

## **BILL ANALYSIS**

Senate Research Center

S.B. 7  
By: Sibley  
Electric Utility Restructuring  
2/1/1999  
As Filed

### **DIGEST**

Currently, the Public Utility Regulatory Act of 1995 (Act) authorizes the Public Utility Commission (PUC) to regulate the electricity market and ensure that only one electric energy provider serves each area of the state. This bill amends the Act by deregulating the electricity generation market and permitting providers to compete for customers who choose their electricity supplier in competitive areas. This bill authorizes the PUC to develop and promulgate customer protection rules during and after a transition to a competitive market.

### **PURPOSE**

As proposed, S.B. 7 restructures electric utility service.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Public Utility Commission in SECTIONS 22, 24, and 37 (Chapter 38A; Tittle 2D; and Section 40.003, Utilities Code) and the boards of electric cooperatives in SECTION 24 (Chapter 41A, Utilities Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subdivisions (1) and (16), Section 11.003, Utilities Code, to redefine “affected persons” and “ratemaking proceeding.” Makes conforming changes.

SECTION 2. Amends Section 12.005, Utilities Code, to provide a Texas Sunset Act review of the Public Utility Commission (PUC) by September 1, 2005, rather than 2001.

SECTION 3. Amends Section 31.002, Utilities Code, to define “affiliated power generation company,” “affiliated retail electric provider,” “customer choice,” “Electric Reliability Council of Texas,” and “ERCOT.” Redefines “electric utility,” “freeze period,” “independent system operator,” “power generation company,” “power region,” “retail customer,” “retail electric provider,” and “transmission and distribution utility.” Makes conforming changes.

SECTION 4. Amends Sections 32.051 and 32.052, Utilities Code, to exempt a river authority from wholesale rate regulation by a river authority operating a steam generating plant on or before January 1, 1999. Makes a conforming change.

SECTION 5. Amends Section 32.053, Utilities Code, by amending Subsections (b) and (f), and adding Subsection (g), as follows:

- (b) Authorizes a corporation to purchase and sell electricity at wholesale prices to an in-state, non-ultimate customer.
- (f) Prohibits the proceeds from tax-free obligations from being used to finance construction or acquisition of a power generation facility.
- (g) Authorizes the board of directors of a river authority to transfer any part of their electric generation property to a nonprofit corporation. Requires the property transfer to be made pursuant to approved terms and conditions by the river authority board.

SECTION 6. Amends Section 35.001, Utilities Code, to redefine “electric utility.”

SECTION 7. Amends Section 35.004, Utilities Code, as follows:

(a)-(c) Requires a transmission and distribution utility to provide at-cost wholesale transmission service. Requires the PUC to ensure an electric utility or transmission and distribution utility provides wholesale transmission service to power generation companies, retail electric providers, and other transmission and distribution facilities. Requires the PUC to ensure the utility recovers reasonable costs in providing wholesale transmission services, when an electric utility or transmission and distribution utility provides wholesale transmission service.

(d) Authorizes the PUC to price wholesale transmission services based in any part on the postage stamp method of pricing. Sets forth the postage stamp method of pricing.

(e) Requires the PUC to ensure affordable and fair ancillary services necessary to transmit electric energy. Defines “ancillary services.”

SECTION 8. Amends Section 35.005(b), Utilities Code, to delete text regarding a proceeding not related to approval of an integrated resource plan.

SECTION 9. Amends Section 35.033, Utilities Code, to delete reference to Chapter 34 regulating an exempt wholesale generator or power marketer.

SECTION 10. Amends Section 35.034, Utilities Code, by adding Subsection (c), to define “electric utility.”

SECTION 11. Amends Section 35.035, Utilities Code, by adding Subsection (d), to define “electric utility.”

SECTION 12. Amends Section 36.008, Utilities Code, to delete text regarding an electric utility not required to file an integrated resource plan.

SECTION 13. Amends Section 36.052, Utilities Code, to delete text regarding an integrated resource plan. Makes conforming changes.

SECTION 14. Amends Section 36.058(d), to make a conforming change.

SECTION 15. Amends Section 36.201, Utilities Code, to make a conforming change.

SECTION 16. Amends Section 36.204, Utilities Code, to make a conforming change.

SECTION 17. Amends Section 36.207, Utilities Code, to make a conforming change.

SECTION 18. Amends Section 37.001, Utilities Code, to define “electric utility.” Makes a conforming change.

SECTION 19. Amends Chapter 37B, by adding Section 37.060, as follows:

Sec. 37.060. DIVISION OF MULTIPLY CERTIFICATED SERVICE AREAS. Requires the PUC, at the request of a customer choice electric utility, to amend other local electric utility certificates in order to establish for only one provider in the area that the requesting utility provides customer choice service to all retail customers. Provides that only retail electric utilities certificated to serve an area on June 1, 1999, may serve the area under an amended certificate. Prohibits application of this section to an area in which a municipally owned utility certificated to provide retail electric utility service files a request by February 1, 2000 for the area to remain as certificated. Requires the PUC to divide a certificated area within one year of the request. Requires the PUC to consider factors in Section 37.056 when amending certificates under this section. Requires the PUC to revoke enough certificates to

achieve the division of retail electric service areas, as provided by this section, notwithstanding Section 37.059. Permits a retail electric utility to continue to operate its services on the date an application for division of certified area is filed, provided that the other affected utilities accede. Prohibits a customer from switching retail electric utilities while an application for division is pending. Requires a retail electric utility to file with the PUC a consent from the certificated retail electric utility for the area, if providing service to the certificated area on June 1, 1999. Prohibits the PUC from granting a retail electric utility certificate if the grant would cause the area to be a multiply certificated.

SECTION 20. Amends Section 38.001, Utilities Code, to include electric cooperatives in the general standards of safety and service.

SECTION 21. Amends Section 38.004, Utilities Code, to include electric cooperatives in construction standards set forth by the National Electrical Safety Code Standard ANSI(c)(2).

