

By: Schwertner, King

S.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Energy Insurance Program and other funding mechanisms to support the construction and operation of electric generating facilities.

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

ARTICLE 1. TEXAS ENERGY INSURANCE PROGRAM

SECTION 1.01. Section 11.003(16), Utilities Code, is amended to read as follows:

(16) "Rate" includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility or the Texas Energy Insurance Program for a service, product, or commodity described in the definition of utility in Section 31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

SECTION 1.02. Section 31.002(6), Utilities Code, as amended by Chapters 255 (H.B. 1572) and 389 (S.B. 1202), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and amended to read as follows:

(6) "Electric utility" means a person or river authority that owns or operates for compensation in this state

1 equipment or facilities to produce, generate, transmit,
2 distribute, sell, or furnish electricity in this state. The term
3 includes a lessee, trustee, or receiver of an electric utility and a
4 recreational vehicle park owner who does not comply with Subchapter
5 C, Chapter 184, with regard to the metered sale of electricity at
6 the recreational vehicle park. The term does not include:

- 7 (A) a municipal corporation;
- 8 (B) a qualifying facility;
- 9 (C) a power generation company;
- 10 (D) an exempt wholesale generator;
- 11 (E) a power marketer;
- 12 (F) a corporation described by Section 32.053 to
13 the extent the corporation sells electricity exclusively at
14 wholesale and not to the ultimate consumer;
- 15 (G) an electric cooperative;
- 16 (H) a retail electric provider;
- 17 (I) this state or an agency of this state; ~~or~~
- 18 (J) the Texas Energy Insurance Program; or
- 19 (K) a person not otherwise an electric utility

20 who:

21 (i) furnishes an electric service or
22 commodity only to itself, its employees, or its tenants as an
23 incident of employment or tenancy, if that service or commodity is
24 not resold to or used by others;

25 (ii) owns or operates in this state
26 equipment or facilities to produce, generate, transmit,
27 distribute, sell, or furnish electric energy to an electric

1 utility, if the equipment or facilities are used primarily to
2 produce and generate electric energy for consumption by that
3 person;

4 (iii) owns or operates in this state a
5 recreational vehicle park that provides metered electric service in
6 accordance with Subchapter C, Chapter 184; ~~or~~

7 (iv) owns or operates equipment used solely
8 to provide electricity charging service for consumption by an
9 alternatively fueled vehicle, as defined by Section 502.004,
10 Transportation Code; or

11 (v) ~~(iv)~~ is an electric generation
12 equipment lessor or operator.

13 SECTION 1.03. Section 31.002, Utilities Code, is amended by
14 amending Subdivisions (10), (15), (19), and (20) and adding
15 Subdivisions (15-a) and (18-a) to read as follows:

16 (10) "Power generation company":

17 (A) means a person, including a person who owns
18 or operates a distributed natural gas generation facility, that:

19 (i) ~~(A)~~ generates electricity that is
20 intended to be sold at wholesale, including the owner or operator of
21 electric energy storage equipment or facilities to which Subchapter
22 E, Chapter 35, applies;

23 (ii) ~~(B)~~ does not own a transmission or
24 distribution facility in this state other than an essential
25 interconnecting facility, a facility not dedicated to public use,
26 or a facility otherwise excluded from the definition of "electric
27 utility" under this section; and

1 (iii) [~~(C)~~] does not have a certificated
2 service area, although its affiliated electric utility or
3 transmission and distribution utility may have a certificated
4 service area; and

5 (B) does not include the Texas Energy Insurance
6 Program.

7 (15) "Rate" includes:

8 (A) a compensation, tariff, charge, fare, toll,
9 rental, or classification that is directly or indirectly demanded,
10 observed, charged, or collected by an electric utility for a
11 service, product, or commodity described in the definition of
12 electric utility in this section and a rule, practice, or contract
13 affecting the compensation, tariff, charge, fare, toll, rental, or
14 classification that must be approved by a regulatory authority; or

15 (B) Texas Energy Insurance Program charges.

16 (15-a) "Reliability asset" means a weatherized gas
17 turbine generation asset with on-site fuel storage that is located
18 in the ERCOT power region near a major load center, gas pipeline, or
19 electric transmission line, and is owned and operated by an entity
20 certified under Section 39.360 for the purpose of providing power
21 when dispatched under Section 38.079.

22 (18-a) "Texas Energy Insurance Program" includes all
23 entities certified under Section 39.360.

24 (19) "Transmission and distribution utility" means a
25 person or river authority that owns or operates for compensation in
26 this state equipment or facilities to transmit or distribute
27 electricity, except for facilities necessary to interconnect a

1 generation facility with the transmission or distribution network,
2 a facility not dedicated to public use, or a facility otherwise
3 excluded from the definition of "electric utility" under this
4 section, in a qualifying power region certified under Section
5 39.152, but does not include a municipally owned utility, ~~or~~ an
6 electric cooperative, or the Texas Energy Insurance Program.

