

By: Farabee

H.B. No. 2809

A BILL TO BE ENTITLED

AN ACT

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Relating to the construction, purchase, ownership and operation of electrical energy storage by a utility, and providing for a definition.

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

SECTION 1. Section 31.002 of the Utilities Code is amended to read as follows:

Sec. 31.002. DEFINITIONS. In this subtitle:

(1) "Affiliated power generation company" means a power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(2) "Affiliated retail electric provider" means a retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(3) "Aggregation" includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any

1 nonbypassable charges or fees as a result of aggregating its load.

2 (4) "Customer choice" means the freedom of a retail
3 customer to purchase electric services, either individually or
4 through voluntary aggregation with other retail customers, from the
5 provider or providers of the customer's choice and to choose among
6 various fuel types, energy efficiency programs, and renewable power
7 suppliers.

8 (5) "Electric Reliability Council of Texas" or "ERCOT"
9 means the area in Texas served by electric utilities, municipally
10 owned utilities, and electric cooperatives that is not
11 synchronously interconnected with electric utilities outside the
12 state.

13 (6) "Electric Storage" refers to any facility or
14 product, constructed or purchased, owned or leased, or operated by
15 or for a transmission and distribution utility, which is capable of
16 taking in electricity, and returning, at a later time, electricity,
17 or energy capable of being used to generate electricity, as a means
18 of increasing the deliverability, reliability, or efficiency of new
19 or existing transmission or distribution assets of the transmission
20 and distribution utility, or of avoiding the cost of alternative
21 means of providing transmission and distribution services. The
22 term includes pumped hydro, superconducting magnetic energy
23 storage, flywheels, and batteries, or compressed air energy storage
24 systems where the power rating of the compression equipment is at
25 least 50% of the power rating of the associated regeneration
26 equipment. Electricity used to charge a storage facility shall not
27 be considered retail electricity, and although a utility may charge

1 a fee for storage, only the power discharged from storage shall bear
2 a transmission or distribution use charge.

3 (67) "Electric utility" means a person or river
4 authority that owns or operates for compensation in this state
5 equipment or facilities to produce, generate, transmit, store,
6 distribute, sell, or furnish electricity in this state. The term
7 includes a lessee, trustee, or receiver of an electric utility and a
8 recreational vehicle park owner who does not comply with Subchapter
9 C, Chapter 184, with regard to the metered sale of electricity at
10 the recreational vehicle park. The term does not include:

- 11 (A) a municipal corporation;
12 (B) a qualifying facility;
13 (C) a power generation company;
14 (D) an exempt wholesale generator;
15 (E) a power marketer;
16 (F) a corporation described by Section 32.053 to
17 the extent the corporation sells electricity exclusively at
18 wholesale and not to the ultimate consumer;
19 (G) an electric cooperative;
20 (H) a retail electric provider;
21 (I) this state or an agency of this state; or
22 (J) a person not otherwise an electric utility
23 who:

24 (i) furnishes an electric service or
25 commodity only to itself, its employees, or its tenants as an
26 incident of employment or tenancy, if that service or commodity is
27 not resold to or used by others;

1 (ii) owns or operates in this state
2 equipment or facilities to produce, generate, transmit,
3 distribute, sell, or furnish electric energy to an electric
4 utility, if the equipment or facilities are used primarily to
5 produce and generate electric energy for consumption by that
6 person; or

7 (iii) owns or operates in this state a
8 recreational vehicle park that provides metered electric service in
9 accordance with Subchapter C, Chapter 184.

10 (78) "Exempt wholesale generator" means a person who
11 is engaged directly or indirectly through one or more affiliates
12 exclusively in the business of owning or operating all or part of a
13 facility for generating electric energy and selling electric energy
14 at wholesale and who:

15 (A) does not own a facility for the transmission
16 of electricity, other than an essential interconnecting
17 transmission facility necessary to effect a sale of electric energy
18 at wholesale; and

19 (B) has:

20 (i) applied to the Federal Energy
21 Regulatory Commission for a determination under 15 U.S.C. Section
22 79z-5a; or

23 (ii) registered as an exempt wholesale
24 generator as required by Section 35.032.

25 (89) "Freeze period" means the period beginning on
26 January 1, 1999, and ending on December 31, 2001.

27 (910) "Independent system operator" means an entity

1 supervising the collective transmission facilities of a power
2 region that is charged with nondiscriminatory coordination of
3 market transactions, systemwide transmission planning, and network
4 reliability.

