

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

Sec. 39.206. NUCLEAR-POWERED ELECTRIC GENERATING UNIT DECOMMISSIONING COSTS.

(a) In 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.

(3) "Nuclear generating unit" means an electric generating facility that uses nuclear energy to generate power for sale.

(4) "Retail electric customer" means a retail electric customer:

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

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

(b) This section applies only to a nuclear generating unit that is:

(1) constructed in this state after January 1, 2002; and

(2) owned by a power generation company.

SENATE VERSION

SECTION 1. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.206, Section 39.207, and Section 39.208 to read as follows:

Sec. 39.206. NUCLEAR-POWERED ELECTRIC GENERATION UNIT DECOMMISSIONING COST PLAN. (a) For purposes of this section, Section 39.207, and Section 39.208:

(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 built in this state after January 1, 2007 but before December 31, 2020.

(4) "Power generation company" means a power generation company as that term is defined in Section 31.002(10), that is licensed by the Nuclear Regulatory Commission to operate a nuclear generating unit, and includes its parent and affiliates.

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(c) A power generation company that owns a nuclear generating unit shall fund out of operating revenues on an annual basis.

- (1) the costs associated with funding the decommissioning obligations for the nuclear generating unit; or
(2) the power generation company's portion of the decommissioning costs for the nuclear generating unit in

SENATE VERSION

(b) A power generation company that intends to own or operate a nuclear generating unit shall submit to the commission a plan for funding a nuclear decommissioning trust, in accordance with Sections 39.207 and 39.208. The plan shall detail the power generation company's proposal for funding a nuclear decommissioning trust, consistent with the requirements of the Nuclear Regulatory Commission.

(c) The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under Subsection (b). An order approved under this subsection shall be competitively neutral and minimize the decommissioning risk to electric customers, consistent with Sections 39.207 and 39.208.

(d) Nothing in this section shall be construed to require a power generation company to use a nuclear decommissioning trust as a method to provide funds for decommissioning, if the power generation company can otherwise satisfy the decommissioning financial assurance requirements of the federal Nuclear Regulatory Commission.

Sec. 39.207. NUCLEAR-POWERED ELECTRIC GENERATION UNIT DECOMMISSIONING TRUST AND RESPONSIBILITY. (a) A power generation company shall have the responsibility to fund:

- (1) the costs associated with funding the decommissioning obligations for the nuclear generating unit; or
(2) the power generation company's portion of the decommissioning costs for the nuclear generating unit in

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

proportion to the company's ownership interest in the nuclear generating unit if the unit is owned by more than one person.

(d) The power generation company shall establish a nuclear decommissioning trust for a nuclear generating unit it owns or for the proportionate share of a nuclear generating unit of which it owns a part. The funding obligations for the trust must begin before the nuclear generating unit receives its initial fuel load and begins commercial operation to generate power for sale. The terms of the trust must be consistent with trust terms and conditions the federal Nuclear Regulatory Commission requires for providing financial assurance for decommissioning.

(e) The commission by order shall establish for a nuclear generating unit the amount of annual decommissioning funding necessary to meet the decommissioning obligations for the nuclear generating unit over the unit's operating license period as established by the federal Nuclear Regulatory Commission. The power generation company shall conduct a study of the costs of decommissioning to establish the decommissioning obligations before the nuclear generating unit begins commercial operation to generate power for sale. The power generation company shall conduct the study at least once in each three-year period during the term of the nuclear generating unit's operating license using the most current reasonably

SENATE VERSION

proportion to the company's ownership interest in the nuclear generating unit if the unit is owned by more than one person.

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

(b) The power generation company shall establish a nuclear decommissioning trust for a nuclear generating unit it owns or for the proportionate share of a nuclear generating unit of which it owns a part. The funding obligations for the trust must begin before the nuclear generating unit commences its initial fuel load and begins commercial operation to generate power for sale. The terms of the trust must be consistent with trust terms and conditions the federal Nuclear Regulatory Commission requires for providing financial assurance for decommissioning.

(c) The commission by order shall establish for a nuclear generating unit the amount of annual decommissioning funding necessary to meet the decommissioning obligations for the nuclear generating unit as established by the federal Nuclear Regulatory Commission. The power generation company shall perform a study on the cost of decommissioning to establish the decommissioning obligations before the nuclear generating unit begins commercial operation to generate power for sale. The study shall be performed by the power generation company at least once in each three-year period during the unit's operating license period using the most current reasonably available information on the cost of decommissioning. The commission shall

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

available information on the costs of decommissioning. At least once in each three-year period, the commission shall conduct a proceeding to review the most recent study for each power generation company, consider other reasonably available current information on the costs of decommissioning, and determine whether the study's conclusions are reasonable.

