

BILL ANALYSIS

Senate Research Center

C.S.S.B. 7
By: Sibley
Electric Utility Restructuring
3/10/1999
Committee Report (Substituted)

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 also authorizes the PUC to develop and promulgate customer protection rules during and after a transition to a competitive market.

PURPOSE

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

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Public Utility Commission in SECTIONS 31, 33, and 35 (Sections 38.005(a), 39.101(c), 39.155(a), 39.157(e), 39.262(h), 39.601(g), 41.003(a), Utilities Code); the commissioner of education in SECTION 33 (Section 39.601(g), Utilities Code); and to the comptroller of public accounts in SECTION 33 (Sec. 39.601(g), Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.003, Utilities Code, to redefine “affected person,” “cooperative corporation,” “person,” “ratemaking proceeding,” and “service.” Defines “electric cooperative.” 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 12.101, Utilities Code, to designate whom the commission shall employ.

SECTION 4. Amends Sections 12.151 and 12.152, Utilities Code, to prohibit a person from serving as a commissioner, rather than a commissioner or general counsel to the commission, when the person has been involved in certain activities. Makes conforming changes.

SECTION 5. Amends Section 13.002, Utilities Code, to provide that the Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act), and is abolished along with this chapter on September 1, 2005, rather than 2001.

SECTION 6. Amends Subsection (d), Section 14.101, Utilities Code, provide that this section does not apply to transactions that facilitate unbundling, asset valuation, minimization of ownership or control of generation assets, or other purposes consistent with Chapter 39.

SECTION 7. Amends Subsections (a) and (b), Section 16.001, Utilities Code, to impose an assessment on each retail electric provider and electric cooperative, to defray administrative expenses. Provides that an assessment is equal to one-sixth of one percent of the public utility’s, retail electric provider’s, or electric cooperative’s gross receipts from certain rates.

SECTION 8. Amends Section 31.002, Utilities Code, to define “affiliated power generation company,” “affiliated retail electric provider,” “aggregation,” “customer choice,” “Electric Reliability Council of Texas,” “ERCOT,” “freeze period,” “independent system operator,” “power generation company,” “power

region,” “retail customer,” “retail electric provider,” “separately metered,” and “transmission and distribution utility.” Redefines “electric utility,” “qualifying cogenerator,” and “qualifying small power producer.” Makes conforming changes.

SECTION 9. Amends Chapter 32A, Utilities Code, by adding Section 32.0015, as follows:

Sec. 32.0015. REGULATION OF SUCCESSOR ELECTRIC UTILITY OR ELECTRIC COOPERATIVE. Requires the PUC to regulate an electric utility that purchases or gains majority control of another electric utility or electric cooperative cooperation.

SECTION 10. Amends Sections 32.051 and 32.052, Utilities Code, as follows:

Sec. 35.051. EXEMPTION OF RIVER AUTHORITY FROM WHOLESALE RATE REGULATION. Exempts a river authority from wholesale rate regulation by a river authority operating a steam generating plant on or before January 1, 1999.

Sec. 35.052. ABILITY OF CERTAIN RIVER AUTHORITIES TO CONSTRUCT IMPROVEMENTS. Makes a conforming change.

SECTION 11. Amends Section 32.053, Utilities Code, by amending Subsections (b) and (f), and adding Subsection (g) and (h), to authorize a corporation to purchase and sell electricity at wholesale prices to an in-state, non-ultimate customer. Prohibits the proceeds from tax-free obligations from being used to finance construction or acquisition of a power generation facility. 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. Provides that Subsections (a)-(f) do not apply to a corporation created pursuant to Article 717b, V.T.C.S., to serve an area described in Section 32.052.

SECTION 12. Amends Section 35.001, Utilities Code, to redefine “electric utility.”

SECTION 13. Amends Section 35.004, Utilities Code, to require 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, electric cooperative, or transmission and distribution utility provides wholesale transmission service within the Electric Reliability Council of Texas (ERCOT). Requires the PUC to price wholesale transmission services within ERCOT based on the postage stamp method of pricing. Sets forth the postage stamp method of pricing. Authorizes an electric utility subject to the freeze period imposed by Section 39.052 to treat transmission costs in excess of transmission revenues during the freeze period as an expense for purposes of determining annual costs in the annual report filed pursuant to Section 39.257. Authorizes the PUC to approve rates that may be periodically adjusted to ensure timely recovery of transmission investment, notwithstanding Section 36.201. Requires the PUC to ensure affordable and fair ancillary services necessary to transmit electric energy. Defines “ancillary services.”

SECTION 14. Amends Section 35.005(b), Utilities Code, to delete text regarding a proceeding not related to approval of an integrated resource plan.

SECTION 15. Amends Section 35.033, Utilities Code, to delete reference to Chapter 34 regulating an exempt wholesale generator or power marketer.

