

By: Turner of Harris

H.B. No. 3357

A BILL TO BE ENTITLED

AN ACT

relating to mergers and acquisitions in the electric industry.

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

SECTION 1. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. Mergers of Power Generation Companies and Retail Electric Providers.

(a) An owner of electric generation facilities that offers electricity for sale in the state and proposes to merge, consolidate, or otherwise become affiliated with a retail electric provider that offers electricity for sale to retail customers in this state shall obtain the approval of the commission before closing, if the owner of the electric generation facilities owns or controls more than ten percent (10%) of the electricity generated in an ERCOT zone.

(b) Upon the filing of an application with the commission, the commission shall investigate the transaction to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall consider whether the transaction will:

(1) adversely affect the health or safety of customers or employees;

(2) result in the transfer of jobs of citizens of this state to workers domiciled outside the state;

1           (3) result in the decline of service;

2           (4) result in the potential for impairment of  
3 competition, cross-subsidization, customer confusion or any  
4 preferential advantage, access or treatment for either the power  
5 generation company, the retail electric provider or the combination  
6 thereof; or

7           (5) otherwise be adverse to the public interest.

8           (c) If the commission finds that the transaction as proposed  
9 would not be in the public interest, the commission may reject the  
10 transaction or may condition approval of the transaction on such  
11 conditions as the commission may deem reasonable and necessary to  
12 protect the public interest.

13           (d) Nothing in this chapter shall be construed to confer  
14 immunity from state or federal antitrust laws. This chapter is  
15 intended to complement other state and federal antitrust  
16 provisions. Therefore, antitrust remedies may also be sought in  
17 state or federal court to remedy anticompetitive activities.

18           (e) The commission has the authority to adopt such rules as  
19 may be necessary to implement this section.

20           (f) This section shall apply to any merger, consolidation or  
21 affiliation proposed after January 1, 2009. No such merger,  
22 consolidation or affiliation shall be effective until approved by  
23 the commission at least 120 days after the effective date of this  
24 act.

25           SECTION 2. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the votes necessary for immediate effect, this  
2 Act takes effect September 1, 2009.