SECTION 22. Amends Chapter 38A, Utilities Code, by adding Section 38.005, as follows:

Sec. 38.005. **ELECTRIC SERVICE RELIABILITY MEASURES.** Requires the PUC to implement quality and reliability standards for delivery of electricity to retail customers by electric utilities and transmission and distribution utilities. Requires the PUC to develop, by rule, certain reliability standards. Requires standards to require each electric utility and transmission and distribution utility to maintain trained personnel. Requires the standards to ensure electric utilities can not neglect geographic areas, such as small or low-income communities, with regard to system reliability. Authorizes the PUC to require data from the electric utilities to assist the regulatory agency in developing reliability standards. Requires all generation providers to comply with any operational criteria duly established by the independent system operator or adopted by the PUC.

SECTION 23. Amends Section 38.071, Utilities Code, to obligate an electric cooperative to interconnect specified facilities, if ordered by the PUC.

SECTION 24. Amends Title 2B, Utilities Code, by adding Chapters 39, 40, and 41, as follows:

## CHAPTER 39. RESTRUCTURING OF ELECTRIC UTILITY INDUSTRY

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 39.001. **LEGISLATIVE POLICY AND PURPOSE.** Provides that this chapter is enacted to protect the public interest during the transition to a fully competitive electric power industry. Sets forth the legislative findings of the legislature regarding the implementation of a competitive retail electric market, encouragement of competition, recovery of above market costs to a utility, and education of utility customers.

Sec. 39.002. **APPLICABILITY.** Provides that this chapter, except for Sections 39.155, 39.157(d), and 39.203, does not apply to a municipally owned utility or an electric cooperative corporation. Provides that this chapter controls when conflicts arises between a provision of this chapter and other provisions of this title, except for Chapters 40 and 41.

### SUBCHAPTER B. TRANSITION TO COMPETITIVE RETAIL ELECTRIC MARKET

Sec. 39.051. **UNBUNDLING.** Requires an electric utility to separate its costs and rates by September 1, 2000, into generation, transmission, distribution, retail energy services, and charges for a system benefit fund and expected competition transition. Requires an electric utility to separate its interbusiness activity by January 1, 2000, into units called a power generation company, retail electric provider, and transmission and distribution utility. Authorizes an electric utility to conduct the preceding activities by either a separate nonaffiliated company, separate affiliated company owned by a common holding company, or sale of assets to a third party. Requires an electric utility to provide for separation of personnel, information flow, functions, and operations. Authorizes the PUC to adjust the

filing and implementation dates in this section if the PUC finds a power region will not qualify for customer choice under Section 39.152 by January 1, 2002.

Sec. 39.052. **FREEZE ON EXISTING RETAIL BASE RATE TARIFFS.** Requires an electric utility to provide retail electric service to its certificated service area in accordance with the electric utility's retail base rate tariffs and purchased power cost recovery factor that were in effect on September 1, 1999. Prohibits an electric utility from increasing or decreasing its retail base rates during the freeze period, except for force majeure, Section 39.055 losses, and other specific provisions within this title. Provides that during the freeze period, overall revenues, return on invested capital, and net income of an electric utility are not subject to complaint, hearing, or reasonable determination. Requires an electric company that had a rate proceeding pending before the PUC as of January 2, 1999, to comply with the tariffs set by the PUC until the freeze period ends. Provides that this section does not hinder the PUC's authority to fulfill its Section 39.262 obligations.

Sec. 39.053. **COST RECOVERY ADJUSTMENTS.** Provides that this chapter does not hinder an electric utility's ability to revise its fuel factor, reconcile fuel expenses, and refund to customers for fuel overcollections and undercollections, during the freeze period, as authorized by its tariffs and Sections 36.203 and 36.205.

Sec. 39.054. **RETAIL ELECTRIC SERVICE DURING THE FREEZE PERIOD.** Requires an electric utility to provide service to its retail customers throughout the freeze period in accordance with the terms of its regulatory contract in effect on December 21, 1998. Provides that nothing in Sections 39.052(c) and (d) shall be construed to restrict any customer's right to complain during the freeze period regarding the quality of retail electric service. Provides that nothing in this title shall be construed to restrict an electric utility from offering new services or tariffs options to customers during the freeze period. Requires new service or tariffs under this section to be equal to or greater than the long-run marginal cost of the electric utility, while not being unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive. Requires the new offering revenues to be accounted for consistent with Section 36.007.

Sec. 39.055. **FORCE MAJEURE.** Authorizes an electric utility to claim force majeure and thereby raise its base rates during the freeze period, subject to a required PUC hearing, but notwithstanding Chapter 36C. Defines "force majeure."

#### SUBCHAPTER C. RETAIL COMPETITION

Sec. 39.101. **CUSTOMER SAFEGUARDS.** Requires the PUC to ensure retail customer protections are established prior to the onset of competition, that entitle a customer to certain items. Requires the PUC to establish by a certain date customer protections, customer entitlements, and rules regarding customer choice, and that those rules ensure the same level of protection for customers in a restructured electric industry as the level on December 31, 1999.

Sec. 39.102. **RETAIL CUSTOMER CHOICE.** Provides that all customers in the state, with certain exemptions, shall have a choice on or after January 1, 2002. Authorizes an affiliated retail electric provider serving a customer on December 31, 2001, to continue serving until that customer chooses a different retail electric provider. Exempts an electric utility operating in the public interest during certain dates from complying with provisions in Sections 39.153, 39.154, 39.156, and 39.157, and Subchapters E and F, unless required by federal courts or the PUC. Requires the exempt electric utilities to provide retail customer choice within a certain time frame, if a federal court or the PUC determines such provisions are not permitted, in which case there is no standard cost recovery. Authorizes any utility ratepayer to request for its provider an exemption under Subsection (c). Sets forth the requirements for the PUC to consider when making its determination.

Sec. 39.103. **COMMISSION AUTHORITY TO DELAY COMPETITION AND SET NEW RATES.** Requires the PUC to delay competition of electric utility competition if the PUC

determines under Section 39.104 that either a power region is unable to offer fair competition and reliable service to all its retail customer classes on January 1, 2002, or the power region fails to meet the requirements in Section 39.152. Authorizes the PUC to establish new rates, as provided by Chapter 36, for the electric utilities in the power region.