SECTION 16. Amends Section 35.034, Utilities Code, by adding Subsection (c), to define “electric utility.”

SECTION 17. Amends Section 35.035, Utilities Code, by adding Subsection (d), to define “electric utility.”

SECTION 18. Amends Chapter 35, Utilities Code, by adding Subchapter D, as follows:

SUBCHAPTER D. STATE AUTHORITY TO SELL OR CONVEY POWER

Sec. 35.101. DEFINITIONS. Defines “commissioner” and “public retail customer.”

Sec. 35.102. STATE AUTHORITY TO SELL OR CONVEY POWER. Authorizes the commissioner of the general land office (land commissioner) to sell or otherwise convey power to a public retail customer regardless of the wholesale status of the customer.

Sec. 35.103. ACCESS TO TRANSMISSION AND DISTRIBUTION SYSTEMS; RATES. Entitles the state to have access to all utilities and electric cooperatives that serve public retail customers. Requires an entity described by Subsection (a) to provide any utility service at the lowest possible rate.

Sec. 35.104. LIMIT IN CERTAIN AREAS. Prohibits the state from engaging in retail transactions that exceed 2.5 percent of a certain retail load, in certain areas with no customer choice.

Sec. 35.105. COSTS OF SERVING STATE AGENCY. Prohibits an electric utility, municipal utility, or an electric cooperative from recovering costs of serving a state agency or other public entities from residential customers and other customer classes.

Sec. 35.106. WHOLESALE CUSTOMERS. Provides that this chapter does not preclude the commissioner from registering as a power marketer.

SECTION 19. Amends Section 36.008, Utilities Code, to delete text regarding an electric utility not required to file an integrated resource plan.

SECTION 20. Amends Section 36.052, Utilities Code, to delete text regarding an integrated resource plan. Makes conforming changes.

SECTION 21. Amends Section 36.058(d), Utilities Code, to make a conforming change.

SECTION 22. Amends Section 36.201, Utilities Code, to make a conforming change.

SECTION 23. Amends Section 36.204, Utilities Code, to make a conforming change.

SECTION 24. Amends Section 36.207, Utilities Code, to make a conforming change.

SECTION 25. Amends Section 37.001, Utilities Code, to define “electric utility.” Makes a conforming change.

SECTION 26. Amends Section 37.051, Utilities Code, by adding Subsection (c), to provide that an electric cooperative is not required to obtain the certificate for construction and installation operations.

SECTION 27. Amends Chapter 37B, Utilities Code, by adding Sections 37.060 and 37.061, as follows:

Sec. 37.060. DIVISION OF MULTIPLY CERTIFICATED SERVICE AREAS. Requires Subsections (a)-(g) to apply only to areas in which each retail electric utility that is authorized to provide retail electric utility service to the area is providing customer choice. Sets forth conditions when an electric cooperative, municipally owned electric utility, and other retail electric utilities are providing customer choice. Requires the PUC to examine all other areas seeking customer choice and arrange for a single certificated distributor. Authorizes only retail electric utilities certificated on June 1, 1999, to continue to serve the area or portion of the area under an amended certificate issued pursuant Subsection (a). 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 certificated 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. Authorizes the PUC to grant an exception or amend a retail electric utility's certificate, upon proper notification. Prohibits the PUC from granting a retail electric utility certificate if the grant would cause the area to be multiply certificated, unless the PUC finds that the certificate holders are not providing service to the area where the certificate is sought and are not capable of providing adequate service. Sets forth terms and conditions when this subsection may not apply and when a multiple certification may be filed with the PUC. Authorizes the PUC to singly certify the service territory of a municipally owned utility, provided certain terms and conditions are part of the certification.

Sec. 37.061. EXISTING SERVICE AREA AGREEMENTS. Requires the PUC to allow a municipally owned utility to amend the service area boundaries of its certificate if the municipally owned utility and the area meet certain conditions. Prohibits the PUC from amending the certificate of the public utility serving the affected area based upon the granting of a certificate to the municipal utility.

SECTION 28. Amends Section 37.101(a), Utilities Code, to provide that each electric cooperative holding a certificate under this title has the right to continue to provide the service or operate the facility and extend service to a certain extent.

SECTION 29. Amends Section 38.001, Utilities Code, to include electric cooperatives in the general standards of safety and service.

SECTION 30. 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 31. 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 cannot neglect geographic areas, such as small, rural, 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 each electric utility, transmission and distribution utility, and generation provider to be obligated to comply with any operational criteria duly established by the independent system operator or adopted by the PUC.

SECTION 32. Amends Section 38.071, Utilities Code, to obligate an electric cooperative to interconnect specified facilities, if ordered by the PUC.

SECTION 33. 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 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, other than Sections 39.155, 39.157(d), 39.203, 39.603, and 39.604, does not apply to a municipally owned utility or an electric cooperative. Provides that this chapter controls when a conflict arises between a provision of this chapter and other provisions of this title, except for Chapters 40 and 41.

