

BILL ANALYSIS

Senate Research Center
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S.B. 1094
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Non-ERCOT utilities serve their customers using an economic combination of owned generation and electric energy purchased from third-party generators through purchased power agreements (PPAs).

PPAs guarantee utility payments to the third-party provider, but utilities are not guaranteed to collect funds to support those payments. The third parties are able to use the utility guarantee with their financial backers to get low-cost financing for their competitive projects. This essentially transfers all risk to the utility's balance sheet, negatively impacts the utility's credit rating, and grants an inadvertent advantage to the use of PPAs. While utilities are not guaranteed cost recovery, they are also prohibited from earning a return on PPAs. This process results in utilities subsidizing competitive projects.

While current law grants the Public Utility Commission of Texas (PUC) the option to include a "mark-up" on PPAs, it may only do so when the utility's financial integrity is threatened. S.B. 1094 requires the PUC to include a mark-up on PPA's sufficient to ensure the utility has no economic disincentive to relying on purchased power.

As proposed, S.B. 1094 amends current law relating to the recovery of purchased power costs by electric utilities.

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 36.206, Utilities Code, as follows:

Sec. 36.206. MARK-UPS. (a) Provides that a cost recovery factor established for the recovery of purchased power costs is required, rather than authorized, to include:

- (1) creates this subdivision from existing text; and
- (2) a mark-up added to the cost or another mechanism the Public Utility Commission of Texas determines will:
 - (A) reasonably compensate the utility for any administrative costs, financing costs, and financial risk associated with purchased power obligations so that the mark-up is sufficient to ensure that the utility has financial incentives to procure purchased power rather than rely solely on utility-owned generation; and
 - (B) allow the utility to retain a reasonable portion of the value added by the utility in making the purchased power available to customers. Makes a nonsubstantive change.

(b) Provides that the mark-ups and cost recovery factors:

(1) are required to be retained by the electric utility; and

(2) are prohibited from being less than an amount sufficient to encourage the utility to include economical purchased power as part of the utility's energy and capacity resource supply plan.

Deletes existing text providing that the mark-ups and cost recovery factors, if allowed, are authorized to be those necessary to encourage the electric utility to include economical purchased power as part of the utility's energy and capacity resource supply plan.

(c) Prohibits an electric utility's rate of return established in the utility's base rate from being reduced in connection with the implementation of this section.

SECTION 2. Repealer: Section 36.207 (Use of Mark-Ups), Utilities Code.

SECTION 3. Makes application of Section 36.206, Utilities Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2023.