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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. _____

BY: _____

1 Amend H.B. 1600 (house committee report) as follows:

2 (1) On page 1, line 15, strike "or by Chapter 39" and
3 substitute "[~~or by Chapter 39~~]".

4 (2) Strike SECTION 1.02 of ARTICLE 1 of the bill (page 1,
5 lines 17 through 22) and renumber subsequent SECTIONS of the
6 article accordingly.

7 (3) Strike SECTIONS 1.04, 1.05, and 1.06 of ARTICLE 1 of the
8 bill (page 4, line 13, through page 8, line 3) and renumber
9 subsequent SECTIONS of the article accordingly.

10 (4) On page 111, line 16, strike "This" and substitute
11 "Except as otherwise provided by a provision of this Act, this".

12 (5) Add the following appropriately numbered ARTICLE to the
13 bill and renumber subsequent ARTICLES of the bill accordingly:

14 ARTICLE ____ . REREGULATION OF RETAIL ELECTRIC SERVICES

15 SECTION ____ . The following provisions of the Utilities Code
16 are repealed:

17 (1) Section 17.051(c);

18 (2) Sections 31.002(1), (4), (8), and (9);

19 (3) Section 36.053(d);

20 (4) Chapter 39;

21 (5) Sections 40.001, 40.003, 40.051, 40.052, 40.053,
22 40.054, 40.055, 40.056, 40.057, 40.058, and 40.059;

23 (6) Sections 41.001, 41.003, 41.051, 41.052, 41.053,
24 41.054, 41.056, 41.057, 41.058, 41.060, and 41.062; and

25 (7) Section 43.151(b).

26 SECTION ____ . Section 17.007, Utilities Code, is amended to
27 read as follows:

28 Sec. 17.007. ELIGIBILITY PROCESS FOR CUSTOMER SERVICE
29 DISCOUNTS. The commission by rule shall provide for an integrated

1 eligibility process for customer service discounts, including
2 discounts under Section [~~Sections 39.903 and~~] 55.015.

3 SECTION _____. Sections 31.002(6), (17), (18), and (19),
4 Utilities Code, are amended to read as follows:

5 (6) "Electric utility" means a person or river
6 authority that owns or operates for compensation in this state
7 equipment or facilities to produce, generate, transmit,
8 distribute, sell, or furnish electricity in this state. The term
9 includes a lessee, trustee, or receiver of an electric utility and a
10 recreational vehicle park owner who does not comply with Subchapter
11 C, Chapter 184, with regard to the metered sale of electricity at
12 the recreational vehicle park. The term does not include:

- 13 (A) a municipal corporation;
- 14 (B) a qualifying facility;
- 15 (C) a power generation company;
- 16 (D) an exempt wholesale generator;
- 17 (E) a power marketer;
- 18 (F) a corporation described by Section 32.053 to
19 the extent the corporation sells electricity exclusively at
20 wholesale and not to the ultimate consumer;
- 21 (G) an electric cooperative;
- 22 (H) [~~a retail electric provider,~~
- 23 [~~(I)~~] this state or an agency of this state; or
- 24 (I) [~~(J)~~] a person not otherwise an electric
25 utility who:

26 (i) furnishes an electric service or
27 commodity only to itself, its employees, or its tenants as an
28 incident of employment or tenancy, if that service or commodity is
29 not resold to or used by others;

30 (ii) owns or operates in this state
31 equipment or facilities to produce, generate, transmit,

1 distribute, sell, or furnish electric energy to an electric
2 utility, if the equipment or facilities are used primarily to
3 produce and generate electric energy for consumption by that
4 person; or

5 (iii) owns or operates in this state a
6 recreational vehicle park that provides metered electric service in
7 accordance with Subchapter C, Chapter 184.

8 (17) "Retail electric provider" means a person that
9 sells electric energy to retail customers in this state. [~~A retail
10 electric provider may not own or operate generation assets.~~]

11 (18) "Separately metered" means metered by an
12 individual meter that is used to measure electric energy
13 consumption by a retail customer and for which the customer is
14 directly billed by a utility, [~~retail electric provider,~~] electric
15 cooperative, or municipally owned utility.

16 (19) "Transmission and distribution utility" means a
17 person or river authority that owns or operates for compensation in
18 this state equipment or facilities to transmit or distribute
19 electricity, except for facilities necessary to interconnect a
20 generation facility with the transmission or distribution network,
21 a facility not dedicated to public use, or a facility otherwise
22 excluded from the definition of "electric utility" under this
23 section, in a [~~qualifying~~] power region [~~certified under Section
24 39.152, but does not include a municipally owned utility or an
25 electric cooperative~~].

26 SECTION _____. Subchapter A, Chapter 32, Utilities Code, is
27 amended by adding Section 32.0013 to read as follows:

28 Sec. 32.0013. COMMISSION JURISDICTION RELATING TO
29 REREGULATION OF ELECTRIC UTILITIES. The commission has all
30 necessary jurisdiction to take any action necessary to effectuate
31 the reregulation of retail electric service in an area in which

1 customer choice was introduced before January 1, 2015.

2 SECTION _____. Subtitle B, Title 2, Utilities Code, is
3 amended by adding Chapter 34 to read as follows:

4 CHAPTER 34. ELECTRICAL PLANNING

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 34.001. ADOPTION OF INTEGRATED RESOURCE PLANNING
7 PROCESS. (a) The commission by rule shall develop an integrated
8 resource planning process to provide reliable energy service at the
9 lowest reasonable system cost.

10 (b) In determining the lowest reasonable system cost of an
11 electric utility's integrated resource plan, the commission shall
12 consider:

13 (1) direct costs;

14 (2) the effect on the rates and bills of various types
15 of customers;

16 (3) minimization of the risks of future fuel costs and
17 regulations;

18 (4) the appropriateness and reliability of the mix of
19 resources; and

20 (5) the cost of compliance with environmental
21 protection requirements of all applicable state and federal laws,
22 rules, and orders.