7 (20) "Transmission service" includes construction or
8 enlargement of facilities, transmission over distribution
9 facilities, control area services, scheduling resources,
10 regulation services, reactive power support, voltage control,
11 provision of operating reserves, and any other associated
12 electrical service the commission determines appropriate, except
13 that, on and after the implementation of customer choice, control
14 area services, scheduling resources, regulation services,
15 provision of operating reserves, and reactive power support,
16 voltage control, ~~and~~ other services provided by generation
17 resources, and services provided by the Texas Energy Insurance
18 Program are not "transmission service."

19 SECTION 1.04. Section 33.001, Utilities Code, is amended by
20 adding Subsection (b) to read as follows:

21 (b) The governing body of a municipality does not have
22 jurisdiction over the Texas Energy Insurance Program.

23 SECTION 1.05. Section 33.008(a), Utilities Code, is amended
24 to read as follows:

25 (a) Following the end of the freeze period for a
26 municipality that has been served by an electric utility, and
27 following the date a municipally owned utility or an electric

1 cooperative has implemented customer choice for a municipality that
2 has been served by that municipally owned utility or electric
3 cooperative, a municipality may impose on an electric utility,
4 transmission and distribution utility, municipally owned utility,
5 or electric cooperative, as appropriate, that provides
6 distribution service within the municipality a reasonable charge as
7 specified in Subsection (b) for the use of a municipal street,
8 alley, or public way to deliver electricity to a retail customer. A
9 municipality may not impose a charge on:

10 (1) an electric utility, or transmission and
11 distribution utility, municipally owned utility, or electric
12 cooperative for electric service provided outside the
13 municipality;

14 (2) a qualifying facility;

15 (3) an exempt wholesale generator;

16 (4) a power marketer;

17 (5) a retail electric provider;

18 (6) a power generation company;

19 (7) a person that generates electricity on and after
20 January 1, 2002; ~~or~~

21 (8) an aggregator, as that term is defined by Section
22 [39.353](#); or

23 (9) the Texas Energy Insurance Program.

24 SECTION 1.06. Section [35.004](#), Utilities Code, is amended by
25 amending Subsections (b) and (c) and adding Subsections (c-1),
26 (c-2), and (i) to read as follows:

27 (b) The commission shall ensure that an electric utility or

1 transmission and distribution utility provides nondiscriminatory
2 access to wholesale transmission service for qualifying
3 facilities, exempt wholesale generators, power marketers, power
4 generation companies, retail electric providers, the Texas Energy
5 Insurance Program, and other electric utilities or transmission and
6 distribution utilities.

7 (c) When an electric utility, electric cooperative, or
8 transmission and distribution utility provides wholesale
9 transmission service within ERCOT at the request of a third party,
10 the commission shall ensure that the utility recovers the utility's
11 reasonable costs in providing wholesale transmission services
12 necessary for the transaction from the entity for which the
13 transmission is provided so that the utility's other customers do
14 not bear the costs of the service. The Texas Energy Insurance
15 Program is not a third party for the purposes of this subsection.

16 (c-1) The costs of transmission and distribution utility
17 service for the Texas Energy Insurance Program must be allocated to
18 all retail customers in the ERCOT power region.

19 (c-2) The Texas Energy Insurance Program will not bear costs
20 related to the interconnection of a reliability asset.

21 (i) Services provided by the Texas Energy Insurance Program
22 when deployed under Section 38.079 are not considered to be
23 ancillary services.

24 SECTION 1.07. Section 35.005, Utilities Code, is amended by
25 amending Subsection (a) and adding Subsections (d), (e), and (f) to
26 read as follows:

27 (a) The commission may require an electric utility to

1 provide transmission service at wholesale to another electric
2 utility, a qualifying facility, an exempt wholesale generator, the
3 Texas Energy Insurance Program, or a power marketer and may
4 determine whether terms for the transmission service are
5 reasonable.

6 (d) To ensure customers in the ERCOT power region can
7 receive promptly the benefits associated with the Texas Energy
8 Insurance Program, the independent organization certified under
9 Section 39.151 for the ERCOT power region shall work with
10 transmission service providers to ensure that each reliability
11 asset is fully interconnected in the ERCOT power region not later
12 than the 270th day after the date the interconnection agreement is
13 executed. An electric utility that enters into an interconnection
14 agreement for a reliability asset shall complete construction of
15 any facilities necessary to interconnect the reliability asset not
16 later than the 270th day after the date the interconnection
17 agreement is executed. The electric utility may not recover its
18 reasonable costs of constructing the facilities during the period
19 that begins on the 271st day after the date the interconnection
20 agreement is executed and ending on the date the construction of the
21 facilities necessary to interconnect the reliability asset is
22 complete.

23 (e) Notwithstanding Subsection (d), the commission may
24 extend the 270-day deadline established by that subsection after
25 notice, hearing, and a determination on a showing of good cause that
26 fully interconnecting the reliability asset before the 270th day is
27 not feasible.

