

By: Keffer

H.B. No. 2782

A BILL TO BE ENTITLED

AN ACT

relating to regulation of electric generation capacity ownership in the electric power market.

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

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

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

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

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

(3) no person owns, controls, or owns and controls in any combination more than 20 percent of the installed generation capacity located in or capable of delivering electricity to a power region, as determined according to Section 39.154.

(d) For a power region outside of ERCOT, a power generation company that is affiliated with an electric utility may elect to demonstrate that it meets the requirements of Subsection (a)(3) by showing that it does not own, control, or own and control in any combination more than 20 percent of the installed capacity in a geographic market that includes the power region, using the

1 guidelines, standards, and methods adopted by the Federal Energy  
2 Regulatory Commission.

3 SECTION 2. Section 39.153, Utilities Code, is amended by  
4 adding Subsection (a-1) and amending Subsections (e) and (f) to  
5 read as follows:

6 (a-1) Not later than September 30, 2010, each electric  
7 utility subject to this section shall sell at auction or otherwise  
8 divest any additional entitlements to the utility's jurisdictional  
9 installed generation capacity necessary to ensure that the electric  
10 utility does not control more than 20 percent of the installed  
11 generation capacity:

12 (1) in ERCOT;

13 (2) in an ERCOT zonal boundary; or

14 (3) in a functional market recognized by the  
15 commission.

16 (e) The commission shall adopt rules by December 31, 2000,  
17 that define the initial scope of the capacity entitlements to be  
18 auctioned and not later than December 31, 2009, shall adopt  
19 additional rules that define the scope of the auctions necessary to  
20 comply with Subsection (a-1). Entitlements may be auctioned in  
21 blocks of less than 15 percent. The rules shall state the minimum  
22 amount of capacity that can be sold at auction as an entitlement.  
23 At a minimum, the rules shall provide that the entitlements:

24 (1) may be sold and purchased in periods of not less  
25 than one month nor more than four years;

26 (2) may be resold to any lawful purchaser, except for a  
27 retail electric provider affiliated with the electric utility that

1 originally auctioned the entitlement;

2 (3) include no possessory interest in the unit from  
3 which the power is produced;

4 (4) include no obligations of a possessory owner of an  
5 interest in the unit from which the power is produced; and

6 (5) give the purchaser the right to designate the  
7 dispatch of the entitlement, subject to planned outages, outages  
8 beyond the control of the utility operating the unit, and other  
9 considerations subject to the oversight of the applicable  
10 independent organization.

11 (f) The commission shall adopt rules by December 31, 2000,  
12 that prescribe the procedure for the auction of the entitlements as  
13 required by Subsection (a). If necessary, the commission may adopt  
14 additional rules that prescribe the procedure for the auction of  
15 the entitlements as required by Subsection (a-1). The rules shall  
16 include:

17 (1) a process for conducting the auction or auctions,  
18 including who shall conduct it, how often it shall be conducted, and  
19 how winning bidders shall be determined;

20 (2) a process for the electric utility to designate  
21 which generation units or combination of units are offered for  
22 auction;

23 (3) a provision for the utility to establish an  
24 opening bid price based on the electric utility's expected cost,  
25 with the commission prescribing the means for determining the  
26 opening bid price, which may not include return on equity; and

27 (4) a provision that allows a bidder to specify the

1 magnitude and term of the entitlement, subject to the conditions  
2 established in Subsection (e).

3 SECTION 3. Sections 39.154(a) and (c), Utilities Code, are  
4 amended to read as follows:

5 (a) Beginning on the date of introduction of customer  
6 choice, a power generation company may not own, ~~and~~ control, or  
7 own and control in any combination more than 20 percent of the  
8 installed generation capacity located in, or capable of delivering  
9 electricity to, a power region, zone, or functional market  
10 recognized by the commission in the 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, zone, or functional  
16 market recognized by the commission in the power region, reduced by  
17 the installed generation capacity of those facilities that are made  
18 subject to capacity auctions under Sections 39.153(a) and (d).

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

21 (a) Each person, municipally owned utility, electric  
22 cooperative, and river authority that owns or controls generation  
23 facilities and offers electricity for sale in this state shall  
24 report to the commission its installed generation capacity, the  
25 total amount of capacity available for sale to others, the total  
26 amount of capacity under contract to others, the total amount of  
27 capacity dedicated to its own use, its annual wholesale power sales

1 in the state, its annual retail power sales in the state, and any  
2 other information necessary for the commission to assess market  
3 power or the development of a competitive retail market in the  
4 state. The commission shall by rule prescribe the nature and detail  
5 of the reporting requirements and shall administer those reporting  
6 requirements in a manner that ensures the confidentiality of  
7 competitively sensitive information.

