

By: Sanford

H.B. No. 857

A BILL TO BE ENTITLED

AN ACT

relating to the legislature's goals for renewable electric generating capacity.

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

SECTION 1. Section 2305.0322(b)(5), Government Code, is amended to read as follows:

(5) "Renewable energy technology" has the meaning assigned by Section 39.916 [~~39.904(d)~~], Utilities Code.

SECTION 2. Section 36.053(d), Utilities Code, is amended to read as follows:

(d) If the commission issues a certificate of convenience and necessity or if the commission, acting under the authority formerly provided by Section 39.203(e), ordered [~~orders~~] an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under former Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION 3. Section 37.051(f), Utilities Code, is amended to read as follows:

(f) The commission shall consider the requirements of

1 Subsection (e) to have been met by an electric utility or other
2 person that:

3 (1) was [~~is~~] selected by the commission as a
4 transmission provider under a plan adopted by the commission under
5 former Section 39.904 not later than September 1, 2009; and

6 (2) before the certificate is issued, provides to the
7 commission a detailed plan regarding the offices, personnel, and
8 other resources the electric utility or other person will have in
9 this state to ensure provision of continuous and adequate
10 transmission service.

11 SECTION 4. Section 37.0541, Utilities Code, is amended to
12 read as follows:

13 Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The
14 commission shall consolidate the proceeding on an application to
15 obtain or amend a certificate of convenience and necessity for the
16 construction of a transmission line with the proceeding on another
17 application to obtain or amend a certificate of convenience and
18 necessity for the construction of a transmission line if it is
19 apparent from the applications or a motion to intervene in either
20 proceeding that the transmission lines that are the subject of the
21 separate proceedings share a common point of interconnection.
22 [~~This section does not apply to a proceeding on an application for a~~
23 ~~certificate of convenience and necessity for a transmission line to~~
24 ~~serve a competitive renewable energy zone as part of a plan~~
25 ~~developed by the commission under Section 39.904(g)(2).]~~

26 SECTION 5. Sections 37.056(c) and (d), Utilities Code, are
27 amended to read as follows:

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

3 (1) the adequacy of existing service;

4 (2) the need for additional service;

5 (3) the effect of granting the certificate on the
6 recipient of the certificate and any electric utility serving the
7 proximate area; and

8 (4) other factors, such as:

9 (A) community values;

10 (B) recreational and park areas;

11 (C) historical and aesthetic values;

12 (D) environmental integrity; and

13 (E) the probable improvement of service or
14 lowering of cost to consumers in the area if the certificate is
15 granted[~~and~~

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

19 (d) The commission by rule shall establish criteria, in
20 addition to the criteria described by Subsection (c), for granting
21 a certificate for a transmission project that serves the ERCOT
22 power region and [~~and~~] that is not necessary to meet state or federal
23 reliability standards[~~and that does not serve a competitive~~
24 ~~renewable energy zone]. The criteria must include a comparison of~~
25 the estimated cost of the transmission project and the estimated
26 cost savings that may result from the transmission project. The
27 commission shall include with its decision on an application for a

1 certificate to which this subsection applies findings on the
2 criteria.

3 SECTION 6. Section 39.002, Utilities Code, is amended to
4 read as follows:

5 Sec. 39.002. APPLICABILITY. This chapter, other than
6 Sections 39.155, 39.157(e), 39.203, 39.903, [~~39.904~~] 39.9051,
7 39.9052, and 39.914(e), does not apply to a municipally owned
8 utility or an electric cooperative. Sections 39.157(e) and [~~7~~]
9 39.203, [~~and 39.904~~] however, apply only to a municipally owned
10 utility or an electric cooperative that is offering customer
11 choice. If there is a conflict between the specific provisions of
12 this chapter and any other provisions of this title, except for
13 Chapters 40 and 41, the provisions of this chapter control.

14 SECTION 7. Section 39.203(e), Utilities Code, is amended to
15 read as follows:

16 (e) The commission may require an electric utility or a
17 transmission and distribution utility to construct or enlarge
18 facilities to ensure safe and reliable service for the state's
19 electric markets and to reduce transmission constraints within
20 ERCOT in a cost-effective manner where the constraints are such
21 that they are not being resolved through Chapter 37 or the ERCOT
22 transmission planning process. [~~The commission shall require an~~
23 ~~electric utility or a transmission and distribution utility to~~
24 ~~construct or enlarge transmission or transmission-related~~
25 ~~facilities for the purpose of meeting the goal for generating~~
26 ~~capacity from renewable energy technologies under Section~~
27 ~~39.904(a).~~] In any proceeding brought under Chapter 37, an

1 electric utility or transmission and distribution utility ordered
2 to construct or enlarge facilities under this subchapter need not
3 prove that the construction ordered is necessary for the service,
4 accommodation, convenience, or safety of the public and need not
5 address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E).
6 Notwithstanding any other law, including Section 37.057, in any
7 proceeding brought under Chapter 37 by an electric utility or a
8 transmission and distribution utility related to an application for
9 a certificate of public convenience and necessity to construct or
10 enlarge transmission or transmission-related facilities under this
11 subsection, the commission shall issue a final order before the
12 181st day after the date the application is filed with the
13 commission. If the commission does not issue a final order before
14 that date, the application is approved.