23 (c) An appropriate and reliable mix under Subsection (b)(4)
24 may include a portfolio of cost-effective sources of power,
25 including fueled and nonfueled resources, such as renewable
26 resources and conservation measures, and a mixture of long-term and
27 short-term contracts.

28 (d) In establishing a requirement under this chapter,
29 including a reporting requirement, the commission shall consider
30 and recognize the different capabilities of small and large
31 electric utilities.

1 Sec. 34.002. STATEWIDE INTEGRATED RESOURCE PLAN. (a) The
2 commission by rule shall adopt and periodically update a statewide
3 integrated resource plan that includes the commission's long-term
4 resource planning goals. The commission shall notify each electric
5 utility of the approval of the plan.

6 (b) The commission shall send a report on the statewide
7 integrated resource plan to the governor when it adopts or revises
8 the plan and make the report available to the public.

9 (c) The report on the statewide integrated resource plan
10 must include:

11 (1) historical data for electric consumption
12 statewide and by each electric utility;

13 (2) historical data for electric generation by each
14 electric utility and by type of capacity, including alternative
15 energy sources;

16 (3) an inventory of generation capacity statewide and
17 by each electric utility;

18 (4) quantitative data on demand-side management
19 programs to the extent the commission determines necessary;

20 (5) each generating electric utility's forecast
21 without adjustment;

22 (6) the commission's long-term resource planning goals
23 included in the plan;

24 (7) a projection of the need for electric services;

25 (8) a description of the approved individual
26 integrated resource plan of each electric utility; and

27 (9) an assessment of transmission planning being
28 conducted by electric utilities in this state.

29 Sec. 34.003. PROMOTION OF RENEWABLE ENERGY TECHNOLOGIES.
30 The commission shall adopt rules consistent with the integrated
31 resource planning process to promote the development of renewable

1 energy technologies.

2 Sec. 34.004. REVIEW OF STATE TRANSMISSION SYSTEM. In
3 carrying out its duties related to the integrated resource planning
4 process, the commission may review this state's transmission system
5 and make recommendations to electric utilities on the need to build
6 new power lines, upgrade power lines, and make other necessary
7 improvements and additions.

8 SUBCHAPTER B. PRELIMINARY INTEGRATED RESOURCE PLAN

9 Sec. 34.021. PRELIMINARY INTEGRATED RESOURCE PLAN
10 REQUIRED. (a) Every three years each nongenerating electric
11 utility planning to construct generating resources and each
12 generating electric utility shall submit to the commission a
13 preliminary integrated resource plan covering a 10-year period.

14 (b) The commission by rule shall:

15 (1) establish a staggered schedule for the submission
16 of integrated resource plans by electric utilities;

17 (2) prescribe the form and manner in which a plan must
18 be submitted;

19 (3) adopt filing requirements and schedules; and

20 (4) prescribe the methods by which an electric utility
21 may recover supply-side and demand-side costs.

22 (c) The commission by rule may:

23 (1) define the scope and nature of public
24 participation in the development of the integrated resource plan;
25 and

26 (2) establish the general guidelines an electric
27 utility shall use to evaluate and to select or reject a resource,
28 including procedures governing the solicitation process.

29 Sec. 34.022. CONTENTS OF PRELIMINARY INTEGRATED RESOURCE
30 PLAN. (a) A preliminary integrated resource plan must include:

31 (1) the electric utility's forecast of future demands;

1 (2) an estimate of the energy savings and demand
2 reduction the electric utility can achieve during the time covered
3 by the plan by use of demand-side management resources and the range
4 of possible costs for those resources;

5 (3) if additional supply-side resources are needed to
6 meet future demand, an estimate of:

7 (A) the amount and operational characteristics
8 of the additional capacity needed;

9 (B) the types of viable supply-side resources for
10 meeting that need; and

11 (C) the range of probable costs of those
12 resources;

13 (4) if necessary, proposed requests for proposals to
14 be used in a solicitation of demand-side or supply-side resources,
15 or both;

16 (5) the specific criteria the electric utility will
17 use to evaluate and to select or reject demand-side or supply-side
18 resources;

19 (6) the methods by which the electric utility intends
20 to monitor demand-side or supply-side resources, or both as
21 appropriate, after selection;

22 (7) the method by which the electric utility intends
23 to allocate costs;

24 (8) a description of how the electric utility will
25 achieve equity among customer classes and provide demand-side
26 programs to each customer class, including tenants and low-income
27 ratepayers;

28 (9) any proposed incentive factors; and

29 (10) any other information the commission requires.

30 (b) If the commission adopts under Section 34.021(c) the
31 general guidelines an electric utility shall use to evaluate and to

1 select or reject a resource, the specific criteria proposed by the
2 electric utility under Subsection (a)(5) may deviate from those
3 guidelines only on a showing of good cause.

4 Sec. 34.023. PUBLIC HEARING ON PRELIMINARY INTEGRATED
5 RESOURCE PLAN. (a) If a preliminary integrated resource plan
6 includes a proposed solicitation of demand-side or supply-side
7 resources, the commission, on its own motion or on the motion of the
8 electric utility or an affected person, may convene a public
9 hearing on the adequacy and merits of the plan.

10 (b) Any interested person may intervene in the hearing and,
11 at the hearing, may present evidence and cross-examine witnesses
12 regarding the contents and adequacy of the preliminary integrated
13 resource plan.

14 (c) Discovery by a participant in the hearing is limited to:

15 (1) an issue relating to the development of the
16 preliminary integrated resource plan;

17 (2) a fact issue included in the plan; and

18 (3) other issues the commission is required to decide
19 relating to the plan.

