88R9643 CXP-D

By:  Schwertner, et al. S.B. No. 1368

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel, and the functions of the independent organization certified for the ERCOT power region.

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

SECTION 1.  Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005.  APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished [~~and this title expires~~] September 1, 2029 [~~2023~~].

SECTION 2.  Section 12.059, Utilities Code, is amended to read as follows:

Sec. 12.059.  TRAINING PROGRAM FOR COMMISSIONERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a [~~Before a commissioner may assume the commissioner's duties and before the commissioner may be confirmed by the senate, the commissioner must complete at least one course of the~~] training program that complies with [~~established under~~] this section.

(b)  The [~~A~~] training program must [~~established under this section shall~~] provide the person with information [~~to the commissioner~~] regarding:

(1)  the law governing [~~enabling legislation that created the~~] commission operations [~~and its policymaking body to which the commissioner is appointed to serve~~];

(2)  the programs, functions, rules, and budget of [~~operated by~~] the commission;

(3)  the scope [~~role and functions~~] of and limitations on the rulemaking authority of the commission;

(4)  the results [~~rules~~] of the most recent formal audit of the commission [~~with an emphasis on the rules that relate to disciplinary and investigatory authority~~];

(5)  the requirements of:

(A)  laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B)  other laws applicable to members of a state policy-making body in performing their duties [~~current budget for the commission~~]; and

(6)  [~~the results of the most recent formal audit of the commission;~~

[~~(7)  the requirements of Chapters 551, 552, and 2001, Government Code;~~

[~~(8)  the requirements of the conflict of interest laws and other laws relating to public officials; and~~

[~~(9)~~]  any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c)  A person [~~who is~~] appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d)  The executive director of the commission shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the commission. Each member of the commission shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3.  Section 12.202, Utilities Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1)  The policies adopted under this section must require the agenda for each regular commission meeting to include public testimony as a meeting agenda item and allow members of the public to comment on:

(1)  each meeting agenda item unrelated to a contested case; and

(2)  other matters under the commission's jurisdiction.

(a-2)  The commission may prohibit public comment at a regular commission meeting on a meeting agenda item related to a contested case.

SECTION 4.  Section 12.203, Utilities Code, is amended to read as follows:

Sec. 12.203.  BIENNIAL REPORT. (a) Not later than January 15 of each odd-numbered year, the commission shall prepare a written report that includes:

(1)  suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general, including the regulation of water and sewer service under Chapter 13, Water Code, that the commission considers appropriate for protecting and furthering the interest of the public;

(2)  a report on the scope of competition in the electric and telecommunications markets that includes:

(A)  an assessment of:

(i)  the effect of competition and industry restructuring on customers in both competitive and noncompetitive electric markets; and

(ii)  the effect of competition on the rates and availability of electric services for residential and small commercial customers;

(B)  an assessment of the effect of competition on:

(i)  customers in both competitive and noncompetitive telecommunications markets, with a specific focus on rural markets; and

(ii)  the rates and availability of telecommunications services for residential and business customers, including any effects on universal service; and

(C)  a summary of commission action over the preceding two years that reflects changes in the scope of competition in regulated electric and telecommunications markets; and

(3)  recommendations for legislation that the commission determines appropriate to promote the public interest in the context of partially competitive electric and telecommunications markets.

(b)  A telecommunications utility, as defined by Section 51.002, shall cooperate with the commission as necessary for the commission to satisfy the requirements of this section.

SECTION 5.  Subchapter E, Chapter 12, Utilities Code, is amended by adding Section 12.205 to read as follows:

Sec. 12.205.  STRATEGIC COMMUNICATIONS PLAN. The commission shall:

(1)  develop an agency-wide plan for:

(A)  improving the effectiveness of commission communications with the public, market participants, and other relevant audiences; and

(B)  responding to changing communications needs;

(2)  include in the plan required by Subdivision (1) goals, objectives, and metrics to assess commission efforts; and

(3)  update the plan required by Subdivision (1) at least once every two years.

SECTION 6.  Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002.  APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished [~~and this chapter expires~~] September 1, 2029 [~~2023~~].

