

By: Williams

S.B. No. 1492

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the delay of retail electric competition in the areas of  
3 the state covered by the Southeastern Electric Reliability Council  
4 and to the recovery of certain transmission costs by electric  
5 utilities in those areas and to the provision of power during a  
6 natural disaster or declared emergency.

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

8 SECTION 1. Subsection (a), Section 36.209, Utilities Code,  
9 is amended to read as follows:

10 (a) This section applies only to an electric utility that  
11 operates solely outside of ERCOT in areas of this state included in  
12 the Southeastern Electric Reliability Council, the Southwest Power  
13 Pool, or the Western Electricity Coordinating Council and that owns  
14 or operates transmission facilities.

15 SECTION 2. Subchapter D, Chapter 38, Utilities Code, is  
16 amended by adding Section 38.073 to read as follows:

17 Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY.

18 (a) On a declaration of a natural disaster or other emergency by  
19 the governor, the commission may require an electric utility,  
20 municipally owned utility, electric cooperative, qualifying  
21 facility, power generation company, exempt wholesale generator, or  
22 power marketer to sell electricity to an electric utility,  
23 municipally owned utility, or electric cooperative that is unable  
24 to supply power to meet customer demand due to the natural disaster

1 or other emergency. Any plant, property, equipment, or other items  
2 used to receive or deliver electricity under this subsection are  
3 used and useful in delivering service to the public, and the  
4 commission shall allow timely recovery for the costs of those  
5 items. The commission may order an electric utility, municipally  
6 owned utility, or electric cooperative to provide interconnection  
7 service to another electric utility, municipally owned utility, or  
8 electric cooperative to facilitate a sale of electricity under this  
9 section. If the commission does not order the sale of electricity  
10 during a declared emergency as described by this subsection, the  
11 commission shall promptly submit to the legislature a report  
12 describing the reasons why the commission did not make that order.

13 (b) If an entity receives electricity under Subsection (a),  
14 the receiving entity shall reimburse the supplying entity for the  
15 actual cost of providing the electricity. The entity receiving the  
16 electricity is responsible for any transmission and distribution  
17 service charges specifically incurred in relation to providing the  
18 electricity.

19 (c) An entity that pays for electricity received under  
20 Subsection (b) and that is regulated by the commission may fully  
21 recover the cost of the electricity in a timely manner by:

22 (1) including the cost in the entity's fuel cost under  
23 Section 36.203; or

24 (2) notwithstanding Section 36.201, imposing a  
25 different surcharge.

26 SECTION 3. Section 39.452, Utilities Code, is amended by  
27 amending Subsection (b) and adding Subsection (i) to read as

1 follows:

2           (b) An electric [~~Notwithstanding Subsection (a), except for~~  
3 ~~adjustments authorized by Sections 36.203, 39.454, 39.455, and~~  
4 ~~39.456, and except for proceedings and cost recovery mechanisms~~  
5 ~~authorized by Sections 39.458-39.463, a person may not file a~~  
6 ~~proceeding to change, alter, or revoke any rate offered or charged~~  
7 ~~by an electric utility subject to this subchapter before June 30,~~  
8 ~~2007, with an effective date no earlier than June 30, 2008. As part~~  
9 ~~of a Subchapter C, Chapter 36, rate proceeding, the]~~ utility  
10 subject to this subchapter shall propose a competitive generation  
11 tariff to allow eligible customers the ability to contract for  
12 competitive generation. The commission shall approve, reject, or  
13 modify the proposed tariff not later than September 1, 2010. The  
14 tariffs subject to this subsection may not be considered to offer a  
15 discounted rate or rates under Section 36.007, and the utility's  
16 rates shall be set, in the proceeding in which the tariff is  
17 adopted, to recover any costs unrecovered as a result of the  
18 implementation of the tariff. The commission shall ensure that a  
19 competitive generation tariff shall not be implemented in a manner  
20 that harms the sustainability or competitiveness of manufacturers  
21 that choose not to take advantage of competitive generation.  
22 Pursuant to the competitive generation tariff, an electric utility  
23 subject to this subsection shall purchase competitive generation  
24 service, selected by the customer, and provide the generation at  
25 retail to the customer. An electric utility subject to this  
26 subsection shall provide and price retail transmission service,  
27 including necessary ancillary services, to retail customers who