20 (d) A hearing before the commission is not required for a
21 preliminary integrated resource plan filed by a river authority or
22 generating electric cooperative that does not intend to build a new
23 generating plant.

24 Sec. 34.024. INTERIM ORDER ON PRELIMINARY INTEGRATED
25 RESOURCE PLAN; DEADLINE. (a) After conducting a hearing on a
26 preliminary integrated resource plan under Section 34.023, the
27 commission shall determine:

28 (1) whether the plan is based on substantially
29 accurate data and an adequate method of forecasting;

30 (2) whether the plan identifies and takes into account
31 any present and projected reduction in the demand for energy that

1 may result from cost-effective measures to improve conservation and
2 energy efficiency in various customer classes of the area being
3 served;

4 (3) if additional supply-side resources are needed to
5 meet future demand, whether the plan adequately demonstrates:

6 (A) the amount and operational characteristics
7 of the additional capacity needed;

8 (B) the types of viable supply-side resources for
9 meeting that need; and

10 (C) the range of probable costs of those
11 resources;

12 (4) whether the plan describes opportunities for
13 appropriate persons to participate in developing the plan;

14 (5) whether the specific criteria the electric utility
15 will use to evaluate and to select or reject resources are
16 reasonable and consistent with the guidelines of the integrated
17 resource planning process;

18 (6) whether the cost allocation method proposed by the
19 electric utility is reasonable;

20 (7) how the electric utility will achieve equity among
21 customer classes and provide demand-side programs to each customer
22 class, including tenants and low-income ratepayers; and

23 (8) whether any incentive factors are appropriate and,
24 if so, the levels of the factors.

25 (b) Not later than the 180th day after the date an electric
26 utility submits a preliminary integrated resource plan, the
27 commission shall issue an interim order approving the plan,
28 approving the plan as modified by the commission, or remanding the
29 plan for additional proceedings. The commission may extend the
30 deadline for not more than 30 days for extenuating circumstances
31 encountered in the development and processing of the plan if the

1 circumstances are fully explained and agreed on by the
2 commissioners.

3 SUBCHAPTER C. RESOURCE SOLICITATION

4 Sec. 34.051. COMMENCEMENT OF SOLICITATION. (a) After the
5 commission approves an electric utility's preliminary integrated
6 resource plan, the utility shall conduct solicitations of
7 demand-side and supply-side resources as prescribed by the plan.

8 (b) In addition to soliciting resources from a
9 nonaffiliated third party, an electric utility may:

10 (1) prepare and submit a bid of a new utility
11 demand-side management program as prescribed by Section 34.053;

12 (2) receive bids from one or more affiliates; and

13 (3) request a certificate of convenience and necessity
14 for a new rate-based generating plant.

15 Sec. 34.052. SUBMISSION OF BIDS; CONFIDENTIALITY. (a)
16 Each bidder under Section 34.051, including the electric utility
17 conducting the solicitation and each bidding affiliate, shall
18 submit two copies of its bid to the commission. The commission shall
19 ensure that the electric utility has access to all bids at the same
20 time.

21 (b) The commission shall keep a copy of each bid submitted
22 by the electric utility conducting the solicitation or a bidding
23 affiliate to determine whether the utility complied with the
24 criteria established for conducting the solicitation.

25 (c) A bid submitted or retained under this section is
26 confidential and is not subject to disclosure under Chapter 552,
27 Government Code.

28 Sec. 34.053. ELECTRIC UTILITY DEMAND-SIDE MANAGEMENT
29 PROGRAMS. (a) An electric utility that intends to use a proposed
30 demand-side management program to meet a need identified by the
31 utility's preliminary integrated resource plan must prepare a bid

1 reflecting that resource.

2 (b) A bid prepared by an electric utility under this section
3 must comply with the solicitation, evaluation, selection, and
4 rejection criteria specified by the utility's preliminary
5 integrated resource plan. The electric utility may not give
6 preferential treatment or consideration to the bid.

7 Sec. 34.054. QUALIFYING FACILITY BIDS; AVOIDED COSTS. (a)
8 The submission of a bid under this chapter by a qualifying facility,
9 regardless of whether the bid is accepted or rejected, with respect
10 to the capacity need for which the bid is submitted:

11 (1) is a waiver by the qualifying facility of any right
12 it may otherwise have under law to sell capacity to the electric
13 utility;

14 (2) represents the qualifying facility's agreement to
15 negotiate a rate for the purchase of capacity and terms relating to
16 the purchase that differ from the rate or terms that would otherwise
17 be required by 18 C.F.R. Part 292, Subpart C; and

18 (3) is a waiver by the qualifying facility of its right
19 to the rate or terms for a purchase of capacity by the electric
20 utility that might otherwise be required by 18 C.F.R. Part 292,
21 Subpart C.

22 (b) The avoided capacity costs under 18 C.F.R. Part 292,
23 Subpart C, of an electric utility that has submitted a preliminary
24 integrated resource plan to the commission under this chapter is \$0
25 and remains \$0, with respect to any capacity needs shown in the
26 preliminary plan or final plan that are to be satisfied by resources
27 approved in the utility's final plan.

28 (c) This section does not affect the validity of a contract
29 entered into between an electric utility and a qualifying facility
30 for any purchase.

31 Sec. 34.055. EVALUATION OF BIDS; NEGOTIATION OF CONTRACTS.

1 (a) An electric utility shall evaluate each bid submitted,
2 including an affiliate bid, in accordance with the criteria
3 specified by the utility's preliminary integrated resource plan and
4 shall negotiate each necessary contract.

5 (b) An electric utility is not required to accept a bid and
6 may reject any or all bids in accordance with the selection and
7 rejection criteria specified by the utility's preliminary
8 integrated resource plan.