SECTION 7.  Section 39.151, Utilities Code, is amended by amending Subsections (d), (g-1), and (g-6) and adding Subsection (g-7) to read as follows:

(d)  The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate those responsibilities to an independent organization [~~responsibilities for adopting or enforcing such rules. Rules adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the commission are subject to commission oversight and review and may not take effect before receiving commission approval~~]. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the independent organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The independent organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an independent organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(g-1)  The [~~independent organization's~~] bylaws of an independent organization certified for the ERCOT power region [~~or protocols~~] must be approved by [~~the commission~~] and [~~must~~] reflect the input of the commission. The bylaws must require that every member of the governing body be a resident of this state and must prohibit a legislator from serving as a member. The governing body must be composed of:

(1)  two members [~~the chairman~~] of the commission as [~~an~~] ex officio nonvoting members:

(A)  one of whom must be the presiding officer of the commission; and

(B)  one of whom must be designated by the presiding officer of the commission to serve a one-year term on the governing body [~~member~~];

(2)  the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3)  the chief executive officer of the independent organization as an ex officio nonvoting member; and

(4)  eight members selected by the selection committee under Section 39.1513 with executive-level experience in any of the following professions:

(A)  finance;

(B)  business;

(C)  engineering, including electrical engineering;

(D)  trading;

(E)  risk management;

(F)  law; or

(G)  electric market design.

(g-6)  In this subsection, a reference to a protocol includes a rule. Protocols adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the commission are subject to commission oversight and review and may not take effect before receiving commission approval. To maintain certification as an independent organization under this section, the organization's governing body must establish and implement a formal process for adopting new protocols or revisions to existing protocols. The process must require that new or revised protocols may not take effect until the commission approves a market impact statement describing the new or revised protocols. The commission may approve, reject, or remand with suggested modifications to the independent organization's governing body protocols adopted by the organization.

(g-7)  The presiding officer of the commission shall designate commissioners to serve terms on the independent organization's governing body under Subsection (g-1)(1)(B) in the order in which the commissioners were first appointed to the commission. A commissioner may not serve an additional term until each commissioner has served a term.

SECTION 8.  Section 39.1511, Utilities Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public only to address [~~sensitive matters such as confidential personnel information,~~] contracts, [~~lawsuits,~~] competitively sensitive information, [~~or other~~] information related to the security of the regional electrical network, or a matter which the commission would be authorized to consider in a closed meeting under Chapter 551, Government Code.

(a-1)  An independent organization's governing body or a subcommittee may adopt a policy allowing the governing body or subcommittee to enter into an executive session closed to the public and commissioners, including the commissioners serving as ex officio nonvoting members, in specific circumstances to address a matter authorized under Subsection (a). A policy described by this subsection is not subject to approval by the commission.

SECTION 9.  Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1514 to read as follows:

Sec. 39.1514.  COMMISSION DIRECTIVES TO INDEPENDENT ORGANIZATION. (a) The commission may not use a verbal directive to direct an independent organization certified under Section 39.151 to take an official action. The commission may direct the organization to take an official action only through:

(1)  a contested case;

(2)  rulemaking;

(3)  a memorandum; or

(4)  a written order.

(b)  The commission by rule shall:

(1)  specify the types of directives the commission may issue through a contested case, rulemaking, memorandum, or written order;

(2)  establish the conditions under which a commission vote is required before issuing a directive;

(3)  require that proposed commission directives be included as an item on a commission meeting agenda and require the commission to allow members of the public an opportunity to comment on the agenda item; and

(4)  establish a reasonable timeline for the release before a commission meeting of discussion materials relevant to any proposed commission directives included as agenda items for that meeting.

(c)  Notwithstanding another provision of this section, the commission may use a verbal directive to direct an independent organization to take an official action in an urgent or emergency situation that poses an imminent threat to public health, public safety, or the reliability of the power grid. The commission by rule shall establish criteria for determining whether a situation is urgent or an emergency under this subsection and establish a process by which the commission will issue directives to the independent organization under this subsection. If an independent organization follows a verbal directive for more than 72 hours, the commission shall use a process adopted under this section to provide written documentation of the directive to the independent organization.

