

By: Schwertner, King

S.B. No. 2012

A BILL TO BE ENTITLED

AN ACT

relating to electricity services; increasing an administrative penalty.

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

SECTION 1. Sections 15.023(b-1) and (f), Utilities Code, are amended to read as follows:

(b-1) Notwithstanding Subsection (b), the penalty for a violation of a voluntary mitigation plan entered into under Subsection (f) or of a provision of Section 35.0021 or 38.075 may be in an amount not to exceed \$1,000,000 for a violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(f) The commission and a person may develop and enter into a voluntary mitigation plan relating to a violation of Section 39.157 or rules adopted by the commission under that section. The commission may approve the plan only if the commission determines that the plan is in the public interest. The voluntary mitigation plan must be reviewed at least once every two years and not later than the 90th day after the implementation date of a wholesale market design change. As part of the review, the commission must determine whether the voluntary mitigation plan remains in the public interest. If the commission determines that the voluntary mitigation plan is no longer in the public interest, the commission and the person must agree to a modification of the plan or the

1 commission must terminate the plan. Adherence [~~If the commission~~  
2 ~~and a person enter into a voluntary mitigation plan, adherence]~~ to  
3 the plan may be considered in determining whether a violation  
4 occurred and, if so, the penalty to be assessed [~~constitutes an~~  
5 ~~absolute defense against an alleged violation with respect to~~  
6 ~~activities covered by the plan]~~.

7 SECTION 2. The heading to Section 39.159, Utilities Code,  
8 as added by Chapter 426 (S.B. 3), Acts of the 87th Legislature,  
9 Regular Session, 2021, is amended to read as follows:

10 Sec. 39.159. POWER REGION RELIABILITY AND DISPATCHABLE  
11 GENERATION.

12 SECTION 3. Section 39.159, Utilities Code, as added by  
13 Chapter 426 (S.B. 3), Acts of the 87th Legislature, Regular  
14 Session, 2021, is amended by amending Subsection (b) and adding  
15 Subsections (b-1) and (b-2) to read as follows:

16 (b) The commission shall ensure that the independent  
17 organization certified under Section 39.151 for the ERCOT power  
18 region:

19 (1) establishes requirements to meet the reliability  
20 needs of the power region;

21 (2) periodically, but at least annually, determines  
22 the quantity and characteristics of ancillary or reliability  
23 services necessary to ensure appropriate reliability during  
24 extreme heat and extreme cold weather conditions and during times  
25 of low non-dispatchable power production in the power region;

26 (3) procures ancillary or reliability services on a  
27 competitive basis to ensure appropriate reliability during extreme

1 heat and extreme cold weather conditions and during times of low  
2 non-dispatchable power production in the power region;

3 (4) develops appropriate qualification and  
4 performance requirements for providing services under Subdivision  
5 (3), including appropriate penalties for failure to provide the  
6 services; ~~and~~

7 (5) sizes the services procured under Subdivision (3)  
8 to prevent prolonged rotating outages due to net load variability  
9 in high demand and low supply scenarios; and

10 (6) allocates the cost of providing ancillary services  
11 and reliability services procured under this section on a  
12 semiannual basis among dispatchable generation facilities,  
13 non-dispatchable generation facilities, and load serving entities  
14 in proportion to their contribution to unreliability during the  
15 highest net load hours in the preceding six months, as determined by  
16 the commission based on a number of hours adopted by the commission  
17 for that six-month period, as follows:

18 (A) for each dispatchable generation facility,  
19 the difference between the forced outage rate of the facility and  
20 the forced outage rate of the facility during the corresponding  
21 season for the three years prior to the current season, multiplied  
22 by the installed capacity of the facility;

23 (B) for non-dispatchable generation facilities,  
24 the difference between the mean of the lowest quartile generation  
25 for each non-dispatchable generation facility and the mean  
26 generation of the facility; and

27 (C) for each load serving entity, the difference

1 between the mean of the highest quartile of total ERCOT load and the  
2 mean of total ERCOT load during the net load hours, multiplied by  
3 the load ratio share of each load serving entity during the net load  
4 hours.

