

By: Solomons

H.B. No. 2134

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and functions of the Electric
3 Reliability Council of Texas, the Office of Public Utility Counsel,
4 and the Public Utility Commission of Texas; imposing an
5 administrative penalty.

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

7 SECTION 1. Section 12.005, Utilities Code, is amended to
8 read as follows:

9 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
10 Commission of Texas is subject to Chapter 325, Government Code
11 (Texas Sunset Act). Unless continued in existence as provided by
12 that chapter or by Chapter 39, the commission is abolished and this
13 title expires September 1, 2023 [~~2011~~].

14 SECTION 2. Section 12.155, Utilities Code, is amended by
15 adding Subsection (d) to read as follows:

16 (d) A commissioner may not be employed by an independent
17 organization certified under Section 39.151. The prohibition under
18 this subsection applies until the second anniversary of the date
19 the commissioner ceases to serve as a commissioner.

20 SECTION 3. Section 13.002, Utilities Code, is amended to
21 read as follows:

22 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
23 Public Utility Counsel is subject to Chapter 325, Government Code
24 (Texas Sunset Act). Unless continued in existence as provided by

1 that chapter, the office is abolished and this chapter expires
2 September 1, 2023 [~~2011~~].

3 SECTION 4. Section 15.023, Utilities Code, is amended by
4 amending Subsections (b), (c), and (d) and adding Subsection (b-1)
5 to read as follows:

6 (b) Except as provided by Subsection (b-1), the [~~The~~]
7 penalty for a violation may be in an amount not to exceed \$25,000.
8 Each day a violation continues or occurs is a separate violation for
9 purposes of imposing a penalty.

10 (b-1) The penalty for a violation of a reliability standard
11 adopted by the independent organization certified under Section
12 39.151 or of a commission rule relating to reliability in the
13 wholesale electric market may be in an amount not to exceed
14 \$100,000. Each day a violation continues or occurs is a separate
15 violation for purposes of imposing a penalty.

16 (c) The commission by rule shall establish a classification
17 system for violations described by Subsection (b) and a separate
18 classification system for violations described by Subsection
19 (b-1). Each system must include [~~that includes~~] a range of
20 administrative penalties that may be assessed for each class of
21 violation, based on:

22 (1) the seriousness of the violation, including:
23 (A) the nature, circumstances, extent, and
24 gravity of a prohibited act; and

25 (B) the hazard or potential hazard created to the
26 health, safety, or economic welfare of the public;

27 (2) the economic harm to property or the environment

1 caused by the violation;

2 (3) the history of previous violations;

3 (4) the amount necessary to deter future violations;

4 (5) efforts to correct the violation; and

5 (6) any other matter that justice may require.

6 (d) The classification system established under Subsection
7 (c) shall provide that a penalty in an amount that exceeds \$5,000
8 may be assessed only if the violation is included in the highest
9 class of violations in the classification system. This subsection
10 does not apply to the classification system established under
11 Subsection (c) for a violation described by Subsection (b-1).

12 SECTION 5. Chapter 15, Utilities Code, is amended by adding
13 Subchapter D to read as follows:

14 SUBCHAPTER D. CEASE AND DESIST ORDERS

15 Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter
16 applies only to a person to whom Subtitle B applies.

17 Sec. 15.102. RULES. The commission shall adopt rules to
18 implement this subchapter.

19 Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission
20 may proceed solely under this subchapter or under this subchapter
21 in conjunction with other applicable law.

22 Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The
23 commission on its own motion may issue a cease and desist order:

24 (1) after providing notice and an opportunity for a
25 hearing if practicable or without notice or opportunity for a
26 hearing; and

27 (2) if the commission determines that the conduct of a

1 person:

2 (A) poses a threat to continuous and adequate
3 electric service;

4 (B) is fraudulent;

5 (C) is hazardous;

6 (D) creates an immediate danger to the public
7 safety; or

8 (E) is causing or can be reasonably expected to
9 cause an immediate injury to a customer of electric services and
10 that the injury is incapable of being repaired or rectified by
11 monetary compensation.

