

BILL ANALYSIS

C.S.H.B. 2049
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the current statutory definition of a cogeneration facility as one that sells electric energy to the sole purchaser of a cogenerator's thermal output is incongruent with a regulatory ruling allowing cogeneration facilities to sell thermal energy to multiple purchasers to maximize operational efficiency. C.S.H.B. 2049 seeks to clarify related statutory provisions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2049 amends the Utilities Code to authorize a qualifying cogenerator to sell electric energy at retail to more than one purchaser of the cogenerator's thermal output under statutory provisions relating to the encouragement of economical production and discounted wholesale or retail rates. The bill establishes that a qualifying cogenerator that sells electric energy at retail to more than one purchaser is not subject to regulation as a retail electric utility or subject to regulation as a retail electric provider or power generation company if the transmission services used to provide electricity necessary to serve the purchasers of the thermal output do not extend beyond the site of any thermal purchaser and are owned by the qualifying cogenerator, the thermal purchaser, or an affiliate of the qualifying cogenerator or thermal purchaser. The bill excepts the sale of wholesale electricity from the limitation on the sale of electricity and exempts from its provisions a municipally owned utility or electric cooperative providing service to an area where competition has not been introduced.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2049 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 37.001(3), Utilities Code, is amended to read as follows:
(3) "Retail electric utility" means a person, political subdivision, electric

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

cooperative, or agency that operates, maintains, or controls in this state a facility to provide retail electric utility service. The term does not include a corporation described by Section 32.053 to the extent that the corporation sells electricity exclusively at wholesale and not to the ultimate consumer. A qualifying facility [~~cogenerator~~] that sells electric energy at retail to any [~~the sole~~] purchaser of the facility's [~~cogenerator's~~] thermal output under Section [~~Sections~~] 35.061 or [~~and~~] 36.007, or a supplier of fuel or waste heat derived from the supplier's manufacturing process that supplies the fuel or waste heat to the qualifying facility, is not for that reason considered to be a retail electric utility. The owner or operator of a qualifying cogeneration facility who was issued the necessary environmental permits from the Texas Natural Resource Conservation Commission after January 1, 1998, and who commenced construction of such qualifying facility before July 1, 1998, may provide electricity to the purchasers of the thermal output of that qualifying facility and shall not for that reason be considered an electric utility or a retail electric utility, provided that the purchasers of the thermal output are owners of manufacturing or process operation facilities that are located on a site entirely owned before September, 1987, by one owner who retained ownership after September, 1987, of some portion of the facilities and that those facilities now share some integrated operations, such as the provision of services and raw materials.

No equivalent provision.

SECTION 1. Section 31.002(13), Utilities Code, is amended to read as follows:

(13) "Qualifying cogenerator" and "qualifying small power producer" have the meanings assigned those terms by 16 U.S.C. Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that provides electricity to a [~~the~~] purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

No equivalent provision.

SECTION 2. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0521 to read as follows:

Sec. 37.0521. EXCEPTION FOR RETAIL SALES BY CERTAIN QUALIFYING COGENERATORS. (a) Notwithstanding any other provision of this title, a qualifying cogenerator may sell electric energy at retail to more than one purchaser of the cogenerator's thermal output under Sections 35.061 and 36.007.

(b) A qualifying cogenerator that sells electric energy at retail to more than one purchaser is not subject to regulation as a retail electric utility under Chapter 37 or subject to regulation as a retail electric provider or power generation company under this subtitle if the transmission facilities used to provide electricity necessary to serve the purchasers of the thermal output:

(1) do not extend beyond the site of any thermal purchaser; and

(2) are owned by the qualifying cogenerator, the thermal purchaser, or an affiliate of the qualifying cogenerator or thermal purchaser.

(c) The limitation on the sale of electricity does not apply to the sale of wholesale electricity.

(d) This section does not apply to a municipally owned utility or an electric cooperative providing service to an area where competition has not been introduced.

SECTION 2. This Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.