

By: Kolkhorst

S.B. No. 1920

A BILL TO BE ENTITLED

AN ACT

relating to electric industry market power rules.

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

SECTION 1. Section 39.157(d), Utilities Code, is amended to read as follows:

(d) Not later than January 10, 2000, the commission shall adopt rules and enforcement procedures to govern transactions or activities between a transmission and distribution utility and its competitive affiliates to avoid potential market power abuses and cross-subsidizations between regulated and competitive activities both during the transition to and after the introduction of competition. Nothing in this subsection is intended to affect or modify the obligations or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission or the Securities and Exchange Commission. A utility that is subject to statutes or regulations in other states that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause. The rules adopted under this section shall ensure that:

(1) a utility makes any products and services, other than corporate support services, that it provides to a competitive affiliate available, contemporaneously and in the same manner, to the competitive affiliate's competitors and applies its tariffs,

1 prices, terms, conditions, and discounts for those products and
2 services in the same manner to all similarly situated entities;

3 (2) a utility does not:

4 (A) give a competitive affiliate or a competitive
5 affiliate's customers any preferential advantage, access, or
6 treatment regarding services other than corporate support
7 services; or

8 (B) act in a manner that is discriminatory or
9 anticompetitive with respect to a nonaffiliated competitor of a
10 competitive affiliate;

11 (3) a utility providing electric transmission or
12 distribution services:

13 (A) provides those services on nondiscriminatory
14 terms and conditions;

15 (B) does not establish as a condition for the
16 provision of those services the purchase of other goods or services
17 from the utility or the competitive affiliate; and

18 (C) does not provide competitive affiliates
19 preferential access to the utility's transmission and distribution
20 systems or to information about those systems;

21 (4) a utility does not release any proprietary
22 customer information to a competitive affiliate or any other
23 entity, other than an independent organization as defined by
24 Section 39.151 or a provider of corporate support services for the
25 purposes of providing the services, without obtaining prior
26 verifiable authorization, as determined from the commission, from
27 the customer;

1 (5) a utility, or any affiliated utility, does not[+]
2 [~~(A)~~] communicate with a current or potential
3 customer about products or services offered by a competitive
4 affiliate in a manner that favors a competitive affiliate[+] or
5 [~~(B)~~] allow a competitive affiliate[~~, before~~
6 ~~September 1, 2005,~~] to use the utility's corporate name, trademark,
7 brand, [~~or~~] logo, or other identifying brand feature, except that
8 an affiliate relationship may be disclosed in communications that
9 are not made for the purpose of advertising or joint marketing
10 ~~[unless the competitive affiliate includes on employee business~~
11 ~~cards and in its advertisements of specific services to existing or~~
12 ~~potential residential or small commercial customers locating~~
13 ~~within the utility's certificated service area a disclaimer that~~
14 ~~states, "(Name of competitive affiliate) is not the same company as~~
15 ~~(name of utility) and is not regulated by the Public Utility~~
16 ~~Commission of Texas, and you do not have to buy (name of competitive~~
17 ~~affiliate)'s products to continue to receive quality regulated~~
18 ~~services from (name of utility)."];~~

19 (6) a utility, or any affiliated utility, does not
20 conduct joint advertising or promotional activities with a
21 competitive affiliate in a manner that favors the competitive
22 affiliate;

23 (7) a utility is a separate, independent entity from
24 any competitive affiliates and, except as provided by Subdivisions
25 (8) and (9), does not share employees, facilities, information, or
26 other resources, other than permissible corporate support
27 services, with those competitive affiliates unless the utility can

1 prove to the commission that the sharing will not compromise the
2 public interest;

3 (8) a utility's office space is physically separated
4 from the office space of the utility's competitive affiliates by
5 being located in separate buildings or, if within the same
6 building, by a method such as having the offices on separate floors
7 or with separate access, unless otherwise approved by the
8 commission;

9 (9) a utility and a competitive affiliate:

10 (A) may, to the extent the utility implements
11 adequate safeguards precluding employees of a competitive
12 affiliate from gaining access to information in a manner
13 inconsistent with Subsection (g) or (i), share common officers and
14 directors, property, equipment, offices to the extent consistent
15 with Subdivision (8), credit, investment, or financing
16 arrangements to the extent consistent with Subdivision (17),
17 computer systems, information systems, and corporate support
18 services; and

19 (B) are not required to enter into prior written
20 contracts or competitive solicitations for non-tariffed
21 transactions between the utility and the competitive affiliate,
22 except that the commission by rule may require the utility and the
23 competitive affiliate to enter into prior written contracts or
24 competitive solicitations for certain classes of transactions,
25 other than corporate support services, that have a per unit value of
26 more than \$75,000 or that total more than \$1 million;

27 (10) a utility does not temporarily assign, for less

1 than one year, employees engaged in transmission or distribution
2 system operations to a competitive affiliate unless the employee
3 does not have knowledge of information that is intended to be
4 protected under this section;

5 (11) a utility does not subsidize the business
6 activities of an affiliate with revenues from a regulated service;

7 (12) a utility and its affiliates fully allocate costs
8 for any shared services, corporate support services, and other
9 items described by Subdivisions (8) and (9);

10 (13) a utility and its affiliates keep separate books
11 of accounts and records and the commission may review records
12 relating to a transaction between a utility and an affiliate;

13 (14) assets transferred or services provided between a
14 utility and an affiliate, other than transfers that facilitate
15 unbundling under Section 39.051 or asset valuation under Section
16 39.262, are priced at a level that is fair and reasonable to the
17 customers of the utility and reflects the market value of the assets
18 or services or the utility's fully allocated cost to provide those
19 assets or services;

20 (15) regulated services that a utility provides on a
21 routine or recurring basis are included in a tariff that is subject
22 to commission approval;

23 (16) each transaction between a utility and a
24 competitive affiliate is conducted at arm's length; and

25 (17) a utility does not allow an affiliate to obtain
26 credit under an arrangement that would include a specific pledge of
27 assets in the rate base of the utility or a pledge of cash

1 reasonably necessary for utility operations.

2 SECTION 2. This Act takes effect September 1, 2017.