12 (b) The commission by order or rule may delegate to the
13 executive director the authority to issue cease and desist orders
14 under this subchapter.

15 Sec. 15.105. NOTICE. (a) Notice of a proposed order must be
16 given not later than the 10th day before the date set for a hearing
17 if the commission requires notice and hearing before issuing the
18 order.

19 (b) On issuance of an order under Section 15.104 with or
20 without a hearing, the commission shall serve on the person
21 affected by the order an order that:

22 (1) contains a statement of the charges; and

23 (2) requires the person immediately to cease and
24 desist from the acts, methods, or practices stated in the order.

25 (c) The commission shall serve the order by registered or
26 certified mail, return receipt requested, to the person's last
27 known address.

1 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,
2 does not apply to the issuance of a cease and desist order under
3 this subchapter without a hearing. A hearing conducted before or
4 after issuance of an order under this subchapter is a contested case
5 under Chapter 2001, Government Code.

6 (b) Not later than the 10th day after the date the
7 commission issues an order under this subchapter without a hearing,
8 the commission shall set the time and place for a hearing to affirm,
9 modify, or set aside the order. The commission shall set the
10 hearing for a date that is not later than the 30th day after the date
11 the commission sets the time and place.

12 (c) At or following the hearing, the commission shall wholly
13 or partly affirm, modify, or set aside the order.

14 (d) The commission may hold a hearing under this subchapter
15 or may authorize the State Office of Administrative Hearings to
16 hold the hearing.

17 Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a
18 hearing under this subchapter, an order continues in effect unless
19 the order is stayed by the commission.

20 Sec. 15.108. ADMINISTRATIVE PENALTY. The commission may
21 impose an administrative penalty under Subchapter B against a
22 person who violates an order issued under this subchapter.

23 SECTION 6. Section 39.151, Utilities Code, is amended by
24 amending Subsections (d-1), (e), and (g) and adding Subsections
25 (d-2), (d-3), (d-4), (e-1), (g-2), (g-3), and (n) to read as
26 follows:

27 (d-1) The commission shall require an independent

1 organization certified by the commission under this section to
2 annually submit to the commission for review and approval the
3 organization's entire proposed annual budget. The commission may
4 approve, disapprove, or modify any item included in the proposed
5 budget. The commission by rule shall establish the type of
6 information or documents needed to effectively evaluate the
7 proposed budget and reasonable dates for the submission of that
8 information or those documents. The commission shall establish a
9 procedure to provide public notice of and public participation in
10 the budget review process.

11 (d-2) An independent organization certified by the
12 commission under this section must submit to the commission for
13 review and approval proposals for obtaining debt financing or for
14 refinancing existing debt. The commission may approve, disapprove,
15 or modify a proposal.

16 (d-3) An independent organization certified by the
17 commission under this section shall develop proposed performance
18 measures to track the organization's operations. The independent
19 organization must submit the proposed performance measures to the
20 commission for review and approval. The commission shall annually
21 review the organization's performance as part of the budget review
22 process under Subsection (d-1). The commission shall prepare an
23 annual report detailing the organization's performance and submit
24 the report to the lieutenant governor, the speaker of the house of
25 representatives, and each house and senate standing committee that
26 has jurisdiction over electric utility issues.

