

By: Burnam

H.B. No. 491

A BILL TO BE ENTITLED

AN ACT

relating to regulation of electric generation capacity in the electric power market.

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

SECTION 1. Section 39.153, Utilities Code, is amended by amending Subsections (d), (e), and (f) and adding Subsection (a-1) to read as follows:

(a-1) Each electric utility subject to this section shall sell at auction or otherwise divest additional entitlements to the utility's Texas jurisdictional installed generation so that a utility does not own or control more than:

(1) 50 percent of installed generation capacity in ERCOT or 50 percent of the installed generation capacity inside an ERCOT zonal boundary or a functional market recognized by the commission by September 1, 2008;

(2) 40 percent of installed generation capacity in ERCOT or 40 percent of the installed generation capacity inside an ERCOT zonal boundary or a functional market recognized by the commission by September 1, 2009;

(3) 30 percent of installed generation capacity in ERCOT or 30 percent of the installed generation capacity inside an ERCOT zonal boundary or a functional market recognized by the commission by September 1, 2010; or

(4) 20 percent of installed generation capacity in

1 ERCOT or 20 percent of the installed generation capacity inside an
2 ERCOT zonal boundary or a functional market recognized by the
3 commission by September 1, 2011.

4 (d) An electric utility may choose to auction additional
5 entitlements [~~beyond those required by Subsection (a) or continue~~
6 ~~to auction entitlements after the period required by Subsection~~
7 ~~(b)] in order to comply with Section 39.154.~~

8 (e) The commission shall adopt rules by December 31, 2000,
9 that define the scope of the initial capacity entitlements to be
10 auctioned and shall adopt additional rules not later than December
11 31, 2007, that define the scope of the auctions necessary to comply
12 with Subsection (a-1). Entitlements may be auctioned in blocks of
13 less than 15 percent. The rules shall state the minimum amount of
14 capacity that can be sold at auction as an entitlement. At a
15 minimum, the rules shall provide that the entitlements:

16 (1) may be sold and purchased in periods of not less
17 than one month nor more than four years;

18 (2) may be resold to any lawful purchaser, except for a
19 retail electric provider affiliated with the electric utility that
20 originally auctioned the entitlement;

21 (3) include no possessory interest in the unit from
22 which the power is produced;

23 (4) include no obligations of a possessory owner of an
24 interest in the unit from which the power is produced; and

25 (5) give the purchaser the right to designate the
26 dispatch of the entitlement, subject to planned outages, outages
27 beyond the control of the utility operating the unit, and other

1 considerations subject to the oversight of the applicable
2 independent organization.

3 (f) The commission shall adopt rules by December 31, 2000,
4 that prescribe the procedure for the auction of the entitlements as
5 required by Subsection (a). If necessary, the commission shall
6 adopt additional rules that prescribe the procedure for the auction
7 of the entitlements as required by Subsection (a-1). The rules
8 shall include:

9 (1) a process for conducting the auction or auctions,
10 including who shall conduct it, how often it shall be conducted, and
11 how winning bidders shall be determined;

12 (2) a process for the electric utility to designate
13 which generation units or combination of units are offered for
14 auction;

15 (3) a provision for the utility to establish an
16 opening bid price based on the electric utility's expected cost,
17 with the commission prescribing the means for determining the
18 opening bid price, which may not include return on equity; and

19 (4) a provision that allows a bidder to specify the
20 magnitude and term of the entitlement, subject to the conditions
21 established in Subsection (e).

22 SECTION 2. Sections 39.154(a) and (c), Utilities Code, are
23 amended to read as follows:

24 (a) A [~~Beginning on the date of introduction of customer~~
25 ~~choice, a~~] power generation company may not own and control more
26 than the percentage [~~20 percent~~] of the installed generation
27 capacity located in, or capable of delivering electricity to, a

1 power region, zone, or functional market recognized by the
2 commission in a power region to which the company is limited
3 following auctions required by Section 59.153(a-1).

4 (c) In determining the percentage shares of installed
5 generation capacity under this section, the commission shall
6 combine capacity owned and controlled by a power generation company
7 and any entity that is affiliated with that power generation
8 company within the power region, zone, or functional market
9 recognized by the commission in the power region, reduced by the
10 installed generation capacity of those facilities that are made
11 subject to capacity auctions under Section [~~Sections~~] 39.153 [~~(a)~~
12 ~~and (d)~~].

13 SECTION 3. Sections 39.156(b) and (g), Utilities Code, are
14 amended to read as follows:

15 (b) An electric utility or power generation company that
16 owns and controls [~~owning and controlling~~] more than the percentage
17 [~~20 percent~~] of the generation capacity located in, or capable of
18 delivering electricity to, a power region, zone, or functional
19 market recognized by the commission in the power region to which the
20 company is limited following auctions required by Section
21 39.153(a-1) shall file a market power mitigation plan with the
22 commission not later than the 90th day after the date the electric
23 utility's or power generation company's generation capacity exceeds
24 the limitation prescribed by this subsection [~~December 1, 2000~~].

25 (g) In reaching its determination under Subsection (f), the
26 commission shall consider:

27 (1) the degree to which the electric utility's or power

1 generation company's stranded costs, if any, are minimized;

2 (2) whether on disposition of the generation assets
3 the reasonable value is likely to be received;

4 (3) the effect of the plan on the electric utility's or
5 power generation company's federal income taxes;

6 (4) the effect of the plan on current and potential
7 competitors in the generation market; ~~and~~

8 (5) whether the plan is consistent with the public
9 interest;

10 (6) the ownership of generation resources in a zone;

11 (7) the control of generation through the use of
12 contracts between affiliated retail electric providers and
13 independent power producers; and

14 (8) the emissions credits owned or controlled in a
15 nonattainment area for national ambient air quality standards.

16 SECTION 4. Section 39.153(b), Utilities Code, is repealed.

17 SECTION 5. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2007.