Sec. 39.104. CUSTOMER CHOICE PILOT PROJECTS. Authorizes the use of customer choice pilot projects by the PUC to evaluate the ability of each power region and electric utility to implement customer choice. Authorizes the PUC to require an electric utility operating outside of to offer customer choice by a certain date to five percent of the combined customer classes. Authorizes the PUC to require customer choice beginning on January 1, 2001, to five percent of the combined customer classes of each electric utilities operating outside of the Electric Reliability Council of Texas (ERCOT). Requires customer classes to receive the load equally, and approved by the PUC. Requires a pilot project utility to charge residential and small commercial customers in accordance with Section 39.052. Authorizes the PUC to prescribe reporting requirements to evaluate the pilot projects. Requires customer choice billing at the rate provided by Section 39.107. Authorizes the PUC to prescribe rules against anticompetitive practice and for the encouragement of customer choice.

Sec. 39.105. LIMITATION ON SALE OF ELECTRICITY. Prohibits a transmission and distribution utility from selling electricity or participating in the market for electricity after the onset of customer choice.

Sec. 39.106. PROVIDER OF LAST RESORT. Requires the PUC to designate for each customer choice area a provider of last resort who must provide each customer class a fixed-rate standard retail service package. Requires a provider of last resort to offer a standard retail package to whomever requests last resort service. Requires the PUC to determine the provider of last resort no later than June 1, 2001, if customer choice begins January 1, 2002, and within 180 days, if customer choice begins at another time. Authorizes the PUC to employ a bid process to determine a provider of last resort, to redesignate a provider of last resort within an appropriate schedule, and to set conditions for a provider of last resort, even when no retail electric provider applies. Authorizes the provider of last resort to serve without interruption in the event the retail electric provider fails to serve any or all of its customers.

Sec. 39.107. METERING AND BILLING SERVICES. Requires the transmission and distribution utility to provide metering services for customer choice areas. Sets forth requirements for metering services to require tenants of a leased or rented property to have the right to choose their retail electric provider, and the owner must grant access to transmission and distribution utilities or retail electric provider for metering purposes. Requires the transmission and distribution utility to bill a customer's retail electric provider for transmission and distribution facilities beginning on the date of customer choice availability. Authorizes a transmission and distribution utility to bill retail customers at the request of a retail electric provider, and requires the distribution utility to offer comparable terms and conditions to any retail electric provider requesting such billing service. Requires the metering and billing service charges to comply with the nondiscriminatory rates of service rules adopted by the PUC.

Sec. 39.108. CONTRACTUAL OBLIGATIONS. Prohibits this chapter from interfering with the rights of contracted parties concerning utility service.

#### SUBCHAPTER D. MARKET STRUCTURE

Sec. 39.151. ESSENTIAL ORGANIZATIONS. Requires each power region to establish one or more independent organizations to ensure nondiscriminatory access to the market, network reliability, timely conveyance of a customer's choice, and accountable electricity processing. Defines "independent organizations." Requires the PUC to certify independent organizations, and the independent organizations to establish and enforce reliability and accountability procedures. Authorizes an independent organization, with PUC approval, to

charge a reasonable rate to wholesale buyers and sellers in order to cover its own costs. Authorizes the PUC, in implementing this section, to hold a joint hearing or make a joint investigation with another state or the federal government. Provides that an existing independent operator in ERCOT who amends its rules to permit a certain representation on its board will meet the same access standards required of other buyers and sellers of electricity. Authorizes the ERCOT independent operator to meet the nondiscriminatory criteria by adopting procedures and acquiring resources. Sets forth the ability of the PUC to certify whether or not the ERCOT independent system operator met the appropriate criteria. Authorizes the PUC to delegate authority to the existing independent system operator in ERCOT for the enforcement and establishment of certain standards and procedures. Authorizes the PUC, after customer choice implementation, to establish terms and conditions for the ERCOT independent system's authority. Requires the retail electric provider, transmission and distribution utility, and power generation companies to observe all authorized protocols established by the independent system operator in ERCOT, at this risk of certificate or administrative penalization for noncompliance. Authorizes the PUC to delegate authority to the independent organization outside of ERCOT.

Sec. 39.152. **QUALIFYING POWER REGIONS.** Requires the PUC to certify a power region given certain circumstances.

Sec. 39.153. **CAPACITY AUCTION.** Requires each electric utility to auction within a certain timeframe 15 percent of the electric utility's generation capacity. Defines "electric utility." Requires the auction obligation to continue until either a certain amount of time has elapsed or a certain amount of customers have acquired power from another electric utility. Prohibits an affiliated retail electric provider from purchasing an electric utility's auctioned entitlements. Requires the PUC to define, by rule, by December 31, 2000, the scope of entitlements auctioned. Authorizes less than 15 percent entitlement to be auctioned. Sets forth requirements for the rules set by the PUC. Requires the PUC to adopt, by rule, procedures meeting certain criteria for the auction.

Sec. 39.154. **LIMITATION OF OWNERSHIP OF INSTALLED CAPACITY.** Prohibits a power generation company from owning more than 20 percent of the installed generation capacity used to deliver electricity in its area. Authorizes the PUC to waive installed generation capacity requirements for a power region that does not entirely reside within the state. Requires the PUC to combine the capacity owned and controlled by a power generation company and its owned entities to determine the percentage shares of installed generation capacity.

Sec. 39.155. **COMMISSION ASSESSMENT OF MARKET POWER.** Requires each entity that owns generation facilities to report to the PUC for the purpose of determining market power in Texas. Requires the PUC to prescribe, by rule, the nature and detail of such reporting requirements. Requires the ERCOT independent system operator to make identifications and recommendations on the constraints and needs of a competitive system, in an annual report beginning on October 1, 1999, and subsequently by the 15th of January. Requires an electric utility owning transmission and distribution facilities to make identifications and recommendations on the constraints and needs of a competitive transmission and distribution system, in a report prior to and after the introduction of customer choice.