SECTION 10.  Section 39.155(d), Utilities Code, is amended to read as follows:

(d)  In a qualifying power region, the report [~~reports~~] required by Subsection (c) [~~Subsections (b) and (c)~~] shall be submitted by the independent organization or organizations having authority over the power region or discrete areas thereof.

SECTION 11.  Section 39.157(f), Utilities Code, is amended to read as follows:

(f)  Following review of the annual report [~~reports~~] submitted to it under Section 39.155(c) [~~Sections 39.155(b) and (c)~~], the commission shall determine whether specific transmission or distribution constraints or bottlenecks within this state give rise to market power in specific geographic markets in the state. The commission, on a finding that specific transmission or distribution constraints or bottlenecks within this state give rise to market power, may order reasonable mitigation of that potential market power by ordering, under Section 39.203(e), one or more electric utilities or transmission and distribution utilities to construct additional transmission or distribution capacity, or both, subject to the certification provisions of this title.

SECTION 12.  (a) This section takes effect only if the Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b)  Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.166 and 39.167 to read as follows:

Sec. 39.166.  ELECTRIC INDUSTRY REPORT. (a) Not later than January 15 of each odd-numbered year, the commission, in consultation with the independent organization certified under Section 39.151 for the ERCOT power region, shall prepare and submit to the legislature an electric industry report.

(b)  Each electric industry report submitted under this section must:

(1)  identify existing and potential transmission and distribution constraints and system needs within the ERCOT power region, alternatives for meeting system needs, and recommendations for meeting system needs;

(2)  summarize key findings from:

(A)  the grid reliability assessment conducted under Section 39.165; and

(B)  the report required by Section 39.904(k);

(3)  outline basic information regarding the electric grid and market in this state, including generation capacity, customer demand, and transmission capacity currently installed on the grid and projected in the future; and

(4)  be presented in plain language that is readily understandable by a person with limited knowledge of the electric industry.

Sec. 39.167.  CONFLICTS OF INTEREST REPORT. The commission and the independent organization certified under Section 39.151 for the ERCOT power region annually shall review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the governing body of the independent organization and submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the commission and the independent organization to fulfill their duties.

SECTION 13.  (a) This section takes effect only if the Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b)  Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.166 and 39.167 to read as follows:

Sec. 39.166.  ELECTRIC INDUSTRY REPORT. (a) Not later than January 15 of each odd-numbered year, the commission, in consultation with the independent organization certified under Section 39.151 for the ERCOT power region, shall prepare and submit to the legislature an electric industry report.

(b)  Each electric industry report submitted under this section must:

(1)  identify existing and potential transmission and distribution constraints and system needs within the ERCOT power region, alternatives for meeting system needs, and recommendations for meeting system needs;

(2)  summarize key findings from:

(A)  the grid reliability assessment conducted under Section 39.159, as added by Chapter 876 (S.B. 1281), Acts of the 87th Legislature, Regular Session, 2021; and

(B)  the report required by Section 39.904(k);

(3)  outline basic information regarding the electric grid and market in this state, including generation capacity, customer demand, and transmission capacity currently installed on the grid and projected in the future; and

(4)  be presented in plain language that is readily understandable by a person with limited knowledge of the electric industry.

Sec. 39.167.  CONFLICTS OF INTEREST REPORT. The commission and the independent organization certified under Section 39.151 for the ERCOT power region annually shall review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the governing body of the independent organization and submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the commission and the independent organization to fulfill their duties.

SECTION 14.  Section 39.203(i), Utilities Code, is amended to read as follows:

(i)  The commission, in cooperation with transmission and distribution utilities and the ERCOT independent system operator, shall study whether existing transmission and distribution planning processes are sufficient to provide adequate infrastructure for seawater desalination projects. If the commission determines that statutory changes are needed to ensure that adequate infrastructure is developed for projects of that kind, the commission shall include recommendations in the report required by Section 12.203 [~~31.003~~].

