

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the legislature's goals for renewable electric generating capacity.

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

SECTION 1. Section 2305.0322(b)(5), Government Code, is amended to read as follows:

(5) "Renewable energy technology" has the meaning assigned by Section 39.916 [~~39.904(d)~~], Utilities Code.

SECTION 2. Section 36.053(d), Utilities Code, is amended to read as follows:

(d) If the commission issues a certificate of convenience and necessity or if the commission, acting under the authority formerly provided by Section 39.203(e), ordered [~~orders~~] an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under former Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the

extent of the utility's actual use of the facilities.

SECTION 3. Section 37.051(f), Utilities Code, is amended to read as follows:

(f) The commission shall consider the requirements of Subsection (e) to have been met by an electric utility or other person that:

(1) was [~~is~~] selected by the commission as a transmission provider under a plan adopted by the commission under former Section 39.904 [~~not later than September 1, 2009~~]; and

(2) before the certificate is issued, provides to the commission a detailed plan regarding the offices, personnel, and other resources the electric utility or other person will have in this state to ensure provision of continuous and adequate transmission service.

SECTION 4. Section 37.0541, Utilities Code, is amended to read as follows:

Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The commission shall consolidate the proceeding on an application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line with the proceeding on another application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line if it is apparent from the applications or a motion to intervene in either

proceeding that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. ~~[This section does not apply to a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone as part of a plan developed by the commission under Section 39.904(g)(2).]~~

SECTION 5. Sections 37.056(c) and (d), Utilities Code, are amended to read as follows:

(c) The commission shall grant each certificate on a nondiscriminatory basis after considering:

(1) the adequacy of existing service;

(2) the need for additional service;

(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4) other factors, such as:

(A) community values;

(B) recreational and park areas;

(C) historical and aesthetic values;

(D) environmental integrity; and

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted[; ~~and~~

~~[(F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title].~~

(d) The commission by rule shall establish criteria, in addition to the criteria described by Subsection (c), for granting a certificate for a transmission project that serves the ERCOT power region and [7] that is not necessary to meet state or federal reliability standards~~[, and that does not serve a competitive renewable energy zone]~~. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project. The commission shall include with its decision on an application for a certificate to which this subsection applies findings on the criteria.

SECTION 6. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.155, 39.157(e), 39.203, 39.903, ~~[39.904,~~ 39.9051, 39.9052, and 39.914(e), does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e) and [7] 39.203, ~~[and 39.904,~~ however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of

this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 7. Section 39.203(e), Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. ~~[The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a).]~~ In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E). Notwithstanding any other law, including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility

or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION 8. Section 39.402(a), Utilities Code, is amended to read as follows:

(a) Until the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice, the rates of the utility shall be regulated under traditional cost of service regulation and the utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter, Section [~~Sections 39.904 and~~] 39.905, and the provisions relating to the duty to obtain a permit from the Texas Commission on Environmental Quality for an electric generating facility and to reduce emissions from an electric generating facility, shall not apply to that utility. That portion of any commission order entered before September 1, 2001, to comply

with this subchapter shall be null and void.

SECTION 9. Section 39.452(d), Utilities Code, is amended to read as follows:

(d) Until the date on which an electric utility subject to this subchapter implements customer choice:

(1) the provisions of this chapter do not apply to that electric utility, other than this subchapter, Section [~~Sections 39.904 and~~] 39.905, the provisions relating to the duty to obtain a permit from the Texas Commission on Environmental Quality for an electric generating facility and to reduce emissions from an electric generating facility, and the provisions of Subchapter G that pertain to the recovery and securitization of hurricane reconstruction costs authorized by Sections 39.458-39.463; and

(2) the electric utility is not subject to a rate freeze and, subject to the limitation provided by Subsection (b), may file for rate changes under Chapter 36 and for approval of one or more of the rate rider mechanisms authorized by Sections 39.454 and 39.455.

SECTION 10. Section 39.502(b), Utilities Code, is amended to read as follows:

(b) Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter and Section [~~Sections 39.904~~

~~and~~] 39.905, do not apply to that utility.

SECTION 11. Section 39.552(b), Utilities Code, is amended to read as follows:

(b) Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter and Section [~~Sections 39.904 and~~] 39.905, do not apply to that utility.

SECTION 12. Section 39.916(a), Utilities Code, is amended by amending Subdivision (1) and adding Subdivision (4) to read as follows:

(1) "Distributed renewable generation" means electric generation with a capacity of not more than 2,000 kilowatts provided by a renewable energy technology [~~, as defined by Section 39.904,~~] that is installed on a retail electric customer's side of the meter.

(4) "Renewable energy technology" means any technology that relies exclusively on an energy source that is naturally regenerated over a short time and is derived from the sun directly or indirectly or from moving water or other natural movements or mechanisms of the environment. The term includes a technology that relies on energy derived from the sun directly, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. The term

does not include a technology that relies on an energy resource derived from a fossil fuel, a waste product from a fossil fuel, or a waste product from an inorganic source.

SECTION 13. Section 40.001(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, and 39.903, [~~and 39.904,~~] this chapter governs the transition to and the establishment of a fully competitive electric power industry for municipally owned utilities. With respect to the regulation of municipally owned utilities, this chapter controls over any other provision of this title, except for sections in which the term "municipally owned utility" is specifically used.

SECTION 14. Section 40.004, Utilities Code, is amended to read as follows:

Sec. 40.004. JURISDICTION OF COMMISSION. Except as specifically otherwise provided in this chapter, the commission has jurisdiction over municipally owned utilities only for the following purposes:

(1) to regulate wholesale transmission rates and service, including terms of access, to the extent provided by Subchapter A, Chapter 35;

(2) to regulate certification of retail service areas

to the extent provided by Chapter 37;

(3) to regulate rates on appeal under Subchapters D and E, Chapter 33, subject to Section 40.051(c);

(4) to establish a code of conduct as provided by Section 39.157(e) applicable to anticompetitive activities and to affiliate activities limited to structurally unbundled affiliates of municipally owned utilities, subject to Section 40.054;

(5) to establish terms and conditions for open access to transmission and distribution facilities for municipally owned utilities providing customer choice, as provided by Section 39.203;

(6) to require collection of the nonbypassable fee established under Section 39.903(b) and to administer the ~~[renewable energy credits program under Section 39.904(b) and the]~~ natural gas energy credits program under Section 39.9044(b); and

(7) to require reports of municipally owned utility operations only to the extent necessary to:

(A) enable the commission to determine the aggregate load and energy requirements of the state and the resources available to serve that load; or

(B) enable the commission to determine information relating to market power as provided by Section 39.155.

SECTION 15. Section 41.001, Utilities Code, is amended to

read as follows:

Sec. 41.001. APPLICABLE LAW. Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, and 39.903, [~~and 39.904,~~] this chapter governs the transition to and the establishment of a fully competitive electric power industry for electric cooperatives. Regarding the regulation of electric cooperatives, this chapter shall control over any other provision of this title, except for sections in which the term "electric cooperative" is specifically used.

SECTION 16. Sections 39.904 and 39.916(g), Utilities Code, are repealed.

SECTION 17. This Act takes effect September 1, 2023.