1 (f) If the commission receives an application under Chapter
2 37 for a certificate of convenience and necessity related to
3 facilities necessary to interconnect a reliability asset, as
4 described by Subsection (d), and does not approve the application
5 before the 90th day after the date the commission received the
6 application, the 270-day deadline established by Subsection (d) is
7 extended one day for each day after the 90th day in which the
8 commission does not approve the application.

9 SECTION 1.08. Section 36.001, Utilities Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) The commission may regulate the rates of certified
12 entities in the Texas Energy Insurance Program related to each
13 reliability asset only to the extent provided by Subchapter K. No
14 other provision of this chapter applies to rates related to a
15 reliability asset.

16 SECTION 1.09. Chapter 36, Utilities Code, is amended by
17 adding Subchapter K to read as follows:

18 SUBCHAPTER K. TEXAS ENERGY INSURANCE PROGRAM

19 Sec. 36.501. RATES FOR RELIABILITY ASSETS. (a) The
20 commission shall ensure that each entity certified to be part of the
21 Texas Energy Insurance Program under Section 39.360 receives a
22 regulated rate that recognizes the critical service the reserve
23 provides to customers in the ERCOT power region.

24 (b) The rate must be based on actual costs, including
25 variable costs, allowance for funds used during construction, and
26 all costs of constructing, owning, operating, and maintaining
27 reliability assets. A certified entity is entitled to recover the

1 actual costs associated with each reliability asset operated by the
2 entity.

3 (c) In determining the rate, the commission shall consider
4 the critical service the Texas Energy Insurance Program provides to
5 customers in the ERCOT power region.

6 (d) The commission shall allocate each rate to each
7 transmission and distribution utility, municipally owned utility,
8 and electric cooperative in the ERCOT power region, based on the
9 cooperative's or utility's proportionate share of overall annual
10 system load. The rate may not be based on peak demand.

11 (e) Each retail electric provider, municipally owned
12 utility, and electric cooperative in the ERCOT power region shall
13 allocate the rates to each retail customer based on the customer's
14 annual system demand, not peak demand.

15 (f) Not later than the 90th day after the date a certified
16 entity submits to the commission a rate request for a reliability
17 asset, the commission shall approve the rates and order each retail
18 electric provider, municipally owned utility, and electric
19 cooperative in the ERCOT power region, beginning on the commercial
20 operation date of each reliability asset, to:

21 (1) collect the rate from the provider's, utility's,
22 or cooperative's retail customers in the ERCOT power region; and

23 (2) remit the payment to the independent organization
24 certified under Section 39.151 monthly.

25 (g) The independent organization certified under Section
26 39.151 shall remit the rate revenue to certified entities monthly.

27 (h) The commission shall establish rates for each

1 reliability asset to include:

2 (1) at least the rate of return on equity stated in the
3 relevant application under Section 39.360(h);

4 (2) a 50-50 debt to equity ratio;

5 (3) a 40-year depreciable life;

6 (4) allowance for funds used during construction;

7 (5) costs associated with ownership, operations,
8 maintenance, fuel, and other variable costs;

9 (6) reasonably incurred attorney's fees; and

10 (7) the estimated costs of constructing the
11 reliability asset before construction has begun and, after the
12 reliability asset is complete, the actual cost of the asset as
13 described by Subsection (b).

14 (i) Not later than the 90th day after the commercial
15 operation date of a reliability asset, the commission shall:

16 (1) adjust the previously established rates for the
17 asset to reflect the actual construction costs; and

18 (2) reconcile any over-collections or
19 under-collections.

20 (j) The commission shall adjust the rate for each
21 reliability asset annually to reflect changes to the costs of
22 ownership, operations and maintenance, and variable costs,
23 including fuel costs and interest rates, to reflect the actual
24 costs as described by Subsection (b) incurred in the preceding
25 year. The review for a rate adjustment under this subsection is
26 limited to verifying the accuracy of the incurred costs.

27 Sec. 36.502. STRANDED COST RECOVERY. (a) In this section:

1 (1) "Net book value of reliability assets" means the
2 generation-related electric plant in service, less accumulated
3 depreciation other than depreciation related to mitigation, plus
4 generation-related construction work in progress, plant held for
5 future use, and fuel inventories, reduced by net mitigation and any
6 public funds received by an entity certified under Section 39.360
7 through state benefit programs.

8 (2) "Stranded costs" means:

9 (A) the actual costs of building, operating, and
10 maintaining reliability assets at the time of disposition incurred
11 by an entity certified under Section 39.360; and

12 (B) any other costs incurred by an entity
13 certified under Section 39.360 associated with establishing the
14 Texas Energy Insurance Program that have not been previously
15 recovered by that entity from ratepayers.

16 (b) If the commission revokes a certificate issued under
17 Section 39.360, the entity that formerly held the certificate may
18 recover in the manner provided by this section all of the entity's
19 net, variable, nonmitigable stranded costs incurred in
20 constructing reliability assets, purchasing fuel, and providing
21 electric generation service in the ERCOT power region.

