

By: Eckhardt

S.B. No. 304

A BILL TO BE ENTITLED

AN ACT

relating to a state goal for competitive zero-carbon electric generation.

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

SECTION 1. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.1516, 39.155, 39.157(e), 39.203, 39.904, 39.9051, 39.9052, ~~and~~ 39.914(e), and 39.918, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 2. Section 39.402(a), Utilities Code, is amended to read as follows:

(a) Until the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice, the rates of the utility shall be regulated under traditional cost of service regulation and the utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the date on which an electric utility subject to this subchapter

1 implements customer choice, the provisions of this chapter, other  
2 than this subchapter, Sections 39.1516, 39.904, [~~and~~] 39.905, and  
3 39.918, and the provisions relating to the duty to obtain a permit  
4 from the Texas Commission on Environmental Quality for an electric  
5 generating facility and to reduce emissions from an electric  
6 generating facility, shall not apply to that utility. That portion  
7 of any commission order entered before September 1, 2001, to comply  
8 with this subchapter shall be null and void.

9 SECTION 3. Section 39.452(d), Utilities Code, is amended to  
10 read as follows:

11 (d) Until the date on which an electric utility subject to  
12 this subchapter implements customer choice:

13 (1) the provisions of this chapter do not apply to that  
14 electric utility, other than this subchapter, Sections 39.1516,  
15 39.904, [~~and~~] 39.905, and 39.918, the provisions relating to the  
16 duty to obtain a permit from the Texas Commission on Environmental  
17 Quality for an electric generating facility and to reduce emissions  
18 from an electric generating facility, and the provisions of  
19 Subchapter G that pertain to the recovery and securitization of  
20 hurricane reconstruction costs authorized by Sections  
21 39.458-39.463; and

22 (2) the electric utility is not subject to a rate  
23 freeze and, subject to the limitation provided by Subsection (b),  
24 may file for rate changes under Chapter 36 and for approval of one  
25 or more of the rate rider mechanisms authorized by Sections 39.454  
26 and 39.455.

27 SECTION 4. Section 39.502(b), Utilities Code, is amended to

1 read as follows:

2 (b) Until the date on which an electric utility subject to  
3 this subchapter implements customer choice, the provisions of this  
4 chapter, other than this subchapter and Sections 39.1516, 39.904,  
5 ~~[and] 39.905~~, and 39.918, do not apply to that utility.

6 SECTION 5. Section 39.552(b), Utilities Code, is amended to  
7 read as follows:

8 (b) Until the date on which an electric utility subject to  
9 this subchapter implements customer choice, the provisions of this  
10 chapter, other than this subchapter and Sections 39.1516, 39.904,  
11 ~~[and] 39.905~~, and 39.918, do not apply to that utility.

12 SECTION 6. Subchapter 2, Chapter 39, Utilities Code, is  
13 amended by adding Section 39.918 to read as follows:

14 Sec. 39.918. GOAL FOR COMPETITIVE ZERO-CARBON ENERGY. (a)  
15 In this section:

16 (1) "Biomass fuel" means fuel developed from organic  
17 material, including material derived from plants, crops, wood or  
18 forest residues, waste residues, waste from food crops,  
19 horticulture, food processing, animal farming, animal waste,  
20 landfills, and sewage treatment facilities.

21 (2) "Zero-carbon energy technology" means a  
22 technology that relies exclusively on an energy source that does  
23 not emit a greenhouse gas in the production of electricity. The  
24 term includes a technology that effectively captures and sequesters  
25 greenhouse gases before their release into the atmosphere.

26 (b) It is the intent of the legislature that the amount of  
27 electric power generated in this state from zero-carbon energy

technology for delivery by a retail electric provider, municipally owned utility, or electric cooperative each year will increase to meet the following percentages on or before the specified dates:

(1) by January 1, 2025, not less than 65 percent of the annual total;

(2) by January 1, 2030, not less than 85 percent of the annual total; and

(3) by January 1, 2035, 100 percent of the annual total.

(c) The commission by rule shall:

(1) establish the minimum annual zero-carbon energy technology generation requirement for each retail electric provider, municipally owned utility, and electric cooperative operating in this state in a manner designed to produce, on a statewide basis, compliance with the requirement prescribed by Subsection (b); and

(2) specify reasonable standards that zero-carbon energy generation must meet to count toward compliance with the requirement prescribed by Subsection (b) and that:

(A) are designed and operated so as to maximize the use of all resources available to meet electric demand and reliability needs from the capacity additions in accordance with then-current industry standards; and

(B) encourage the development, construction, and operation of new zero-carbon energy technology projects at sites in this state that have the greatest economic potential for capture and development of resources for zero-carbon energy technology.

