

BILL ANALYSIS

Senate Research Center
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S.B. 1211
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Public Utility Commission (PUC) reviews merger and acquisition (M&A) activities of power generation companies in ERCOT to ensure that one company does not own an amount of the statewide generation fleet that would allow a single company to exercise market power. Section 39.154 of the Utilities Code sets the accepted threshold by prohibiting a power generation company from owning more than 20 percent of the total installed generation capacity in ERCOT. Section 39.158 of the Utilities Code triggers PUC review of such transactions to ensure that a single company does not exceed the 20 percent limit. Currently, Section 39.158 of the Utilities Code requires "incremental" reviews targeting transactions that involve more than one percent of the "total electricity for sale" in the state.

The number of M&A transactions has increased in the last several years, making it harder for PUC to perform the required reviews in a timely fashion. In 2015 there were five applications, while in 2018 there were 26 applications. These reviews frequently arrive at one time, and often late in the fourth quarter when M&A occurs to meet a year-end deadline for tax considerations. Few of these transactions threaten to surpass the 20 percent ownership limit. Most M&A transactions result in less than five percent market share for one owner, but the allocation of agency staff resources to complete these complex analyses is largely the same for all transactions, and the review can slow down private industry transactions.

S.B. 1211 would increase the official review trigger increment from one percent to 10 percent. This step would still allow PUC to prevent transactions that might create monopoly market power, but would reduce the administrative burden on PUC and allow business transactions to be completed without unnecessary barriers. S.B. 1211 would not affect the 20 percent ownership cap.

Bill Analysis

Public Utility Regulatory Act (PURA) Section 39.158 requires "incremental" reviews targeting transactions that involve more than one percent of the "total electricity for sale" in the state. S.B. 1211 would amend Section 39.158 of PURA to increase the official review trigger increment from one percent to 10 percent.

PURA Section 39.154 sets an accepted threshold by prohibiting a power generation company from owning more than 20 percent of the total installed generation capacity in ERCOT. S.B. 1211 would not change the 20 percent cap.

As proposed, S.B. 1211 amends current law relating to regulation of mergers and consolidations of power generation companies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 39.158, Utilities Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires a power generation company that offers electricity for sale in a power region open to customer choice and proposes a transaction to merge, consolidate, or otherwise become affiliated with another power generation company that offers electricity for sale in the same power region to obtain the approval of the Public Utility Commission of Texas (PUC) before closing if the merged, consolidated, or affiliated entity would own or control more than 10 percent of the total installed generation capacity located in, or capable of delivering electricity to, the power region, rather than requiring an owner of electric generation facilities that offers electricity for sale in the state and proposes to merge, consolidate, or otherwise become affiliated with another owner of electric generation facilities that offers electricity for sale in this state to obtain the approval of PUC before closing if the electricity offered for sale in the power region by the merged, consolidated, or affiliated entity will exceed one percent of the total electricity for sale in the power region.

(a-1) Creates this subsection from existing text. Requires an approval required by Subsection (a) to be requested at least 120 days before the date of the proposed closing of the transaction, rather than requiring the approval to be requested at least 120 days before the date of the proposed closing.

(a-2) Requires PUC to approve a transaction described by Subsection (a), rather than to approve the transaction, unless PUC finds that the transaction results in a violation of Section 39.154 (Limitation of Ownership of Installed Capacity).

SECTION 2. Makes application of Section 39.158(a), Utilities Code, as amended by this Act, and Sections 39.158(a-1) and (a-2), Utilities Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2019.