Sec. 39.156. **MARKET POWER MITIGATION PLAN.** Defines "market power mitigation plan" or "plan." Requires a power generation company with more than 20 percent of the generation capacity for a delivery area to submit a plan to the PUC by December 31, 2000, containing only certain mitigating factors, under a prescribed definition of generation capacity, and written in a certain format. Requires the PUC to evaluate a plan using certain criteria within 180 days of its filing. Authorizes the PUC to auction production capacity by July 1, 2002 of an electric utility whose plan was not approved.

Sec. 39.157. **COMMISSION AUTHORITY TO ADDRESS MARKET POWER.** Requires the PUC to monitor the market power in the state. Requires the PUC to order after a hearing

and other procedures any one of various remedies to reduce market power. Prohibits the ownership of transmission or distribution facilities in this state by a person who owns a generation facility, at the onset of customer choice. Provides that there is a specific exception to the prohibition and that nothing in this chapter prohibits a power generation company affiliated with a transmission and distribution facility from owning generation facilities. Requires the PUC to govern certain transactions, by rule, in order to avoid potential market power abuses and cross-subsidization practices. Requires the PUC to adopt, by rule, a code of conduct for market participants.

Sec. 39.158. **MERGERS AND CONSOLIDATIONS.** Requires PUC approval, whether conditional or absolute, of all consolidations, mergers, affiliations, acquisitions between utility market participants, including electric generation facilities and retail electric providers. Requires electric generation facilities and retail electric providers to obtain PUC approval regarding market power before conducting business in the state. Provides that this section does not provide immunity from state or federal antitrust laws, but does complement and sanction such laws in the spirit of this section.

#### SUBCHAPTER E. PRICE REGULATION AFTER COMPETITION

Sec. 39.201. **COST OF SERVICE TARIFFS AND CHARGES.** Requires each electric utility to file by September 1, 2000, a proposal of tariffs supported by data for nonbypassable delivery charges, and identify the unbundled generation and retail energy service costs by customer class. Requires the PUC to approve the proposal within a certain time frame. Requires the PUC to establish the fund charge pursuant to Section 39.603, and accept the competition transition charge based on Subsections (i)-(l). Sets forth the manner to calculate the competition transition charge. Requires the electric utility to employ the ECOM administrative model using current PUC-approved data for determining estimated stranded costs. Provides that an electric utility, upon PUC approval, may securitize up to 75 percent of its stranded costs, and either implement a bonded, nonbypassable and 100 percent charge for stranded costs, or use a combination of the preceding methods. Requires similar allocation among customer classes of the competition transition charges as the allocation of underlying assets costs. Authorizes the PUC to determine in accordance with certain criteria the length of time over which costs may be recovered. Requires the review of stranded costs by the PUC two years into the customer choice era, and permits certain charge and time adjustments, up or down, of those costs. Authorizes the PUC to adjust the filing and implementation date for customer choice if a region does not qualify for Section 39.152 customer choice by January 1, 2002.

Sec. 39.202. **PRICE TO BEAT.** Requires an affiliated retail electric provider to charge a bundled rate five percent less than its affiliated transmission and distribution utility rates. Provides that this rate process is called price to beat. Requires the PUC to determine by certain dates the fuel factor for an area's electric utilities. Requires all power generation companies affected by customer choice to file a final fuel reconciliation for the period just before customer choice. Provides that this final fuel balance will be included in the Section 39.262 true-up proceedings. Prohibits an affiliated retail electric provider from charging a rate other than the price to beat, until a certain time period has passed or 40 percent of an area's consumption is provided by more than one electric utility. Requires the PUC to establish procedures and reporting requirements to monitor certain consumptions for the purpose of continuing the price to beat. Requires the PUC to notify an affiliated retail electric provider when the price to beat no longer applies. Authorizes the PUC to adjust the price to beat in accordance with the true-up proceedings established in Section 39.262. Defines "small commercial customer."

Sec. 39.203. **TRANSMISSION AND DISTRIBUTION SERVICE.** Requires all transmission and distribution facilities to provide transmission service at wholesale under Chapter 35A. Requires the PUC to establish rules requiring a transmission and distribution utility to provide its services at comparable rates to certain businesses and organizations. Requires an electric utility, electric cooperative corporation, or municipally owned utility to provide distribution service at wholesale if they do not opt for customer choice. Requires the

PUC to establish terms of business for a distribution facility. Provides that those terms of business compare to terms the utility applies to itself. Establishes the rules of comparable terms and service to include the utility's ancillary services. Authorizes the creation of more electric utility facilities to provide adequate service to the state's electric markets. Requires the PUC rules to be consistent. Guarantees open and nondiscriminatory access throughout the qualifying power regions through a PUC-approved tariff.

Sec. 39.204. **TARIFFS FOR OPEN ACCESS.** Requires all transmission and distribution facilities to file within a certain time frame a rule-compliant open access tariff with federal regulatory authorities.

Sec. 39.205. **REGULATION OF COSTS FOLLOWING THE FREEZE PERIOD.** Provides that costs remaining from nuclear decommissioning after the freeze period are subject to cost of service regulation and are required inclusions within the nonbypassable charge to retail customers.

#### SUBCHAPTER F. RECOVERY OF STRANDED COSTS

Sec. 39.251. **DEFINITIONS.** Defines "above market purchased power costs," "below market cost," "existing purchased power contract," "generation assets," "market value," "purchased power market value," "regulatory assets," "retail stranded costs," and "stranded cost."

Sec. 39.252. **RIGHT TO RECOVER STRANDED COSTS.** Provides for the right by an electric utility to recover stranded costs within a certain time frame. Prohibits a retail customer from avoiding stranded costs by switching area providers, except for certain conditions and by a certain date.

Sec. 39.253. **ALLOCATION OF STRANDED COSTS.** Requires the allocation of stranded costs to parallel the allocation of underlying assets among customer classes.

Sec. 39.254. **USE OF REVENUES FOR UTILITIES WITH STRANDED COSTS.** Provides that this chapter contains a number of tools for use by an electric utility to mitigate stranded costs. Requires an electric utility cited with "excess costs over market" (ECOM) in the Senate Interim Committee on Electric Utility Restructuring report, to use these prescribed methods to reduce the net book value of its generation assets.

