

AN ACT

relating to regulation of the decommissioning costs of certain nuclear-powered commercial electric generating units.

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

SECTION 1. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.206 to read as follows:

Sec. 39.206. NUCLEAR GENERATING UNIT DECOMMISSIONING COST PLAN. (a) For purposes of this section:

(1) "Decommissioning" includes decommissioning and decontamination of a nuclear generating unit consistent with federal Nuclear Regulatory Commission requirements.

(2) "Nuclear decommissioning trust" means an external and irrevocable trust created for the purpose of funding decommissioning obligations for a nuclear generating unit, consistent with federal Nuclear Regulatory Commission requirements.

(3) "Nuclear generating unit" means an electric generating facility that uses nuclear energy to generate electricity for sale and is licensed by the Nuclear Regulatory Commission and was under construction in this state after January 1, 2007, but before January 1, 2015.

(4) "Power generation company" has the meaning assigned by Section 31.002.

(5) "Retail electric customer" means a retail electric

1 customer:

2 (A) in a geographic area of this state in which
3 retail customer choice has been implemented; or

4 (B) of a municipally owned utility or electric
5 cooperative that has an agreement to purchase power from a nuclear
6 generating unit.

7 (b) This section applies only to the first six nuclear
8 generation units under construction by January 1, 2015, owned in
9 whole or in part by a power generation company that elects to
10 utilize the decommissioning mechanism set forth in this section.

11 (c) Nothing in this section shall be construed to require a
12 power generation company to use a commission approved method to
13 provide funds for decommissioning, if the power generation company
14 can otherwise satisfy the decommissioning financial assurance
15 requirements of the federal Nuclear Regulatory Commission.

16 (d) A power generation company that owns a nuclear
17 generating unit shall fund out of operating revenues on an annual
18 basis:

19 (1) the costs associated with funding the
20 decommissioning obligations for the nuclear generating unit; or

21 (2) the power generation company's portion of the
22 decommissioning costs for the nuclear generating unit in proportion
23 to the company's ownership interest in the nuclear generating unit
24 if the unit is owned by more than one person.

25 (e) The obligation to fund a nuclear decommissioning trust
26 fund is not dischargeable in bankruptcy.

27 (f) A power generation company shall establish a nuclear

1 decommissioning trust for a nuclear generating unit it owns or for
2 the proportionate share of a nuclear generating unit of which it
3 owns a part. The funding obligations for the trust must begin
4 before the nuclear generating unit commences its initial fuel load
5 and begins commercial operation to generate power for sale. The
6 terms of the trust must be consistent with trust terms and
7 conditions the federal Nuclear Regulatory Commission requires for
8 providing financial assurance for decommissioning.

9 (g) The commission by order shall establish for a nuclear
10 generating unit the amount of annual decommissioning funding
11 necessary to meet the decommissioning obligations for the nuclear
12 generating unit over the unit's operating license period as
13 established by the federal Nuclear Regulatory Commission or over a
14 shorter period of time at the election of the power generation
15 company. The power generation company shall perform a study on the
16 cost of decommissioning to establish the decommissioning
17 obligations before the nuclear generating unit begins commercial
18 operation to generate power for sale. The study shall be performed
19 by the power generation company at least once in each three-year
20 period during the unit's operating license period using the most
21 current reasonably available information on the cost of
22 decommissioning. The commission shall conduct a proceeding at
23 least once in each three-year period to review the study and other
24 current reasonably available information on the cost of
25 decommissioning and determine the reasonableness of the study.

26 (h) A power generation company shall file an annual report
27 to provide the status of the decommissioning trust fund and to

1 update the commission as to its ability to fund the decommissioning
2 trust fund. In determining the amount of the annual
3 decommissioning funding under this subsection, at least once in
4 each three-year period, the commission shall conduct a proceeding
5 to review the balance of each nuclear decommissioning trust and the
6 projected amount of annual decommissioning funding for the
7 associated nuclear generating unit. On the conclusion of the
8 review proceeding, the commission by order shall revise the amount
9 of annual funding for the nuclear generating unit in order to ensure
10 that the nuclear decommissioning trust fund is adequately funded.

11 (i) A power generation company shall remit the appropriate
12 amount of annual decommissioning funding to the nuclear
13 decommissioning trust created for its proportionate ownership
14 position in a nuclear generating unit in accordance with the
15 commission's funding order issued under Subsection (g) or (h). The
16 commission shall take appropriate actions to ensure proper funding
17 of the nuclear decommissioning trust, including possibly
18 terminating the power generation company's registration to
19 operate, if the company violates this subsection.

20 (j) A power generation company that owns a nuclear
21 generating unit is the funds administrator of the nuclear
22 decommissioning trust for the associated nuclear generating unit.
23 The company, as funds administrator, shall invest the trust funds
24 in accordance with guidelines established by commission rule and
25 consistent with the federal Nuclear Regulatory Commission
26 guidelines so that the decommissioning funds, plus the amounts
27 earned from investment of the funds, will be available at the time

1 of decommissioning. The commission shall adopt rules to define the
2 company's specific duties as funds administrator and requirements
3 regarding prudent management and investment of nuclear
4 decommissioning trust funds.