22 (c) If the commission determines that a reliability asset is
23 no longer able to serve the purpose described by Section 38.079, the
24 entity that owns the asset may recover in the manner provided by
25 this section the entity's net, variable, nonmitigable stranded
26 costs that were incurred in constructing the reliability asset,
27 purchasing fuel for the asset, and providing electric generation

1 service in the ERCOT power region with the asset.

2 (d) To recover stranded costs under this section, an entity
3 must submit to the commission an application for recovery of the
4 costs not later than the 30th calendar day after the date the
5 commission issues the order that revokes the certificate under
6 Subsection (b) or the date of the commission's determination
7 described by Subsection (c), as applicable. The application must
8 include a description, supported by the sworn affidavits of a
9 corporate officer of the entity and a stranded cost expert who has
10 at least 10 years of professional experience in the electric
11 industry in the ERCOT power region, of the following:

12 (1) the actual cost of each relevant reliability asset
13 completed by the entity and each relevant reliability asset under
14 construction by the entity at the time of decertification;

15 (2) the total net book value of each relevant
16 reliability asset; and

17 (3) the expected rate of return on the remaining
18 depreciable life of each relevant reliability asset.

19 (e) Not later than the 20th calendar day after the date an
20 application is submitted to the commission under Subsection (d),
21 commission staff may file a motion with the commission stating the
22 staff's finding that the application is materially deficient. The
23 motion must include a detailed explanation of the claimed material
24 deficiencies. If the presiding officer of the commission
25 determines that the application is materially deficient:

26 (1) the entity may not recover the stranded costs
27 unless the entity submits corrections to the commission not later

1 than the 30th calendar day after the date the presiding officer
2 makes the determination of deficiency; and

3 (2) the deadline established by Subsection (f) is
4 extended one day for each day in which:

5 (A) the application is materially deficient, as
6 determined by the presiding officer of the commission; and

7 (B) the entity has not yet corrected the
8 deficiency.

9 (f) The commission shall issue a final order to award
10 recovery of stranded costs to the entity not later than the 90th
11 calendar day after the date the entity files a complete
12 application.

13 (g) A commission order granting recovery of stranded costs
14 under this section must:

15 (1) allocate collection of the stranded costs among
16 each transmission and distribution utility, municipally owned
17 utility, and electric cooperative providing service in the ERCOT
18 power region in the manner provided by Section 36.501;

19 (2) order each transmission and distribution utility,
20 municipally owned utility, and electric cooperative in the ERCOT
21 power region to include a rider on the utility's or cooperative's
22 tariff to allow for collection of the stranded costs from customers
23 in the ERCOT power region allocated based on yearly consumption;

24 (3) order recovery of the stranded costs from all
25 wholesale or retail customers of transmission and distribution
26 utilities, municipally owned utilities, and electric cooperatives
27 that exist on the date of the order and from any new customers

1 served during the recovery period; and

2 (4) prohibit a wholesale or retail customer of a
3 transmission and distribution utility, municipally owned utility,
4 or electric cooperative in the ERCOT power region from avoiding the
5 stranded cost recovery charges.

6 (h) For the purposes of establishing stranded cost recovery
7 rates in the rider under Subsection (g), customers must be
8 classified according to the rate classes established by the most
9 recently completed base-rate proceeding of each transmission and
10 distribution utility, municipally owned utility, or electric
11 cooperative.

12 (i) A stranded cost recovery rider established under this
13 section may not be in effect for more than eight years and must
14 provide for the recovery of the full amount of stranded costs
15 awarded by the commission during that period. If after five years
16 of collection under the rider the full amount owed to the entity has
17 not been recovered, the commission shall initiate a proceeding to
18 adjust the amount of the rider to ensure full recovery before the
19 expiration of the eight-year period.

20 SECTION 1.10. Subchapter D, Chapter 38, Utilities Code, is
21 amended by adding Section 38.079 to read as follows:

22 Sec. 38.079. TEXAS ENERGY INSURANCE PROGRAM. Reliability
23 assets may be dispatched by the independent organization certified
24 under Section 39.151 for the ERCOT power region:

25 (1) when operating reserves drop below 1,000 megawatts
26 and the independent organization does not expect operating reserves
27 to recover for at least 30 minutes; or

1 (2) up to 336 hours per year for testing purposes and
2 as directed by the independent organization.

3 SECTION 1.11. Section 39.154, Utilities Code, is amended by
4 adding Subsection (f) to read as follows:

5 (f) For purposes of this section and Section 39.158, a
6 reliability asset is not considered to be installed generation
7 capacity.

8 SECTION 1.12. Section 39.155, Utilities Code, is amended by
9 amending Subsections (a) and (b) and adding Subsection (e) to read
10 as follows:

11 (a) Each person, municipally owned utility, electric
12 cooperative, and river authority that owns generation facilities
13 and offers electricity for sale in this state, other than the Texas
14 Energy Insurance Program, shall report to the commission its
15 installed generation capacity, the total amount of capacity
16 available for sale to others, the total amount of capacity under
17 contract to others, the total amount of capacity dedicated to its
18 own use, its annual wholesale power sales in the state, its annual
19 retail power sales in the state, and any other information
20 necessary for the commission to assess market power or the
21 development of a competitive retail market in the state. The
22 commission shall by rule prescribe the nature and detail of the
23 reporting requirements and shall administer those reporting
24 requirements in a manner that ensures the confidentiality of
25 competitively sensitive information.