Sec. 39.255. **USE OF REVENUES FOR UTILITIES WITH NO STRANDED COSTS.** Requires a positive difference from an electric utility with no stranded costs to flow back to the utility customers via the power cost recovery factor.

Sec. 39.256. **OPTION TO REDIRECT DEPRECIATION.** Authorizes an electric utility to redirect any part of its depreciation expenses relating to transmission and distribution assets to its net generation plant assets and to report the action to the PUC or other applicable authority. Requires the PUC to accept and apply these book value adjustments for the purpose of establishing net invested capital and transmission and distribution rates for retail customers after the freeze period. Prohibits the design of post-freeze-period retail rates from certain cost adjustments, provided that certain exceptions do not apply.

Sec. 39.257. **ANNUAL REPORT.** Sets forth the requirement that each electric utility must file a report with the PUC at the end of each year that identifies a positive difference between the annual revenues, Section 36.205 reductions, and annual costs.

Sec. 39.258. **ANNUAL REPORT: DETERMINATION OF ANNUAL COSTS.** Sets forth certain amounts required for determining annual costs in each annual report.

Sec. 39.259. **ANNUAL REPORT: DETERMINATION OF INVESTED CAPITAL.** Requires a yearly update of all plant services, regulatory assets, and deferred federal income taxes which determine invested capital in the annual report. Provides that prudent capital is

capital additions less than 1.5 percent of the electric utility's net plant in service for certain dates. Requires PUC approval for any other item considered invested capital.

Sec. 39.260. **USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** Provides that the definitions and identification of invested capital in this subchapter conform to generally accepted accounting principles (GAAP), including application of Statement of Financial Accounting Standards No. 71 on January 1, 1999.

Sec. 39.261. **REVIEW OF ANNUAL REPORT.** Provides that the annual report filed under this subchapter is a public document and shall be reviewed by PUC staff (staff) and the office of public utility counsel (office). Authorizes the staff and office to review work papers and supporting document and discuss the report's underlying data with the utility. Requires the staff and office to send within a certain date written notification regarding data disagreements to an electric utility. Requires the PUC to resolve any data disagreements within a certain date.

Sec. 39.262. **TRUE-UP PROCEEDING.** Prohibits an electric utility from over recovering stranded costs in conjunction with both the utility's affiliated retail electric provider and affiliated transmission and distribution utility. Requires an electric utility providing service to an area not subject to competition after the freeze period to continue to file its annual reports pursuant to Sections 39.257-39.259 as if the freeze period were still in effect, until the area qualifies for Section 39.152 competition. Requires the PUC to continue to review the annual reports. Requires a transmission and distribution utility along with its retail electric provider and affiliated power generation company to file a joint finalization and reconciliation of stranded costs. Requires the application of resulting costs to the nonbypassable delivery rates of the transmission and distribution facility. Requires an affiliated power company to reconcile certain net sums. Requires the affiliated retail electric provider to reconcile within certain constraints the net sum between the price to beat and the prevailing market price of electricity. Requires the transmission and distribution facility to adjust within certain constraints the nonbypassable delivery rates it charges to retail electric providers. Authorizes the PUC to extend or recede the original collection period based on the sufficiency of the nonbypassable delivery rates. Requires the affiliated power generation company to quantify its stranded costs using the methods of sale of assets, stock valuation, and partial stock valuation. Requires an electric utility or power generation company to quantify its stranded costs for nuclear assets using the ECOM if the utility or company did not employ a Subsection (g)(2) or (g)(3) method. Provides for the description and proper utilization of the ECOM method. Requires the PUC to establish, by rule, a precise ECOM methodology for updating natural gas forecasts. Requires the PUC to conduct hearings as a contested case. Sets forth final orders for certain utility facilities by the PUC, subject to Chapter 2001, Government Code judicial review. Authorizes charging stranded costs to a customer if the utility provided service to a legal customer, incurred the cost within a certain time frame, actually provided the customer service through its transmission and distribution facility, and updated all relevant Texas Natural Resource Conservation Commission (TNRCC) environmental permits.

Sec. 39.263. **STRANDED COST RECOVERY OF ENVIRONMENTAL CLEANUP COSTS.** Provides invested capital eligibility for capital costs incurred by an electric utility that improves air quality before January 1, 2002, subject to certain provisions. Provides that capital costs incurred by an electric utility that improves air quality within a certain time frame are eligible for Section 39.262 determination of invested capital in the true-up proceeding eligibility, subject to certain provisions. Requires the net book value to be included in determining stranded costs from a retired facility, notwithstanding Section 39.259(c) provisions. Requires the net book value include in the electric utility's stranded cost the retirement of a generating facility, notwithstanding Section 39.259(c), if retirement is more cost-effective.

Sec. 39.264. **PURPOSE.** Provides that this chapter does not alter any rights of a utility to recover stranded costs from wholesale customers.

## SUBCHAPTER G. SECURITIZATION

Sec. 39.301. PURPOSE. Provides that the primary purpose of this chapter is to enable an electric utility to engage in cost-effective financing for the recovery of stranded costs over conventional utility financing methods.

Sec. 39.302. DEFINITION. Defines “securitized financing transaction.”

Sec. 39.303. QUALIFIED RATE ORDER. Authorizes the PUC to issue a qualified rate order for a utility in Section 39.201 proceedings that permits with certain provisions up to 75 percent of expected stranded costs.

Sec. 39.304. EFFECT OF RATE ORDER. Provides that a qualified rate order remains in full force and effect, except during insolvency proceedings.

Sec. 39.305. PLEDGE OF STATE. Provides that securitized financing transaction-issued bonds are not backed by the credit of the state, but are collectible without state interference if the securities are outstanding.

Sec. 39.306. CHARACTERIZATION OF NONBYPASSABLE CHARGE. Provides that the property right created under this subchapter is not account or general intangible under Section 9.106, Business & Commerce Code.