Sec. 39.003. OPERATIONS IN MULTIPLE POWER REGIONS. Requires that certain areas of a retail electric utility to be considered a retail electric utility in a qualifying power region and

to be considered a retail electric utility outside of that power region.

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. Requires each electric utility to file a plan for implementation by January 1, 2000, and requires the PUC to take certain action on the utility's plan. 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. Provides that certain transactions by electric utilities to accomplish the purposes of this section are not subject to Sections 14.101, 35.034, or 35.035.

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 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. Provides that nothing in this section shall deny a utility to a proceeding by the PUC regarding certain matters referred by court, as long as the free period rates for customers are not affected. Prohibits anything in this title from being construed to prevent an electric utility or a transmission and distribution utility from filing a change in wholesale transmission service rates during the freeze period.

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 in a manner 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 that retail customer protections are established prior to the onset of competition, that entitle a customer to certain information or protections. Provides that the PUC has the authority to adopt and enforce rules to carry out Subsections (a) and (b). Provides that PUC has jurisdiction over all providers of

electric service in enforcing Subsections (a) and (b) and may assess civil and administrative penalties. 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.** Requires that all customers in the state, with certain exemptions, to 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, cooperative, or municipal utility offering customer choice. Provides that if a regulatory authority finds a utility is in the public interest, an electric utility has in effect a systemwide freeze for residential and commercial customers extending beyond December 31, 2001. Requires the utility to be subject to the provisions of this chapter at the expiration of the freeze period.

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 ERCOT to offer customer choice by a certain date to five percent of the combined customer classes. Requires customer classes to receive the load equally, and approved by the PUC. Authorizes customers participating in a pilot under this section to buy electric energy from any retail electric provider, provided certain conditions exist. 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 terms and conditions against anticompetitive practice and for the encouragement of customer choice. Provides that a provider participating in a pilot project is not an electric utility.

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. Provides that this subsection does not prohibit the provision of electric service in multiply certificated service areas to customers of any other retail electric utility.

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, except as provided in Sections 40.053(c) and 41.053(d). 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 providers for metering purposes. Requires the transmission and distribution utility to bill a customer's retail electric provider for certain nonbypassable delivery charges. Requires the retail electric provider to pay these charges. 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 or from resulting in a change in wholesale power costs to certain wholesale customers.

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 organization." 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 that 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. 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 to establish terms and conditions for the ERCOT independent system's authority. Requires the retail electric provider, transmission and distribution utility, municipally owned utility, electric cooperative, power marketer, and power generation companies to observe all authorized protocols and rules established by the independent system operator in ERCOT, at the risk of certificate or administrative penalty for noncompliance. Authorizes the PUC to delegate authority to the independent organization outside of ERCOT. Prohibits any requirement established by an independent organization, including ERCOT, from adversely affecting or impeding any manufacturing or other operation associated with an industrial generation facility, except for minor exceptions.

Sec. 39.152. QUALIFYING POWER REGIONS. Requires the PUC to certify a power region given certain circumstances. Requires the PUC to consider the limited extent of electricity delivery from out of state in considering whether a partially out-of-state power region meets the requirements of this section.

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 affiliate of the electric utility from purchasing entitlements from the auction. Authorizes an electric utility to choose auctioning additional entitlements in order to comply with Section 39.154. 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. Requires the PUC to consider certain factors in adopting the process under Subsection (f)(2), and to consult with the applicable organization to develop the process.

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 within ERCOT, 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 the power region, 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, providing only certain factors regarding sale, auction, and mitigation factors. Requires the PUC to evaluate a plan using certain criteria, not to include divestiture, within 180 days of its filing. Provides that an electric utility or power generation company may amend or repeal its approved plan, and the PUC must take action on the change. Authorizes the PUC to order the auction of generation capacity entitlement held by a certain date of an electric utility or a power generation company whose market power 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 certain transmission or distribution facilities in this state by a person who owns a generation facility, at the onset of customer choice. Requires the PUC to monitor market share of installed capacity to ensure limitations are not exceeded. Requires the PUC to order a person to file a mitigation plan if the person was found at the conclusion of a hearing of having violated certain limitations. Requires the PUC to establish predatory pricing safeguards to avoid anticompetitive activity. Requires the PUC to determine whether specific transmission or distribution constraints or bottlenecks within this state give rise to market power in specific geographic markets in the state. Authorizes the PUC to order reasonable mitigation of market power constraints or bottlenecks. 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 of all consolidations, mergers, affiliations, and acquisitions between utility market participants, including electric generation facilities and retail electric providers. 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. Provides that this section does not authorize the PUC to review or approve transactions entered into between municipally owned utilities, river authorities, special districts, or other political subdivisions, when the transaction is authorized pursuant to law.