27 (d-4) The commission may:

1 (1) require an independent organization to provide
2 reports and information relating to the independent organization's
3 performance of the functions prescribed by this section and
4 relating to the organization's revenues, expenses, and other
5 financial matters;

6 (2) prescribe a system of accounts for an independent
7 organization;

8 (3) conduct audits of an independent organization's
9 performance of the functions prescribed by this section or relating
10 to its revenues, expenses, and other financial matters and may
11 require an independent organization to conduct such an audit;

12 (4) inspect an independent organization's facilities,
13 records, and accounts during reasonable hours and after reasonable
14 notice to the independent organization;

15 (5) assess administrative penalties against an
16 independent organization that violates this title or a rule or
17 order adopted by the commission and, at the request of the
18 commission, the attorney general may apply for a court order to
19 require an independent organization to comply with commission rules
20 and orders in the manner provided by Chapter 15; and

21 (6) resolve disputes between an affected person and an
22 independent organization and adopt procedures for the efficient
23 resolution of such disputes.

24 (e) After approving the budget of an independent
25 organization under Subsection (d-1), the [The] commission shall
26 [may] authorize the [an independent] organization [that is
27 certified under this section] to charge [a reasonable and

1 ~~competitively neutral rate]~~ to wholesale buyers and sellers a
2 system administration fee, within a range determined by the
3 commission, that is reasonable and competitively neutral to fund
4 ~~[to cover]~~ the independent organization's approved budget ~~[costs]~~.
5 The commission shall investigate the organization's cost
6 efficiencies, salaries and benefits, and use of debt financing and
7 may require the organization to provide any information needed to
8 effectively evaluate ~~[the organization's budget and]~~ the
9 reasonableness and neutrality of the fee ~~[a rate or proposed rate]~~
10 or to evaluate the effectiveness or efficiency of the
11 organization. The commission shall work with the organization to
12 establish the detail of information, both current and historical,
13 and the time frames the commission needs to effectively evaluate
14 the fee. The commission shall require the independent organization
15 to closely match actual revenues generated by the fee with revenue
16 necessary to fund the budget and make quarterly fee adjustments to
17 ensure that the budget year does not end with surplus or
18 insufficient funds. The commission shall require the organization
19 to submit to the commission quarterly reports that compare actual
20 expenditures with budgeted expenditures ~~[a rate or a rate request]~~.

21 (e-1) The review and approval of a proposed budget under
22 Subsection (d-1) or a proceeding to authorize and set the range for
23 the amount of a fee under Subsection (e) is not a contested case for
24 purposes of Chapter 2001, Government Code.

25 (g) To maintain certification as an independent
26 organization under this section, an organization's governing body
27 must be composed of persons specified by this section and selected

1 in accordance with formal bylaws or protocols of the
2 organization. The bylaws or protocols must be approved by the
3 commission and must reflect the input of the commission. The
4 bylaws must specify the process by which appropriate stakeholders
5 elect members and, for unaffiliated members, prescribe
6 professional qualifications for selection as a member. The bylaws
7 must require the use of a professional search firm to identify
8 candidates for membership of unaffiliated members. The process
9 must allow for commission input in identifying candidates. The
10 governing body must be composed of:

11 (1) one member unaffiliated with any market segment
12 and selected by [the chairman of] the commission, who may be a
13 former commissioner, to serve a three-year term [as an ex officio
14 ~~nonvoting member]~~;

15 (2) one member [the counsellor as an ex officio voting
16 ~~member]~~ representing residential and small commercial consumer
17 interests and selected by the counsellor to serve a one-year term;

18 (3) the chief executive officer of the independent
19 organization as an ex officio voting member;

20 (4) six market participants elected by their
21 respective market segments to serve one-year terms, with:

22 (A) one representing independent generators;

23 (B) one representing investor-owned utilities;

24 (C) one representing power marketers;

25 (D) one representing retail electric providers;

26 (E) one representing municipally owned

27 utilities; and

1 (F) one representing electric cooperatives;

2 (5) one member representing industrial consumer
3 interests and elected by the industrial consumer market segment to
4 serve a one-year term;

5 (6) one member representing large commercial consumer
6 interests selected in accordance with the bylaws to serve a
7 one-year term; ~~and~~

8 (7) five members unaffiliated with any market segment
9 and selected by the other members of the governing body to serve
10 three-year terms; and

11 (8) one member unaffiliated with any market segment
12 who possesses financial expertise and is selected by the other
13 members of the governing body to serve a three-year term.