9 Sec. 34.056. APPLICATION FOR CERTIFICATE OF CONVENIENCE AND
10 NECESSITY FOR RESOURCE NOT INCLUDED IN PRELIMINARY PLAN. If the
11 results of the solicitation and contract negotiations do not meet
12 the supply-side needs identified by the electric utility's
13 preliminary integrated resource plan, the utility may apply for a
14 certificate of convenience and necessity for a utility-owned
15 resource addition, notwithstanding that a solicitation was
16 conducted and the resource addition was not included in the
17 approved plan.

18 SUBCHAPTER D. FINAL INTEGRATED RESOURCE PLAN

19 Sec. 34.101. SUBMISSION OF FINAL INTEGRATED RESOURCE PLAN.
20 After conducting each solicitation and negotiating each contract,
21 an electric utility shall submit a proposed final integrated
22 resource plan to the commission. The proposed plan must include:

23 (1) the results of each solicitation;
24 (2) any contracts for resources;
25 (3) the terms under which the electric utility will
26 provide resources to meet a need identified by the preliminary
27 integrated resource plan, if the electric utility accepts a bid
28 submitted under Section 34.053; and

29 (4) an application for a certificate of convenience
30 and necessity, if necessary.

31 Sec. 34.102. PUBLIC HEARING ON FINAL INTEGRATED RESOURCE

1 PLAN. (a) The commission, on request by an affected person, shall
2 convene a public hearing on the reasonableness and
3 cost-effectiveness of a proposed final integrated resource plan.
4 The commission shall convene the hearing, if requested, not later
5 than the 90th day after the date the electric utility files its
6 proposed plan.

7 (b) Any interested person may intervene in the hearing and,
8 at the hearing, may present evidence and cross-examine witnesses
9 regarding the reasonableness and cost-effectiveness of the
10 proposed final integrated resource plan.

11 (c) A party to the hearing may not litigate or conduct
12 discovery on an issue that was or could have been litigated in
13 connection with the filing of the electric utility's preliminary
14 integrated resource plan.

15 (d) To the extent permitted by federal law, the commission
16 may issue a written order for access to the books, accounts,
17 memoranda, contracts, or other records of an exempt wholesale
18 generator or power marketer selling energy at wholesale to an
19 electric utility, if access is required for the effective discharge
20 of the commission's regulatory responsibilities under this
21 subtitle. The materials obtained by the commission under this
22 subsection are confidential and are not subject to disclosure under
23 Chapter 552, Government Code.

24 Sec. 34.103. RULING ON FINAL INTEGRATED RESOURCE PLAN;
25 DEADLINE. (a) After conducting a hearing on a proposed final
26 integrated resource plan under Section 34.102, the commission shall
27 determine whether:

28 (1) the final plan was developed in accordance with
29 the electric utility's preliminary integrated resource plan and
30 commission rules;

31 (2) the resource solicitations, evaluations,

1 selections, and rejections were conducted in accordance with the
2 criteria included in the utility's preliminary plan;

3 (3) the final plan is cost-effective;

4 (4) the final plan is equitable among customer classes
5 and provides demand-side programs to each customer class, including
6 tenants and low-income ratepayers;

7 (5) the commission should certify each contract and
8 electric utility bid submitted under Section 34.053 that resulted
9 from the solicitations; and

10 (6) the commission should grant a requested
11 certificate of convenience and necessity for an electric
12 utility-owned resource addition.

13 (b) Not later than the 180th day after the date an electric
14 utility submits a proposed final integrated resource plan, the
15 commission shall issue a final order approving the plan, approving
16 the plan as modified by the commission, or remanding the plan for
17 additional proceedings.

18 Sec. 34.104. CERTIFICATION OF CONTRACTS. (a) In
19 determining whether to certify a supply-side or demand-side
20 contract that results from a solicitation, the commission shall
21 consider:

22 (1) the reliability, financial condition, and safety
23 of the resource contract; and

24 (2) whether the solicitation, evaluation, and
25 selection of the resource contract were conducted in accordance
26 with the criteria included in the electric utility's preliminary
27 integrated resource plan.

28 (b) In addition to the considerations in Subsection (a), if
29 a contract proposed for certification is between an electric
30 utility and its affiliate, the commission shall determine whether:

31 (1) the utility treated and considered the affiliate's

bid in the same manner it treated and considered each other bid intended to meet the same resource needs;

(2) the transaction will benefit consumers;

(3) the transaction violates any state law, including least-cost planning;

(4) the transaction provides the affiliate with an unfair competitive advantage by virtue of its affiliation or association with the utility;

(5) the transaction is in the public interest; and

(6) the commission has sufficient regulatory authority, resources, and access to the books and records of the utility and its affiliate to make the determination required by this subsection.

(c) The commission may not certify a contract for a new purchase of power by an electric utility unless the utility has determined, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria, that:

(1) the contract would not unreasonably impair the continued reliability of electric systems affected by the purchase; and

(2) the purchase can reasonably be expected to produce benefits to customers of the purchasing utility.

(d) Commission certification of a resource contract under this section does not negate the necessity of the resource to comply with all applicable environmental and siting regulations.

(e) In establishing an electric utility's rates, a regulatory authority shall consider a payment made under a certified contract to be a reasonable and necessary operating expense of the utility during the period for which the certified contract is effective. A regulatory authority may provide for

1 monthly recovery of approved costs of the contract as those costs
2 are incurred, including any markup allowed by the commission.

3 Sec. 34.105. CERTIFICATE OF CONVENIENCE AND NECESSITY. (a)
4 In determining whether to grant a certificate of convenience and
5 necessity requested by an electric utility in the utility's
6 proposed final integrated resource plan, the commission shall
7 consider:

8 (1) the effect of granting the certificate on the
9 recipient of the certificate and on any electric utility serving
10 the proximate area; and

11 (2) other factors, such as:

12 (A) community values;

13 (B) recreational and park areas;

14 (C) historical and aesthetic values;

15 (D) environmental integrity; and

16 (E) the probable improvement of service or
17 lowering of cost to consumers in the area if the certificate is
18 granted.