26 (b) The ERCOT independent system operator shall submit an
27 annual report to the commission identifying existing and potential

1 transmission and distribution constraints and system needs within
2 ERCOT, alternatives for meeting system needs, and recommendations
3 for meeting system needs. The first report shall be submitted on or
4 before October 1, 1999. Subsequent reports shall be submitted by
5 January 15 of each year or as determined necessary by the
6 commission. The reports required by this subsection must include a
7 section identifying existing and potential transmission and
8 distribution constraints that could affect the availability of any
9 reliability asset and include alternatives for meeting identified
10 needs.

11 (e) The Texas Energy Insurance Program is not considered to
12 have market power when dispatched by an order of the independent
13 organization certified under Section 39.151 for the ERCOT power
14 region.

15 SECTION 1.13. Subchapter H, Chapter 39, Utilities Code, is
16 amended by adding Section 39.360 to read as follows:

17 Sec. 39.360. CERTIFICATION OF TEXAS ENERGY INSURANCE
18 PROGRAM. (a) The commission may certify one or more entities to
19 operate as the Texas Energy Insurance Program by owning and
20 operating reliability assets. The commission may certify any
21 number of entities to operate any number of reliability assets, but
22 may not certify a total of more than 10 gigawatts of generating
23 capacity for the entire Texas Energy Insurance Program.

24 (b) An entity may not operate as part of the Texas Energy
25 Insurance Program unless the entity is certified by the commission
26 under this section.

27 (c) The commission shall:

1 (1) issue at least one request for proposals from
2 qualified applicants to serve as part of the Texas Energy Insurance
3 Program; and

4 (2) if the commission receives at least one
5 application from a qualified applicant in response to the request
6 described by Subdivision (1) before the expiration of the period
7 provided by Subsection (e), select and certify at least one
8 qualified applicant not later than the 28th day after the date the
9 commission issues the request.

10 (d) To ensure efficient distribution of reliability assets,
11 the commission may designate regions in the ERCOT power region and
12 issue requests for proposals under Subsection (c) for specific
13 amounts of gigawatts of generation capacity by region.

14 (e) An applicant must submit an application under
15 Subsection (c) not later than the 14th day after the date the
16 commission issues a request for proposals under that subsection.

17 (f) An entity that is not authorized by this title to
18 operate a generation asset may apply to be certified to be part of
19 the Texas Energy Insurance Program under this section.

20 (g) To be certified as part of the Texas Energy Insurance
21 Program, an applicant must:

22 (1) establish financial stability by demonstrating
23 that:

24 (A) the applicant or the applicant's parent
25 company has total assets of at least \$10 billion for every gigawatt
26 of generating capacity for which the applicant is applying to be
27 certified;

1 (B) the applicant or the applicant's parent
2 company has a credit rating that is acceptable to the commission
3 from a major credit rating agency;

4 (C) the applicant or the applicant's parent
5 company is able to fund the investment with cash on hand or proof of
6 access to adequate financing; and

7 (D) the applicant is able to close on any
8 financing not later than the 60th day after the date of securing
9 certification and contract execution;

10 (2) establish industry expertise by demonstrating
11 that:

12 (A) the applicant is an electric utility or the
13 applicant or the applicant's parent company owns or operates
14 electric generation assets totaling at least 15,000 megawatts;

15 (B) the applicant or the applicant's parent
16 company has an Occupational Safety and Health Administration
17 incident rate in the top quartile for electric utilities; and

18 (C) the certified entity will be International
19 Organization for Standardization 27001 certified;

20 (3) establish project quality standards by
21 demonstrating that:

22 (A) the applicant is able to provide a parent
23 performance guarantee that the independent organization certified
24 under Section 39.151 for the ERCOT power region or the commission
25 may draw upon during each season, as defined by the independent
26 organization, if a reliability asset does not perform and
27 performance is not excused under Subsection (m), in the amount of

1 \$400 million for every gigawatt of generating capacity for which
2 the applicant is applying to be certified; and

3 (B) each reliability asset will be in operation
4 not later than the last day of the 42nd month after certification,
5 unless interconnection delays require a later operation date; and

6 (4) establish customer friendly solutions by
7 committing:

8 (A) that any net revenue earned during testing or
9 operating would be for the benefit of the ERCOT power region;

10 (B) not to sell any reliability asset over the
11 life of the reliability asset while the applicant is certified as
12 part of the Texas Energy Insurance Program; and

13 (C) that the siting of reliability assets will
14 maximize the effectiveness of the new generation capacity.

