

By: Fraser

S.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to state energy policy and the planning of energy development and utilization and to certain related electric power generation issues.

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

ARTICLE 1

SECTION 1.01. This article may be cited as the Energy Policy Act.

SECTION 1.02. The Utilities Code is amended by adding Title 6 to read as follows:

TITLE 6. ENERGY POLICY ACT

CHAPTER 300. STRATEGIC ENERGY PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300.001. PURPOSE AND FINDINGS. (a) This title is enacted to promote, in accordance with the public interest, the strategic planning of energy development, production, delivery, commercialization, and utilization in this state.

(b) The purpose of this title is to establish a statewide energy policy planning entity and process that recognizes:

(1) public health and general welfare as a critical concern in the development of energy policies;

(2) energy as a valuable and vital commodity in the state's economy;

(3) protection of the environment as a major

1 consideration in the production of energy and utilization of
2 natural resources;

3 (4) cost-effective, market-based solutions as a
4 preferred policy for energy planning;

5 (5) utilization of Texas-based resources to help
6 provide energy security, stability, and reliability; and

7 (6) the importance of portfolio diversity in promoting
8 energy system flexibility, affordability, and efficiency.

9 Sec. 300.002. DEFINITIONS. In this title:

10 (1) "Commission" means the Public Utility Commission
11 of Texas.

12 (2) "Council" means the Texas Energy Policy Council.

13 (3) "Plan" means the statewide energy policy plan.

14 Sec. 300.003. TEXAS ENERGY POLICY COUNCIL. (a) The Texas
15 Energy Policy Council is created to develop and present a statewide
16 energy policy plan to the legislature. The plan must include a
17 20-year planning horizon and be updated to reflect changing
18 conditions and should be considered a living document.

19 (b) The council is composed of 13 members as follows:

20 (1) the chairman of the Public Utility Commission of
21 Texas;

22 (2) the chairman of the Railroad Commission of Texas;

23 (3) the chairman of the Texas Commission on
24 Environmental Quality;

25 (4) the president and chief executive officer of the
26 Electric Reliability Council of Texas;

27 (5) the commissioner of the General Land Office;

1 (6) two members of the senate appointed by the
2 lieutenant governor;

3 (7) two members of the house of representatives
4 appointed by the speaker of the house of representatives;

5 (8) one member of the academic community with
6 expertise in energy appointed by the governor;

7 (9) one member of the academic community with
8 expertise in environmental issues related to energy appointed by
9 the governor;

10 (10) the director of the State Energy Conservation
11 Office; and

12 (11) one member of the public with expertise in
13 low-income energy issues, including the needs of low-income and
14 vulnerable ratepayers, appointed by the governor.

15 (c) The governor shall designate the presiding officer from
16 among the members of the council.

17 (d) An appointed member of the council serves for a full
18 planning cycle and may be reappointed at the pleasure of the
19 appointing official.

20 (e) The council shall meet at least quarterly in
21 even-numbered years while developing a plan for submission to the
22 legislature. The council may meet annually in odd-numbered years
23 after submitting plans to the legislature.

24 (f) The council shall develop and implement policies and
25 procedures that provide the public with reasonable opportunity to
26 appear before the council and to speak on issues under the
27 jurisdiction of the council.

1 (g) The commission is designated as the state agency
2 responsible for administering the council. Staff from the
3 commission shall be tasked, as necessary, with assisting the
4 council in carrying out its duties.

5 Sec. 300.004. POWERS, DUTIES, AND RESPONSIBILITIES OF
6 COUNCIL. (a) In developing the plan, the council shall:

7 (1) encourage cooperation and coordination between
8 public and private entities regarding energy usage, planning,
9 research and development, and commercialization;

10 (2) seek policies that promote a diverse portfolio of
11 clean, reliable, and competitively priced energy sources;

12 (3) promote research, pilot projects, and
13 market-based incentives to explore and expand long-term energy
14 options;

15 (4) develop policies to prevent supply interruptions
16 and infrastructure failure;

17 (5) examine the impact on the environment of energy
18 exploration, production, and use;

19 (6) take into account the statewide and regional water
20 planning process;

21 (7) make recommendations for increasing public
22 knowledge of energy use issues and public awareness of the
23 importance of more efficient consumption of energy; and

24 (8) take into account the needs of low-income and
25 vulnerable Texans.

26 (b) The council shall submit to the legislature the initial
27 plan by December 1, 2012. Thereafter, the council shall report to

1 the legislature by December 1 of each even-numbered year the status
2 of the plan's implementation and make any recommendations for
3 legislative action as necessary to implement or revise the plan.
4 The council may update the plan as necessary to reflect evolving
5 conditions.