19 (b) The commission shall grant a requested certificate of
20 convenience and necessity as part of the commission's approval of a
21 final integrated resource plan if the commission finds that:

22 (1) the proposed resource addition is necessary under
23 the plan;

24 (2) the proposed resource addition is the best and
25 most economical choice of technology for the service area; and

26 (3) cost-effective conservation and other
27 cost-effective alternative energy sources cannot reasonably meet
28 the need.

29 SUBCHAPTER E. ACQUISITION OF RESOURCES OUTSIDE THE
30 INTEGRATED RESOURCE PLANNING PROCESS

31 Sec. 34.151. EXEMPTIONS FROM SOLICITATION PROCESS. (a)

1 The commission shall adopt rules allowing an electric utility to
2 add new or incremental resources outside the solicitation process,
3 consistent with the utility's last approved integrated resource
4 planning goals, including resources listed in Subsection (b).

5 (b) Consistent with an electric utility's last approved
6 integrated resource planning goals, if any, an electric utility,
7 including a nongenerating electric utility, may add new or
8 incremental resources outside the solicitation process, including:

9 (1) contract renegotiation for existing capacity from
10 an electric cooperative or nonaffiliated power generating
11 facility;

12 (2) electric cooperative or nonaffiliated demand-side
13 management programs or renewable resources;

14 (3) capacity purchases with two-year or shorter terms
15 from an electric cooperative or nonaffiliated power supplier;

16 (4) capacity purchases necessary to satisfy
17 unanticipated emergency conditions;

18 (5) the exercise of an option in a purchased power
19 contract with an electric cooperative or nonaffiliated supplier;
20 and

21 (6) renewable distributed resources, located at or
22 near the point of consumption, if the resources are less costly than
23 transmission extensions or upgrades.

24 (c) The addition of new or incremental resources by an
25 electric utility under Subsection (b) does not require an amendment
26 to the utility's integrated resource plan.

27 Sec. 34.152. NONGENERATING ELECTRIC UTILITY SOLICITATIONS.

28 (a) A nongenerating electric utility not planning to construct
29 generating facilities shall conduct a solicitation of resources if
30 the utility seeks to purchase from a wholesale power supplier other
31 than the utility's existing power supplier more than 25 percent of

1 the utility's peak demand or more than 70 megawatts. A
2 nongenerating electric utility is not required to conduct a
3 solicitation for a purchase from an existing power supplier and the
4 utility may add new or incremental resources outside the
5 solicitation process as provided by Section 34.151.

6 (b) The commission, on request by the nongenerating
7 electric utility, may review a proposed contract for resources
8 resulting from a solicitation to determine the contract's
9 reasonableness. The commission shall certify the proposed contract
10 if the commission finds that the contract is reasonable. The
11 commission shall make its determination not later than the 90th day
12 after the date the proposed contract is submitted.

13 (c) This section does not alter or amend a wholesale power
14 supply contract executed before January 1, 2015.

15 Sec. 34.153. EXEMPTION FOR CERTAIN FACILITIES. (a) To
16 provide for the orderly transition to an integrated resource
17 planning process and to avoid delays in the construction of
18 resources necessary to provide electric service, an integrated
19 resource plan is not required for issuance of a certificate of
20 convenience and necessity for the construction of a generating
21 facility if:

22 (1) the electric utility has conducted a solicitation
23 for resources to meet the need identified by the utility's notice of
24 intent in accordance with commission rules in effect at the time of
25 the solicitation; and

26 (2) the electric utility has submitted to the
27 commission the results of the solicitation and an application for
28 certification of the facility to meet the need identified by the
29 utility's notice of intent.

30 (b) The commission shall grant a certificate of convenience
31 and necessity for a generating facility to which this section

1 applies if:

2 (1) the facility is needed to meet future demand;

3 (2) the facility is the best and most economical
4 choice of technology for the service area; and

5 (3) cost-effective conservation and cost-effective
6 alternative energy sources cannot reasonably meet the need.

7 SUBCHAPTER F. MISCELLANEOUS PROVISIONS

8 Sec. 34.171. COST RECOVERY AND INCENTIVES. In carrying out
9 its duties related to the integrated resource planning process, the
10 commission may:

11 (1) allow timely recovery of the reasonable costs of
12 conservation, load management, and purchased power,
13 notwithstanding Section 36.201; and

14 (2) authorize additional incentives for conservation,
15 load management, purchased power, and renewable resources.

16 Sec. 34.172. RECONCILIATION OF RECOVERED COSTS. (a) To the
17 extent that the commission authorizes an electric utility to
18 recover the costs of demand-side management programs,
19 conservation, load management, or purchased power through cost
20 recovery factors, the commission shall make a final reconciliation
21 of the costs recovered through the cost recovery factors.

22 (b) The commission shall adopt rules regarding:

23 (1) the timing of reconciliations for each cost
24 recovery factor;

25 (2) the information an electric utility must file in
26 support of each reconciliation; and

27 (3) other matters necessary to accomplish the
28 reconciliation.

29 (c) Each reconciliation must:

30 (1) review the reasonableness of the electric
31 utility's administration of the contracts and programs the costs of

1 which are being reconciled; and

2 (2) reconcile the revenue collected under each cost
3 recovery factor and the costs that the utility incurred on
4 purchased power, demand-side management, conservation, or load
5 management, as applicable, during the reconciliation period.

6 Sec. 34.173. RESOURCE PLANNING EXPENSES. (a) To the extent
7 that an electric utility is required by the commission to reimburse
8 a municipality for expenses incurred while participating in a
9 proceeding under this chapter, the commission shall, as part of the
10 commission's approval of the utility's integrated resource plan,
11 authorize a surcharge to be included in the utility's rates to allow
12 the utility to recover the amount paid to the municipality before
13 the utility's next preliminary integrated resource plan is filed.

