

Chapter 1226

1 AN ACT

2 relating to the delay of retail electric competition in the areas of
3 the state covered by the Southeastern Electric Reliability Council
4 and to the recovery of certain transmission costs by electric
5 utilities in those areas and to the provision of power during a
6 natural disaster or declared emergency.

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

8 SECTION 1. Subsection (a), Section 36.209, Utilities Code,
9 is amended to read as follows:

10 (a) This section applies only to an electric utility that
11 operates solely outside of ERCOT in areas of this state included in
12 the Southeastern Electric Reliability Council, the Southwest Power
13 Pool, or the Western Electricity Coordinating Council and that owns
14 or operates transmission facilities.

15 SECTION 2. Subchapter D, Chapter 38, Utilities Code, is
16 amended by adding Section 38.073 to read as follows:

17 Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY.

18 (a) On a declaration of a natural disaster or other emergency by
19 the governor, the commission may require an electric utility,
20 municipally owned utility, electric cooperative, qualifying
21 facility, power generation company, exempt wholesale generator, or
22 power marketer to sell electricity to an electric utility,
23 municipally owned utility, or electric cooperative that is unable
24 to supply power to meet customer demand due to the natural disaster

1 or other emergency. Any plant, property, equipment, or other items
2 used to receive or deliver electricity under this subsection are
3 used and useful in delivering service to the public, and the
4 commission shall allow timely recovery for the costs of those
5 items. The commission may order an electric utility, municipally
6 owned utility, or electric cooperative to provide interconnection
7 service to another electric utility, municipally owned utility, or
8 electric cooperative to facilitate a sale of electricity under this
9 section. If the commission does not order the sale of electricity
10 during a declared emergency as described by this subsection, the
11 commission shall promptly submit to the legislature a report
12 describing the reasons why the commission did not make that order.

13 (b) If an entity receives electricity under Subsection (a),
14 the receiving entity shall reimburse the supplying entity for the
15 actual cost of providing the electricity. The entity receiving the
16 electricity is responsible for any transmission and distribution
17 service charges specifically incurred in relation to providing the
18 electricity.

19 (c) An entity that pays for electricity received under
20 Subsection (b) and that is regulated by the commission may fully
21 recover the cost of the electricity in a timely manner by:

22 (1) including the cost in the entity's fuel cost under
23 Section 36.203; or

24 (2) notwithstanding Section 36.201, imposing a
25 different surcharge.

26 SECTION 3. Section 39.452, Utilities Code, is amended by
27 amending Subsection (b) and adding Subsections (i) and (j) to read

1 as follows:

2 (b) An electric [~~Notwithstanding Subsection (a), except for~~
3 ~~adjustments authorized by Sections 36.203, 39.454, 39.455, and~~
4 ~~39.456, and except for proceedings and cost recovery mechanisms~~
5 ~~authorized by Sections 39.458-39.463, a person may not file a~~
6 ~~proceeding to change, alter, or revoke any rate offered or charged~~
7 ~~by an electric utility subject to this subchapter before June 30,~~
8 ~~2007, with an effective date no earlier than June 30, 2008. As part~~
9 ~~of a Subchapter C, Chapter 36, rate proceeding, the]~~ utility
10 subject to this subchapter shall propose a competitive generation
11 tariff to allow eligible customers the ability to contract for
12 competitive generation. The commission shall approve, reject, or
13 modify the proposed tariff not later than September 1, 2010. The
14 tariffs subject to this subsection may not be considered to offer a
15 discounted rate or rates under Section 36.007, and the utility's
16 rates shall be set, in the proceeding in which the tariff is
17 adopted, to recover any costs unrecovered as a result of the
18 implementation of the tariff. The commission shall ensure that a
19 competitive generation tariff shall not be implemented in a manner
20 that harms the sustainability or competitiveness of manufacturers
21 that choose not to take advantage of competitive generation.
22 Pursuant to the competitive generation tariff, an electric utility
23 subject to this subsection shall purchase competitive generation
24 service, selected by the customer, and provide the generation at
25 retail to the customer. An electric utility subject to this
26 subsection shall provide and price retail transmission service,
27 including necessary ancillary services, to retail customers who

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S.B. No. 1492

1 choose to take advantage of the competitive generation tariff at a
2 rate that is unbundled from the utility's cost of service. Such
3 customers shall not be considered wholesale transmission
4 customers. Notwithstanding any other provision of this chapter,
5 the commission may not issue a decision relating to a competitive
6 generation tariff that is contrary to an applicable decision, rule,
7 or policy statement of a federal regulatory agency having
8 jurisdiction.