5 ~~(1011)~~ "Power generation company" means a person that:

6 (A) generates electricity that is intended to be
7 sold at wholesale;

8 (B) does not own a transmission or distribution
9 facility in this state other than an essential interconnecting
10 facility, an electric storage facility, a facility not dedicated to
11 public use, or a facility otherwise excluded from the definition of
12 "electric utility" under this section; and

13 (C) does not have a certificated service area,
14 although its affiliated electric utility or transmission and
15 distribution utility may have a certificated service area.

16 (D)

17 ~~(1112)~~ "Power marketer" means a person who:

18 (A) becomes an owner of electric energy in this
19 state for the purpose of selling the electric energy at wholesale;

20 (B) does not own generation, transmission, or
21 distribution facilities in this state;

22 (C) does not have a certificated service area;
23 and

24 (D) has:

25 (i) been granted authority by the Federal
26 Energy Regulatory Commission to sell electric energy at
27 market-based rates; or

1 (ii) registered as a power marketer under
2 Section 35.032.

3 (~~12~~13) "Power region" means a contiguous geographical
4 area which is a distinct region of the North American Electric
5 Reliability Council.

6 (~~13~~14) "Qualifying cogenerator" and "qualifying small
7 power producer" have the meanings assigned those terms by 16 U.S.C.
8 Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that
9 provides electricity to the purchaser of the cogenerator's thermal
10 output is not for that reason considered to be a retail electric
11 provider or a power generation company.

12 (~~14~~15) "Qualifying facility" means a qualifying
13 cogenerator or qualifying small power producer.

14 (~~15~~16) "Rate" includes a compensation, tariff,
15 charge, fare, toll, rental, or classification that is directly or
16 indirectly demanded, observed, charged, or collected by an electric
17 utility for a service, product, or commodity described in the
18 definition of electric utility in this section and a rule,
19 practice, or contract affecting the compensation, tariff, charge,
20 fare, toll, rental, or classification that must be approved by a
21 regulatory authority.

22 (~~16~~17) "Retail customer" means the separately metered
23 end-use customer who purchases and ultimately consumes
24 electricity.

25 (~~17~~18) "Retail electric provider" means a person that
26 sells electric energy to retail customers in this state. A retail
27 electric provider may not own or operate generation assets.

1 (~~18~~19) "Separately metered" means metered by an
2 individual meter that is used to measure electric energy
3 consumption by a retail customer and for which the customer is
4 directly billed by a utility, retail electric provider, electric
5 cooperative, or municipally owned utility.

6 (~~19~~20) "Transmission and distribution utility" means
7 a person or river authority that owns or operates for compensation
8 in this state equipment or facilities to transmit, store, or
9 distribute electricity, except for facilities necessary to
10 interconnect a generation facility with the transmission or
11 distribution network, a facility not dedicated to public use, or a
12 facility otherwise excluded from the definition of "electric
13 utility" under this section, in a qualifying power region certified
14 under Section 39.152, but does not include a municipally owned
15 utility or an electric cooperative.

16 (~~20~~21) "Transmission service" includes construction
17 or enlargement of facilities, storage of electrical energy,
18 transmission over distribution facilities, control area services,
19 scheduling resources, regulation services, reactive power support,
20 voltage control, provision of operating reserves, and any other
21 associated electrical service the commission determines
22 appropriate, except that, on and after the implementation of
23 customer choice, control area services, scheduling resources,
24 regulation services, provision of operating reserves, and reactive
25 power support, voltage control, and other services provided by
26 generation resources, unless provided from electrical storage
27 capacity provided by the transmission utility, are not

1 "transmission service."

2 SECTION 2. Section 39.105 of the Utilities Code is amended
3 to read as follows:

4 Sec. 39.105. LIMITATION ON SALE OF ELECTRICITY. (a) After
5 January 1, 2002, a transmission and distribution utility may not
6 sell electricity or otherwise participate in the market for
7 electricity except for the purpose of buying electricity to serve
8 its own needs, or for the purpose of temporarily storing electrical
9 energy as a means to reduce congestion, improve deliverability or
10 reliability of their system, or cost-effectively avoid the need for
11 other additional transmission or distribution facilities.

12 SECTION 3. Effective date. This act takes effect
13 immediately if it receives a vote of two-thirds of all the members
14 elected to each house, as provided by Section 39, Article III, Texas
15 Constitution. If this Act does not receive the vote necessary for
16 immediate effect, this Act takes effect September 1, 2007.