5 (b-1) Subsection (b)(6) applies only to a generation  
6 facility or load serving entity that has participated in the ERCOT  
7 market for at least one year, including a load serving entity whose  
8 parent company or affiliate has participated in the ERCOT market  
9 for at least one year.

10 (b-2) Subsection (b)(6) does not apply to electric energy  
11 storage.

12 SECTION 4. Subchapter D, Chapter 39, Utilities Code, is  
13 amended by adding Sections 39.1595 and 39.1596 to read as follows:

14 Sec. 39.1595. RELIABILITY PROGRAM. (a) Under Section  
15 39.159(b), as added by Chapter 426 (S.B. 3), Acts of the 87th  
16 Legislature, Regular Session, 2021, or other law, the commission  
17 may not adopt a reliability program for the ERCOT power region that  
18 requires the purchase of capacity credits earned by generators to  
19 support a reserve margin mandate unless the commission ensures  
20 that:

21 (1) the cost to the ERCOT market of the credits does  
22 not exceed \$500 million annually;

23 (2) credits are available only for dispatchable  
24 generation, excluding load resources and electric energy storage;

25 (3) the cost of credits is assigned to generation  
26 facilities and load serving entities according to Section  
27 39.159(b)(6), as added by Chapter 426 (S.B. 3), Acts of the 87th

1 Legislature, Regular Session, 2021;

2 (4) the program includes appropriate penalties for a  
3 failure to perform during a reliability event caused by factors  
4 within the reasonable control of the generator, including a  
5 requirement for a generator to buy back credits that the generator  
6 sold but for which the generator did not provide the required  
7 capacity;

8 (5) the independent organization certified under  
9 Section 39.151 for the ERCOT power region begins implementing real  
10 time co-optimization of energy and ancillary services in the ERCOT  
11 wholesale market before the program is implemented;

12 (6) all elements of the program are initially  
13 implemented on a single starting date;

14 (7) the terms of the program and any associated market  
15 rules do not assign costs, credit, or collateral for the program in  
16 a manner that provides a cost advantage to load serving entities who  
17 own, or whose affiliates own, generation facilities;

18 (8) generators who receive credits may not  
19 self-arrange credit exchanges with any affiliated competitive  
20 retail electric providers;

21 (9) secured financial credit and collateral  
22 requirements are adopted for the program to ensure that other  
23 market participants do not bear the risk of nonperformance or  
24 nonpayment;

25 (10) qualifying generators do not receive credits that  
26 exceed the amount of generation bid into the forward market on an  
27 individual resource basis; and

1           (11) the wholesale electric market monitor has the  
2 authority and necessary resources to investigate potential  
3 instances of market manipulation by program participants,  
4 including financial and physical actions, and recommend penalties  
5 to the commission.

6           (b) This section does not require the commission to adopt a  
7 reliability program that requires an entity to purchase capacity  
8 credits.

9           (c) The commission and the independent organization  
10 certified under Section 39.151 for the ERCOT power region shall  
11 consider comments and recommendations from a technical advisory  
12 committee established under the bylaws of the independent  
13 organization that includes market participants when adopting and  
14 implementing a program described by Subsection (a), if any.

15           (d) If the commission adopts a program described by  
16 Subsection (a), not later than January 1, 2029, the commission  
17 shall require the wholesale electric market monitor to submit to  
18 the commission and the legislature a report on the costs and  
19 benefits of continuing the program. This subsection expires  
20 September 1, 2029.