(f) The power generation company annually shall file a report on the status of the decommissioning trust fund. At least once in each three-year period, the commission shall conduct a proceeding to review the balance of each nuclear decommissioning trust and the projected amount of annual decommissioning funding for the associated nuclear generating unit. On the conclusion of the review proceeding, the commission by order shall revise the amount of annual funding for the nuclear generating unit as necessary.

(g) A power generation company that owns all or part of a nuclear generating unit shall remit the appropriate amount of annual decommissioning funding to the nuclear decommissioning trust created for its proportionate ownership position in a nuclear generating unit in accordance with the commission's funding order issued under Subsection (e) or (f). The commission may terminate the power generation company's registration to operate if the company violates this subsection.

SENATE VERSION

conduct a proceeding at least once in each three-year period to review the study and other current reasonably available information on the cost of decommissioning and determine the reasonableness of the study.

(d) The power generation company shall file an annual report to provide the status of the decommissioning trust fund and to update the commission as to its ability to fund the decommissioning trust fund. In determining the amount of the annual decommissioning funding under this subsection, at least once in each three-year period, the commission shall conduct a proceeding to review the balance of each nuclear decommissioning trust and the projected amount of annual decommissioning funding for the associated nuclear generating unit. On the conclusion of the review proceeding, the commission by order shall revise the amount of annual funding for the nuclear generating unit in order to ensure that the nuclear decommissioning trust fund is adequately funded.

(e) A power generation company shall remit the appropriate amount of annual decommissioning funding to the nuclear decommissioning trust created for its proportionate ownership position in a nuclear generating unit in accordance with the commission's funding order issued under Subsection (c) or (d). The commission shall take appropriate actions to ensure proper funding of the nuclear decommissioning trust, including possibly terminating the power generation company's registration

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(h) A power generation company that owns a nuclear generating unit is the funds administrator of the nuclear decommissioning trust for the associated nuclear generating unit. The company as funds administrator shall invest the trust funds in accordance with guidelines established by commission rule and consistent with the federal Nuclear Regulatory Commission guidelines so that the decommissioning funds, plus the amounts earned from investment of the funds, will be available at the time of decommissioning. The commission shall adopt rules to define the company's specific duties as funds administrator and requirements regarding prudent management and investment of nuclear decommissioning trust funds.

(i) The commission shall adopt rules necessary to ensure that:

(1) sufficient funds are remitted to a nuclear decommissioning trust on an annual basis to cover the cost of decommissioning a nuclear generating unit at the end of its operating license period in accordance with applicable state and federal laws and regulations;

(2) the periodic cost studies and reviews described by Subsections (e) and (f) include all current reasonably available information the commission determines is necessary and appropriate;

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

(4) the funds remitted to a nuclear decommissioning

SENATE VERSION

to operate, if the company violates this subsection.

(f) A power generation company that owns a nuclear generating unit is the funds administrator of the nuclear decommissioning trust for the associated nuclear generating unit. The company as funds administrator shall invest the trust funds in accordance with guidelines established by commission rule and consistent with the federal Nuclear Regulatory Commission guidelines so that the decommissioning funds, plus the amounts earned from investment of the funds, will be available at the time of decommissioning. The commission shall adopt rules to define the company's specific duties as funds administrator and requirements regarding prudent management and investment of nuclear decommissioning trust funds.

(g) The commission shall adopt rules necessary to ensure that:

(1) a power generation company remits sufficient funds to a nuclear decommissioning trust on an annual basis to cover the cost of decommissioning a nuclear generating unit at the end of its operating license period in accordance with applicable state and federal laws and regulations;

(2) the periodic cost studies and reviews described in Subsections (c) and (d) include all current reasonably available information as determined necessary and appropriate by the commission;

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

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

trust and the amounts earned from investing the funds, will be available for, and restricted to the purpose of decommissioning of the associated nuclear generating unit, including if the trust or nuclear generating unit is transferred to another person.