SECTION 15.  Section 39.206(q), Utilities Code, is amended to read as follows:

(q)  The commission shall, in conjunction with the Nuclear Regulatory Commission, investigate the development of a mechanism whereby the State of Texas could ensure that funds for decommissioning will be obtained when necessary in the same manner as if the State of Texas were the licensee under federal law. [~~The commission shall file legislative recommendations regarding any changes in law that may be necessary to carry out the purposes of this subsection prior to January 15, 2009, which may be combined with the report required by Section 31.003.~~]

SECTION 16.  Section 39.904(k), Utilities Code, is amended to read as follows:

(k)  The commission and the independent organization certified under Section 39.151 for the ERCOT power region [~~for ERCOT~~] shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year [~~and may be filed as a part of the report required by Subsection (j)~~].

SECTION 17.  Section 39.9055, Utilities Code, is amended to read as follows:

Sec. 39.9055.  EXAMINATION OF DEMAND RESPONSE POTENTIAL OF SEAWATER DESALINATION PROJECTS. The commission and the ERCOT independent system operator shall study the potential for seawater desalination projects to participate in existing demand response opportunities in the ERCOT market. To the extent feasible, the study shall determine whether the operational characteristics of seawater desalination projects enable projects of that kind to participate in ERCOT-operated ancillary services markets or other competitively supplied demand response opportunities. The study shall also determine the potential economic benefit to a seawater desalination project if the project is able to reduce its demand during peak pricing periods. The commission shall include the results of the study in the report required by Section 12.203 [~~31.003~~].

SECTION 18.  Section 39.908, Utilities Code, is amended to read as follows:

Sec. 39.908.  EFFECT OF SUNSET PROVISION. [~~(a)~~] If the commission is abolished under Section 12.005 or other law, the [~~and the other provisions of this title expire as provided by Chapter 325, Government Code (Texas Sunset Act), this subchapter, including the provisions of this title referred to in this subchapter, continues in full force and effect and does not expire.~~

[~~(b)  The~~] authorities, duties, and functions of the commission under this chapter shall be performed and carried out by a successor agency to be designated by the legislature before abolishment of the commission or, if the legislature does not designate the successor, by the secretary of state.

SECTION 19.  Section 52.060, Utilities Code, is amended to read as follows:

Sec. 52.060.  ADMINISTRATIVE FEE OR ASSESSMENT. The commission may prescribe and collect a fee or assessment from local exchange companies necessary to recover the cost to the commission and to the office of activities carried out and services provided under this subchapter and Section 12.203 [~~52.006~~].

SECTION 20.  Section 13.4132, Water Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  Notwithstanding Section 5.505, the term of an emergency order issued under this section by the utility commission or the commission may not exceed 360 days. The emergency order may be renewed:

(1)  once for a period not to exceed 360 days; or

(2)  if the utility is undergoing a sale, transfer, merger, consolidation, or acquisition required to be reported to the utility commission under Section 13.301, for a reasonable time until the sale, transfer, merger, consolidation, or acquisition is complete.

SECTION 21.  (a) The following provisions are repealed:

(1)  Section 304.201, Business & Commerce Code;

(2)  Section 31.003, Utilities Code;

(3)  Section 39.155(b), Utilities Code;

(4)  Section 39.904(j), Utilities Code; and

(5)  Section 52.006, Utilities Code.

(b)  Section 34, Chapter 426 (S.B. 3), Acts of the 87th Legislature, Regular Session, 2021, is repealed.

SECTION 22.  The presiding officer of the Public Utility Commission of Texas shall designate a commissioner to serve a term on the governing body of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region that begins January 1, 2024, to comply with Section 39.151(g-1), Utilities Code, as amended by this Act.

SECTION 23.  (a) Except as provided by Subsection (b) of this section, Section 12.059, Utilities Code, as amended by this Act, applies to a member of the Public Utility Commission of Texas appointed before, on, or after the effective date of this Act.

(b)  A member of the Public Utility Commission of Texas who, before the effective date of this Act, completed the training program required by Section 12.059, Utilities Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 12.059, Utilities Code. A commission member described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission held on or after December 1, 2023, until the member completes the additional training.

SECTION 24.  This Act takes effect September 1, 2023.