SUBCHAPTER E. PRICE REGULATION AFTER COMPETITION

Sec. 39.201. COST OF SERVICE TARIFFS AND CHARGES. Requires each electric utility to file by April 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 excess costs over market (ECOM) administrative model using current PUC-approved data for determining estimated stranded costs. Provides that an electric utility, upon PUC approval, may use certain securitization and bond methods. Requires similar allocation among customer classes of the competition transition charges as the allocation of underlying assets costs, unless the utility has agreed to an alternative allocation. 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 dates 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, adjusted to reflect the fuel factor and any base rate reduction stipulated by an established proceeding. Provides that this rate process is called the “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 up to twice a year the price to beat in accordance with the true-up proceedings established in Section 39.262. Authorizes an affiliated retail electric provider to request the PUC so many times to adjust the fuel factor. Defines "small commercial customer." Authorizes the PUC to set the price to beat at a minimum level that will allow a retail electric provider to maintain its financial integrity.

Sec. 39.203. TRANSMISSION AND DISTRIBUTION SERVICE. Requires all transmission and distribution facilities to provide transmission service at wholesale under Chapter 35A. Requires a transmission and distribution utility, municipal utility offering customer choice, and an electric cooperative offering customer choice to provide transmission or distribution service at retail to an electric utility, a retail electric provider, a municipally owned utility, an electric cooperative, or an end-user customer at rates, terms of access, and conditions that are comparable to those that apply to the transmission and distribution utility and its facilities. Requires a municipal utility or cooperative that does not opt for customer to provide utility service at wholesale. Requires the PUC to establish for all retail electric utilities offering customer choice, except municipal utilities and cooperative, reasonable and comparable terms and conditions and comparable rates for open access. 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. Provides that in a proceeding brought under Chapter 37 regarding an order to enlarge facilities, an electric utility or transmission and distribution utility need not prove certain construction was necessary for the service, accommodation, convenience, or safety of the public and address certain other factors. Requires the PUC rules to be consistent. Guarantees open and nondiscriminatory access throughout the qualifying power regions through a PUC-approved tariff. Requires Subsection(g) to not be deemed to vest in the PUC power to set or approve distribution access rates of a municipal utility or an electric cooperative that has adopted customer choice.

Sec. 39.204. TARIFFS FOR OPEN ACCESS. Requires each transmission and distribution utility 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 to be included within the nonbypassable charge to retail customers.

SUBCHAPTER F. RECOVERY OF STRANDED COSTS

Sec. 39.251. DEFINITIONS. Defines "above market purchased power costs," "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. Allows an electric utility to recover stranded costs within a certain time frame. Prohibits a retail customer from avoiding stranded cost recovery charges by switching to another electric utility after May 1, 1999. Provides that certain customers are not responsible for stranded costs.

Sec. 39.253. ALLOCATION OF STRANDED COSTS. Requires the allocation of retail 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 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 an electric utility that does not have stranded costs to be permitted to use within a certain period of time any positive difference under a certain report on certain capital expenditures, and the costs must be reflected in future proceedings to set rates. Requires stranded costs not used for capital expenditures to flow back to the utility customers via the power cost recovery factor. Provides that this section applies only to the use of positive differences under a certain report.

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.** Requires each electric utility to file a report with the PUC at the end of each year that identifies a positive difference between the annual revenues, Section 36.205 and 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 each annual report for the net plant in service, regulatory assets, and deferred federal income taxes to be updated yearly of certain services, assets, income taxes, and generation-related invested capital. Requires related invested capital to be reduced by the amount of provided securitization. Sets forth provisions for capital additions to a plant and a requirement regarding 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 documents 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 overrecovering 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 and the office 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, except the utility may choose to securitize the remaining stranded costs. Requires an affiliated power company to reconcile certain net sums. Requires the affiliated retail electric provider to reconcile and credit to the affiliated transmission and distribution utility any positive difference between a certain price to beat and a certain prevailing market price. Prohibits the amount credited from exceeding 50 percent of the net income of the affiliated retail electric provider. 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 costs incurred under Subsections (a) and (b) to be included as invested capital and considered in an electric utility's stranded cost determination, only to a certain extent. Requires the net book value to be included in the electric utility's stranded cost, if the retirement of a generating facility is the most cost-effective alternative, notwithstanding Section 39.259(c). Requires the PUC and the TNRCC to submit a joint report to certain executive officials. Sets forth criteria for the report.

Sec. 39.264. RIGHTS NOT AFFECTED. Provides that this chapter is not intended to 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. DEFINITIONS. Defines "assignee," "financing order," "financing party," "qualified costs," "transition bonds," "transition charges," and "transition property."