6 Sec. 300.005. FUELS AND TECHNOLOGIES. (a) The council
7 shall consider the following fuel sources, types of generation, and
8 innovative technologies associated with these fuels and types of
9 generation when creating the plan. These fuels, types of
10 generation, and technologies include:

- 11 (1) oil and natural gas;
- 12 (2) coal and lignite;
- 13 (3) nuclear;
- 14 (4) renewable energy technologies;
- 15 (5) geothermal;
- 16 (6) methane;
- 17 (7) distributed generation;
- 18 (8) fuel cells and storage;
- 19 (9) water conservation technologies that could be
20 utilized in the exploration, production, and generation of energy
21 resources; and
- 22 (10) any other fuels and technologies as defined in
23 Section 39.904(d), including solar and wind technologies.

24 (b) The council shall develop policies that ensure fuel
25 resources available to the state are utilized in a balanced and
26 efficient manner. The council shall consider the economic
27 viability, price stability and volatility, and environmental

1 impact of types of fuel and technology when making its
2 recommendations. The council shall also consider all types of
3 generation technology to identify in its recommendations current or
4 potential operational or administrative advantages or
5 disadvantages of each type of technology to which a protocol of the
6 Electric Reliability Council of Texas applies.

7 Sec. 300.006. ENERGY EFFICIENT TECHNOLOGY. (a) In order
8 to reduce the energy demand of customers in this state, the council
9 shall consider energy-efficient technologies when formulating the
10 plan and include them in its recommendations. Energy-efficient
11 technologies shall be considered for the following:

12 (1) residential, commercial, industrial, and state
13 and local energy users; and

14 (2) any other user group or application the council
15 deems appropriate.

16 (b) The council shall consider the economic viability and
17 competitiveness of new technologies when making its
18 recommendations.

19 (c) The council shall consider the ability of
20 energy-efficient technologies to reduce the demand for energy and
21 the need for additional transmission capacity in the state and
22 shall consider opportunities for reducing transmission constraints
23 by using these technologies.

24 Sec. 300.007. TRANSMISSION. (a) The council shall
25 consider and recommend strategies to ensure that customers in this
26 state have access to reliable energy.

27 (b) The council shall consider transmission constraints,

1 and make recommendations in the plan to alleviate or prevent those
2 constraints, for the following sources of energy:

3 (1) oil and natural gas;

4 (2) coal and lignite;

5 (3) wind and solar; and

6 (4) electricity.

7 Sec. 300.008. ALTERNATIVE FUEL VEHICLES. (a) The council
8 shall consider and make recommendations on strategies and
9 incentives that promote the use of alternative fuel vehicles such
10 as natural gas vehicles and plug-in electric vehicles.

11 (b) The council shall consider the economic feasibility of
12 alternative fuel vehicles and infrastructure constraints and may
13 make recommendations on incentives to incorporate and promote these
14 vehicles as a component of the plan.

15 Sec. 300.009. ENVIRONMENT. (a) The council, when creating
16 the plan or in formulating recommendations, shall consider the
17 effects of energy exploration, production, and consumption on the
18 environment.

19 (b) The council shall recommend strategies that protect and
20 preserve the environment of the state and allow for access to and
21 the production of safe, economically viable, and reliable sources
22 of energy. The council shall consider:

23 (1) air quality;

24 (2) water quality;

25 (3) water supply; and

26 (4) waste disposal.

ARTICLE 2

SECTION 2.01. Chapter 39, Utilities Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. REPORT ON RESERVES AND VOLUNTARY EMISSIONS

REDUCTIONS PLAN

Sec. 39.551. STATEMENT OF INTENT. It is not the intent of this subchapter to:

(1) transfer environmental regulation from the Railroad Commission of Texas or the Texas Commission on Environmental Quality to the commission; or

(2) reduce the competitiveness of the existing energy market in Texas by re-regulating the market or requiring the decommissioning of any lawfully operating generating plant.

Sec. 39.552. REPORT ON RESERVES. (a) Not later than December 1, 2011, the Railroad Commission of Texas shall prepare and submit to the commission a report on coal and gas reserves in this state that includes information relating to:

(1) natural gas reserves in this state proven and probable on November 1, 2011;

(2) estimates of the proven and probable natural gas reserves in this state for each of the next 15 years;

(3) estimates of natural gas prices and potential price volatility for each of the next 15 years;

(4) coal reserves in this state proven and probable on November 1, 2011;

(5) estimates of the proven and probable coal reserves in this state for each of the next 15 years; and

1 (6) estimates of coal prices and potential price
2 volatility for each of the next 15 years.

