

By: Creighton

S.B. No. 1761

A BILL TO BE ENTITLED

AN ACT

relating to the authority and obligation of this state to comply with and implement a Clean Power Plan.

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

SECTION 1. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0174 to read as follows:

Sec. 382.0174. STATE AUTHORITY AND OBLIGATIONS UNDER CERTAIN FEDERAL REQUIREMENTS. (a) In this section:

(1) "Clean Power Plan" means a final rulemaking action of the United States Environmental Protection Agency that establishes carbon pollution guidelines for existing electric utility generating units under Section 111(d) of the federal Clean Air Act (42 U.S.C. Section 7411).

(2) "Utility commission" means the Public Utility Commission of Texas.

(b) The governor and the attorney general, in consultation with the commission and the utility commission, shall work to prevent federal commandeering of state police powers, protect the sovereignty of this state under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), and retain authority to develop a state plan to meet judicially or legislatively approved goals to reduce carbon dioxide emissions.

(c) Notwithstanding any other law, the commission and the utility commission:

1 (1) may examine the implications of complying with and
2 implementing a Clean Power Plan;

3 (2) shall take measures necessary to comply with or
4 implement a Clean Power Plan only after:

5 (A) the plan has been finally determined to be
6 authorized under federal law by the United States Supreme Court;

7 (B) the House Committee on Environmental
8 Regulation or a successor committee and the Senate Committee on
9 Natural Resources and Economic Development or a successor committee
10 have affirmatively approved the plan and submitted to the
11 legislature a report on the plan's impacts on commercial and
12 residential electricity customers in this state; and

13 (C) the utility commission and the Federal Energy
14 Regulatory Commission have certified that this state's plan to
15 implement the Clean Power Plan meets the grid reliability standards
16 of the Federal Energy Regulatory Commission; and

17 (3) have the authority necessary to comply with and
18 implement a Clean Power Plan if the requirements of Subdivision (2)
19 are satisfied.

20 (d) The commission and the utility commission shall develop
21 and adopt a memorandum of understanding as necessary to clarify or
22 provide for their respective duties, responsibilities, or
23 functions regarding any matter under the jurisdiction of the
24 commission or utility commission that relates to a Clean Power Plan
25 and is not expressly assigned to either the commission or utility
26 commission.

27 (e) During the examination of the implications of complying

1 with and implementing a Clean Power Plan and during the
2 implementation of the plan, the utility commission:

3 (1) may not authorize the retirement of a functioning
4 electric generating unit in this state before the unit has aged past
5 the engineering lifetime of the unit, unless:

6 (A) the unit is not necessary to maintain the
7 grid reliability required by the Federal Energy Regulatory
8 Commission;

9 (B) the owner of the unit has recouped the costs
10 of constructing and financing the unit;

11 (C) the state has sufficient replacement
12 capacity to meet the dispatchable capacity of the unit to be
13 retired; and

14 (D) an electric generating unit brought online to
15 replace the unit to be retired will not increase costs to consumers;

16 (2) shall require operators of electric generating
17 units to operate the units in accordance with the design parameters
18 and design life of the unit approved by the utility commission when
19 the generating unit began operation;

20 (3) shall regulate electricity generation and
21 distribution based on least-cost proposals that comply with federal
22 and state regulations of air pollutants for which criteria have
23 been adopted under Section 108 of the federal Clean Air Act (42
24 U.S.C. Section 7408) or that are listed in Section 112 of the
25 federal Clean Air Act (42 U.S.C. Section 7412); and

26 (4) to the extent possible, shall ensure that each
27 entity engaged in generating, transmitting, or distributing

1 electric energy that increases non-fuel rates based on
2 implementation of a Clean Power Plan or anticipated implementation
3 of a Clean Power Plan does not increase the rates by more than 1.5
4 percent.

5 SECTION 2. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2015.