SENATE VERSION

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

Sec. 39.208. NUCLEAR-POWERED ELECTRIC GENERATION UNIT DECOMMISSIONING TRUST FUNDING ASSURANCES. (a) A plan filed under Section 39.206 may include the following mechanisms to allow a power generation company to provide added assurances to satisfy the Nuclear Regulatory Commission's nuclear decommissioning trust requirements:

(1) prepayment by the power generation company of a portion of the amount necessary to assure decommissioning;

(2) surety, insurance or other financial guarantees;

(3) parental or other corporate guarantees;

(4) assurances through contractual obligations;

(5) the accelerated payment of amounts required under Section 39.207;

(6) periodic reporting of financial information associated with a nuclear generating unit; and,

(7) a customer recourse mechanism whereby electric customers provide assurance of decommissioning, pursuant to Subsections (b) and (c).

(b) Prior to allowing a power generation company to utilize the mechanism in Subsection (a)(7), the commission shall determine the creditworthiness of the

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(j) The commission shall determine the manner in which any shortfall in the actual cost of decommissioning a nuclear generating unit shall be recovered from retail electric customers in this state, consistent with law. Subject to Subsection (k), the retail electric customers in this state are responsible for funding any shortfall in the cost of decommissioning the nuclear generating unit if:

(1) the nuclear generating unit is being decommissioned and the balance of the nuclear decommissioning trust is not sufficient to fund the cost of decommissioning; or

(2) the power generation company does not remit the

power generation company and may, as a condition of granting a petition to utilize the mechanism in Subsection (a)(7), require a percentage of the cost of decommissioning a nuclear generating unit at the end of its operating license period to be paid into a nuclear decommissioning trust before the nuclear generating unit commences its initial fuel load and begins commercial operation.

(c) In considering a plan seeking electric customer recourse under Subsection (a)(7), the commission shall:

(1) require electric customers to be at risk for nuclear decommissioning expense to the minimum extent necessary in order to allow for the development of a nuclear generating unit; and

(2) adopt a payment period for a power generation company subject to this subsection that is designed to achieve full funding of the decommissioning trust in a reasonable and expeditious manner, as necessary to allow for the development of a nuclear generating unit.

(d) The commission shall determine the manner in which any shortfall in the actual cost of decommissioning a nuclear generating unit shall be recovered. In making the determination, the commission shall look first to a power generation company. To the extent that no recourse exists to a power generation company or any other entity subject to this section, electric customers may be responsible for funding any shortfall in the cost of decommissioning the nuclear generating unit if the nuclear generating unit is being decommissioned and the balance of the nuclear decommissioning trust is not

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

required amount of funding and the company's registration to operate is terminated under Subsection (g).

(k) For retail electric customers of a municipally owned utility or an electric cooperative that has an agreement to purchase power from a nuclear generating unit, the amount of the shortfall in the cost of decommissioning the nuclear generating unit that the customers are responsible for is limited to a portion of that shortfall that bears the same proportion to the total shortfall as the amount of electric power generated by the nuclear generating unit and purchased by the municipally owned utility or electric cooperative bears to the total amount of power the nuclear generating unit generated.

(l) If retail electric customers in this state become responsible for the costs of decommissioning a nuclear generating unit and incur costs under Subsection (j) or (k) and the nuclear generating unit is recommissioned by the power generation company whose registration to operate was terminated under Subsection (g) or by a new owner, as a condition of operating the generating unit, the power generation company or new owner shall repay the costs the retail electric customers in this state incurred in the manner determined by the commission. The commission may authorize the repayment to occur over a period established by the commission if the nuclear decommissioning trust is adequately funded on an annual basis as determined by the commission in Subsection (e) or (f).

(m) The commission by rule may ensure that:

SENATE VERSION

sufficient to fund the cost of decommissioning.

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

CONFERENCE

House Bill 1386
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(1) money for decommissioning a nuclear generating unit is prudently collected, managed, and spent for its intended purposes; and
(2) decommissioning money that remains unspent after decommissioning of the nuclear generating unit is complete is returned to the appropriate retail electric customers.

SENATE VERSION

(f) The commission shall, in conjunction with the Nuclear Regulatory Commission, investigate the development of a mechanism whereby the State of Texas could ensure that funds for decommissioning will be obtained when necessary in the same manner as if the State of Texas were the licensee under federal law. The commission shall file legislative recommendations regarding any changes in law that may be necessary to carry out the purposes of this subsection prior to January 15, 2009, which may be combined with the report required by Section 31.003.

CONFERENCE

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

Same as House version.