

By: Parker

S.B. No. 1378

A BILL TO BE ENTITLED

AN ACT

relating to the procurement and operation of backup generation facilities for the ERCOT power region.

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

SECTION 1. Section 31.002, Utilities Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Backup generation facility" means an electric generation facility operated under Subchapter O, Chapter 39.

SECTION 2. Section 35.004(b), Utilities Code, is amended to read as follows:

(b) The commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, backup generation facility operators, and other electric utilities or transmission and distribution utilities.

SECTION 3. Section 35.005(a), Utilities Code, is amended to read as follows:

(a) The commission may require an electric utility to provide transmission service at wholesale to another electric utility, a qualifying facility, an exempt wholesale generator, a backup generation facility operator, or a power marketer and may determine whether terms for the transmission service are

reasonable.

SECTION 4. Chapter 39, Utilities Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. BACKUP GENERATION FACILITIES

Sec. 39.701. PURPOSE; LIMITATION. (a) The purpose of this subchapter is to establish a program to allow the comptroller, in consultation with the commission, to contract with entities for the construction and operation of at least 5,000 megawatts of generating capacity powered by nuclear energy or natural gas for the ERCOT power region.

(b) Not later than January 31, 2024, the commission shall determine whether market participants have contracted for the installation of at least 5,000 megawatts of new generation capacity for the ERCOT power region compared to the amount of installed generation capacity on January 1, 2023.

(c) If the commission determines under Subsection (b) that market participants have contracted for the installation of at least 5,000 megawatts of new generation capacity for the ERCOT power region, the comptroller may not enter into a contract under this subchapter.

Sec. 39.702. CONSTRUCTION AND OPERATION OF BACKUP GENERATION FACILITY. (a) The comptroller may contract with one or more entities to construct or operate backup generation facilities in the manner provided by this subchapter. The comptroller may use any procurement method that provides the best value to the state, including a method authorized by Chapter 2267, Government Code.

(b) A contract must provide that an entity that constructs

or operates a backup generation facility:

(1) is entitled to payments from the state for the construction or operation of a backup generation facility equal to 103 percent of the actual costs of constructing or operating the facility;

(2) is not entitled to sell electric energy from the backup generation facility;

(3) may not sell the backup generation facility without the permission of the comptroller; and

(4) shall provide electric energy for the ERCOT power region as directed by the independent system operator in times of high demand and low supply.

(c) A backup generation facility constructed under this subchapter:

(1) is the property of the state; and

(2) is not considered to be installed generation capacity for the purposes of Sections [39.154](#) and [39.158](#).

(d) An entity is eligible to operate a backup generation facility under this subchapter only if the entity is authorized by this title to generate electric energy at wholesale.

(e) If a backup generation facility is constructed under this subchapter, the commission shall:

(1) annually evaluate the reserve margin for the ERCOT power region; and

(2) determine whether the reserve margin equals at least 15 percent of peak electric demand over the preceding two years.

1 (f) If the condition under Subsection (e)(2) is met, the
2 comptroller shall sell each backup generation facility constructed
3 under this subchapter.

4 SECTION 5. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2023.