8 SECTION 5. Sections 39.156(a), (b), and (g), Utilities  
9 Code, are amended to read as follows:

10 (a) In this section, "market power mitigation plan" or  
11 "plan" means a written proposal by an electric utility or a power  
12 generation company for reducing its ownership or [~~and~~] control of  
13 installed generation capacity as required by Section 39.154.

14 (b) An electric utility or power generation company owning,  
15 controlling, or owning and controlling in any combination more than  
16 20 percent of the generation capacity located in, or capable of  
17 delivering electricity to, a power region, zone, or functional  
18 market recognized by the commission in the power region shall file a  
19 market power mitigation plan with the commission not later than the  
20 90th day after the date the electric utility's or power generation  
21 company's generation capacity exceeds the 20 percent limitation  
22 under this subsection [~~December 1, 2000~~].

23 (g) In reaching its determination under Subsection (f), the  
24 commission shall consider:

25 (1) the degree to which the electric utility's or power  
26 generation company's stranded costs, if any, are minimized;

27 (2) whether on disposition of the generation assets

1 the reasonable value is likely to be received;

2 (3) the effect of the plan on the electric utility's or  
3 power generation company's federal income taxes;

4 (4) the effect of the plan on current and potential  
5 competitors in the generation market; ~~and~~

6 (5) whether the plan is consistent with the public  
7 interest;

8 (6) the ownership of generation resources in a zone;

9 (7) the control of generation through the use of  
10 contracts between affiliated retail electric providers and  
11 independent power producers; and

12 (8) the emissions credits owned or controlled by an  
13 electric utility or power generation company in a nonattainment  
14 area for national ambient air quality standards.

15 SECTION 6. Section 39.407(a), Utilities Code, is amended to  
16 read as follows:

17 (a) If an electric utility chooses on or after January 1,  
18 2007, to participate in customer choice, the commission may not  
19 authorize customer choice until the applicable power region has  
20 been certified as a qualifying power region under Section  
21 39.152(a). Except as otherwise provided by this subsection, the  
22 commission shall certify that the requirements of Section  
23 39.152(a)(3) are met for electric utilities subject to this  
24 subchapter only upon a finding that the total capacity owned,  
25 controlled, or owned and controlled in any combination by each such  
26 electric utility and its affiliates does not exceed 20 percent of  
27 the total installed generation capacity within the constrained

1 geographic region served by each such electric utility plus the  
2 total available transmission capacity capable of delivering firm  
3 power and energy to that constrained geographic region. Not later  
4 than May 1, 2002, each electric utility subject to this subchapter  
5 shall submit to the electric utility restructuring legislative  
6 oversight committee an analysis of the needed transmission  
7 facilities necessary to make the electric utility's service area  
8 transmission capability comparable to areas within the ERCOT power  
9 region. On or after September 1, 2003, each electric utility  
10 subject to this subchapter shall file the utility's plans to  
11 develop the utility's transmission interconnections with the  
12 utility's power region or other adjacent power regions. The  
13 commission shall review the plan and not later than the 180th day  
14 after the date the plan is filed, determine the additional  
15 transmission facilities necessary to provide access to power and  
16 energy that is comparable to the access provided in areas within the  
17 ERCOT power region; provided, however, that if a hearing is  
18 requested by any party to the proceeding, the 180-day deadline will  
19 be extended one day for each day of hearings. The commission shall,  
20 as a part of the commission's approval of the plan, approve a rate  
21 rider mechanism for the recovery of the incremental costs of those  
22 facilities after the facilities are completed and in-service. A  
23 finding of need under this subsection shall meet the requirements  
24 of Sections 37.056(c)(1), (2), and (4)(E). The commission may  
25 certify that the requirements of Section 39.152(a)(3) are met for  
26 electric utilities subject to this subchapter if the commission  
27 finds that:

1           (1) each such utility has sufficient transmission  
2 facilities to provide customers access to power and energy from  
3 capacity controlled by suppliers not affiliated with the incumbent  
4 utility that is comparable to the access to power and energy from  
5 capacity controlled by suppliers not affiliated with the incumbent  
6 utilities in areas of the ERCOT power region; and

7           (2) the total capacity owned, controlled, or owned and  
8 controlled in any combination by each such electric utility and its  
9 affiliates does not exceed 20 percent of the total installed  
10 generation capacity within the power region.

11           SECTION 7. Section 39.453(b), Utilities Code, is amended to  
12 read as follows:

13           (b) The commission shall certify that the requirement of  
14 Section 39.152(a)(3) is met for an electric utility subject to this  
15 subchapter only if the commission finds that the total capacity  
16 owned, controlled, or owned and controlled in any combination by  
17 the electric utility and the utility's affiliates does not exceed  
18 20 percent of the total installed generation capacity within the  
19 power region of that utility.

20           SECTION 8. Sections 39.153(b) and 39.154(e), Utilities  
21 Code, are repealed.

22           SECTION 9. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2009.