14 (b) An electric utility may recover its reasonable expenses
15 arising from planning, preparing, and participating in a proceeding
16 under this chapter only after commission review is conducted in
17 accordance with Subchapter C or D, Chapter 36.

18 SECTION _____. Section 35.004(d), Utilities Code, is amended
19 to read as follows:

20 (d) The commission shall price wholesale transmission
21 services within ERCOT based on the postage stamp method of pricing
22 under which a transmission-owning utility's rate is based on the
23 ERCOT utilities' combined annual costs of transmission divided by
24 the total demand placed on the combined transmission systems of all
25 such transmission-owning utilities within a power region. [~~An~~
26 ~~electric utility subject to the freeze period imposed by Section~~
27 ~~39.052 may treat transmission costs in excess of transmission~~
28 ~~revenues during the freeze period as an expense for purposes of~~
29 ~~determining annual costs in the annual report filed under Section~~
30 ~~39.257.] Notwithstanding Section 36.201, the commission may~~
31 approve wholesale rates that may be periodically adjusted to ensure

1 timely recovery of transmission investment. [~~Notwithstanding~~
2 ~~Section 36.054(a), if the commission determines that conditions~~
3 ~~warrant the action, the commission may authorize the inclusion of~~
4 ~~construction work in progress in the rate base for transmission~~
5 ~~investment required by the commission under Section 39.203(e).~~]

6 SECTION _____. Section 36.354(a), Utilities Code, is amended
7 to read as follows:

8 (a) Notwithstanding any other provision of this title, each
9 municipally owned utility, electric cooperative, or electric
10 utility [~~in an area where customer choice is not available or the~~
11 ~~commission has delayed the implementation of full customer choice~~
12 ~~in accordance with Section 39.103]~~ shall discount charges for
13 electric service provided to a military base.

14 SECTION _____. Sections 37.051(e) and (f), Utilities Code,
15 are amended to read as follows:

16 (e) The commission may consider an application filed by a
17 person not currently certificated as an electric utility for a
18 certificate of convenience and necessity to construct transmission
19 capacity that serves the ERCOT power region. Before granting a
20 certificate under this section, the commission must find, after
21 notice and hearing, that:

22 (1) the applicant has the technical ability, financial
23 ability, and sufficient resources in this state to own, operate,
24 and maintain reliable transmission facilities;

25 (2) the applicant has the resources and ability to
26 comply with commission rules[~~, requirements of the independent~~
27 ~~organization certified under Section 39.151 for the ERCOT power~~
28 ~~region,~~] and requirements of the National Electric Reliability
29 Council applicable to the provisions of transmission service; and

30 (3) for an application filed by a person that is not an
31 electric utility, granting the application will not adversely

1 affect wholesale transmission rates, as compared to the rates
2 projected to be charged if an existing electric utility were to
3 build the transmission facility.

4 (f) Notwithstanding any other provision of this title, the
5 commission may issue multiple certificates to serve an area in
6 which customer choice was introduced before January 1, 2015. On
7 application, the commission shall issue a certificate to a retail
8 electric provider authorizing the provider to continue to provide
9 retail electric service in any area in which it was providing that
10 service on December 21, 2014. After July 1, 2015, only retail
11 electric providers certificated to serve an area in which customer
12 choice was introduced before January 1, 2015, may continue to serve
13 that area. ~~[The commission shall consider the requirements of~~
14 ~~Subsection (e) to have been met by an electric utility or other~~
15 ~~person that:~~

16 ~~[(1) is selected by the commission as a transmission~~
17 ~~provider under a plan adopted by the commission under Section~~
18 ~~39.904 not later than September 1, 2009; and~~

19 ~~[(2) before the certificate is issued, provides to the~~
20 ~~commission a detailed plan regarding the offices, personnel, and~~
21 ~~other resources the electric utility or other person will have in~~
22 ~~this state to ensure provision of continuous and adequate~~
23 ~~transmission service.]~~

24 SECTION _____. Section 37.0541, Utilities Code, is amended to
25 read as follows:

26 Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The
27 commission shall consolidate the proceeding on an application to
28 obtain or amend a certificate of convenience and necessity for the
29 construction of a transmission line with the proceeding on another
30 application to obtain or amend a certificate of convenience and
31 necessity for the construction of a transmission line if it is

1 apparent from the applications or a motion to intervene in either
2 proceeding that the transmission lines that are the subject of the
3 separate proceedings share a common point of
4 interconnection. ~~[This section does not apply to a proceeding on~~
5 ~~an application for a certificate of convenience and necessity for a~~
6 ~~transmission line to serve a competitive renewable energy zone as~~
7 ~~part of a plan developed by the commission under Section~~
8 ~~39.904(g)(2).]~~

9 SECTION _____. Section 37.056(c), Utilities Code, is amended
10 to read as follows:

11 (c) The commission shall grant each certificate on a
12 nondiscriminatory basis after considering:

13 (1) the adequacy of existing service;
14 (2) the need for additional service;
15 (3) the effect of granting the certificate on the
16 recipient of the certificate and any electric utility serving the
17 proximate area; and

18 (4) other factors, such as:
19 (A) community values;
20 (B) recreational and park areas;
21 (C) historical and aesthetic values;
22 (D) environmental integrity; and
23 (E) the probable improvement of service or
24 lowering of cost to consumers in the area if the certificate is
25 granted~~[, and~~

26 ~~[(F) to the extent applicable, the effect of~~
27 ~~granting the certificate on the ability of this state to meet the~~
28 ~~goal established by Section 39.904(a) of this title].~~

29 SECTION _____. Section 38.005(f), Utilities Code, is amended
30 to read as follows:

31 (f) Each electric utility, transmission and distribution

1 utility, electric cooperative, municipally owned utility, and
2 generation provider shall be obligated to comply with any
3 operational criteria [~~duly established by the independent~~
4 ~~organization as defined by Section 39.151 or~~] adopted by the
5 commission.