15 SECTION 8. Section 39.402(a), Utilities Code, is amended to
16 read as follows:

17 (a) Until the date on which an electric utility subject to
18 this subchapter is authorized by the commission to implement
19 customer choice, the rates of the utility shall be regulated under
20 traditional cost of service regulation and the utility is subject
21 to all applicable regulatory authority prescribed by this subtitle
22 and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until
23 the date on which an electric utility subject to this subchapter
24 implements customer choice, the provisions of this chapter, other
25 than this subchapter, Section [~~Sections 39.904 and~~] 39.905, and the
26 provisions relating to the duty to obtain a permit from the Texas
27 Commission on Environmental Quality for an electric generating

1 facility and to reduce emissions from an electric generating
2 facility, shall not apply to that utility. That portion of any
3 commission order entered before September 1, 2001, to comply with
4 this subchapter shall be null and void.

5 SECTION 9. Section 39.452(d), Utilities Code, is amended to
6 read as follows:

7 (d) Until the date on which an electric utility subject to
8 this subchapter implements customer choice:

9 (1) the provisions of this chapter do not apply to that
10 electric utility, other than this subchapter, Section [~~Sections~~
11 ~~39.904 and~~ 39.905], the provisions relating to the duty to obtain a
12 permit from the Texas Commission on Environmental Quality for an
13 electric generating facility and to reduce emissions from an
14 electric generating facility, and the provisions of Subchapter G
15 that pertain to the recovery and securitization of hurricane
16 reconstruction costs authorized by Sections 39.458-39.463; and

17 (2) the electric utility is not subject to a rate
18 freeze and, subject to the limitation provided by Subsection (b),
19 may file for rate changes under Chapter 36 and for approval of one
20 or more of the rate rider mechanisms authorized by Sections 39.454
21 and 39.455.

22 SECTION 10. Section 39.502(b), Utilities Code, is amended
23 to read as follows:

24 (b) Until the date on which an electric utility subject to
25 this subchapter implements customer choice, the provisions of this
26 chapter, other than this subchapter and Section [~~Sections~~ 39.904
27 ~~and~~ 39.905], do not apply to that utility.

1 SECTION 11. Section 39.552(b), Utilities Code, is amended
2 to read as follows:

3 (b) Until the date on which an electric utility subject to
4 this subchapter implements customer choice, the provisions of this
5 chapter, other than this subchapter and Section [~~Sections 39.904~~
6 ~~and~~ 39.905, do not apply to that utility.

7 SECTION 12. Section 39.916(a), Utilities Code, is amended
8 by amending Subdivision (1) and adding Subdivision (4) to read as
9 follows:

10 (1) "Distributed renewable generation" means electric
11 generation with a capacity of not more than 2,000 kilowatts
12 provided by a renewable energy technology [~~, as defined by Section~~
13 ~~39.904,~~] that is installed on a retail electric customer's side of
14 the meter.

15 (4) "Renewable energy technology" means any
16 technology that relies exclusively on an energy source that is
17 naturally regenerated over a short time and is derived from the sun
18 directly or indirectly or from moving water or other natural
19 movements or mechanisms of the environment. The term includes a
20 technology that relies on energy derived from the sun directly, on
21 wind, geothermal, hydroelectric, wave, or tidal energy, or on
22 biomass or biomass-based waste products, including landfill gas.
23 The term does not include a technology that relies on an energy
24 resource derived from a fossil fuel, a waste product from a fossil
25 fuel, or a waste product from an inorganic source.

26 SECTION 13. Section 40.001(a), Utilities Code, is amended
27 to read as follows:

1 (a) Notwithstanding any other provision of law, except
2 Sections 39.155, 39.157(e), 39.203, and 39.903, [~~and 39.904~~], this
3 chapter governs the transition to and the establishment of a fully
4 competitive electric power industry for municipally owned
5 utilities. With respect to the regulation of municipally owned
6 utilities, this chapter controls over any other provision of this
7 title, except for sections in which the term "municipally owned
8 utility" is specifically used.

9 SECTION 14. Section 40.004, Utilities Code, is amended to
10 read as follows:

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

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

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

20 (3) to regulate rates on appeal under Subchapters D
21 and E, Chapter 33, subject to Section 40.051(c);

22 (4) to establish a code of conduct as provided by
23 Section 39.157(e) applicable to anticompetitive activities and to
24 affiliate activities limited to structurally unbundled affiliates
25 of municipally owned utilities, subject to Section 40.054;

26 (5) to establish terms and conditions for open access
27 to transmission and distribution facilities for municipally owned

1 utilities providing customer choice, as provided by Section 39.203;

2 (6) to require collection of the nonbypassable fee
3 established under Section 39.903(b) and to administer the
4 ~~[renewable energy credits program under Section 39.904(b) and the]~~
5 natural gas energy credits program under Section 39.9044(b); and

6 (7) to require reports of municipally owned utility
7 operations only to the extent necessary to:

8 (A) enable the commission to determine the
9 aggregate load and energy requirements of the state and the
10 resources available to serve that load; or

11 (B) enable the commission to determine
12 information relating to market power as provided by Section 39.155.

13 SECTION 15. Section 41.001, Utilities Code, is amended to
14 read as follows:

15 Sec. 41.001. APPLICABLE LAW. Notwithstanding any other
16 provision of law, except Sections 39.155, 39.157(e), 39.203, and
17 39.903, ~~[and 39.904]~~ this chapter governs the transition to and
18 the establishment of a fully competitive electric power industry
19 for electric cooperatives. Regarding the regulation of electric
20 cooperatives, this chapter shall control over any other provision
21 of this title, except for sections in which the term "electric
22 cooperative" is specifically used.

23 SECTION 16. Sections 39.904 and 39.916(g), Utilities Code,
24 are repealed.

25 SECTION 17. This Act takes effect September 1, 2015.