5 (k) The commission shall adopt rules necessary to ensure
6 that:

7 (1) a power generation company remits sufficient funds
8 to a nuclear decommissioning trust on an annual basis, including
9 projected earnings to approximate the amount remaining to be
10 accumulated to cover the cost of decommissioning a nuclear
11 generating unit at the end of its operating license period divided
12 by the remaining years of the license and in accordance with
13 applicable state and federal laws and regulations or over a shorter
14 period of time at the election of the power generation company;

15 (2) the periodic cost studies and reviews described in
16 Subsections (g) and (h) include all current reasonably available
17 information as determined necessary and appropriate by the
18 commission;

19 (3) all funds remitted to a nuclear decommissioning
20 trust are prudently managed and spent for their intended purpose;

21 (4) the funds remitted to a nuclear decommissioning
22 trust and the amounts earned from investing the funds, will be
23 available for, and restricted to the purpose of decommissioning of
24 the associated nuclear generating unit, including if the trust or
25 nuclear generating unit is transferred to another person; and

26 (5) before a power generation company is allowed to
27 take advantage of the mechanisms in this section, the company meets

1 creditworthiness standards established by the commission to
2 minimize the risk that retail electric customers will be
3 responsible for funding any shortfall in the cost of
4 decommissioning a nuclear generating unit.

5 (l) In addition to the nuclear decommissioning trust
6 required by Subsection (f), for purposes of Subsection (k), the
7 power generation company and its parent and affiliates shall
8 provide financial assurances that funds will be available to
9 satisfy up to 16 years of annual decommissioning funding in the
10 event the power generation company defaults on its obligation to
11 make annual funding to the decommissioning trust. Within 180 days
12 after the effective date of this section, the commission by rule
13 shall establish the acceptable forms of financial assurance, which
14 shall include, but not be limited to, parent guarantees and support
15 agreements, letters of credit, surety or insurance, and such other
16 requirements necessary to ensure compliance with this section. In
17 establishing the acceptable forms of assurance, and the eligibility
18 requirements for each form of assurance, the commission shall
19 consider the relative risk factors and creditworthiness attributes
20 of potential applicant financial characteristics in order to
21 minimize exposure of retail electric customers to default by power
22 generation companies under this section. The power generation
23 company may choose the manner of financial assurance for which it is
24 eligible under the commission's rules.

25 (m) In the event the financial assurances provided by
26 Subsection (k) are insufficient to meet the annual funding
27 requirements of the decommissioning trust, the retail electric

1 customers shall be responsible for funding any shortfall in the
2 cost of decommissioning the nuclear generating unit.

3 (n) The commission shall determine the manner in which any
4 shortfall in the cost of decommissioning a nuclear generating unit
5 shall be recovered from retail electric customers in the state,
6 consistent with law.

7 (o) For retail electric customers of a municipally owned
8 utility or an electric cooperative that has an agreement to
9 purchase power from a nuclear generating unit, the amount of the
10 shortfall in the cost of decommissioning the nuclear generating
11 unit that the customers are responsible for is limited to a portion
12 of that shortfall that bears the same proportion to the total
13 shortfall as the amount of electric power generated by the nuclear
14 generating unit and purchased by the municipally owned utility or
15 electric cooperative bears to the total amount of power the nuclear
16 generating unit generated.

17 (p) If retail electric customers in this state become
18 responsible for the costs of decommissioning a nuclear generating
19 unit and incur costs under this section and the nuclear generating
20 unit is operational, as a condition of operating the generating
21 unit, the power generation company or any new owner shall repay the
22 costs the electric customers incurred in the manner determined by
23 the commission. The commission may authorize the repayment to
24 occur over a period established by the commission.

25 (q) The commission shall, in conjunction with the Nuclear
26 Regulatory Commission, investigate the development of a mechanism
27 whereby the State of Texas could ensure that funds for

1 decommissioning will be obtained when necessary in the same manner
2 as if the State of Texas were the licensee under federal law. The
3 commission shall file legislative recommendations regarding any
4 changes in law that may be necessary to carry out the purposes of
5 this subsection prior to January 15, 2009, which may be combined
6 with the report required by Section 31.003.

7 (r) The commission by rule shall ensure that:

8 (1) money for decommissioning a nuclear generating
9 unit is prudently collected, managed, and spent for its intended
10 purposes; and

11 (2) decommissioning money that remains unspent after
12 decommissioning of the nuclear generating unit is complete is
13 returned to the power generation company and the retail electric
14 customers based on the proportionate amount of money the power
15 generation company and retail electric customers paid into the
16 fund.

17 SECTION 2. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 1386 was passed by the House on April 26, 2007, by the following vote: Yeas 136, Nays 6, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1386 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1386 on May 28, 2007, by the following vote: Yeas 134, Nays 8, 4 present, not voting.

Chief Clerk of the House

H.B. No. 1386

I certify that H.B. No. 1386 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 29, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1386 on May 28, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor