

By: Thompson

H.B. No. 2282

A BILL TO BE ENTITLED

AN ACT

relating to reregulation of retail electric services.

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

SECTION 1. The following provisions of the Utilities Code are repealed:

(1) Sections 31.002(1), (4), (8), and (9);

(2) Chapter 39;

(3) Section 40.001;

(4) Section 40.003;

(5) Sections 40.051, 40.052, 40.053, 40.054, 40.055, 40.056, 40.057, 40.058, and 40.059;

(6) Section 41.001;

(7) Section 41.003;

(8) Sections 41.051, 41.052, 41.053, and 41.054;

(9) Sections 41.056, 41.057, and 41.058;

(10) Section 41.060; and

(11) Section 41.062.

SECTION 2. Sections 31.002(6), (17), (18), and (19), Utilities Code, are amended to read as follows:

(6) "Electric utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a

1 recreational vehicle park owner who does not comply with Subchapter
2 C, Chapter 184, with regard to the metered sale of electricity at
3 the recreational vehicle park. The term does not include:

- 4 (A) a municipal corporation;
- 5 (B) a qualifying facility;
- 6 (C) a power generation company;
- 7 (D) an exempt wholesale generator;
- 8 (E) a power marketer;
- 9 (F) a corporation described by Section 32.053 to

10 the extent the corporation sells electricity exclusively at
11 wholesale and not to the ultimate consumer;

- 12 (G) an electric cooperative;
- 13 (H) ~~[a retail electric provider,~~
- 14 ~~[(I)]~~ this state or an agency of this state; or
- 15 (I) ~~[(J)]~~ a person not otherwise an electric

16 utility who:

17 (i) furnishes an electric service or
18 commodity only to itself, its employees, or its tenants as an
19 incident of employment or tenancy, if that service or commodity is
20 not resold to or used by others;

21 (ii) owns or operates in this state
22 equipment or facilities to produce, generate, transmit,
23 distribute, sell, or furnish electric energy to an electric
24 utility, if the equipment or facilities are used primarily to
25 produce and generate electric energy for consumption by that
26 person; or

27 (iii) owns or operates in this state a

1 recreational vehicle park that provides metered electric service in
2 accordance with Subchapter C, Chapter 184.

3 (17) "Retail electric provider" means a person that
4 sells electric energy to retail customers in this state. [~~A retail
5 electric provider may not own or operate generation assets.~~]

6 (18) "Separately metered" means metered by an
7 individual meter that is used to measure electric energy
8 consumption by a retail customer and for which the customer is
9 directly billed by a utility, [~~retail electric provider,~~] electric
10 cooperative, or municipally owned utility.

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

21 SECTION 3. Subchapter A, Chapter 32, Utilities Code, is
22 amended by adding Section 32.0013 to read as follows:

23 Sec. 32.0013. COMMISSION JURISDICTION RELATING TO
24 REREGULATION OF ELECTRIC UTILITIES. The commission has all
25 necessary jurisdiction to take any action necessary to effectuate
26 the reregulation of retail electric service in an area in which
27 customer choice was introduced before January 1, 2010.

1 SECTION 4. Subtitle B, Title 2, Utilities Code, is amended
2 by adding Chapter 34 to read as follows:

3 CHAPTER 34. ELECTRICAL PLANNING

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 34.001. ADOPTION OF INTEGRATED RESOURCE PLANNING
6 PROCESS. (a) The commission by rule shall develop an integrated
7 resource planning process to provide reliable energy service at the
8 lowest reasonable system cost.

9 (b) In determining the lowest reasonable system cost of an
10 electric utility's integrated resource plan, the commission shall
11 consider:

12 (1) direct costs;

13 (2) the effect on the rates and bills of various types
14 of customers;

15 (3) minimization of the risks of future fuel costs and
16 regulations;

17 (4) the appropriateness and reliability of the mix of
18 resources; and

19 (5) the cost of compliance with environmental
20 protection requirements of all applicable state and federal laws,
21 rules, and orders.

22 (c) An appropriate and reliable mix under Subsection (b)(4)
23 may include a portfolio of cost-effective sources of power,
24 including fueled and nonfueled resources, such as renewable
25 resources and conservation measures, and a mixture of long-term and
26 short-term contracts.

27 (d) In establishing a requirement under this chapter,

1 including a reporting requirement, the commission shall consider
2 and recognize the different capabilities of small and large
3 electric utilities.

4 Sec. 34.002. STATEWIDE INTEGRATED RESOURCE PLAN. (a) The
5 commission by rule shall adopt and periodically update a statewide
6 integrated resource plan that includes the commission's long-term
7 resource planning goals. The commission shall notify each electric
8 utility of the approval of the plan.

9 (b) The commission shall send a report on the statewide
10 integrated resource plan to the governor when it adopts or revises
11 the plan and make the report available to the public.

12 (c) The report on the statewide integrated resource plan
13 must include:

14 (1) historical data for electric consumption
15 statewide and by each electric utility;

16 (2) historical data for electric generation by each
17 electric utility and by type of capacity, including alternative
18 energy sources;

19 (3) an inventory of generation capacity statewide and
20 by each electric utility;

21 (4) quantitative data on demand-side management
22 programs to the extent the commission determines necessary;

23 (5) each generating electric utility's forecast
24 without adjustment;

25 (6) the commission's long-term resource planning goals
26 included in the plan;

27 (7) a projection of the need for electric services;

1 (8) a description of the approved individual
2 integrated resource plan of each electric utility; and

3 (9) an assessment of transmission planning being
4 conducted by electric utilities in this state.

5 Sec. 34.003. PROMOTION OF RENEWABLE ENERGY TECHNOLOGIES.

6 The commission shall adopt rules consistent with the integrated
7 resource planning process to promote the development of renewable
8 energy technologies.

9 Sec. 34.004. REVIEW OF STATE TRANSMISSION SYSTEM. In

10 carrying out its duties related to the integrated resource planning
11 process, the commission may review this state's transmission system
12 and make recommendations to electric utilities on the need to build
13 new power lines, upgrade power lines, and make other necessary
14 improvements and additions.

15 [Sections 34.005-34.020 reserved for expansion]

16 SUBCHAPTER B. PRELIMINARY INTEGRATED RESOURCE PLAN

17 Sec. 34.021. PRELIMINARY INTEGRATED RESOURCE PLAN

18 REQUIRED. (a) Every three years each nongenerating electric
19 utility planning to construct generating resources and each
20 generating electric utility shall submit to the commission a
21 preliminary integrated resource plan covering a 10-year period.

22 (b) The commission by rule shall:

23 (1) establish a staggered schedule for the submission
24 of integrated resource plans by electric utilities;

25 (2) prescribe the form and manner in which a plan must
26 be submitted;

27 (3) adopt filing requirements and schedules; and

1 (4) prescribe the methods by which an electric utility
2 may recover supply-side and demand-side costs.

3 (c) The commission by rule may:

4 (1) define the scope and nature of public
5 participation in the development of the integrated resource plan;
6 and

7 (2) establish the general guidelines an electric
8 utility shall use to evaluate and to select or reject a resource,
9 including procedures governing the solicitation process.

10 Sec. 34.022. CONTENTS OF PRELIMINARY INTEGRATED RESOURCE
11 PLAN. (a) A preliminary integrated resource plan must include:

12 (1) the electric utility's forecast of future demands;
13 (2) an estimate of the energy savings and demand
14 reduction the electric utility can achieve during the time covered
15 by the plan by use of demand-side management resources and the range
16 of possible costs for those resources;

17 (3) if additional supply-side resources are needed to
18 meet future demand, an estimate of:

19 (A) the amount and operational characteristics
20 of the additional capacity needed;

21 (B) the types of viable supply-side resources for
22 meeting that need; and

23 (C) the range of probable costs of those
24 resources;

25 (4) if necessary, proposed requests for proposals to
26 be used in a solicitation of demand-side or supply-side resources,
27 or both;

1 (5) the specific criteria the electric utility will
2 use to evaluate and to select or reject demand-side or supply-side
3 resources;

4 (6) the methods by which the electric utility intends
5 to monitor demand-side or supply-side resources, or both as
6 appropriate, after selection;

7 (7) the method by which the electric utility intends
8 to allocate costs;

9 (8) a description of how the electric utility will
10 achieve equity among customer classes and provide demand-side
11 programs to each customer class, including tenants and low-income
12 ratepayers;

13 (9) any proposed incentive factors; and

14 (10) any other information the commission requires.

15 (b) If the commission adopts under Section 34.021(c) the
16 general guidelines an electric utility shall use to evaluate and to
17 select or reject a resource, the specific criteria proposed by the
18 electric utility under Subsection (a)(5) may deviate from those
19 guidelines only on a showing of good cause.

20 Sec. 34.023. PUBLIC HEARING ON PRELIMINARY INTEGRATED
21 RESOURCE PLAN. (a) If a preliminary integrated resource plan
22 includes a proposed solicitation of demand-side or supply-side
23 resources, the commission, on its own motion or on the motion of the
24 electric utility or an affected person, may convene a public
25 hearing on the adequacy and merits of the plan.

26 (b) Any interested person may intervene in the hearing and,
27 at the hearing, may present evidence and cross-examine witnesses

1 regarding the contents and adequacy of the preliminary integrated
2 resource plan.

3 (c) Discovery by a participant in the hearing is limited to:

4 (1) an issue relating to the development of the
5 preliminary integrated resource plan;

6 (2) a fact issue included in the plan; and

7 (3) other issues the commission is required to decide
8 relating to the plan.

9 (d) A hearing before the commission is not required for a
10 preliminary integrated resource plan filed by a river authority or
11 generating electric cooperative that does not intend to build a new
12 generating plant.

13 Sec. 34.024. INTERIM ORDER ON PRELIMINARY INTEGRATED
14 RESOURCE PLAN; DEADLINE. (a) After conducting a hearing on a
15 preliminary integrated resource plan under Section 34.023, the
16 commission shall determine:

17 (1) whether the plan is based on substantially
18 accurate data and an adequate method of forecasting;

19 (2) whether the plan identifies and takes into account
20 any present and projected reduction in the demand for energy that
21 may result from cost-effective measures to improve conservation and
22 energy efficiency in various customer classes of the area being
23 served;

24 (3) if additional supply-side resources are needed to
25 meet future demand, whether the plan adequately demonstrates:

26 (A) the amount and operational characteristics
27 of the additional capacity needed;

1 (B) the types of viable supply-side resources for
2 meeting that need; and

3 (C) the range of probable costs of those
4 resources;

5 (4) whether the plan describes opportunities for
6 appropriate persons to participate in developing the plan;

7 (5) whether the specific criteria the electric utility
8 will use to evaluate and to select or reject resources are
9 reasonable and consistent with the guidelines of the integrated
10 resource planning process;

11 (6) whether the cost allocation method proposed by the
12 electric utility is reasonable;

13 (7) how the electric utility will achieve equity among
14 customer classes and provide demand-side programs to each customer
15 class, including tenants and low-income ratepayers; and

16 (8) whether any incentive factors are appropriate and,
17 if so, the levels of the factors.

18 (b) Not later than the 180th day after the date an electric
19 utility submits a preliminary integrated resource plan, the
20 commission shall issue an interim order approving the plan,
21 approving the plan as modified by the commission, or remanding the
22 plan for additional proceedings. The commission may extend the
23 deadline for not more than 30 days for extenuating circumstances
24 encountered in the development and processing of the plan if the
25 circumstances are fully explained and agreed on by the
26 commissioners.

27 [Sections 34.025-34.050 reserved for expansion]

1 SUBCHAPTER C. RESOURCE SOLICITATION

2 Sec. 34.051. COMMENCEMENT OF SOLICITATION. (a) After the
3 commission approves an electric utility's preliminary integrated
4 resource plan, the utility shall conduct solicitations of
5 demand-side and supply-side resources as prescribed by the plan.

6 (b) In addition to soliciting resources from a
7 nonaffiliated third party, an electric utility may:

8 (1) prepare and submit a bid of a new utility
9 demand-side management program as prescribed by Section 34.053;

10 (2) receive bids from one or more affiliates; and

11 (3) request a certificate of convenience and necessity
12 for a new rate-based generating plant.

13 Sec. 34.052. SUBMISSION OF BIDS; CONFIDENTIALITY. (a)
14 Each bidder under Section 34.051, including the electric utility
15 conducting the solicitation and each bidding affiliate, shall
16 submit two copies of its bid to the commission. The commission shall
17 ensure that the electric utility has access to all bids at the same
18 time.

19 (b) The commission shall keep a copy of each bid submitted
20 by the electric utility conducting the solicitation or a bidding
21 affiliate to determine whether the utility complied with the
22 criteria established for conducting the solicitation.

23 (c) A bid submitted or retained under this section is
24 confidential and is not subject to disclosure under Chapter 552,
25 Government Code.

26 Sec. 34.053. ELECTRIC UTILITY DEMAND-SIDE MANAGEMENT
27 PROGRAMS. (a) An electric utility that intends to use a proposed

1 demand-side management program to meet a need identified by the
2 utility's preliminary integrated resource plan must prepare a bid
3 reflecting that resource.

4 (b) A bid prepared by an electric utility under this section
5 must comply with the solicitation, evaluation, selection, and
6 rejection criteria specified by the utility's preliminary
7 integrated resource plan. The electric utility may not give
8 preferential treatment or consideration to the bid.

9 Sec. 34.054. QUALIFYING FACILITY BIDS; AVOIDED COSTS. (a)
10 The submission of a bid under this chapter by a qualifying facility,
11 regardless of whether the bid is accepted or rejected, with respect
12 to the capacity need for which the bid is submitted:

13 (1) is a waiver by the qualifying facility of any right
14 it may otherwise have under law to sell capacity to the electric
15 utility;

16 (2) represents the qualifying facility's agreement to
17 negotiate a rate for the purchase of capacity and terms relating to
18 the purchase that differ from the rate or terms that would otherwise
19 be required by 18 C.F.R. Part 292, Subpart C; and

20 (3) is a waiver by the qualifying facility of its right
21 to the rate or terms for a purchase of capacity by the electric
22 utility that might otherwise be required by 18 C.F.R. Part 292,
23 Subpart C.

24 (b) The avoided capacity costs under 18 C.F.R. Part 292,
25 Subpart C, of an electric utility that has submitted a preliminary
26 integrated resource plan to the commission under this chapter is \$0
27 and remains \$0, with respect to any capacity needs shown in the

1 preliminary plan or final plan that are to be satisfied by resources
2 approved in the utility's final plan.

3 (c) This section does not affect the validity of a contract
4 entered into between an electric utility and a qualifying facility
5 for any purchase.

6 Sec. 34.055. EVALUATION OF BIDS; NEGOTIATION OF CONTRACTS.

7 (a) An electric utility shall evaluate each bid submitted,
8 including an affiliate bid, in accordance with the criteria
9 specified by the utility's preliminary integrated resource plan and
10 shall negotiate each necessary contract.

11 (b) An electric utility is not required to accept a bid and
12 may reject any or all bids in accordance with the selection and
13 rejection criteria specified by the utility's preliminary
14 integrated resource plan.

15 Sec. 34.056. APPLICATION FOR CERTIFICATE OF CONVENIENCE AND
16 NECESSITY FOR RESOURCE NOT INCLUDED IN PRELIMINARY PLAN. If the
17 results of the solicitation and contract negotiations do not meet
18 the supply-side needs identified by the electric utility's
19 preliminary integrated resource plan, the utility may apply for a
20 certificate of convenience and necessity for a utility-owned
21 resource addition, notwithstanding that a solicitation was
22 conducted and the resource addition was not included in the
23 approved plan.

24 [Sections 34.057-34.100 reserved for expansion]

25 SUBCHAPTER D. FINAL INTEGRATED RESOURCE PLAN

26 Sec. 34.101. SUBMISSION OF FINAL INTEGRATED RESOURCE PLAN.

27 After conducting each solicitation and negotiating each contract,

1 an electric utility shall submit a proposed final integrated
2 resource plan to the commission. The proposed plan must include:

- 3 (1) the results of each solicitation;
4 (2) any contracts for resources;
5 (3) the terms under which the electric utility will
6 provide resources to meet a need identified by the preliminary
7 integrated resource plan, if the electric utility accepts a bid
8 submitted under Section 34.053; and
9 (4) an application for a certificate of convenience
10 and necessity, if necessary.

11 Sec. 34.102. PUBLIC HEARING ON FINAL INTEGRATED RESOURCE
12 PLAN. (a) The commission, on request by an affected person, shall
13 convene a public hearing on the reasonableness and
14 cost-effectiveness of a proposed final integrated resource plan.
15 The commission shall convene the hearing, if requested, not later
16 than the 90th day after the date the electric utility files its
17 proposed plan.

18 (b) Any interested person may intervene in the hearing and,
19 at the hearing, may present evidence and cross-examine witnesses
20 regarding the reasonableness and cost-effectiveness of the
21 proposed final integrated resource plan.

22 (c) A party to the hearing may not litigate or conduct
23 discovery on an issue that was or could have been litigated in
24 connection with the filing of the electric utility's preliminary
25 integrated resource plan.

26 (d) To the extent permitted by federal law, the commission
27 may issue a written order for access to the books, accounts,

1 memoranda, contracts, or other records of an exempt wholesale
2 generator or power marketer selling energy at wholesale to an
3 electric utility, if access is required for the effective discharge
4 of the commission's regulatory responsibilities under this
5 subtitle. The materials obtained by the commission under this
6 subsection are confidential and are not subject to disclosure under
7 Chapter 552, Government Code.

8 Sec. 34.103. RULING ON FINAL INTEGRATED RESOURCE PLAN;

9 DEADLINE. (a) After conducting a hearing on a proposed final
10 integrated resource plan under Section 34.102, the commission shall
11 determine whether:

12 (1) the final plan was developed in accordance with
13 the electric utility's preliminary integrated resource plan and
14 commission rules;

15 (2) the resource solicitations, evaluations,
16 selections, and rejections were conducted in accordance with the
17 criteria included in the utility's preliminary plan;

18 (3) the final plan is cost-effective;

19 (4) the final plan is equitable among customer classes
20 and provides demand-side programs to each customer class, including
21 tenants and low-income ratepayers;

22 (5) the commission should certify each contract and
23 electric utility bid submitted under Section 34.053 that resulted
24 from the solicitations; and

25 (6) the commission should grant a requested
26 certificate of convenience and necessity for an electric
27 utility-owned resource addition.

1 (b) Not later than the 180th day after the date an electric
2 utility submits a proposed final integrated resource plan, the
3 commission shall issue a final order approving the plan, approving
4 the plan as modified by the commission, or remanding the plan for
5 additional proceedings.

6 Sec. 34.104. CERTIFICATION OF CONTRACTS. (a) In
7 determining whether to certify a supply-side or demand-side
8 contract that results from a solicitation, the commission shall
9 consider:

10 (1) the reliability, financial condition, and safety
11 of the resource contract; and

12 (2) whether the solicitation, evaluation, and
13 selection of the resource contract were conducted in accordance
14 with the criteria included in the electric utility's preliminary
15 integrated resource plan.

16 (b) In addition to the considerations in Subsection (a), if
17 a contract proposed for certification is between an electric
18 utility and its affiliate, the commission shall determine whether:

19 (1) the utility treated and considered the affiliate's
20 bid in the same manner it treated and considered each other bid
21 intended to meet the same resource needs;

22 (2) the transaction will benefit consumers;

23 (3) the transaction violates any state law, including
24 least-cost planning;

25 (4) the transaction provides the affiliate with an
26 unfair competitive advantage by virtue of its affiliation or
27 association with the utility;

1 (5) the transaction is in the public interest; and

2 (6) the commission has sufficient regulatory
3 authority, resources, and access to the books and records of the
4 utility and its affiliate to make the determination required by
5 this subsection.

6 (c) The commission may not certify a contract for a new
7 purchase of power by an electric utility unless the utility has
8 determined, after giving consideration to consistently applied
9 regional or national reliability standards, guidelines, or
10 criteria, that:

11 (1) the contract would not unreasonably impair the
12 continued reliability of electric systems affected by the purchase;
13 and

14 (2) the purchase can reasonably be expected to produce
15 benefits to customers of the purchasing utility.

16 (d) Commission certification of a resource contract under
17 this section does not negate the necessity of the resource to comply
18 with all applicable environmental and siting regulations.

19 (e) In establishing an electric utility's rates, a
20 regulatory authority shall consider a payment made under a
21 certified contract to be a reasonable and necessary operating
22 expense of the utility during the period for which the certified
23 contract is effective. A regulatory authority may provide for
24 monthly recovery of approved costs of the contract as those costs
25 are incurred, including any markup allowed by the commission.

26 Sec. 34.105. CERTIFICATE OF CONVENIENCE AND NECESSITY. (a)
27 In determining whether to grant a certificate of convenience and

1 necessity requested by an electric utility in the utility's
2 proposed final integrated resource plan, the commission shall
3 consider:

4 (1) the effect of granting the certificate on the
5 recipient of the certificate and on any electric utility serving
6 the proximate area; and

7 (2) other factors, such as:

8 (A) community values;

9 (B) recreational and park areas;

10 (C) historical and aesthetic values;

11 (D) environmental integrity; and

12 (E) the probable improvement of service or
13 lowering of cost to consumers in the area if the certificate is
14 granted.

15 (b) The commission shall grant a requested certificate of
16 convenience and necessity as part of the commission's approval of a
17 final integrated resource plan if the commission finds that:

18 (1) the proposed resource addition is necessary under
19 the plan;

20 (2) the proposed resource addition is the best and
21 most economical choice of technology for the service area; and

22 (3) cost-effective conservation and other
23 cost-effective alternative energy sources cannot reasonably meet
24 the need.

25 [Sections 34.106-34.150 reserved for expansion]

1 SUBCHAPTER E. ACQUISITION OF RESOURCES OUTSIDE THE

2 INTEGRATED RESOURCE PLANNING PROCESS

3 Sec. 34.151. EXEMPTIONS FROM SOLICITATION PROCESS. (a)

4 The commission shall adopt rules allowing an electric utility to
5 add new or incremental resources outside the solicitation process,
6 consistent with the utility's last approved integrated resource
7 planning goals, including resources listed in Subsection (b).

8 (b) Consistent with an electric utility's last approved
9 integrated resource planning goals, if any, an electric utility,
10 including a nongenerating electric utility, may add new or
11 incremental resources outside the solicitation process, including:

12 (1) contract renegotiation for existing capacity from
13 an electric cooperative or nonaffiliated power generating
14 facility;

15 (2) electric cooperative or nonaffiliated demand-side
16 management programs or renewable resources;

17 (3) capacity purchases with two-year or shorter terms
18 from an electric cooperative or nonaffiliated power supplier;

19 (4) capacity purchases necessary to satisfy
20 unanticipated emergency conditions;

21 (5) the exercise of an option in a purchased power
22 contract with an electric cooperative or nonaffiliated supplier;
23 and

24 (6) renewable distributed resources, located at or
25 near the point of consumption, if the resources are less costly than
26 transmission extensions or upgrades.

27 (c) The addition of new or incremental resources by an

1 electric utility under Subsection (b) does not require an amendment
2 to the utility's integrated resource plan.

3 Sec. 34.152. NONGENERATING ELECTRIC UTILITY SOLICITATIONS.

4 (a) A nongenerating electric utility not planning to construct
5 generating facilities shall conduct a solicitation of resources if
6 the utility seeks to purchase from a wholesale power supplier other
7 than the utility's existing power supplier more than 25 percent of
8 the utility's peak demand or more than 70 megawatts. A
9 nongenerating electric utility is not required to conduct a
10 solicitation for a purchase from an existing power supplier and the
11 utility may add new or incremental resources outside the
12 solicitation process as provided by Section 34.151.

13 (b) The commission, on request by the nongenerating
14 electric utility, may review a proposed contract for resources
15 resulting from a solicitation to determine the contract's
16 reasonableness. The commission shall certify the proposed contract
17 if the commission finds that the contract is reasonable. The
18 commission shall make its determination not later than the 90th day
19 after the date the proposed contract is submitted.

20 (c) This section does not alter or amend a wholesale power
21 supply contract executed before January 1, 2010.

22 Sec. 34.153. EXEMPTION FOR CERTAIN FACILITIES. (a) To
23 provide for the orderly transition to an integrated resource
24 planning process and to avoid delays in the construction of
25 resources necessary to provide electric service, an integrated
26 resource plan is not required for issuance of a certificate of
27 convenience and necessity for the construction of a generating

1 facility if:

2 (1) the electric utility has conducted a solicitation
3 for resources to meet the need identified by the utility's notice of
4 intent in accordance with commission rules in effect at the time of
5 the solicitation; and

6 (2) the electric utility has submitted to the
7 commission the results of the solicitation and an application for
8 certification of the facility to meet the need identified by the
9 utility's notice of intent.

10 (b) The commission shall grant a certificate of convenience
11 and necessity for a generating facility to which this section
12 applies if:

13 (1) the facility is needed to meet future demand;

14 (2) the facility is the best and most economical
15 choice of technology for the service area; and

16 (3) cost-effective conservation and cost-effective
17 alternative energy sources cannot reasonably meet the need.

18 [Sections 34.154-34.170 reserved for expansion]

19 SUBCHAPTER F. MISCELLANEOUS PROVISIONS

20 Sec. 34.171. COST RECOVERY AND INCENTIVES. In carrying out
21 its duties related to the integrated resource planning process, the
22 commission may:

23 (1) allow timely recovery of the reasonable costs of
24 conservation, load management, and purchased power,
25 notwithstanding Section 36.201; and

26 (2) authorize additional incentives for conservation,
27 load management, purchased power, and renewable resources.

1 Sec. 34.172. RECONCILIATION OF RECOVERED COSTS. (a) To the
2 extent that the commission authorizes an electric utility to
3 recover the costs of demand-side management programs,
4 conservation, load management, or purchased power through cost
5 recovery factors, the commission shall make a final reconciliation
6 of the costs recovered through the cost recovery factors.

7 (b) The commission shall adopt rules regarding:

8 (1) the timing of reconciliations for each cost
9 recovery factor;

10 (2) the information an electric utility must file in
11 support of each reconciliation; and

12 (3) other matters necessary to accomplish the
13 reconciliation.

14 (c) Each reconciliation must:

15 (1) review the reasonableness of the electric
16 utility's administration of the contracts and programs the costs of
17 which are being reconciled; and

18 (2) reconcile the revenue collected under each cost
19 recovery factor and the costs that the utility incurred on
20 purchased power, demand-side management, conservation, or load
21 management, as applicable, during the reconciliation period.

22 Sec. 34.173. RESOURCE PLANNING EXPENSES. (a) To the extent
23 that an electric utility is required by the commission to reimburse
24 a municipality for expenses incurred while participating in a
25 proceeding under this chapter, the commission shall, as part of the
26 commission's approval of the utility's integrated resource plan,
27 authorize a surcharge to be included in the utility's rates to allow

1 the utility to recover the amount paid to the municipality before
2 the utility's next preliminary integrated resource plan is filed.

3 (b) An electric utility may recover its reasonable expenses
4 arising from planning, preparing, and participating in a proceeding
5 under this chapter only after commission review is conducted in
6 accordance with Subchapter C or D, Chapter 36.

7 SECTION 5. Section 37.051, Utilities Code, is amended by
8 adding Subsection (d) to read as follows:

9 (d) Notwithstanding any other provision of this title, the
10 commission may issue multiple certificates to serve an area in
11 which customer choice was introduced before January 1, 2010. On
12 application, the commission shall issue a certificate to a retail
13 electric provider authorizing the provider to continue to provide
14 retail electric service in any area in which it was providing that
15 service on December 21, 2009. After July 1, 2010, only retail
16 electric providers certificated to serve an area in which customer
17 choice was introduced before January 1, 2010, may continue to serve
18 that area.

19 SECTION 6. Section 40.004, Utilities Code, is amended to
20 read as follows:

21 Sec. 40.004. JURISDICTION OF COMMISSION. Except as
22 specifically otherwise provided in this chapter, the commission has
23 jurisdiction over municipally owned utilities only for the
24 following purposes:

25 (1) to regulate wholesale transmission rates and
26 service, including terms of access, to the extent provided by
27 Subchapter A, Chapter 35;

1 (2) to regulate certification of retail service areas
2 to the extent provided by Chapter 37;

3 (3) to regulate rates on appeal under Subchapters D
4 and E, Chapter 33 [~~subject to Section 40.051(c)~~]; and

5 (4) [~~to establish a code of conduct as provided by~~
6 ~~Section 39.157(e) applicable to anticompetitive activities and to~~
7 ~~affiliate activities limited to structurally unbundled affiliates~~
8 ~~of municipally owned utilities, subject to Section 40.054;~~

9 [~~(5) to establish terms and conditions for open access~~
10 ~~to transmission and distribution facilities for municipally owned~~
11 ~~utilities providing customer choice, as provided by Section 39.203;~~

12 [~~(6) to require collection of the nonbypassable fee~~
13 ~~established under Section 39.903(b) and to administer the renewable~~
14 ~~energy credits program under Section 39.904(b) and the natural gas~~
15 ~~energy credits program under Section 39.9044(b); and~~

16 [~~(7)~~] to require reports of municipally owned utility
17 operations only to the extent necessary to [+

18 [(A)] enable the commission to determine the
19 aggregate load and energy requirements of the state and the
20 resources available to serve that load [~~or~~

21 [(B) enable the commission to determine
22 information relating to market power as provided by Section
23 39.155].

24 SECTION 7. Section 40.104, Utilities Code, is amended to
25 read as follows:

26 Sec. 40.104. TAX-EXEMPT STATUS. Nothing in this subtitle
27 may impair the tax-exempt status of municipalities, electric

1 cooperatives, or river authorities, nor shall anything in this
2 subtitle compel any municipality, electric cooperative, or river
3 authority to use its facilities in a manner that violates any
4 contractual provisions, bond covenants, or other restrictions
5 applicable to facilities financed by tax-exempt debt.
6 ~~[Notwithstanding any other provision of law, the decision to~~
7 ~~participate in customer choice by the adoption of a resolution in~~
8 ~~accordance with Section 40.051(b) is irrevocable.]~~

9 SECTION 8. Section 41.004, Utilities Code, is amended to
10 read as follows:

11 Sec. 41.004. JURISDICTION OF COMMISSION. Except as
12 specifically provided otherwise in this chapter, the commission has
13 jurisdiction over electric cooperatives only as follows:

14 (1) to regulate wholesale transmission rates and
15 service, including terms of access, to the extent provided in
16 Subchapter A, Chapter 35;

17 (2) to regulate certification to the extent provided
18 in Chapter 37;

19 (3) to establish a code of conduct as provided in
20 Section 39.157(e) ~~[subject to Section 41.054]; and~~

21 (4) ~~[to establish terms and conditions, but not rates,~~
22 ~~for open access to distribution facilities for electric~~
23 ~~cooperatives providing customer choice, as provided in Section~~
24 ~~39.203, and~~

25 ~~(5)]~~ to require reports of electric cooperative
26 operations only to the extent necessary to:

27 (A) ensure the public safety;

1 (B) enable the commission to satisfy its
2 responsibilities relating to electric cooperatives under this
3 chapter; or

4 (C) enable the commission to determine the
5 aggregate electric load and energy requirements in the state and
6 the resources available to serve that load[~~, or~~

7 [~~(D) enable the commission to determine~~
8 ~~information relating to market power as provided in Section~~
9 ~~39.155].~~

10 SECTION 9. Section 41.055, Utilities Code, is amended to
11 read as follows:

12 Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board
13 of directors has exclusive jurisdiction to:

14 (1) set all terms of access, conditions, and rates
15 applicable to services provided by the electric cooperative,
16 [~~except as provided by Sections 41.054 and 41.056,~~] including
17 nondiscriminatory and comparable rates for distribution but
18 excluding wholesale transmission rates, terms of access, and
19 conditions for wholesale transmission service set by the commission
20 under Subchapter A, Chapter 35, provided that the rates for
21 distribution established by the electric cooperative shall be
22 comparable to the distribution rates that apply to the electric
23 cooperative and its subsidiaries;

24 (2) [~~determine whether to unbundle any energy-related~~
25 ~~activities and, if the board of directors chooses to unbundle,~~
26 ~~whether to do so structurally or functionally,~~

27 [~~(3) reasonably determine the amount of the electric~~

1 ~~cooperative's stranded investment,~~

2 ~~[(4) establish nondiscriminatory transition charges~~
3 ~~reasonably designed to recover the stranded investment over an~~
4 ~~appropriate period of time,~~

5 ~~[(5) determine the extent to which the electric~~
6 ~~cooperative will provide various customer services, including~~
7 ~~nonelectric services, or accept the services from other providers,~~

8 ~~[(6)]~~ manage and operate the electric cooperative's
9 utility systems, including exercise of control over resource
10 acquisition and any related expansion programs;

11 (3) ~~[(7)]~~ establish and enforce service quality
12 standards, reliability standards, and consumer safeguards designed
13 to protect retail electric customers;

14 (4) ~~[(8) determine whether a base rate reduction is~~
15 ~~appropriate for the electric cooperative,~~

16 ~~[(9)]~~ determine any other utility matters that the
17 board of directors believes should be included;

18 (5) ~~[(10)]~~ sell electric energy and capacity at
19 wholesale~~[, regardless of whether the electric cooperative~~
20 ~~participates in customer choice,~~

21 ~~[(11) determine the extent to which the electric~~
22 ~~cooperative offers energy efficiency programs and how the programs~~
23 ~~are administered by the electric cooperative]; and~~

24 (6) ~~[(12)]~~ make any other decisions affecting the
25 electric cooperative's method of conducting business that are not
26 inconsistent with the provisions of this chapter.

27 SECTION 10. Sections 41.061(a), (c), and (e), Utilities

1 Code, are amended to read as follows:

2 (a) This section shall apply to retail rates of an electric
3 cooperative [~~that has not adopted customer choice and to the retail~~
4 ~~delivery rates of an electric cooperative that has adopted customer~~
5 ~~choice~~]. This section may not apply to rates for [+

6 [~~(1) sales of electric energy by an electric~~
7 ~~cooperative that has adopted customer choice, or~~

8 [~~(2)~~] wholesale sales of electric energy.

9 (c) An electric cooperative may implement the proposed
10 rates on completion of the requirements under Subsection (b), and
11 those rates shall remain in effect until changed by the electric
12 cooperative as provided by this section [~~or, for rates other than~~
13 ~~retail delivery rates, until this section is no longer applicable~~
14 ~~because the electric cooperative adopts customer choice~~].

15 (e) Retail rates set by an electric cooperative [~~that has~~
16 ~~not adopted customer choice and retail delivery rates set by an~~
17 ~~electric cooperative that has adopted customer choice~~] shall be
18 just and reasonable, not unreasonably preferential, prejudicial,
19 or discriminatory; provided, however, if the customer agrees, an
20 electric cooperative may charge a market-based rate to customers
21 who have energy supply options if rates are not increased for other
22 customers as a result.

23 SECTION 11. Not later than February 1, 2010, a retail
24 electric provider that wants to continue to provide retail electric
25 service in ERCOT shall file with the Public Utility Commission of
26 Texas:

27 (1) an application for a certificate of convenience

1 and necessity under Section 37.051(d), Utilities Code, as added by
2 this Act; and

3 (2) a tariff that complies with Section 32.101,
4 Utilities Code.

5 SECTION 12. This Act does not affect bonds or other
6 indebtedness issued before the effective date of this Act. Bonds or
7 other indebtedness issued before the effective date of this Act are
8 governed by the law in effect when the bonds or other indebtedness
9 was issued, and that law is continued in effect for that purpose.

10 SECTION 13. This Act takes effect January 1, 2010.