

By: King of Parker

H.B. No. 1901

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the assessment of generation market-share of power
3 generation companies.

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

5 SECTION 1. Sections 39.152(a) and (d), Utilities Code, are
6 amended to read as follows:

7 (a) The commission shall certify a power region if:

8 (1) a sufficient number of interconnected utilities in
9 the power region fall under the operational control of an
10 independent organization as described by Section 39.151;

11 (2) the power region has a generally applicable tariff
12 that guarantees open and nondiscriminatory access for all users to
13 transmission and distribution facilities in the power region as
14 provided by Section 39.203; and

15 (3) no person owns or [~~and~~] controls, or any
16 combination of owning or controlling, more than 20 percent of the
17 installed generation capacity located in or capable of delivering
18 electricity to a power region, as determined according to Section
19 39.154.

20 (d) For a power region outside of ERCOT, a power generation
21 company that is affiliated with an electric utility may elect to
22 demonstrate that it meets the requirements of Subsection (a)(3) by
23 showing that it does not own or [~~and~~] control, or any combination of
24 owning or controlling, more than 20 percent of the installed

1 capacity in a geographic market that includes the power region,
2 using the guidelines, standards, and methods adopted by the Federal
3 Energy Regulatory Commission.

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

6 (a) Beginning on the date of introduction of customer
7 choice, a power generation company may not own or ~~and~~ control, or
8 any combination of owning or controlling, more than 20 percent of
9 the installed generation capacity located in, or capable of
10 delivering electricity to, a power region.

11 (c) In determining the percentage shares of installed
12 generation capacity under this section, the commission shall
13 combine capacity owned or ~~and~~ controlled by a power generation
14 company and any entity that is affiliated with that power
15 generation company within the power region, reduced by the
16 installed generation capacity of those facilities that are made
17 subject to capacity auctions under Sections 39.153(a) and (d).

18 (e) In determining the percentage shares of installed
19 generation capacity owned or ~~and~~ controlled by a power generation
20 company under this section and Section 39.156, the commission
21 shall, for purposes of calculating the numerator, reduce the
22 installed generation capacity owned or ~~and~~ controlled by that
23 power generation company by the installed generation capacity of
24 any "grandfathered facility" within an ozone nonattainment area as
25 of September 1, 1999, for which that power generation company has
26 commenced complying or made a binding commitment to comply with
27 Section 39.264. This subsection applies only to a power generation

1 company that is affiliated with an electric utility that owned and
2 controlled more than 27 percent of the installed generation
3 capacity in the power region on January 1, 1999.

4 SECTION 3. Section 39.155(a), Utilities Code, is amended to
5 read as follows:

6 (a) Each person, municipally owned utility, electric
7 cooperative, and river authority that owns or controls generation
8 facilities and offers electricity for sale in this state shall
9 report to the commission its installed generation capacity, the
10 total amount of capacity available for sale to others, the total
11 amount of capacity under contract to others, the total amount of
12 capacity dedicated to its own use, its annual wholesale power sales
13 in the state, its annual retail power sales in the state, and any
14 other information necessary for the commission to assess market
15 power or the development of a competitive retail market in the
16 state. The commission shall by rule prescribe the nature and detail
17 of the reporting requirements and shall administer those reporting
18 requirements in a manner that ensures the confidentiality of
19 competitively sensitive information.

20 SECTION 4. Sections 39.156(a) and (b), Utilities Code, are
21 amended to read as follows:

22 (a) In this section, "market power mitigation plan" or
23 "plan" means a written proposal by an electric utility or a power
24 generation company for reducing its ownership or ~~and~~ control of
25 installed generation capacity as required by Section 39.154.

26 (b) An electric utility or power generation company owning
27 or ~~and~~ controlling, or any combination of owning or controlling,

1 more than 20 percent of the generation capacity located in, or
2 capable of delivering electricity to, a power region shall file a
3 market power mitigation plan with the commission not later than
4 December 1, 2000.

5 SECTION 5. Section 39.157(b), Utilities Code, is amended to
6 read as follows:

7 (b) Beginning on the date of introduction of customer
8 choice, a person that owns or controls generation facilities may
9 not own transmission or distribution facilities in this state
10 except for those facilities necessary to interconnect a generation
11 facility with the transmission or distribution network, a facility
12 not dedicated to public use, or a facility otherwise excluded from
13 the definition of "electric utility" under Section 31.002.
14 However, nothing in this chapter shall prohibit a power generation
15 company affiliated with a transmission and distribution utility
16 from owning or controlling generation facilities.