Sec. 39.303. FINANCING ORDERS; TERMS. Requires the PUC to adopt a financing order upon finding that the total amount of revenues to be collected pursuant to the financing order is less than the revenue requirement that would be recovered over the remaining life of the stranded costs. Requires the financing order to detail the amount of stranded costs over a certain period. Requires transition charges to be collected and allocated among customers in a certain manner. Requires a financing order to become effective in accordance with its terms and to become irrevocable thereafter. Requires the PUC to issue the financing order within a certain time period. Prohibits a financing order from being subject to rehearing by the PUC. Authorizes a financing order to be reviewed upon appeal, in which case venue will be in Travis County. Sets forth conditions and terms of a review and appeal of a court decision regarding a financing order. Authorizes the PUC to adopt a financing order under certain conditions, at the request of an electric utility. Requires the PUC to adjust the related transition charges of a retired and refunded transition bond.

Sec. 39.304. PROPERTY RIGHTS. Requires the rights and interests of an electric utility to be only contract rights, except for transfer into transition bonds. Requires transition property to constitute a present property right for contract purposes, even though the imposition and collection of transition charges depends on not-yet-occurred acts, in any case the financing order remains in effect. Requires all revenues and collections resulting from transition charges to constitute proceeds only of the transition property arising from the financing order.

Sec. 39.305. NO SETOFF. Prohibits certain interests in transition property from being subject to setoff or other bankruptcy procedures.

Sec. 39.306. NO BYPASS. Requires a financing order to include terms ensuring that the

imposition and collection of transition charges authorized in the order shall be nonbypassable.

Sec. 39.307. TRUE-UP. Sets forth required inclusions in a financing order regarding true-up provisions.

Sec. 39.308. TRUE SALE. Establishes that certain agreements by an electric utility are true sales and are not secure transactions. Requires this true sale to apply regardless of possible buyer-seller recourse.

Sec. 39.309. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. Prohibits transition property from constituting an account or general intangible under Section 9.106, Business & Commerce Code. Provides that administrative duties regarding liens are governed by this chapter and not the Business & Commerce Code. Requires a valid and enforceable lien and security interest in transition property to be created only by a financing order and the execution and delivery of a certain security agreement. Sets forth conditions for the valuation of a lien and security interest. Sets forth terms and conditions for the transfer and perfection of an interest in transition property. Requires the secretary of state to implement this section by establishing and maintaining a system of records. Provides that the priority of a perfected lien and security interest may not be impaired, and any other security interest that may apply to those funds shall be terminated upon certain transfers. Requires proceeds to be held in trust in a transfer of transition property to an assignee. Authorizes foreclosure of transition bonds under certain conditions. Requires a Travis County district court to order the sequestration and payment of the bonds, upon application.

Sec. 39.310. PLEDGE OF STATE. Provides that transition bonds are not a debt or obligation of the state. Provides that the state does pledge to protect the financing parties and the electric utilities, and that a financing party may include this pledge in future documentation.

Sec. 39.311. TAX EXEMPTION. Exempts transactions and ownership involving transition property from local and state taxation.

Sec. 39.312. NO PUBLIC UTILITY. Prohibits an assignee or financing authority from being considered as a public utility or person providing electric service solely by virtue of the transactions described in this subchapter.

Sec. 39.313. SEVERABILITY. Establishes that certain legal and financial occurrences regarding transition bonds issued under this chapter do not affect the validity or continuation of this subchapter and certain sections that are relevant to the transition bonds.

SUBCHAPTER H. CERTIFICATION AND REGISTRATION; PENALTIES

Sec. 39.351. CERTIFICATION OF POWER GENERATION COMPANIES. Prohibits a person from generating electricity for sale, unless the person is registered. Authorizes a person to register as a power generation company by filing certain information for certification. Requires a power generation company to comply with the independent organization's reliability standards, and may register anytime after September 1, 2000.

Sec. 39.352. CERTIFICATION OF RETAIL ELECTRIC PROVIDERS. Prohibits a person without PUC certification from providing retail electric service in customer choice areas. Requires the PUC to issue a person who demonstrates certain abilities a provider's certificate. Requires a person applying for certification to comply with certain protections, requirements, and guidelines. Requires the PUC to consider the nature of the retail transactions and customer type, in determine whether the requirements are met. Authorizes a retail electric provider to apply for certification anytime after September 1, 2000. Requires the PUC to use any information required in this section in a manner that ensures the confidentiality of competitively sensitive information.

Sec. 39.353. REGISTRATION OF AGGREGATORS. Prohibits a non-certificated person from providing aggregation services. Defines "aggregator." Prohibits an aggregator from selling or taking title to electricity. Provides that retail electric providers are not aggregators. Requires a person registering under this section 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. Authorizes an aggregator to register anytime after September 1, 2000.

Sec. 39.354. REGISTRATION OF MUNICIPAL AGGREGATORS. Prohibits a non-registered municipal aggregator from providing aggregation services. Defines "municipal aggregator." Authorizes a municipal aggregator to register anytime after September 1, 2000.

