

By: Kacal

H.B. No. 4376

A BILL TO BE ENTITLED

AN ACT

relating to regulation of ownership and control of installed electric generation capacity.

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

SECTION 1. Sections 39.152(a) and (d), Utilities Code, are amended to read as follows:

(a) The commission shall certify a power region if:

(1) a sufficient number of interconnected utilities in the power region fall under the operational control of an independent organization as described by Section 39.151;

(2) the power region has a generally applicable tariff that guarantees open and nondiscriminatory access for all users to transmission and distribution facilities in the power region as provided by Section 39.203; and

(3) no person owns and controls more than 25 [~~20~~] percent of the installed generation capacity located in or capable of delivering electricity to a power region, as determined according to Section 39.154.

(d) For a power region outside of ERCOT, a power generation company that is affiliated with an electric utility may elect to demonstrate that it meets the requirements of Subsection (a)(3) by showing that it does not own and control more than 25 [~~20~~] percent of the installed capacity in a geographic market that includes the power region, using the guidelines, standards, and methods adopted

1 by the Federal Energy Regulatory Commission.

2 SECTION 2. Section 39.154(a), Utilities Code, is amended to
3 read as follows:

4 (a) A [~~Beginning on the date of introduction of customer~~
5 ~~choice, a~~] power generation company may not own and control more
6 than 25 [~~20~~] percent of the installed generation capacity located
7 in, or capable of delivering electricity to, a power region.

8 SECTION 3. Section 39.156(f), Utilities Code, is amended to
9 read as follows:

10 (f) The commission shall approve, modify, or reject a plan
11 within 180 days after the date the plan is filed [~~of a filing under~~
12 ~~Subsection (b)~~]. The commission may not modify a plan to require
13 divestiture by the electric utility or the power generation
14 company.

15 SECTION 4. Section 39.407(a), Utilities Code, is amended to
16 read as follows:

17 (a) If an electric utility chooses on or after January 1,
18 2007, to participate in customer choice, the commission may not
19 authorize customer choice until the applicable power region has
20 been certified as a qualifying power region under Section
21 39.152(a). Except as otherwise provided by this subsection, the
22 commission shall certify that the requirements of Section
23 39.152(a)(3) are met for electric utilities subject to this
24 subchapter only upon a finding that the total capacity owned and
25 controlled by each such electric utility and its affiliates does
26 not exceed 25 [~~20~~] percent of the total installed generation
27 capacity within the constrained geographic region served by each

1 such electric utility plus the total available transmission
2 capacity capable of delivering firm power and energy to that
3 constrained geographic region. Not later than May 1, 2002, each
4 electric utility subject to this subchapter shall submit to the
5 electric utility restructuring legislative oversight committee an
6 analysis of the needed transmission facilities necessary to make
7 the electric utility's service area transmission capability
8 comparable to areas within the ERCOT power region. On or after
9 September 1, 2003, each electric utility subject to this subchapter
10 shall file the utility's plans to develop the utility's
11 transmission interconnections with the utility's power region or
12 other adjacent power regions. The commission shall review the plan
13 and not later than the 180th day after the date the plan is filed,
14 determine the additional transmission facilities necessary to
15 provide access to power and energy that is comparable to the access
16 provided in areas within the ERCOT power region; provided, however,
17 that if a hearing is requested by any party to the proceeding, the
18 180-day deadline will be extended one day for each day of hearings.
19 The commission shall, as a part of the commission's approval of the
20 plan, approve a rate rider mechanism for the recovery of the
21 incremental costs of those facilities after the facilities are
22 completed and in-service. A finding of need under this subsection
23 shall meet the requirements of Sections 37.056(c)(1), (2), and
24 (4)(E). The commission may certify that the requirements of
25 Section 39.152(a)(3) are met for electric utilities subject to this
26 subchapter if the commission finds that:

27 (1) each such utility has sufficient transmission

1 facilities to provide customers access to power and energy from
2 capacity controlled by suppliers not affiliated with the incumbent
3 utility that is comparable to the access to power and energy from
4 capacity controlled by suppliers not affiliated with the incumbent
5 utilities in areas of the ERCOT power region; and

6 (2) the total capacity owned and controlled by each
7 such electric utility and its affiliates does not exceed 25 [~~20~~]
8 percent of the total installed generation capacity within the power
9 region.

10 SECTION 5. Section [39.453\(b\)](#), Utilities Code, is amended to
11 read as follows:

12 (b) The commission shall certify that the requirement of
13 Section [39.152\(a\)\(3\)](#) is met for an electric utility subject to this
14 subchapter only if the commission finds that the total capacity
15 owned and controlled by the electric utility and the utility's
16 affiliates does not exceed 25 [~~20~~] percent of the total installed
17 generation capacity within the power region of that utility.

18 SECTION 6. Section [39.156\(b\)](#), Utilities Code, is repealed.

19 SECTION 7. This Act takes effect September 1, 2021.