## SUBCHAPTER H. CERTIFICATION AND REGISTRATION; PENALTIES

Sec. 39.351. CERTIFICATION OF POWER GENERATION COMPANIES. Prohibits a person without PUC certification from generating for resale electricity. Authorizes a person to apply for certification, and sets forth the information necessary to apply for certification. Requires a power generation company to comply with the independent organization’s reliability standards.

Sec. 39.352. CERTIFICATION OF RETAIL ELECTRIC PROVIDERS. Prohibits a person without PUC certification from providing retail electric service in customer choice area. Requires the PUC to issue a person who meets certain provisions a provider’s certificate. Sets forth the provisions necessary to award certification. Requires a person applying for certification to comply with all customer protection provisions, disclosure requirements, and established marketing guidelines.

Sec. 39.353. CERTIFICATION OF AGGREGATORS. Prohibits a non-certificated person from providing aggregation services. Defines “aggregator.” Requires a person applying for aggregator certification to comply with all customer protection provisions, disclosure requirements, and established marketing guidelines. Authorizes the PUC to establish any terms and conditions necessary for the regulation of proper aggregation service.

Sec. 39.354. REGISTRATION OF MUNICIPAL AGGREGATORS. Prohibits a non-registered municipal aggregator from providing aggregation services. Defines “municipal aggregator.”

Sec. 39.355. REGISTRATION OF POWER MARKETERS. Prohibits a non-registered person from selling electric energy at wholesale as a power marketer.

Sec. 39.356. REVOCATION OF CERTIFICATION. Authorizes the PUC to suspend, revoke, or amend a retail electric provider’s certificate when the offender does not comply with this title’s rules or a certified independent organization’s protocols. Authorizes the PUC to revoke a retail electric provider’s certificate in the event the provider can no longer provide continuous and reliable service. Authorizes the PUC to suspend or revoke a power generation company’s certification and to suspend, revoke, or amend an aggregator’s certificate for significant violations of this title’s rules or reliability protocols.

Sec. 39.357. ADMINISTRATIVE PENALTY. Authorizes the PUC to levy an additional administrative penalty against a Section 39.356 violator.

#### SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 39.601. SCHOOL FUNDING LOSS MECHANISM. Requires the comptroller to certify to the Texas Education Agency (TEA) any property wealth reductions attributable to electric utility restructuring. Requires TEA to determine the reduction of the amount of property taxes and to notify the PUC of the amount necessary to compensate the state for the reduction. Requires the PUC to transfer by a certain date the necessary amount out of the system benefit fund and into the foundation school fund.

Sec. 39.602. CUSTOMER EDUCATION. Requires the PUC to develop and implement an education program, prior to the onset of customer choice, to inform customers of changes resulting from opening the retail electric market, and that provides the information necessary to make an informed choice.

Sec. 39.603. SYSTEM BENEFIT FUND. Requires the PUC to establish a system benefit fund, to be financed by a nonbypassable charge set by the PUC, not to exceed 30 cents per MWh. Sets forth the purpose of the fund. Defines a “low-income electric customer.”

Sec. 39.604. GOAL FOR RENEWAL ELECTRICITY. Provides that the legislature intends renewable energy technologies, to constitute not less than five percent of the installed electric generation capacity located within the state, and generating electricity for sale by January 1, 2007. Requires at least one percent of generation capacity of a retail electric provider to come from renewal energy technologies by January 1, 2004. Requires the PUC to establish a credits trading program for renewable energy available to a retail electric provider who does not satisfy the renewable energy requirements. Defines “renewable energy technology.”

Sec. 39.605. EFFECTS OF SUNSET PROVISION. Provides that the provisions of this subchapter remain and do not expire in the event the PUC is abolished and certain title provisions expire. Provides that an established successor agency performs in lieu of an abolished PUC.

### CHAPTER 40. COMPETITION FOR MUNICIPALITY OWNED UTILITIES AND RIVER AUTHORITIES

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. APPLICABLE LAW. Provides that this chapter governs the transition to and establishment of a fully competitive electric power industry for municipally owned utilities.

Sec. 40.002. DEFINITION. Defines “body vested with the power to manage and operate a municipally owned utility.”

Sec. 40.003. SECURITIZATION. Authorizes a municipally owned utility or river authority to recover up to 100 percent stranded costs through securitization provisions. Sets forth rules and procedures for using securitization, including a provision for the PUC to establish additional rules and procedures for the issuance of a securitized financing transaction bond. Requires these rules and procedures to be consistent with established law.

#### SUBCHAPTER B. MUNICIPALLY OWNED UTILITY CHOICE

Sec. 40.051. GOVERNING BODY DECISIONS. Provides discretion to a municipally owned utility to decide when or if the utility will employ customer choice on or after January 1, 2002, via an appropriate resolution. Provides that a decision by resolution to provide customer choice is irrevocable. Establishes that Subchapters 33C, D, and E no longer apply if the municipally owned utility resolves to offer customer choice.

Sec. 40.052. UTILITY NOT OFFERING CUSTOMER CHOICE. Prohibits a municipal utility from offering unregulated prices if the utility decides not to offer customer choice, but may still provide a full range of customer service, pricing programs within its certificated area, and buy and sell wholesale electricity without geographic restriction.

Sec. 40.053. RETAIL CUSTOMER'S RIGHT OF CHOICE. Establishes that after customer choice is approved by a municipal utility, customer choice shall be provided with open access for retail service. Prohibits the municipally owned utility from offering competitive metering, notwithstanding Section 39.107 provisions. Authorizes the municipally owned utility to be the sole provider of the metering function. Sets forth the municipally owned utility in the event of customer choice as the provider of last resort and the default provider of last resort offering standard regulation retail service for requesting customers. Authorizes the municipally owned authority to establish procedures and criteria for designating and redesignating the provider of last resort.

Sec. 40.054. SERVICE OUTSIDE AREA. Authorizes a municipally owned utility opting for customer choice to offer electricity and related services at unregulated prices without regard to geography, yet abiding by the PUC's code of conduct regulating anticompetitive practice. Authorizes the PUC to establish terms and conditions, but not rates, for access by other retail electric providers against municipally owned utilities participating in customer choice. Requires the codes of conduct to accommodate relevant state and federal laws. Provides that the PUC does not have jurisdiction that would require municipally owned utilities to unbundle its services. Requires the municipally owned utility to maintain separate books and records for its operations from those of affiliated operations.