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 an aggregator's registration 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 TEA to determine and to notify the PUC of the amounts necessary to compensate school districts for lost revenue resulting from the property wealth reductions. Requires the amounts necessary to compensate districts to be the sum of certain funding and revenue. Provides that the amounts determined by the comptroller and the TEA are final and may not be appealed. Requires the PUC to transfer the appropriate amount from the system benefit fund to the foundation school fund. Provides that amounts transferred from the system benefit fund for this section are appropriated for the support of the foundation school program and are available, in addition to any other General Appropriations Act funds, to finance actions under Section 41.002(b) or 42.252(e). Requires the TEA to compensate school districts for losses incurred under Subsection (c), with the transferred money. Authorizes the comptroller and the commissioner of education to adopt rules necessary to implement this section. Provides that this section is effective through the 2006-2007 school year, but expires August 31, 2007.

Sec. 39.602. CUSTOMER EDUCATION. Requires the PUC to develop and implement an educational program, prior to January 1, 2000, to inform customers of changes resulting from opening the retail electric market. Requires the education program to be neutral, nonpromotional, providing the information necessary to make an informed choice. Requires the PUC to consult the Texas Department of Housing and Community Affairs (TDHCA) and customers of providers of retail electric services, in order to plan and implement this program. Authorizes the PUC to enter into contracts to carry out the customer education program. Requires the PUC to report on the status of the program to the legislature by December 1, 2001. Requires the PUC to conduct ongoing customer education after the onset of customer choice, including providing information concerning specific retail electric providers and instances and complaints against the providers.

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 50 cents per MWh. Requires the system benefit fund to provide funding for certain program and costs. Defines a "low-income electric customer."

Sec. 39.604. GOAL FOR RENEWAL ELECTRICITY. Sets forth the intent of the legislature regarding renewable energy technologies, which shall 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 for each retail electric provider, municipally owned utility, and electric cooperative to come from renewal energy technologies, beginning January 1, 2004. Requires the PUC to establish a credits trading program

for renewable energy available to a retail electric provider, municipally owned utility, or electric cooperative which does not satisfy the renewable energy requirements. Defines “renewable energy technology.”

Sec. 39.605. GOAL FOR ENERGY EFFICIENCY. Sets forth the intent of the legislature regarding energy efficiency.

Sec. 39.606. DISPLACED WORKERS. Authorizes the PUC to allow the recovery of reasonable employee related transition costs.

Sec. 39.607. LEGISLATIVE OVERSIGHT COMMITTEE. Defines “committee.” Sets forth the composition, terms, duties, and responsibilities for the legislative oversight committee, including a report to certain executive officials.

Sec. 39.608. EFFECT OF SUNSET PROVISION. Provides that the provisions of this title continue in full force in the event the PUC is abolished. Requires the duties and functions of the PUC to be performed by a successor agency designated by the legislature before the PUC’s abolishment, or by the secretary of state in the event of no successor appointment.

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. Prohibits the provisions of Chapter 39 from applying to a river authority operating a steam plant before a certain date, or a corporation authorized by Article 717p, V.T.C.S. Subjects the river authority to certain sections of law. Provides that hydroelectric assets do not include certain assets for purposes of Section 39.051, and that generating assets to a certain corporation shall satisfy the requirements of Section 39.051. Provides that an accommodation shall be made in the code of conduct established under Section 39.157(e) for the provisions of Article 717p, V.T.C.S., and that the PUC shall not prohibit a river authority and other related corporation from sharing or providing to each certain officers, facilities, and duties, without the need for a competitive bid.

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.

Sec. 40.004. JURISDICTION OF THE COMMISSION. Establishes that the PUC has jurisdiction over municipally owned utilities only for certain purposes.

SUBCHAPTER B. MUNICIPALLY OWNED UTILITY CHOICE

Sec. 40.051. GOVERNING BODY DECISION. 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 33D and 33E 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 requirements for the provider of last resort and the default provider of last resort to offer 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. Sets forth exclusive jurisdictions to the municipal governing body or the body's replacement. Prohibits a retail customer, including a customer of an electric cooperative or municipal utility, from avoiding stranded cost recovery charges by switching to another electric 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 certain customers 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 by a certain date with the PUC tariffs implementing open access rules and certain rates. 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. Provides that provisions of this section are cumulative of all other provisions of this chapter, and nothing in this section shall be construed to limit or restrict the application of any provision of this chapter. Requires the municipal power agency to extinguish the agency's indebtedness by sale of the electric facility to one or more purchasers, and to set the objective of selling the debt by September 1, 2000. Requires the agency to provide to the electric utility restructuring legislative oversight committee detailed reasons why the objective was not met by a certain date.

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. Establishes 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(e), and 39.203.

Sec. 41.002. DEFINITIONS. Defines “board of directors,” “rate,” and “stranded investment.”