(d) The commission by rule shall establish a zero-carbon energy generation credits trading program. A retail electric provider, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (b) by directly owning or purchasing energy generated using zero-carbon energy technologies shall purchase sufficient zero-carbon energy generation credits to satisfy the requirements by holding zero-carbon energy generation credits in lieu of energy generated from zero-carbon energy technologies.

(e) The commission by rule shall establish a means for a retail electric provider, municipally owned utility, or electric cooperative to satisfy the requirements of Subsection (b) by generating electricity using biomass fuel instead of directly owning or purchasing energy generated using zero-carbon energy technologies.

(f) The commission may cap the price of zero-carbon energy credits and may suspend the goal established by Subsection (b) as necessary to protect the reliability and operation of the grid. A price cap established under this subsection must equal or exceed the social cost of carbon as determined by the United States Environmental Protection Agency.

(g) The commission by rule shall establish a carbon offset alternative payment program. An entity required by this section to purchase a zero-carbon energy generation credit may choose to purchase and apply a carbon capture and sequestration credit instead of a zero-carbon energy generation credit toward the satisfaction of the entity's obligation under this section. A

carbon capture and sequestration credit must be purchased through a marketplace certified by the commission to offset the same amount of carbon as is produced by the entity's carbon energy generation. The offset payment must equal or exceed the social cost of carbon as determined by the United States Environmental Protection Agency. In implementing this subsection, the commission shall consider:

(1) the effects of zero-carbon energy credit prices on electric rates; and

(2) the effects of the carbon offset alternative payments on the zero-carbon energy credit market.

SECTION 7. Section 40.001(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, ~~and~~ 39.904, and 39.918, this chapter governs the transition to and the establishment of a fully competitive electric power industry for municipally owned utilities. With respect to the regulation of municipally owned utilities, this chapter controls over any other provision of this title, except for sections in which the term "municipally owned utility" is specifically used.

SECTION 8. Section 40.004, Utilities Code, is amended to read as follows:

Sec. 40.004. JURISDICTION OF COMMISSION. Except as specifically otherwise provided in this chapter, the commission has jurisdiction over municipally owned utilities only for the following purposes:

(1) to regulate wholesale transmission rates and

1 service, including terms of access, to the extent provided by  
2 Subchapter A, Chapter 35;

3 (2) to regulate certification of retail service areas  
4 to the extent provided by Chapter 37;

5 (3) to regulate rates on appeal under Subchapters D  
6 and E, Chapter 33, subject to Section 40.051(c);

7 (4) to establish a code of conduct as provided by  
8 Section 39.157(e) applicable to anticompetitive activities and to  
9 affiliate activities limited to structurally unbundled affiliates  
10 of municipally owned utilities, subject to Section 40.054;

11 (5) to establish terms and conditions for open access  
12 to transmission and distribution facilities for municipally owned  
13 utilities providing customer choice, as provided by Section 39.203;

14 (6) to administer the renewable energy credits program  
15 under Section 39.904(b), ~~and~~ the natural gas energy credits  
16 program under Section 39.9044(b), and the zero-carbon energy  
17 generation credits trading program under Section 39.918(d);

18 (7) to require reports of municipally owned utility  
19 operations only to the extent necessary to:

20 (A) enable the commission to determine the  
21 aggregate load and energy requirements of the state and the  
22 resources available to serve that load; or

23 (B) enable the commission to determine  
24 information relating to market power as provided by Section 39.155;  
25 and

26 (8) to evaluate and monitor the cybersecurity  
27 preparedness of a municipally owned utility described by Section

1 39.1516(a)(3) or (4).

2 SECTION 9. Section 41.001, Utilities Code, is amended to  
3 read as follows:

4 Sec. 41.001. APPLICABLE LAW. Notwithstanding any other  
5 provision of law, except Sections 39.155, 39.157(e), 39.203, ~~and~~  
6 39.904, and 39.918, this chapter governs the transition to and the  
7 establishment of a fully competitive electric power industry for  
8 electric cooperatives. Regarding the regulation of electric  
9 cooperatives, this chapter shall control over any other provision  
10 of this title, except for sections in which the term "electric  
11 cooperative" is specifically used.

12 SECTION 10. The Public Utility Commission of Texas shall  
13 adopt rules required by Section 39.918, Utilities Code, as added by  
14 this Act, not later than January 1, 2022.

15 SECTION 11. This Act takes effect September 1, 2021.