3 (b) The Railroad Commission of Texas may request financial
4 information and forecasts from the comptroller to assist the
5 Railroad Commission of Texas in carrying out its duties under this
6 section. The comptroller shall provide that information and those
7 forecasts to the Railroad Commission of Texas as quickly as
8 possible after receiving such request.

9 Sec. 39.553. REPORT AND PLAN. (a) The commission shall
10 prepare a report on electric energy generation in this state. The
11 report must include an analysis of and policy recommendations for
12 how to most cost-effectively comply with environmental regulation.

13 (b) In preparing the report, the commission shall:

14 (1) analyze information from the reports submitted
15 under this subchapter by electric generating facilities and the
16 Railroad Commission of Texas; and

17 (2) use information already in the possession of
18 existing regulators by consulting with the Railroad Commission of
19 Texas, the Texas Commission on Environmental Quality, the Electric
20 Reliability Council of Texas, the Southwest Power Pool, the
21 Southeastern Electric Reliability Council, and the Western
22 Electricity Coordinating Council.

23 (c) The report must evaluate and consider measures that
24 will:

25 (1) maintain electric grid reliability;

26 (2) ensure the availability of electric energy at
27 reasonable rates;

1 (3) reduce air pollution, as defined by Section
2 382.003, Health and Safety Code;

3 (4) increase the state's ability to comply with state
4 and federal clean air standards in nonattainment and
5 near-nonattainment areas; and

6 (5) reduce the use of water for electricity generation
7 in this state.

8 (d) The report must identify the 10 percent of electric
9 generation capacity that will be most impacted by compliance with
10 environmental regulation.

11 (e) The report must identify combinations of market
12 factors, plant operating characteristics, federal and state
13 environmental regulations promulgated after January 1, 2011, and
14 other conditions that might make it more economically attractive
15 for the electric generation capacity identified in the report to be
16 retired rather than comply with the regulations. The market
17 factors considered in the analysis must include:

18 (1) long-term prices and price volatility for fuel
19 sources used to generate electricity in this state;

20 (2) price projections for the cost of electricity
21 going forward and factors that are relevant to determining the
22 market price of electricity; and

23 (3) the potential impact of the voluntary
24 decommissioning of existing units of electric generation capacity
25 from facilities in this state.

26 (f) The report must consider plant operating
27 characteristics including variable and fixed operating costs of

1 electric generation facilities identified in the report. The
2 analysis must also incorporate a range of costs projected by
3 credible sources for complying with the specified federal and state
4 air pollution regulations. In conducting this analysis, the
5 commission shall consider electric generation facilities in this
6 state of various vintages, sizes, fuel types, conversion
7 efficiencies, and emission characteristics. The analysis must:

8 (1) estimate the amount of electric generation
9 capacity that is likely to voluntarily be retired rather than incur
10 the additional expense of complying with the federal and state air
11 pollution regulations;

12 (2) provide an analysis of the cost and the impact on
13 electric rates, and provide price projections, associated with
14 voluntarily retiring electric generation facilities included in
15 the report;

16 (3) identify any additional barriers to the retirement
17 of the types of electric generation capacity identified and provide
18 recommendations on how to most cost-effectively and voluntarily
19 reduce air pollution, including recommendations to accelerate the
20 permitting process for certain types of low-polluting generation;
21 and

22 (4) identify the types, costs, and effects of
23 incentives to promote the goals of this section.

24 (g) Not later than October 1, 2012, the commission shall
25 make a draft of the report available for public review and comment
26 for a period of not less than 30 days.

27 (h) Not later than December 1, 2012, the commission shall

1 finalize and publish the report.

2 (i) Implementation of the requirements of this section
3 shall be contingent upon receiving gifts, grants, or donations
4 sufficient to cover the expenses incurred by the commission.

5 SECTION 2.02. Section 31.002, Utilities Code, is amended by
6 adding Subdivision (4-a) and amending Subdivision (10) to read as
7 follows:

8 (4-a) "Distributed natural gas generation facility"
9 means a facility installed on the customer's side of the meter that
10 uses natural gas to generate not more than 2,000 kilowatts of
11 electricity.

12 (10) "Power generation company" means a person,
13 including a person who owns or operates a distributed natural gas
14 generation facility, that:

15 (A) generates electricity that is intended to be
16 sold at wholesale;

17 (B) does not own a transmission or distribution
18 facility in this state other than an essential interconnecting
19 facility, a facility not dedicated to public use, or a facility
20 otherwise excluded from the definition of "electric utility" under
21 this section; and

22 (C) does not have a certificated service area,
23 although its affiliated electric utility or transmission and
24 distribution utility may have a certificated service area.