Sec. 40.103. SECURITIZATION. Authorizes electric cooperatives to adopt and use securitization provisions having the effect of Subchapter 39G, to recover costs up to 100 percent under rules and procedures established by the PUC. Sets forth required criteria and procedures for the rules regarding Subsections (a) and (b).

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

Sec. 40.105. LIMITATION ON MUNICIPAL AUTHORITY. Prohibits a municipality from regulating the rates of electric cooperatives, notwithstanding any other provision of this title. Prohibits this section from prohibiting a municipality from making a lawful charge for the use of public rights-of-way within the municipality.

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. Authorizes an electric cooperative to initiate customer choice pilot project at any time.

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. Prohibits a subsidiary of an electric cooperative from providing electric energy at unregulated prices outside of its parent’s certificated area, unless the electric cooperative offers customer choice inside its certificated area.

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. Prohibits the metering function from being deemed a competitive service for customers of the electric cooperative and may be offered by the electric cooperative as sole provider. Establishes that when a cooperative serves retail customers outside its certificated area, the cooperative becomes subject to PUC jurisdiction regulating the code of conduct 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. Authorizes a customer to 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 certain electric cooperatives to file with the appropriate regulatory agency and within a certain date tariffs implementing the 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.

Sec. 41.061. RETAIL RATE CHANGES BY ELECTRIC COOPERATIVES. Makes this section applicable to retail rates of certain electric cooperatives. Sets forth rates that this section will not apply to. Sets forth conditions when an electric cooperative may change its rates. Authorizes an electric cooperative to implement the proposed rates under certain conditions and for certain durations. Authorizes an electric cooperative via resolution to reconsider and to adjust a rate change without additional notice, under certain conditions. Authorizes rate changes under the circumstances provided to be reasonable. Entitles a customer adversely by rate change to judicial review. Provides venue and time period for the judicial review. Requires the resolution to be considered valid and places the burden of invalidity on the challenger of the resolution. Authorizes a court considering a review decision to consider all relevant factors including cost of providing service. Requires a court finding a violation of rate standards to enter certain orders.

Prohibits the court from ordering a remedy other than what is outlined in Subsection (h). Provides that the rates of a wholesale transmission are not subject to review, except for certain circumstances.

Sec. 41.062. ALLOCATION OF STRANDED INVESTMENT. Requires any competition transition charge to be allocated among retail customer classes based on certain relevant class characteristics. Prohibits a retail customer from avoiding stranded cost recovery charges by switching to another electric cooperative, an electric utility, or a municipally owned utility.

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 shall impair the various agreements between an electric cooperative, a lender, and the holders of bonds issued on behalf of or by the electric cooperative.

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 or federally insured or guaranteed debt.

SECTION 34. 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. Prohibits this subsection from being deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

SECTION 35. 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, provided the governing body shall adopt a resolution regarding the sale, or exchange and the public purpose achieved. Defines “municipally owned utility.”

SECTION 36. Amends Section 402.002(c), Local Government Code, to authorize a certain municipal utility to function by charter, ordinance, or resolution of the governing body of the municipally owned utility.

SECTION 37. Amends Subchapter 551D, Government Code, by adding Section 551.086, as follows:

Sec. 551.086. CERTAIN PUBLIC POWER UTILITIES: COMPETITIVE MATTERS. Provides that the rules provided by this section apply to competitive matters of a public power utility. Defines “public power utility,” “public power utility governing body,” and “competitive matter.” Provides that this chapter does not require a public power utility to conduct an open meeting or take other action on any competitive matter. Requires a public utility, before taking action in a closed meeting, to make a good-faith effort by majority vote to determine the nature of the competitive matter is consistent with Subsection (b)(3). Requires the vote to be made in closed session and recorded in a specific format. Requires the public utility to make a matter public if the majority of the members do not find the matter meets the established criteria. Prohibits the public entity from taking any further action in closed meeting regarding the matter. Provides that this section does not limit the right of a public utility governing body to hold other closed sessions. Requires the notice of the matter to be considered in such a general way as to not compromise the competitive activity of the public utility. Provides that this section applies regardless whether a public utility has adopted customer choice. Provides that nothing in this section precludes the enforcement and remedies of Subchapter G.

SECTION 38. Amends Subchapter C, Government Code, by adding Section 552.131, as follows:

Sec. 552.131. EXCEPTION: PUBLIC POWER UTILITY COMPETITIVE MATTERS. Defines “public power utility,” “public power utility,” “governing body,” and “competitive matter.” Exempts records related to a competitive matter from the requirements of Section 552.021. Specifies certain contents of exempt records. Provides that records related to a competitive matter are not subject to disclosure under this chapter regardless whether the utility has opted for customer choice. Provides that this section does not limit the right of a public utility governing body to withhold certain other information within the scope of other exceptions. Sets forth conditions under which the attorney general may find records to be open to the public in the event an opinion is requested from the attorney general.