14 (g-2) To maintain certification as an independent
15 organization under this section, the organization's governing body
16 must establish and implement a formal process for adopting new
17 protocols or revisions to existing protocols. The process must
18 require that:

19 (1) the organization's governing body initiate the
20 creation or revision of protocols; and

21 (2) the organization's staff develop the new or
22 revised protocols and submit the protocols to the governing body
23 for adoption.

24 (g-3) The governing body of an independent organization
25 certified by the commission under this section shall, in accordance
26 with formal bylaws or protocols adopted by the organization and
27 approved by the commission, establish and maintain an advisory

1 committee whose membership is broadly representative of the
2 organization's members to assist the organization's governing body
3 and staff in developing or revising protocols or in performing the
4 organization's other duties and functions. This subsection does
5 not prohibit the governing body of the organization from appointing
6 one or more additional committees or subcommittees to assist the
7 organization's governing body and staff in performing the
8 organization's duties and functions.

9 (n) An independent organization certified by the commission
10 under this section is subject to review under Chapter 325,
11 Government Code (Texas Sunset Act), but is not abolished under that
12 chapter. The independent organization shall be reviewed during
13 the periods in which the Public Utility Commission of Texas is
14 reviewed.

15 SECTION 7. Section 39.1515(c), Utilities Code, is amended
16 to read as follows:

17 (c) The independent organization shall use money from the
18 fee [rate] authorized by Section 39.151(e) to pay for the market
19 monitor's activities.

20 SECTION 8. Section 52.057, Utilities Code, is amended by
21 amending Subsections (a), (b), and (c) and adding Subsections (c-1)
22 and (d-1) to read as follows:

23 (a) This section applies only to [~~The commission shall~~
24 ~~approve~~] a customer-specific contract [~~that meets the requirements~~
25 ~~of Subsection (b)~~] to provide:

26 (1) central office based PBX-type services for a
27 system of 200 stations or more;

1 (2) billing and collection services;

2 (3) high-speed private line services of 1.544 megabits
3 or greater; or

4 (4) customized services.

5 (b) The commission may require an incumbent local exchange
6 company to submit the company's customer-specific contract to the
7 commission for review [~~shall approve a contract for a service~~
8 ~~described by Subsection (a) if:~~

9 [(1) ~~the contract is filed before the 30th day before~~
10 ~~the date the service contracted for is initiated,~~

11 [(2) ~~the contract is accompanied by an affidavit from~~
12 ~~the person or entity contracting for the service stating that the~~
13 ~~person or entity considered acquiring the same, equivalent, or~~
14 ~~substitutable service by bid or quotation from a source other than~~
15 ~~the incumbent local exchange company,~~

16 [(3) ~~the incumbent local exchange company recovers the~~
17 ~~appropriate costs of providing the service, and~~

18 [(4) ~~approval of the contract is in the public~~
19 ~~interest].~~

20 (c) An affected party may request in writing that the
21 commission review a customer-specific contract. The commission by
22 rule may establish guidelines for submitting a request [~~shall~~
23 ~~approve or deny a contract under this section not later than the~~
24 ~~30th day after the date the contract is filed, unless the commission~~
25 ~~for good cause extends the effective date for an additional 35~~
26 ~~days].~~

27 (c-1) The commission by rule may establish the criteria the

1 commission will consider when reviewing a customer-specific
2 contract.

3 (d-1) The commission by rule shall prescribe the period
4 during which an incumbent local exchange company must keep a record
5 of a customer-specific contract to which the company is a party.

