the condition that this must be done in a manner that favors the competitive affiliate. Requires PUC to adopt a rule that ensures a utility does not temporarily assign, for less than three years, rather than one year, employees engaged in transmission or distribution system operations to a competitive affiliate, and deletes an exception.

(j) Prohibits a competitive affiliate, after January 1, 2008, from using the utility's corporate name, trademark, brand, or logo or any portion of these if PUC determines that such use may be misleading to customers.

SECTION 7. Amends Section 39.158(a), Utilities Code, by requiring a person who owns or controls, rather than an owner of, electric generation facilities that offers electricity for sale in the state and proposes to merge, consolidate, or otherwise become affiliated with another person who owns or controls, rather than only an owner of, electric generation facilities that offer electricity for sale in this state to obtain the approval of PUC before closing if the electricity offered for sale exceeds one percent of the total electricity for sale in the power region.

SECTION 8. Amends Section 39.407(a), Utilities Code, by revising that PUC, except as otherwise provided by this subsection, is required to certify that the requirements of Section 39.152(a) (3) (regarding qualifying power regions) are met for electric utilities subject to this subchapter if the total capacity owned or controlled, or any combination thereof, rather than owned and controlled, by each such utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the constrained geographic region served by each such utility plus the total available transmission capacity capable of delivering firm power and energy to that constrained geographic region. Modifies PUC's authorization to certify that the requirements of Section 39.152(a) (3) are met for electric utilities subject to this subchapter if PUC finds that the total capacity owned or controlled, or any combination thereof, rather than owned and controlled, by each such utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the power region and another condition is met.

SECTION 9. Amends Section 39.453(b), Utilities Code, by modifying the requirement that PUC certify that the requirement of Section 39.152(a) (3) is met for an electric utility subject to this subchapter only if PUC finds that the total capacity owned or controlled, or any combination thereof, rather than owned and controlled, by the electric utility and the utility's affiliates does not exceed 20 percent of the total installed generation capacity within the power region of that utility.

SECTION 10. Repealer: Section 39.153(b) and Section 39.154(e) (regarding auctioning the capacity entitlements of electric utilities), Utilities Code.

SECTION 11. Effective date: upon passage or September 1, 2007.