

By: Davis, Wendy

S.B. No. 1480

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 39.157(a), Utilities Code, is amended to  
16 read as follows:

17 (a) The commission shall monitor market power associated  
18 with the generation, transmission, distribution, and sale of  
19 electricity in this state. On a finding that market power abuses or  
20 other violations of this section are occurring, the commission  
21 shall require reasonable mitigation of the market power by ordering  
22 the construction of additional transmission or distribution  
23 facilities, by seeking an injunction or civil penalties as  
24 necessary to eliminate or to remedy the market power abuse or  
25 violation as authorized by Chapter 15, by imposing an  
26 administrative penalty as authorized by Chapter 15, or by  
27 suspending, revoking, or amending a certificate or registration as

1 authorized by Section 39.356. The commission shall allow affected  
2 customers, including political subdivisions, retail electric  
3 providers, and commercial power users to participate in an  
4 enforcement proceeding that alleges market power abuse or  
5 manipulation of the wholesale market. The commission shall order  
6 refunds be made to end users adversely impacted by a finding of  
7 market power abuse or manipulation of the wholesale market. A  
8 person may seek a remedy in any appropriate forum, regardless of  
9 whether the commission takes action regarding an allegation of  
10 market power abuse or manipulation of a wholesale market by an  
11 electric utility or power generation company. An electric utility  
12 or power generation company may not use the filed rate doctrine as a  
13 defense to a suit by a private party that alleges market power abuse  
14 or manipulation of the wholesale market. Section 15.024(c) does  
15 not apply to an administrative penalty imposed under this section.  
16 For purposes of this subchapter, market power abuses are practices  
17 by persons possessing market power that are unreasonably  
18 discriminatory or tend to unreasonably restrict, impair, or reduce  
19 the level of competition, including practices that tie unregulated  
20 products or services to regulated products or services or  
21 unreasonably discriminate in the provision of regulated services.  
22 For purposes of this section, "market power abuses" include  
23 predatory pricing, withholding of production, precluding entry,  
24 and collusion. A violation of the code of conduct provided by  
25 Subsection (d) that materially impairs the ability of a person to  
26 compete in a competitive market shall be deemed to be an abuse of  
27 market power. The possession of a high market share in a market

1 open to competition may not, of itself, be deemed to be an abuse of  
2 market power; however, this sentence shall not affect the  
3 application of state and federal antitrust laws. The possession of  
4 a low market share within a market open to competition does not, of  
5 itself, preclude a finding that an investor-owned generator engaged  
6 in an abuse of market power.

7 SECTION 7. Section 39.407(a), Utilities Code, is amended to  
8 read as follows:

9 (a) If an electric utility chooses on or after January 1,  
10 2007, to participate in customer choice, the commission may not  
11 authorize customer choice until the applicable power region has  
12 been certified as a qualifying power region under Section  
13 39.152(a). Except as otherwise provided by this subsection, the  
14 commission shall certify that the requirements of Section  
15 39.152(a)(3) are met for electric utilities subject to this  
16 subchapter only upon a finding that the total capacity owned,  
17 controlled, or owned and controlled in any combination by each such  
18 electric utility and its affiliates does not exceed 20 percent of  
19 the total installed generation capacity within the constrained  
20 geographic region served by each such electric utility plus the  
21 total available transmission capacity capable of delivering firm  
22 power and energy to that constrained geographic region. Not later  
23 than May 1, 2002, each electric utility subject to this subchapter  
24 shall submit to the electric utility restructuring legislative  
25 oversight committee an analysis of the needed transmission  
26 facilities necessary to make the electric utility's service area  
27 transmission capability comparable to areas within the ERCOT power



1 region. On or after September 1, 2003, each electric utility  
2 subject to this subchapter shall file the utility's plans to  
3 develop the utility's transmission interconnections with the  
4 utility's power region or other adjacent power regions. The  
5 commission shall review the plan and not later than the 180th day  
6 after the date the plan is filed, determine the additional  
7 transmission facilities necessary to provide access to power and  
8 energy that is comparable to the access provided in areas within the  
9 ERCOT power region; provided, however, that if a hearing is  
10 requested by any party to the proceeding, the 180-day deadline will  
11 be extended one day for each day of hearings. The commission shall,  
12 as a part of the commission's approval of the plan, approve a rate  
13 rider mechanism for the recovery of the incremental costs of those  
14 facilities after the facilities are completed and in-service. A  
15 finding of need under this subsection shall meet the requirements  
16 of Sections 37.056(c)(1), (2), and (4)(E). The commission may  
17 certify that the requirements of Section 39.152(a)(3) are met for  
18 electric utilities subject to this subchapter if the commission  
19 finds that:

20 (1) each such utility has sufficient transmission  
21 facilities to provide customers access to power and energy from  
22 capacity controlled by suppliers not affiliated with the incumbent  
23 utility that is comparable to the access to power and energy from  
24 capacity controlled by suppliers not affiliated with the incumbent  
25 utilities in areas of the ERCOT power region; and

26 (2) the total capacity owned, controlled, or owned and  
27 controlled in any combination by each such electric utility and its

1 affiliates does not exceed 20 percent of the total installed  
2 generation capacity within the power region.

3 SECTION 8. Section 39.453(b), Utilities Code, is amended to  
4 read as follows:

5 (b) The commission shall certify that the requirement of  
6 Section 39.152(a)(3) is met for an electric utility subject to this  
7 subchapter only if the commission finds that the total capacity  
8 owned, controlled, or owned and controlled in any combination by  
9 the electric utility and the utility's affiliates does not exceed  
10 20 percent of the total installed generation capacity within the  
11 power region of that utility.

12 SECTION 9. Sections 39.153(b) and 39.154(e), Utilities  
13 Code, are repealed.

14 SECTION 10. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section 39, Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect September 1, 2009.