1 choose to take advantage of the competitive generation tariff at a  
2 rate that is unbundled from the utility's cost of service. Such  
3 customers shall not be considered wholesale transmission  
4 customers. Notwithstanding any other provision of this chapter,  
5 the commission may not issue a decision relating to a competitive  
6 generation tariff that is contrary to an applicable decision, rule,  
7 or policy statement of a federal regulatory agency having  
8 jurisdiction.

9 (i) Notwithstanding any other provision of this chapter, if  
10 the commission has not approved the transition to competition plan  
11 under this section before January 1, 2009, an electric utility  
12 subject to this subchapter shall cease all activities relating to  
13 the transition to competition under this section. The commission  
14 may, on its own motion or the motion of any affected person,  
15 initiate a proceeding under Section 39.152 to certify a power  
16 region to which the utility belongs as a qualified power region when  
17 the conditions supporting such a proceeding exist. The commission  
18 may not approve a plan under Subsection (g) until the expiration of  
19 four years from the time that the commission certifies a power  
20 region under Subsection (f). If after the expiration of four years  
21 from the time the commission certifies a power region under  
22 Subsection (f), and after notice and a hearing, the commission  
23 determines consistent with the study required by Section 5, S.B.  
24 No. 1492, Acts of the 81st Legislature, Regular Session, 2009, that  
25 the electric utility cannot comply with Section 38.073, it shall  
26 consider approving a plan under Subsection (g).

27 SECTION 4. Not later than the 90th day after the effective

1 date of this Act, an electric utility operating in the Southeastern  
2 Electric Reliability Council that is subject to traditional cost of  
3 service rate regulation and on the effective date of this Act has a  
4 transition to competition plan on file with the Public Utility  
5 Commission of Texas shall:

6 (1) withdraw the plan from the commission; and

7 (2) cease all activities related to the plan.

8 SECTION 5. (a) Not later than November 1, 2009, the Public  
9 Utility Commission of Texas shall conduct and complete a study to  
10 evaluate:

11 (1) the locations in this state that are most likely to  
12 experience a natural disaster or other emergency;

13 (2) the ability of each entity described by Subsection  
14 (a), Section 38.073, Utilities Code, as added by this Act, to comply  
15 with that section in the event of a natural disaster or other  
16 emergency; and

17 (3) any steps an entity described by Subsection (a),  
18 Section 38.073, Utilities Code, as added by this Act, should take to  
19 prepare to comply with that section.

20 (b) An entity described by Subsection (a), Section 38.073,  
21 Utilities Code, as added by this Act, shall comply with any order  
22 issued by the Public Utility Commission of Texas under that  
23 subsection while the study required by Subsection (a) of this  
24 section is conducted.

25 (c) The Public Utility Commission of Texas shall prepare a  
26 report based on the study conducted under Subsection (a) of this  
27 section. The report must include any recommendations the

1 commission considers advisable in relation to the implementation of  
2 and compliance with Section 38.073, Utilities Code, as added by  
3 this Act. The commission may include the report in the report  
4 required by Section 31.003, Utilities Code.

5 SECTION 6. This Act takes effect immediately if it receives  
6 a vote of two-thirds of all the members elected to each house, as  
7 provided by Section 39, Article III, Texas Constitution. If this  
8 Act does not receive the vote necessary for immediate effect, this  
9 Act takes effect September 1, 2009.

COMMITTEE AMENDMENT NO. 1

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Amend S.B. No. 1492 (engrossed version) as follows:

On page 4, line 26, add Subsection (i):

(i) Notwithstanding any other provision of this Subtitle, in awarding a certificate of convenience and necessity or allowing cost recovery for purchased power by an electric utility subject to this section, the Commission shall ensure in its determination that the provision of section 37.056(4)(d) and (e) are met.

Solomons