25 SECTION 2.03. The heading to Subchapter B, Chapter 35,
26 Utilities Code, is amended to read as follows:

1 SUBCHAPTER B. EXEMPT WHOLESALE GENERATORS, DISTRIBUTED NATURAL
2 GAS GENERATION FACILITIES, AND POWER MARKETERS

3 SECTION 2.04. Subchapter B, Chapter 35, Utilities Code, is
4 amended by adding Section 35.036 to read as follows:

5 Sec. 35.036. DISTRIBUTED NATURAL GAS GENERATION
6 FACILITIES. (a) A person who owns or operates a distributed
7 natural gas generation facility may sell electric power generated
8 by the facility. The electric utility, electric cooperative, or
9 retail electric provider that provides retail electricity service
10 to the facility may purchase electric power tendered to it by the
11 owner or operator of the facility at a value agreed to by the
12 electric utility, electric cooperative, or retail electric
13 provider and the owner or operator of the facility. The value of
14 the electric power may be based wholly or partly on the clearing
15 price of energy at the time of day and at the location at which the
16 electric power is made available to the electric grid.

17 (b) At the request of the owner or operator of the
18 distributed natural gas generation facility, the electric utility
19 or electric cooperative shall allow the owner or operator of the
20 facility to use transmission and distribution facilities to
21 transmit the electric power to another entity that is acceptable to
22 the owner or operator in accordance with commission rules or a
23 tariff approved by the Federal Energy Regulatory Commission.

24 (c) Subject to Subsections (e) and (f), if the owner or
25 operator of a distributed natural gas generation facility requests
26 to be interconnected to an electric utility or electric cooperative
27 that does not have a transmission tariff approved by the Federal

1 Energy Regulatory Commission, the electric utility or electric
2 cooperative may recover from the owner or operator of the facility
3 the reasonable costs of interconnecting the facility with the
4 electric utility or electric cooperative that are necessary for and
5 directly attributable to the interconnection of the facility.

6 (d) Subject to Subsections (e) and (f), an electric utility
7 or electric cooperative may recover from the owner or operator of a
8 distributed natural gas generation facility the reasonable costs of
9 electric facility upgrades and improvements if:

10 (1) the rated capacity of the distributed natural gas
11 generation facility is greater than the rated capacity of the
12 electric utility or electric cooperative; and

13 (2) the costs are necessary for and directly
14 attributable to accommodating the distributed natural gas
15 generation facility's capacity.

16 (e) An electric utility or electric cooperative may recover
17 costs under Subsection (c) or (d) only if:

18 (1) the electric utility or electric cooperative
19 provides a written good-faith cost estimate to the owner or
20 operator of the distributed natural gas generation facility; and

21 (2) the owner or operator of the distributed natural
22 gas generation facility agrees in writing to pay the reasonable and
23 necessary costs of interconnection or capacity accommodation
24 requested by the owner or operator and described in the estimate
25 before the electric utility or electric cooperative incurs the
26 costs.

27 (f) If an electric utility or electric cooperative seeks to

1 recover from the owner or operator of a distributed natural gas
2 generation facility an amount that exceeds the amount in the
3 estimate provided under Subsection (e) by more than five percent,
4 the commission shall resolve the dispute at the request of the owner
5 or operator of the facility.

6 (g) A distributed natural gas generation facility must
7 comply with emissions limitations established by the Texas
8 Commission on Environmental Quality for a standard emissions permit
9 for an electric generation facility unit installed after January 1,
10 1995.

11 (h) This section does not require an electric cooperative to
12 transmit electricity to a retail point of delivery in the
13 certificated service area of the electric cooperative if the
14 electric cooperative has not adopted customer choice.

15 SECTION 2.05. Subsection (c), Section 39.351, Utilities
16 Code, is amended to read as follows:

17 (c) The commission may establish simplified filing
18 requirements for distributed natural gas generation facilities [A
19 ~~power generation company may register any time after September 1,~~
20 ~~2000].~~

21 SECTION 2.06. Section 39.904, Utilities Code, is amended by
22 adding Subsection (p) to read as follows:

23 (p) This section is intended to increase the amount of
24 renewable generating capacity as provided by Subsection (a) and is
25 not intended, unless specifically stated otherwise in this section,
26 to provide operational or competitive advantages through Electric
27 Reliability Council of Texas protocols to renewable energy

1 generators to the detriment of other generation resources.

2

ARTICLE 3

3 SECTION 3.01. As soon as practicable after the effective
4 date of this Act, the designated appointing officials shall appoint
5 the members to the Texas Energy Policy Council established under
6 Chapter 300, Utilities Code, as added by this Act.

7 SECTION 3.02. This Act takes effect September 1, 2011.