SECTION 39. Amends Section 791.011(d), to require an interlocal contract to be authorized by the governing body of each party to the contract, however, if a party to the contract is a municipally owned electric utility, the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,00 without requiring the approval of the governing body.

SECTION 40. 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 and natural gas to the public to engage in hedging contracts and related to security and insurance agreements. Requires the hedging 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 41. Amends Section 52.133, Natural Resources Code, by amending Subsection (a), (c), and (d), to delete a provision referencing the Board for Lease of University Lands, in a requirement that each oil or gas lease covering land leased by the School Land Board (board) for the Board for Lease of University Lands must include a provision granting a royalty in kind. Authorizes the commissioner of the general land office (land commissioner), the owner of the soil under Subchapter F, acting on behalf of or at the direction of the Board for Lease of University Lands, to negotiate contracts necessary to dispose or enhance the portion of the royalty taken in kind, including purchase to secure or guarantee payment. Authorizes the land commissioner, acting on behalf of certain individuals or boards, to executive contracts. Deletes a provision regarding the inapplicability of this section to the Board for Lease of University Lands. Makes conforming changes.

SECTION 42. Amends Section 53.026, Natural Resources Code, to require the land commissioner along with certain others to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale or purchase. Requires the commissioner to negotiate and execute a contract to convert that portion of the royalty taken in kind to other forms of energy, including electricity. Makes conforming changes.

SECTION 43. Amends Section 53.077, Natural Resources Code, by amending Subsection (a) and adding Subsection (b), to authorize the land commissioner and certain others to negotiate a contract to convert that portion of the royalty taken in kind to other forms of energy, including electricity.

SECTION 44. 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.

SECTION 45. Amends Sections 1 and 2, Article 1115a, V.T.C.S., to provide that this article applies only to a home-rule municipality that owns an electric utility system, that by ordinance or charter elects to have the management and control of the system governed by a board of trustees, rather than this article, and that has outstanding obligations 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 46. Amends Subsection (a), Section 151.0101, Tax Code, to redefine “taxable services.”

SECTION 47. Amends Subdivision (1), Section 182.021, Tax Code, to redefine “utility company.”

SECTION 48. Amends Subchapter 182B, Tax Code, by adding Section 182.027, as follows:

Sec. 182.027. NO EXEMPTION. Provides that this subchapter applies to a retail electric provider that is an organizational unit of an electric cooperative organized under Chapter 161, Utilities Code, that is subject to retail competition under Chapter 41, Utilities Code, notwithstanding certain provisions.

SECTION 49. Repealer: Section 12.104, Utilities Code (Duties of General Counsel);

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 50. 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 in accordance with its certificate of public convenience and necessity. Authorizes a certificate to be revoked or modified pursuant to Sections 37.059 and 37.060, Utilities Code.

SECTION 51. 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 52. Requires the PUC to establish rules and procedures for the securitization of stranded costs for river authorities and electric cooperatives, within a certain time period.

SECTION 53. Effective date: September 1, 1999.

SECTION 54. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 11.003, Utilities Code, to add definitions and redefine certain definitions regarding the utility industry.

SECTIONS 3-4, 6-9, 28, 37-38, 40-43, and 46-48.

Adds new SECTIONS.

SECTION 5.

Removes definitions regarding the utility industry.

SECTION 11.

Amends Section 32.053, Utilities Code, by adding Subsection (h), regarding the inapplicability of certain subsections for a corporation created under Article 717p, V.T.C.S.

SECTION 13.

Amends Section 35.004, Utilities Code, by adding a reference to electric cooperatives and areas within ERCOT, and authorizing certain utilities to create an expense for certain treatment costs.

SECTION 27.

Amends Subchapter 37B, Utilities Code, by amending Section 37.060 and adding Section 37.061,

to include electric utility requirements regarding existing service area agreements.

SECTION 31.

Amends Subchapter 38A, Utilities Code, to obligate utilities to comply with operational criteria established by the independent organization.

SECTION 33.

Amends Subtitle 2B, Utilities Code, by adding provisions regarding operations of multiple power regions; redefining definitions, property rights, and pricing schemes for securitization; miscellaneous provisions providing for consumer education of customer choice; goals for energy efficiency; an inclusion of displaced workers in certain utility matters; a legislative oversight committee; a specification on the jurisdiction of the PUC; rulemaking authority for the comptroller; clarifications regarding the PUC's code of conduct; specifications for the exclusive jurisdiction of a municipal governing body; requirements for the issuance of transition bonds; limitations on municipal authority; retail rate changes by electric cooperatives; specific instances for certain public power utilities to disclose or withhold information involving competitive matters; and a repealer regarding certain duties of a general counsel.

Amends Sections 52.133, 53.026, and 53.077, Natural Resources Code, to authorize the general land commissioner to negotiate certain contracts involving state land.