Sec. 40.055. JURISDICTION OF MUNICIPAL GOVERNING BODY. Establishes the exclusive jurisdictional authority and certain powers of that authority for a municipally owned utility to manage and operate its own utility.

Sec. 40.056. ANTICOMPETITIVE ACTIONS. Requires the PUC to notify the municipally owned utility of any known anticompetitive practices to provide three months for the utility to cure the anticompetitive practice, following a hearing, and to deny access to service outside an offender's certificated retail service area if the offense is not remedied within a certain time.

Sec. 40.057. BILLING. Authorizes the municipally owned utility that opts for customer choice to bill directly customers, generation services, and customer services. Specifies that a municipally owned utility cannot adopt anticompetitive practices that would discourage customers from choosing a retail electric provider. Establishes that a customer may choose between a direct billing from each service provider or a single bill from the municipally owned utility.

Sec. 40.058. TARIFFS FOR OPEN ACCESS. Requires a municipally owned or operated transmission and distribution facility to file tariffs implementing open access rules by a certain date. Provides that the PUC has no authority to determine rates for distribution access service for a municipally owned utility.

Sec. 40.059. MUNICIPAL POWER AGENCY; RECOVERY OF STRANDED COSTS. Defines "member city." Authorizes a member city that opts for customer choice to recover stranded costs through a nonbypassable charge. Establishes that the nonbypassable charge shall be as determined by the member city's governing board, and may be spread out over 16 years. Authorizes which stranded costs may be recovered through this section using the Texas Senate Interim Committee on Electric Utility Restructuring report. Prohibits double counting of this section's stranded costs and the generation costs used in setting rates.

Sec. 40.060. NO POWER TO AMEND CERTIFICATES. Provides that nothing in this chapter empowers a municipal governing body or a body vested with the power to manage a municipally owned utility to issue, amend, or rescind a certificate of public convenience and necessity granted by the PUC. Establishes that this section does not deny the ability for a

municipally owned utility to pass a Section 40.051(b) resolution.

#### SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 40.101. INTERFERENCE WITH CONTRACT. Prohibits this subtitle from interfering with or abrogating the rights or obligations of a party to contract with a municipally owned utility or river authority, including a retail or wholesale customer, under a contract or agreement concerning certificated utility service areas.

Sec. 40.102. ACCESS TO WHOLESALE MARKET. Established that nothing in this subtitle limits the access of municipally owned utilities to the wholesale electric markets.

Sec. 40.103. PROTECTION OF BONDHOLDERS. Establishes that nothing in this subtitle or any rule adopted under this subtitle impairs the various agreements between this state, river authorities, municipalities, and the bondholders of revenue bonds issued by the river authorities or municipalities.

Sec. 40.104. TAX-EXEMPT STATUS. Establishes that nothing in this subtitle impairs the tax-exempt status of municipalities, electric cooperatives, or river authorities, or compels any of those organizations to use its facilities in a manner which violates any contractual obligation to finance tax-exempt debt. Establishes that a Section 40.051(b) decision to participate in customer choice is irrevocable, notwithstanding any other provision of law.

### CHAPTER 41. ELECTRIC COOPERATIVES AND COMPETITION

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. APPLICABLE LAW. Establishes that this chapter provides for a fully competitive electric power industry for electric cooperatives, notwithstanding other provisions of law, except Sections 39.155, 39.157(d), and 39.203.

Sec. 41.002. DEFINITION. Defines “board of directors.”

Sec. 40.103. SECURITIZATION. Authorizes electric cooperatives to use securitization provisions consistent with Subchapter 39G, to recover costs under rules and procedures established by their board of directors. Requires the rules to include procedures for the issuance of bonds and consistent with other law, terms, and orders authorizing indebtedness of the electric cooperative.

Sec. 40.104. JURISDICTION OF THE COMMISSION. Sets forth the jurisdiction of the PUC over electric cooperatives.

Sec. 40.105. LIMITATION OF MUNICIPAL AUTHORITY. Prohibits a municipality from regulating the rates of an electric cooperatives, notwithstanding any other provision of this title.

#### SUBCHAPTER B. ELECTRIC COOPERATIVE UTILITY CHOICE

Sec. 41.051. BOARD DECISION. Provides discretion to an electric cooperative’s board of directors to decide when or if they will provide customer choice. Establishes that customer choice may become effective on or after January 1, 2002. Authorizes the decision to opt for customer choice to be revocable if no customer has opted for choice within four years.

Sec. 41.052. ELECTRIC COOPERATIVES NOT OFFERING CUSTOMER CHOICE. Prohibits an electric cooperative that does not opt for customer choice from offering directly unregulated electric service to customers outside its certificated retail service area. Provides that an electric cooperative retains the right to provide a full range of customer service and pricing programs to customers within its certificated area and to purchase and sell electric energy at wholesale without geographic restriction. Authorizes a generation and transmission

electric cooperative to offer electric energy at unregulated prices directly to retail customers outside its parent's area, if a majority of the parent cooperatives of generation and transmission cooperatives choose to offer customer choice.

Sec. 41.053. **RETAIL CUSTOMER RIGHT OF CHOICE.** Provides customer choice and nondiscriminatory access to all customers within an electric cooperative's certificated area for an electric cooperative that has opted for customer choice. Requires the cooperative to designate itself as the provider of last resort and default provider of last resort, if another entity is not so designated by the cooperative. Requires the provider of last resort to supply a requesting customer a standard retail package. Authorizes the cooperative's board to establish procedures and criteria for designating and redesignating a provider of last resort.

Sec. 41.054. **SERVICE OUTSIDE CERTIFICATED AREA.** Requires a cooperative opting for customer choice to offer electric energy and related services at unregulated prices to retail customers without regard to geographic location. Establishes that when a cooperative serves retail customers outside its certificated area, the cooperative becomes subject to PUC jurisdiction regulating the code of conducting regarding anticompetitive practices. Establishes that the PUC has certain jurisdictional authority over an electric cooperative participating in customer choice. Requires the PUC to accommodate the code of conduct for state and federal legal requirements applicable to cooperatives, and to accommodate the cooperative's organizational structure, thereby not prohibiting cooperatives from sharing personnel. Provides that the PUC has no jurisdiction concerning unbundling an electric cooperative's services, except as provided by this section. Requires a cooperative to maintain separate books and records from its subsidiary.

