

BILL ANALYSIS

Senate Research Center
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S.B. 415
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since the unbundling of the electric market in ERCOT into distinct retail, generation, and transmission and distribution business segments, new technologies have developed. Generators have contended in cases before the Public Utility Commission of Texas (PUC) that battery storage technology is an electric generation asset and should be defined as such in statute. Transmission and distribution utilities (TDUs) have contended that battery storage devices are merely a tool—much like a transformer or other device—and should be considered a traditional transmission and distribution asset. The PUC has asked for guidance from the legislature regarding the ownership and deployment of battery storage devices in the uniquely structured ERCOT market.

AEP Texas, a TDU operating in ERCOT, raised this issue to the PUC when it requested to install utility-scale batteries to address reliability issues in two sparsely populated areas in its distribution system. The PUC dismissed the docket on the grounds that there was insufficient information to reach a decision.

To gather additional information, the PUC opened a project to evaluate more broadly the possibility of an electric utility owning and operating an energy storage device. In this project, the PUC has received extensive, sharply differing comments on whether the Utilities Code (Public Utility Regulatory Act) currently allows a TDU to own or operate an energy storage device.

Texas Utilities Code Section 35.152 provides that electric energy storage that is intended to be used to sell energy or ancillary services at wholesale are generation assets, and the owner or operator is a power generation company. However, Section 31.002(10) defines a power generation company as a person that generates electricity that is intended to be sold at wholesale, does not own a transmission and distribution facility, and does not have a certificated service area (obviously batteries do not generate power). Finally, Section 39.105 states that a TDU may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs.

This bill would define energy storage devices as a generation asset, but would allow a TDU, with prior approval from the PUC, to enter into an agreement with a power generation company that owns an energy storage facility for reliability services in circumstances where construction of traditional distribution facilities is not cost effective. A TDU would be allowed to recover the costs of the lease agreement.

As proposed, S.B. 415 amends current law relating to use of electric energy storage facilities in the ERCOT power region.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2 (Section 35.153, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 35.151, Utilities Code, as follows:

Sec. 35.151. ELECTRIC ENERGY STORAGE. Provides that Subchapter E (Electric Energy Storage) applies only to the ownership or operation of electric energy storage equipment or facilities in the ERCOT power region that are intended to:

- (1) creates this subsection from existing text and makes nonsubstantive changes; or
- (2) provide reliable delivery of electric energy to distribution customers.

SECTION 2. Amends Subchapter E, Chapter 35, Utilities Code, by adding Section 35.153, as follows:

Sec. 35.153. CONTRACTS FOR ELECTRIC ENERGY STORAGE FOR RELIABILITY SERVICES. (a) Authorizes a transmission and distribution utility, with prior approval of the Public Utility Commission of Texas (PUC), to contract with a power generation company to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers.

(b) Prohibits the PUC from authorizing ownership of an electric energy storage facility by a transmission and distribution utility.

(c) Requires the transmission and distribution utility, before entering into a contract under Subsection (a), to issue a request for proposals for use of an electric energy storage facility to meet the utility's reliability needs.

(d) Authorizes a transmission and distribution utility to enter into a contract under Subsection (a) only if use of an electric energy storage facility is more cost-effective than construction or modification of traditional distribution facilities.

(e) Prohibits a transmission and distribution utility from entering into a contract under Subsection (a) that reserves an amount of capacity exceeding the amount of capacity required to ensure reliable service to the utility's distribution customers.

(f) Authorizes a power generation company that owns or operates an electric energy storage facility subject to a contract under Subsection (a) to sell electric energy or ancillary services through use of the facility only to the extent that the company reserves capacity as required by the contract.

(g) Prohibits a power generation company that owns or operates an electric energy storage facility subject to a contract under Subsection (a) from discharging the facility to satisfy the contract's requirements unless directed by the transmission and distribution utility.

(h) Requires that a contract under Subsection (a) require a power generation company that owns or operates an electric energy storage facility to reimburse a transmission and distribution utility for the cost of an administrative penalty assessed against the utility for a violation caused by the facility's failure to meet the requirements of the agreement.

(i) Requires a regulatory authority, in establishing the rates of a transmission and distribution utility, to review a contract between the utility and a power generation company under Subsection (a). Provides that the utility has the burden of proof to establish that the costs of the contract are reasonable and necessary. Authorizes the regulatory authority to authorize a transmission and distribution utility to include a reasonable return on the payments required under the contract only if the contract terms satisfy the relevant accounting standards for a capital lease or finance lease.

(j) Prohibits the total amount of electric energy storage capacity reserved by contracts under Subsection (a) from exceeding 40 megawatts. Requires the PUC by rule to establish the maximum amount of electric energy storage capacity allotted to each transmission and distribution utility.

(k) Requires the PUC to adopt rules as necessary to implement this section and establish criteria for approving contracts under Subsection (a).

SECTION 3. Requires the PUC to adopt rules required by Section 35.153, Utilities Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 4. Effective date: September 1, 2021.