15 (h) Each applicant must provide in the application a
16 statement:

17 (1) of the return on equity the applicant will accept
18 while operating as part of the Texas Energy Insurance Program;

19 (2) agreeing to a return on equity of not more than 10
20 percent and an equal debt-to-equity ratio;

21 (3) of the maximum actual costs described by Section
22 36.501 for which the applicant will request recovery; and

23 (4) agreeing to a revenue requirement that is the
24 lesser of the actual costs described by Section 36.501 or \$1 billion
25 per gigawatt of installed generation capacity in the program.

26 (i) The commission may certify an entity to be part of the
27 Texas Energy Insurance Program if the entity submits a qualifying

1 application that includes:

2 (1) proof that the requirements of Subsection (g) have
3 been met;

4 (2) a description of the location or proposed location
5 of each reliability asset;

6 (3) a commitment to construct, own, operate, and
7 maintain reliability assets for a time period not less than the
8 useful life of the assets;

9 (4) a commitment that the reliability assets will
10 include at each site capacity to provide generation at full load for
11 not less than 168 continuous hours;

12 (5) an affidavit affirming that the reliability assets
13 will be available to dispatch in a manner that provides the
14 independent organization certified under Section 39.151 for the
15 ERCOT power region, in times of emergency, natural disaster, and
16 testing, with access to power for up to seven consecutive days,
17 after accounting for ramp up and ramp down times required by the
18 independent organization;

19 (6) proof of the posting of a parent performance
20 guarantee that the independent organization certified under
21 Section 39.151 for the ERCOT power region or the commission may draw
22 upon during each season, as defined by the independent
23 organization, if a reliability asset does not perform and
24 performance is not excused under Subsection (m), in the amount of
25 \$400 million for every gigawatt of generating capacity for which
26 the applicant is applying to be certified; and

27 (7) proof of a credit rating that is acceptable to the

1 commission from a major credit rating agency.

2 (j) The commission shall provide a process to amend a
3 certificate to account for the addition of any new reliability
4 asset.

5 (k) The commission may not revoke a certificate unless after
6 notice and an opportunity for hearing before the commission, the
7 commission finds the certified entity wilfully and without excuse
8 failed to dispatch sufficient reliability assets after the
9 determination of a natural disaster or other emergency by the
10 independent organization certified under Section 39.151 for the
11 ERCOT power region or the commission.

12 (l) The Texas Energy Insurance Program shall comply with the
13 reliability standards adopted by the independent organization
14 certified under Section 39.151 for the ERCOT power region to ensure
15 the reliability of the ERCOT region.

16 (m) The commission or the independent organization
17 certified under Section 39.151 for the ERCOT power region may not
18 draw upon a parent performance guarantee provided by a certified
19 entity and may not impose a fine or penalty on a certified entity
20 for failure to provide service if the inability to provide service
21 is wholly or partly the result of:

22 (1) the actions of an electric utility or transmission
23 service provider;

24 (2) the actions of the independent organization
25 certified under Section 39.151 for the ERCOT power region,
26 including scheduled routine maintenance; or

27 (3) equipment failure beyond the control of the

1 certified entity, when the equipment failure could not reasonably
2 have been predicted or remedied.

3 (n) Subsection (m)(3) does not apply to equipment failure:

4 (1) that results from a failure of a certified entity
5 to exercise good utility practices based on best-in-class
6 industry-based methods; or

7 (2) that is related to the acquisition, design, or
8 construction of a reliability asset.

9 (o) The commission may not require a bond, letter of credit,
10 or other security from a certified entity except for a parent
11 performance guarantee described by this section and may not require
12 the expansion of a parent performance guarantee. If drawn upon, a
13 parent performance guarantee may not be required to be replenished
14 or expanded.

15 (p) A certification issued under this section is
16 nontransferable. If a certified entity transfers ownership of a
17 reliability asset to another entity, the commission shall decertify
18 the entity to operate that asset as part of the Texas Energy
19 Insurance Program.

20 SECTION 1.14. Not later than March 1, 2024, the Public
21 Utility Commission of Texas shall issue a request for proposals
22 required by Section 39.360(c), Utilities Code, as added by this
23 article.

24 SECTION 1.15. The Public Utility Commission of Texas shall
25 adopt any rules necessary to implement this article not later than
26 February 1, 2024.

27 SECTION 1.16. To the extent of any conflict, this article

1 prevails over another Act of the 88th Legislature, Regular Session,
2 2023, relating to nonsubstantive additions to and corrections in
3 enacted codes.

4 SECTION 1.17. This article takes effect September 1, 2023.

5 ARTICLE 2. GENERATING FACILITY FUNDING

6 SECTION 2.01. Subtitle B, Title 2, Utilities Code, is
7 amended by adding Chapter 34 to read as follows:

8 CHAPTER 34. GENERATING FACILITY FUNDING

9 Sec. 34.0101. DEFINITIONS. In this chapter:

10 (1) "Advisory committee" means the Texas Energy
11 Insurance Fund Advisory Committee.

12 (2) "Fund" means the Texas energy insurance fund
13 established by Section 49-q, Article III, Texas Constitution.