17 SECTION 6. Section 39.158(a), Utilities Code, is amended to
18 read as follows:

19 (a) A person who owns or controls [~~An owner of~~] electric
20 generation facilities that offers electricity for sale in the state
21 and proposes to merge, consolidate, or otherwise become affiliated
22 with another person who owns or controls [~~owner of~~] electric
23 generation facilities that offers electricity for sale in this
24 state shall obtain the approval of the commission before closing if
25 the electricity offered for sale in the power region by the merged,
26 consolidated, or affiliated entity will exceed one percent of the
27 total electricity for sale in the power region. The approval shall

1 be requested at least 120 days before the date of the proposed
2 closing. The commission shall approve the transaction unless the
3 commission finds that the transaction results in a violation of
4 Section 39.154. If the commission finds that the transaction as
5 proposed would violate Section 39.154, the commission may condition
6 approval of the transaction on adoption of reasonable modifications
7 to the transaction as prescribed by the commission to mitigate
8 potential market power abuses.

9 SECTION 7. Section 39.407(a), Utilities Code, is amended to
10 read as follows:

11 (a) If an electric utility chooses on or after January 1,
12 2007, to participate in customer choice, the commission may not
13 authorize customer choice until the applicable power region has
14 been certified as a qualifying power region under Section
15 39.152(a). Except as otherwise provided by this subsection, the
16 commission shall certify that the requirements of Section
17 39.152(a)(3) are met for electric utilities subject to this
18 subchapter only upon a finding that the total capacity owned or
19 [and] controlled, or any combination of owned or controlled, by
20 each such electric utility and its affiliates does not exceed 20
21 percent of the total installed generation capacity within the
22 constrained geographic region served by each such electric utility
23 plus the total available transmission capacity capable of
24 delivering firm power and energy to that constrained geographic
25 region. Not later than May 1, 2002, each electric utility subject
26 to this subchapter shall submit to the electric utility
27 restructuring legislative oversight committee an analysis of the

1 needed transmission facilities necessary to make the electric
2 utility's service area transmission capability comparable to areas
3 within the ERCOT power region. On or after September 1, 2003, each
4 electric utility subject to this subchapter shall file the
5 utility's plans to develop the utility's transmission
6 interconnections with the utility's power region or other adjacent
7 power regions. The commission shall review the plan and not later
8 than the 180th day after the date the plan is filed, determine the
9 additional transmission facilities necessary to provide access to
10 power and energy that is comparable to the access provided in areas
11 within the ERCOT power region; provided, however, that if a hearing
12 is requested by any party to the proceeding, the 180-day deadline
13 will be extended one day for each day of hearings. The commission
14 shall, as a part of the commission's approval of the plan, approve a
15 rate rider mechanism for the recovery of the incremental costs of
16 those facilities after the facilities are completed and in-service.
17 A finding of need under this subsection shall meet the requirements
18 of Sections 37.056(c)(1), (2), and (4)(E). The commission may
19 certify that the requirements of Section 39.152(a)(3) are met for
20 electric utilities subject to this subchapter if the commission
21 finds that:

22 (1) each such utility has sufficient transmission
23 facilities to provide customers access to power and energy from
24 capacity controlled by suppliers not affiliated with the incumbent
25 utility that is comparable to the access to power and energy from
26 capacity controlled by suppliers not affiliated with the incumbent
27 utilities in areas of the ERCOT power region; and

1 (2) the total capacity owned or [~~and~~] controlled, or
2 any combination of owned or controlled, by each such electric
3 utility and its affiliates does not exceed 20 percent of the total
4 installed generation capacity within the power region.

5 SECTION 8. Section 39.453(b), Utilities Code, is amended to
6 read as follows:

7 (b) The commission shall certify that the requirement of
8 Section 39.152(a)(3) is met for an electric utility subject to this
9 subchapter only if the commission finds that the total capacity
10 owned or [~~and~~] controlled, or any combination of owned or
11 controlled, by the electric utility and the utility's affiliates
12 does not exceed 20 percent of the total installed generation
13 capacity within the power region of that utility.

14 SECTION 9. This Act takes effect September 1, 2007.