9 (i) Notwithstanding any other provision of this chapter, if
10 the commission has not approved the transition to competition plan
11 under this section before January 1, 2009, an electric utility
12 subject to this subchapter shall cease all activities relating to
13 the transition to competition under this section. The commission
14 may, on its own motion or the motion of any affected person,
15 initiate a proceeding under Section 39.152 to certify a power
16 region to which the utility belongs as a qualified power region when
17 the conditions supporting such a proceeding exist. The commission
18 may not approve a plan under Subsection (g) until the expiration of
19 four years from the time that the commission certifies a power
20 region under Subsection (f). If after the expiration of four years
21 from the time the commission certifies a power region under
22 Subsection (f), and after notice and a hearing, the commission
23 determines consistent with the study required by Section 5, S.B.
24 No. 1492, Acts of the 81st Legislature, Regular Session, 2009, that
25 the electric utility cannot comply with Section 38.073, it shall
26 consider approving a plan under Subsection (g).

27 (j) Notwithstanding any other provision of this subtitle,

*J. Lee
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S.B. No. 1492

1 in awarding a certificate of convenience and necessity or allowing
2 cost recovery for purchased power by an electric utility subject to
3 this section, the commission shall ensure in its determination that
4 the provisions of Sections 37.056(c)(4)(D) and (E) are met and that
5 the generating facility or the purchased power agreement satisfies
6 the identified reliability needs of the utility.

7 SECTION 4. Not later than the 90th day after the effective
8 date of this Act, an electric utility operating in the Southeastern
9 Electric Reliability Council that is subject to traditional cost of
10 service rate regulation and on the effective date of this Act has a
11 transition to competition plan on file with the Public Utility
12 Commission of Texas shall:

- 13 (1) withdraw the plan from the commission; and
14 (2) cease all activities related to the plan.

15 SECTION 5. (a) Not later than November 1, 2009, the Public
16 Utility Commission of Texas shall conduct and complete a study to
17 evaluate:

18 (1) the locations in this state that are most likely to
19 experience a natural disaster or other emergency;

20 (2) the ability of each entity described by Subsection
21 (a), Section 38.073, Utilities Code, as added by this Act, to comply
22 with that section in the event of a natural disaster or other
23 emergency; and

24 (3) any steps an entity described by Subsection (a),
25 Section 38.073, Utilities Code, as added by this Act, should take to
26 prepare to comply with that section.

27 (b) An entity described by Subsection (a), Section 38.073,

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S.B. No. 1492

1 Utilities Code, as added by this Act, shall comply with any order
2 issued by the Public Utility Commission of Texas under that
3 subsection while the study required by Subsection (a) of this
4 section is conducted.

5 (c) The Public Utility Commission of Texas shall prepare a
6 report based on the study conducted under Subsection (a) of this
7 section. The report must include any recommendations the
8 commission considers advisable in relation to the implementation of
9 and compliance with Section 38.073, Utilities Code, as added by
10 this Act. The commission may include the report in the report
11 required by Section 31.003, Utilities Code.

12 SECTION 6. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2009.

S.B. No. 1492

David Newkum
President of the Senate

Jim Strawn
Speaker of the House

I hereby certify that S.B. No. 1492 passed the Senate on April 28, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 30, 2009, by the following vote: Yeas 31, Nays 0.

Patry Spaw
Secretary of the Senate

I hereby certify that S.B. No. 1492 passed the House, with amendment, on May 27, 2009, by the following vote: Yeas 143, Nays 5, one present not voting.

Robert Haney
Chief Clerk of the House

Approved:

19 JUN '09

Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2PM O'CLOCK
JUN 19 2009

Coley Hunter III