6 SECTION _____. Section 40.004, Utilities Code, is amended to
7 read as follows:

8 Sec. 40.004. JURISDICTION OF COMMISSION. Except as
9 specifically otherwise provided in this chapter, the commission has
10 jurisdiction over municipally owned utilities only for the
11 following purposes:

12 (1) to regulate wholesale transmission rates and
13 service, including terms of access, to the extent provided by
14 Subchapter A, Chapter 35;

15 (2) to regulate certification of retail service areas
16 to the extent provided by Chapter 37;

17 (3) to regulate rates on appeal under Subchapters D
18 and E, Chapter 33[~~, subject to Section 40.051(c)~~]; and

19 (4) [~~to establish a code of conduct as provided by~~
20 ~~Section 39.157(e) applicable to anticompetitive activities and to~~
21 ~~affiliate activities limited to structurally unbundled affiliates~~
22 ~~of municipally owned utilities, subject to Section 40.054,~~

23 [~~(5) to establish terms and conditions for open access~~
24 ~~to transmission and distribution facilities for municipally owned~~
25 ~~utilities providing customer choice, as provided by Section 39.203,~~

26 [~~(6) to require collection of the nonbypassable fee~~
27 ~~established under Section 39.903(b) and to administer the renewable~~
28 ~~energy credits program under Section 39.904(b) and the natural gas~~
29 ~~energy credits program under Section 39.9044(b), and~~

30 [(~~7~~)] to require reports of municipally owned utility
31 operations only to the extent necessary to[+]

1 ~~[(A)]~~ enable the commission to determine the
2 aggregate load and energy requirements of the state and the
3 resources available to serve that load~~[, or~~

4 ~~[(B) enable the commission to determine~~
5 ~~information relating to market power as provided by Section~~
6 ~~39.155]~~.

7 SECTION _____. Section 40.055(a), Utilities Code, is amended
8 to read as follows:

9 (a) The municipal governing body or a body vested with the
10 power to manage and operate a municipally owned utility has
11 exclusive jurisdiction to:

12 (1) set all terms of access, conditions, and rates
13 applicable to services provided by the municipally owned utility,
14 ~~[subject to Sections 40.054 and 40.056,]~~ including
15 nondiscriminatory and comparable rates for distribution but
16 excluding wholesale transmission rates, terms of access, and
17 conditions for wholesale transmission service set by the commission
18 under this subtitle, provided that the rates for distribution
19 access established by the municipal governing body shall be
20 comparable to the distribution access rates that apply to the
21 municipally owned utility and the municipally owned utility's
22 affiliates;

23 (2) determine whether to unbundle any energy-related
24 activities and, if the municipally owned utility chooses to
25 unbundle, whether to do so structurally or functionally;

26 (3) reasonably determine the amount of the municipally
27 owned utility's stranded investment;

28 (4) establish nondiscriminatory transition charges
29 reasonably designed to recover the stranded investment over an
30 appropriate period of time, provided that recovery of retail
31 stranded costs shall be from all existing or future retail

1 customers, including the facilities, premises, and loads of those
2 retail customers, within the utility's geographical certificated
3 service area as it existed on May 1, 1999;

4 (5) determine the extent to which the municipally
5 owned utility will provide various customer services at the
6 distribution level, including other services that the municipally
7 owned utility is legally authorized to provide, or will accept the
8 services from other providers;

9 (6) manage and operate the municipality's electric
10 utility systems, including exercise of control over resource
11 acquisition and any related expansion programs;

12 (7) establish and enforce service quality and
13 reliability standards and consumer safeguards designed to protect
14 retail electric customers[~~, including safeguards that will~~
15 ~~accomplish the objectives of Sections 39.101(a) and (b),~~]
16 consistent with this chapter;

17 (8) determine whether a base rate reduction is
18 appropriate for the municipally owned utility;

19 (9) determine any other utility matters that the
20 municipal governing body or body vested with power to manage and
21 operate the municipally owned utility believes should be included;

22 (10) make any other decisions affecting the
23 municipally owned utility's participation in customer choice that
24 are not inconsistent with this chapter; and

25 (11) determine the extent to which the municipally
26 owned utility offers energy efficiency programs and how the
27 programs are administered by the utility[~~, except as provided by~~
28 ~~Section 39.9051(e)]~~.

29 SECTION _____. Section 40.060, Utilities Code, is amended to
30 read as follows:

31 Sec. 40.060. NO POWER TO AMEND CERTIFICATES. Nothing in

1 this chapter empowers a municipal governing body or a body vested
2 with the power to manage and operate a municipally owned utility to
3 issue, amend, or rescind a certificate of public convenience and
4 necessity granted by the commission. ~~[This subsection does not~~
5 ~~affect the ability of a municipal governing body or a body vested~~
6 ~~with the power to manage and operate the municipally owned utility~~
7 ~~to pass a resolution under Section 40.051(b).]~~

8 SECTION _____. Section 40.104, Utilities Code, is amended to
9 read as follows:

10 Sec. 40.104. TAX-EXEMPT STATUS. Nothing in this subtitle
11 may impair the tax-exempt status of municipalities, electric
12 cooperatives, or river authorities, nor shall anything in this
13 subtitle compel any municipality, electric cooperative, or river
14 authority to use its facilities in a manner that violates any
15 contractual provisions, bond covenants, or other restrictions
16 applicable to facilities financed by tax-exempt debt.
17 ~~[Notwithstanding any other provision of law, the decision to~~
18 ~~participate in customer choice by the adoption of a resolution in~~
19 ~~accordance with Section 40.051(b) is irrevocable.]~~