6 SECTION 9. Subchapter C, Chapter 52, Utilities Code, is
7 amended by adding Section 52.1035 to read as follows:

8 Sec. 52.1035. RENEWAL OF CERTAIN REGISTRATIONS OR
9 CERTIFICATES. (a) The commission by rule shall require each
10 interexchange telecommunications utility, holder of a certificate
11 of operating authority, and holder of a service provider
12 certificate of operating authority to file with the commission on a
13 one-time or regular basis:

14 (1) the utility's or holder's name;

15 (2) the utility's or holder's address; and

16 (3) the most recent version of each annual report the
17 commission requires the utility or holder to file under this
18 subtitle.

19 (b) The rules must:

20 (1) require the commission to automatically allow a
21 utility or holder an extension of a filing deadline for the number
22 of days prescribed by the rule, as applicable; and

23 (2) state that the registration or certificate of a
24 utility or holder will not be valid after the last day of the
25 automatic extension period described by Subdivision (1) if the
26 utility or holder does not file information required by the
27 commission under this section by the end of the automatic extension

1 period.

2 (c) A utility or holder whose registration or certificate is
3 no longer valid may reregister or obtain a new certificate only by
4 complying with the requirements prescribed for an original
5 registration or for obtaining an original certificate.

6 SECTION 10. Subchapter B, Chapter 55, Utilities Code, is
7 amended by adding Section 55.026 to read as follows:

8 Sec. 55.026. NEW ORDERS PROHIBITED AFTER A CERTAIN DATE. On
9 or after September 1, 2011, the commission may not order a local
10 exchange company that is a dominant carrier to provide mandatory or
11 optional extended area service to additional metropolitan areas or
12 calling areas under this subchapter.

13 SECTION 11. Section 58.255, Utilities Code, is amended by
14 amending Subsection (c) and adding Subsection (e) to read as
15 follows:

16 (c) The commission may require an electing company to file a
17 private network service contract with the commission. The
18 commission shall require an electing company to file the company's
19 contract with the commission on the written request of an entity
20 described by Section 58.253(a). [~~Each contract shall be filed with~~
21 ~~the commission.~~] Commission approval of a contract is not
22 required.

23 (e) The commission by rule shall prescribe the period during
24 which an electing company must keep a record of a private network
25 service contract to which the company is a party.

26 SECTION 12. Section 59.074, Utilities Code, is amended by
27 amending Subsection (c) and adding Subsection (d) to read as

1 follows:

2 (c) The commission may require an electing company to file a
3 private network service contract with the commission. The
4 commission shall require an electing company to file the company's
5 contract with the commission on the written request of an entity
6 described by Section 59.072(a). [~~Each contract shall be filed with~~
7 ~~the commission.~~] Commission approval of a contract is not
8 required.

9 (d) The commission by rule shall prescribe the period during
10 which an electing company must keep a record of a private network
11 service contract to which the company is a party.

12 SECTION 13. The Public Utility Commission of Texas shall
13 adopt rules to implement the filing process required by Section
14 52.1035, Utilities Code, as added by this Act, as soon as
15 practicable. The rules must specify whether the commission will
16 require that an interexchange telecommunications utility, holder
17 of a certificate of operating authority, or holder of a service
18 provider certificate of operating authority file the information
19 required by Section 52.1035, Utilities Code, as added by this Act,
20 once or on a regular basis. Regardless of the frequency of filing
21 required, each utility or holder shall file the information
22 required by Section 52.1035, Utilities Code, as added by this Act,
23 not later than January 1, 2012. If the commission requires regular
24 filings, the rules must specify the timing of the subsequent
25 filings.

26 SECTION 14. The change in law made by this Act to Section
27 15.023, Utilities Code, applies only to a violation that occurs on

1 or after the effective date of this Act. For purposes of this
2 section, a violation occurs before the effective date of this Act if
3 any element of the violation occurs before that date. A violation
4 that occurs before the effective date of this Act is covered by the
5 law in effect on the date the violation occurred, and the former law
6 is continued in effect for that purpose.

7 SECTION 15. This Act takes effect September 1, 2011.