14 (3) "Trust company" means the Texas Treasury
15 Safekeeping Trust Company.

16 Sec. 34.0102. FUND. (a) The fund is a special fund in the
17 state treasury outside the general revenue fund to be administered
18 and used by the commission for the purposes authorized by this
19 chapter. The commission may establish separate accounts in the
20 fund.

21 (b) The fund and the fund's accounts are kept and held by the
22 trust company for and in the name of the commission. The commission
23 has legal title to money and investments in the fund until money is
24 disbursed from the fund as provided by this chapter and commission
25 rules.

26 (c) Money deposited to the credit of the fund may be used
27 only as provided by this chapter.

1 (d) The fund consists of:

2 (1) money transferred or deposited to the credit of
3 the fund by or as authorized by law, including money from any source
4 transferred or deposited to the credit of the fund at the
5 commission's discretion;

6 (2) revenue, including the proceeds of any fee,
7 assessment, or tax imposed by this state, that general law
8 dedicates for deposit to the credit of the fund; and

9 (3) investment earnings and interest earned on money
10 in the fund.

11 Sec. 34.0103. LOANS FOR MAINTENANCE AND MODERNIZATION. (a)

12 The commission may use money in the fund without further
13 appropriation to provide loans to finance maintenance or
14 modernization of dispatchable electric generating facilities
15 operating in the ERCOT power region. For the purposes of this
16 section, a generating facility is considered to be dispatchable if
17 the facility's output can be controlled primarily by forces under
18 human control.

19 (b) Each year, the commission shall produce a list of
20 dispatchable electric generating facilities operating in the ERCOT
21 power region and estimate the potential costs to maintain and
22 modernize the facilities during the following five years. The
23 commission shall give priority to loan applications under this
24 section that the commission determines will provide the highest
25 ratio of dispatchable megawatts maintained to project costs.

26 (c) The commission shall evaluate an application for a loan
27 under this section based on the applicant's:

- 1 (1) efforts and achievements in conserving resources;
- 2 (2) quality of services;
- 3 (3) efficiency of operations; and
- 4 (4) quality of management.

5 (d) The commission may provide a loan under this section
6 only for maintenance or modernization of a facility that is capable
7 of operating for at least five years after the date the loan is
8 received.

9 (e) Proceeds of a loan received under this section may not
10 be used for:

- 11 (1) weatherization;
- 12 (2) debt payments; or
- 13 (3) expenses not related to maintaining or modernizing
14 the electric generating facility.

15 (f) An electric utility may not receive a loan under this
16 section.

17 (g) The commission may require immediate repayment of a loan
18 issued under this section if the recipient of the loan stops
19 operating the facility for which the loan was received before the
20 fifth anniversary of the date on which the loan was disbursed.

21 (h) The commission may provide a loan under this chapter
22 that bears interest at a rate or rates determined by the commission,
23 including a rate or rates below prevailing market rates.

24 (i) Information submitted to the commission in an
25 application for a loan under this chapter is confidential and not
26 subject to disclosure under Chapter 552, Government Code.

27 Sec. 34.0104. SOURCES OF MONEY FOR LOANS FOR TEXAS ENERGY

1 INSURANCE PROGRAM RELIABILITY ASSETS. The commission may use any
2 money appropriated to the commission for the purpose of providing a
3 loan to an entity certified under Section 39.360 to be used to
4 reduce debt associated with constructing or operating a reliability
5 asset. The commission may use without legislative appropriation
6 money from the fund for that purpose.

7 Sec. 34.0105. MAXIMUM LOAN AMOUNT. If the commission has
8 more than four pending applications for loans to be made from the
9 fund on the date the commission awards a loan, the amount of the
10 loan awarded may not exceed 25 percent of the fund balance on that
11 date.

12 Sec. 34.0106. MANAGEMENT AND INVESTMENT OF FUND. (a) The
13 trust company shall hold and invest the fund, and any accounts
14 established in the fund, for and in the name of the commission,
15 taking into account the purposes for which money in the fund may be
16 used. The fund may be invested with the state treasury pool.

17 (b) The overall objective for the investment of the fund is
18 to maintain sufficient liquidity to meet the needs of the fund while
19 striving to preserve the purchasing power of the fund.

20 (c) The trust company has any power necessary to accomplish
21 the purposes of managing and investing the assets of the fund. In
22 managing the assets of the fund, through procedures and subject to
23 restrictions the trust company considers appropriate, the trust
24 company may acquire, exchange, sell, supervise, manage, or retain
25 any kind of investment that a prudent investor, exercising
26 reasonable care, skill, and caution, would acquire or retain in
27 light of the purposes, terms, distribution requirements, and other

1 circumstances of the fund then prevailing, taking into
2 consideration the investment of all the assets of the fund rather
3 than a single investment.

4 (d) The trust company may charge fees to cover its costs
5 incurred in managing and investing the fund. The fees must be
6 consistent with the fees the trust company charges other state and
7 local governmental entities for which it provides investment
8 management services. The trust company may recover fees it charges
9 under this subsection only from the earnings of the fund.