20 SECTION _____. Section 41.004, Utilities Code, is amended to
21 read as follows:

22 Sec. 41.004. JURISDICTION OF COMMISSION. Except as
23 specifically provided otherwise in this chapter, the commission has
24 jurisdiction over electric cooperatives only as follows:

25 (1) to regulate wholesale transmission rates and
26 service, including terms of access, to the extent provided in
27 Subchapter A, Chapter 35;

28 (2) to regulate certification to the extent provided
29 in Chapter 37; and

30 (3) ~~[to establish a code of conduct as provided in~~
31 ~~Section 39.157(e) subject to Section 41.054,~~

1 ~~[(4) to establish terms and conditions, but not rates,~~
2 ~~for open access to distribution facilities for electric~~
3 ~~cooperatives providing customer choice, as provided in Section~~
4 ~~39.203, and~~

5 ~~[(5)]~~ to require reports of electric cooperative
6 operations only to the extent necessary to:

7 (A) ensure the public safety;

8 (B) enable the commission to satisfy its
9 responsibilities relating to electric cooperatives under this
10 chapter; or

11 (C) enable the commission to determine the
12 aggregate electric load and energy requirements in the state and
13 the resources available to serve that load~~[, or~~

14 ~~[(D) enable the commission to determine~~
15 ~~information relating to market power as provided in Section~~
16 ~~39.155].~~

17 SECTION _____. Section 41.055, Utilities Code, is amended to
18 read as follows:

19 Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board of
20 directors has exclusive jurisdiction to:

21 (1) set all terms of access, conditions, and rates
22 applicable to services provided by the electric cooperative,
23 ~~[except as provided by Sections 41.054 and 41.056,]~~ including
24 nondiscriminatory and comparable rates for distribution but
25 excluding wholesale transmission rates, terms of access, and
26 conditions for wholesale transmission service set by the commission
27 under Subchapter A, Chapter 35, provided that the rates for
28 distribution established by the electric cooperative shall be
29 comparable to the distribution rates that apply to the electric
30 cooperative and its subsidiaries;

31 (2) ~~[determine whether to unbundle any energy-related~~

1 ~~activities and, if the board of directors chooses to unbundle,~~
2 ~~whether to do so structurally or functionally,~~

3 ~~[(3) reasonably determine the amount of the electric~~
4 ~~cooperative's stranded investment,~~

5 ~~[(4) establish nondiscriminatory transition charges~~
6 ~~reasonably designed to recover the stranded investment over an~~
7 ~~appropriate period of time,~~

8 ~~[(5) determine the extent to which the electric~~
9 ~~cooperative will provide various customer services, including~~
10 ~~nonelectric services, or accept the services from other providers,~~

11 ~~[(6)] manage and operate the electric cooperative's~~
12 ~~utility systems, including exercise of control over resource~~
13 ~~acquisition and any related expansion programs;~~

14 ~~(3) [(7)] establish and enforce service quality~~
15 ~~standards, reliability standards, and consumer safeguards designed~~
16 ~~to protect retail electric customers;~~

17 ~~(4) [(8) determine whether a base rate reduction is~~
18 ~~appropriate for the electric cooperative,~~

19 ~~[(9)] determine any other utility matters that the~~
20 ~~board of directors believes should be included;~~

21 ~~(5) [(10)] sell electric energy and capacity at~~
22 ~~wholesale[, regardless of whether the electric cooperative~~
23 ~~participates in customer choice];~~

24 ~~(6) [(11)] determine the extent to which the electric~~
25 ~~cooperative offers energy efficiency programs and how the programs~~
26 ~~are administered by the electric cooperative; and~~

27 ~~(7) [(12)] make any other decisions affecting the~~
28 ~~electric cooperative's method of conducting business that are not~~
29 ~~inconsistent with the provisions of this chapter.~~

30 SECTION _____. Sections 41.061(a), (c), and (e), Utilities
31 Code, are amended to read as follows:

1 (a) This section shall apply to retail rates of an electric
2 cooperative ~~[that has not adopted customer choice and to the retail~~
3 ~~delivery rates of an electric cooperative that has adopted customer~~
4 ~~choice]~~. This section may not apply to rates for~~+~~

5 ~~[(1) sales of electric energy by an electric~~
6 ~~cooperative that has adopted customer choice, or~~

7 ~~[(2)]~~ wholesale sales of electric energy.

8 (c) An electric cooperative may implement the proposed
9 rates on completion of the requirements under Subsection (b), and
10 those rates shall remain in effect until changed by the electric
11 cooperative as provided by this section ~~[or, for rates other than~~
12 ~~retail delivery rates, until this section is no longer applicable~~
13 ~~because the electric cooperative adopts customer choice]~~.

14 (e) Retail rates set by an electric cooperative ~~[that has~~
15 ~~not adopted customer choice and retail delivery rates set by an~~
16 ~~electric cooperative that has adopted customer choice]~~ shall be
17 just and reasonable, not unreasonably preferential, prejudicial,
18 or discriminatory; provided, however, if the customer agrees, an
19 electric cooperative may charge a market-based rate to customers
20 who have energy supply options if rates are not increased for other
21 customers as a result.

22 SECTION _____. Not later than February 1, 2015, a retail
23 electric provider that wants to continue to provide retail electric
24 service in ERCOT shall file with the Public Utility Commission of
25 Texas:

26 (1) an application for a certificate of convenience
27 and necessity under Section 37.051(f), Utilities Code, as amended
28 by this article; and

29 (2) a tariff that complies with Section 32.101,
30 Utilities Code.

31 SECTION _____. This article does not affect bonds or other

1 indebtedness issued before the effective date of this article.
2 Bonds or other indebtedness issued before the effective date of
3 this article are governed by the law in effect when the bonds or
4 other indebtedness were issued, and that law is continued in effect
5 for that purpose.

6 SECTION _____. This article takes effect January 1, 2015.