Sec. 41.055. **JURISDICTION OF BOARD OF DIRECTORS.** Sets forth the exclusive jurisdiction of the board of directors.

Sec. 41.056. **ANTICOMPETITIVE ACTIONS.** Requires the PUC to notify the cooperative in the event the cooperative engaged in anticompetitive practices. Requires the cooperative to cure the anticompetitive practices within three months. Authorizes the PUC to prohibit the cooperative or its subsidiary from providing retail service outside its certificated area until the behavior is remedied after a certain period of time.

Sec. 41.057. **BILLING.** Authorizes the cooperative during customer choice to bill directly its customers in the certificated area for transmission and distribution services, generation services, and customer services. Establishes that a customer may choose between a direct billing from each service provider or a single bill from the electric cooperative.

Sec. 41.058. **TARIFFS FOR OPEN ACCESS.** Requires a cooperative to file within a certain date tariffs implementing open access rules. Provides that the cooperative's filing is for information purposes only.

Sec. 41.059. **NO POWER TO AMEND CERTIFICATES.** Provides that this chapter does not empower a cooperative to issue, amend, or rescind a certificate of public convenience and necessity granted by the PUC.

Sec. 41.060. **CUSTOMER SERVICE INFORMATION.** Requires the PUC to keep information submitted by customers and retail electric providers pertaining to the provision of electric service by electric cooperatives. Requires the PUC to notify the cooperative of submitted information to which the cooperative responds and notifies the PUC. Requires the PUC to prepare a report for the Sunset Advisory Commission that includes the submitted information and responses.

#### SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 41.101. **INTERFERENCE WITH CONTRACT.** Prohibits that this subtitle from interfering with or abrogating the rights or obligations of a party to contract with an electric

cooperative, or to contract or agreement with utility service areas concerning certification.

Sec. 41.102. ACCESS TO WHOLESALE MARKET. Established that nothing in this subtitle limits the access of a cooperative to the wholesale electric markets.

Sec. 40.103. PROTECTION OF BONDHOLDERS. Establishes that nothing in this subtitle or any rule adopted under this subtitle impairs the various agreements between a cooperative, a lender, and the holders of bonds issued on the behalf of or by one or more electric cooperatives.

Sec. 40.104. TAX-EXEMPT STATUS. Establishes that nothing in this subtitle impairs the tax-exempt status of electric cooperatives, nor compels a cooperative to use its facilities in a manner which violates any contractual obligation to finance tax-exempt debt.

SECTION 25. Amends Section 252.022, Local Government Code, to establish that this chapter does not apply to certain expenditures by various municipal entities in connection with certain management purchases. Defines “municipally owned utility.”

SECTION 26. Amends Section 272.001, Government Code, by adding Subsection (j), to provide that this section does not apply to sales or exchanges of land owned by a municipality operating certain electric or gas utilities.

SECTION 27. Amends Section 402.002(c), Local Government Code, to authorize a certain municipal utility to function by charter and ordinance.

SECTION 28. Amends Subdivision (3), Section 551.001, Government Code, to redefine a “governmental body.” Makes conforming changes.

SECTION 29. Amends Subdivision (1), Section 552.003, Government Code, to redefine “governmental body.” Makes conforming changes.

SECTION 30. Amends Section 791.011(d), Government Code, to provide that an interlocal contract authorization is required for only contracts that exceed \$100,000, if a party to the contract is a municipally owned electricity utility.

SECTION 31. Amends Chapter 2256A, Government Code, by adding Section 2256.0201, as follows:

Sec. 2256.0201. AUTHORIZED INVESTMENTS; MUNICIPAL UTILITY. Authorizes a municipally owned electric utility engaged in selling and distributing electricity to the public to engage in hedging contracts relating to security and insurance agreements. Requires the hedge contract to comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission. Provides that in conflicts between the municipal charter and this chapter, this chapter will prevail. Provides that hedging contract payments are fuel expenses, and the utility may credit the expense accordingly. Authorizes the body vested with the power to manage and operate the municipally owned electric or gas utility to set policy regarding hedging transactions. Defines “hedging.”

SECTION 32. Amends Chapter 245, Article 717p, V.T.C.S., by adding Section 4C, as follows:

Sec. 4C. Provides that this section applies only to a river authority engaged in the sale and distribution of electric energy to the public. Authorizes the river authority to engage in various transmission services and lease purchases. Defines “electric transmission facilities.”

SECTION 33. Amends Sections 1 and 2, Article 1115a, V.T.C.S., to provide that this article applies only to a chartered home-rule municipality that owns an electric utility system and has outstanding obligation payable in whole or part, rather than solely, from a secured lien. Authorizes a municipality to transfer management and control of the electric utility system to a board of trustees, rather than a five-member board. Authorizes the board to establish rates and related terms and conditions for its

municipally owned electric utility. Makes conforming changes.

SECTION 34. Repealer: Chapter 34, Government Code (Electrical planning);  
Repealer: Subchapters 36F and G, Utilities Code (Partial rate deregulation available to certain cooperatives, and Rate changes by certain electric cooperatives); and  
Repealer: Section 37.058, Utilities Code (Certificate for electric generating plant).

SECTION 35. Provides that this Act does not hinder a municipality's historical right to provide electricity and does not affect a retail public utility's right to provide electric service pursuant to a certificate of public convenience and necessity.

SECTION 36. Requires the PUC to study and make recommendations by December 15, 2000, for additional legislation that would create a competitive electric market on January 1, 2002.

SECTION 37. Requires the PUC to establish rules and procedures for the securitization of stranded costs for river authorities by 180 days after the effective date of this Act.

SECTION 38. Effective date: September 1, 1999.

SECTION 39. Emergency clause.