10 (e) The trust company annually shall provide a written
11 report to the commission and to the advisory committee with respect
12 to the investment of the fund. The trust company shall contract
13 with a certified public accountant to conduct an independent audit
14 of the fund annually and shall present the results of each annual
15 audit to the commission and to the advisory committee. This
16 subsection does not affect the state auditor's authority to conduct
17 an audit of the fund under Chapter 321, Government Code.

18 (f) The trust company shall adopt a written investment
19 policy that is appropriate for the fund. The trust company shall
20 present the investment policy to the investment advisory board
21 established under Section 404.028, Government Code. The investment
22 advisory board shall submit to the trust company recommendations
23 regarding the policy.

24 (g) The commission annually shall provide to the trust
25 company a forecast of the cash flows into and out of the fund. The
26 commission shall provide updates to the forecasts as appropriate to
27 ensure that the trust company is able to achieve the objective

1 specified by Subsection (b).

2 (h) The trust company shall disburse money from the fund as
3 directed by the commission.

4 (i) An investment-related contract entered into under this
5 section is not subject to Chapter 2260, Government Code.

6 Sec. 34.0107. TEXAS ENERGY INSURANCE FUND ADVISORY
7 COMMITTEE. (a) The advisory committee is composed of the following
8 seven members:

9 (1) the comptroller or a person designated by the
10 comptroller;

11 (2) three members of the senate appointed by the
12 lieutenant governor, including:

13 (A) a member of the committee of the senate
14 having primary jurisdiction over matters relating to the generation
15 of electricity; and

16 (B) a member of the committee of the senate
17 having primary jurisdiction over finance; and

18 (3) three members of the house of representatives
19 appointed by the speaker of the house of representatives,
20 including:

21 (A) a member of the committee of the house of
22 representatives having primary jurisdiction over the generation of
23 electricity; and

24 (B) a member of the committee of the house of
25 representatives having primary jurisdiction over finance.

26 (b) The commission shall provide staff support for the
27 advisory committee.

1 (c) An appointed member of the advisory committee serves at
2 the will of the person who appointed the member.

3 (d) The lieutenant governor shall appoint a co-presiding
4 officer of the advisory committee from among the members appointed
5 by the lieutenant governor. The speaker of the house of
6 representatives shall appoint a co-presiding officer of the
7 advisory committee from among the members appointed by the speaker.

8 (e) The advisory committee may hold public hearings, formal
9 meetings, and work sessions. Either co-presiding officer of the
10 advisory committee may call a public hearing, formal meeting, or
11 work session of the advisory committee at any time. The advisory
12 committee may not take formal action at a public hearing, formal
13 meeting, or work session unless a quorum of the committee is
14 present.

15 (f) Except as otherwise provided by this subsection, a
16 member of the advisory committee is not entitled to receive
17 compensation for service on the committee or reimbursement for
18 expenses incurred in the performance of official duties as a member
19 of the committee. Service on the advisory committee by a member of
20 the senate or house of representatives is considered legislative
21 service for which the member is entitled to reimbursement and other
22 benefits in the same manner and to the same extent as for other
23 legislative service.

24 (g) The advisory committee:

25 (1) may provide comments and recommendations to the
26 commission for the commission to use in adopting rules regarding
27 the use of the fund or on any other matter; and

1 (2) shall review the overall operation, function, and
2 structure of the fund at least semiannually.

3 (h) The advisory committee may adopt rules, procedures, and
4 policies as needed to administer this section and implement its
5 responsibilities.

6 (i) Chapter 2110, Government Code, does not apply to the
7 size, composition, or duration of the advisory committee.

8 (j) The advisory committee is subject to Chapter 325,
9 Government Code (Texas Sunset Act). Unless continued in existence
10 as provided by that chapter, the advisory committee is abolished
11 September 1, 2035.

12 Sec. 34.0108. RULES. (a) The commission by rule may
13 establish procedures for:

14 (1) the application for and award of a loan under this
15 chapter; and

16 (2) the administration of the fund.

17 (b) The commission shall give full consideration to
18 comments and recommendations of the advisory committee before the
19 commission adopts rules under this chapter.

20 Sec. 34.0109. TEXAS ENERGY INSURANCE PROGRAM CUSTOMER
21 PAYMENTS. The commission may use any money appropriated to the
22 commission for the purpose of providing payments to the independent
23 organization certified under Section 39.151 for the ERCOT power
24 region on behalf of customers of retail electric providers,
25 municipally owned utilities, and electric cooperatives to offset
26 amounts owed to certified entities under Section 36.501. The
27 commission may use without legislative appropriation money from the

1 fund for that purpose.

2 SECTION 2.02. This article takes effect on the date on which
3 the constitutional amendment proposed by the 88th Legislature,
4 Regular Session, 2023, providing for the creation of the Texas
5 energy insurance fund and the authorization of other funding
6 mechanisms to support the construction and operation of electric
7 generating facilities takes effect. If that amendment is not
8 approved by the voters, this article has no effect.