21           (e) Notwithstanding Subsection (a):

22                   (1) the Grid Reliability Legislative Oversight  
23 Committee established under Section 39.1596 may recommend that the  
24 commission continue to implement a program described by Subsection  
25 (a) if not more than one requirement under the subdivisions of  
26 Subsection (a) is not met; and

27                   (2) based on a recommendation made under Subdivision

1 (1), the commission by rule may authorize the continuation of a  
2 program described by Subsection (a) if not more than one  
3 requirement under the subdivisions of Subsection (a) is not met.

4 Sec. 39.1596. GRID RELIABILITY LEGISLATIVE OVERSIGHT  
5 COMMITTEE. (a) In this section, "committee" means the Grid  
6 Reliability Legislative Oversight Committee established under this  
7 section.

8 (b) The Grid Reliability Legislative Oversight Committee is  
9 created to oversee the commission's implementation of Section  
10 35.004, Sections 39.159 and 39.160, as added by Chapter 426 (S.B.  
11 3), Acts of the 87th Legislature, Regular Session, 2021, and  
12 Section 39.1595.

13 (c) The committee is composed of eight members as follows:

14 (1) three members of the senate, appointed by the  
15 lieutenant governor;

16 (2) three members of the house of representatives,  
17 appointed by the speaker of the house of representatives;

18 (3) the chair of the committee of the senate having  
19 primary jurisdiction over matters relating to the generation of  
20 electricity; and

21 (4) the chair of the committee of the house having  
22 primary jurisdiction over matters relating to the generation of  
23 electricity.

24 (d) An appointed member of the committee serves at the  
25 pleasure of the appointing official.

26 (e) The committee members described by Subsections (c)(3)  
27 and (4) serve as presiding co-chairs.

1       (f) A member of the committee may not receive compensation  
2 for serving on the committee but is entitled to reimbursement for  
3 travel expenses incurred by the member while conducting the  
4 business of the committee as provided by the General Appropriations  
5 Act.

6       (g) The committee shall meet at least twice each year at the  
7 call of either co-chair and shall meet at other times at the call of  
8 either co-chair, as that officer determines appropriate.

9       (h) Chapter 551, Government Code, applies to the committee.

10       (i) The committee shall submit a report to the governor,  
11 lieutenant governor, speaker of the house of representatives, and  
12 legislature not later than December 1 of each even-numbered year.  
13 The report must include an update on the progress of and issues  
14 related to the commission's implementation of the laws under the  
15 committee's oversight as provided by Subsection (b).

16       SECTION 5. Subchapter D, Chapter 39, Utilities Code, is  
17 amended by adding Section 39.166 to read as follows:

18       Sec. 39.166. RETAIL SALES REPORT. (a) Each retail electric  
19 provider that offers electricity for sale shall report to the  
20 commission:

21               (1) its annual retail sales in this state;

22               (2) the annual retail sales of its affiliates by  
23 number of customers, kilowatts per hour sold, and revenue from  
24 kilowatts per hour sold by customer class; and

25               (3) any other information the commission requires  
26 relating to affiliations between retail electric providers.

27       (b) The commission by rule shall prescribe the nature and



1 detail of the reporting requirements. The commission may accept  
2 information reported under other law to satisfy the requirements of  
3 this section. Information reported under this section is  
4 confidential and not subject to disclosure if the information is  
5 competitively sensitive information. The commission shall  
6 administer the reporting requirements in a manner that ensures the  
7 confidentiality of competitively sensitive information.

8 SECTION 6. (a) The changes in law made by this Act to  
9 Chapter 15, Utilities Code, apply only to a violation committed on  
10 or after the effective date of this Act. A violation committed  
11 before the effective date of this Act is governed by the law in  
12 effect when the violation was committed, and the former law is  
13 continued in effect for that purpose.

14 (b) Not later than September 1, 2024, the Public Utility  
15 Commission of Texas shall implement the changes in law made by this  
16 Act to Section 39.159(b), Utilities Code, as added by Chapter 426  
17 (S.B. 3), Acts of the 87th Legislature, Regular Session, 2021.

18 SECTION 7. This Act takes effect September 1, 2023.