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

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

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

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

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

Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY.
(a) On a declaration of a natural disaster or other emergency by
the governor, the commission may require an electric utility,
municipally owned utility, electric cooperative, qualifying
facility, power generation company, exempt wholesale generator, or
power marketer to sell electricity to an electric utility,
municipally owned utility, or electric cooperative that is unable
to supply power to meet customer demand due to the natural disaster
or other emergency. Any plant, property, equipment, or other items
used to receive or deliver electricity under this subsection are
used and useful in delivering service to the public, and the
commission shall allow timely recovery for the costs of those
items. The commission may order an electric utility, municipally
owned utility, or electric cooperative to provide interconnection
service to another electric utility, municipally owned utility, or
electric cooperative to facilitate a sale of electricity under this
section. If the commission does not order the sale of electricity
during a declared emergency as described by this subsection, the
commission shall promptly submit to the legislature a report
describing the reasons why the commission did not make that order.

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

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

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

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

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

(b) An electric [Notwithstanding Subsection (a), except for adjustments authorized by Sections 36.203, 39.454, 39.455, and 39.456, and except for proceedings and cost recovery mechanisms authorized by Sections 39.458-39.463, a person may not file a proceeding to change, alter, or revoke any rate offered or charged by an electric utility subject to this subchapter before June 30, 2007, with an effective date no earlier than June 30, 2008. As part of a Subchapter C, Chapter 36, rate proceeding, the utility subject to this subchapter shall propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation. The commission shall approve, reject, or modify the proposed tariff not later than September 1, 2010. The tariffs subject to this subsection may not be considered to offer a discounted rate or rates under Section 36.007, and the utility's rates shall be set, in the proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the implementation of the tariff. The commission shall ensure that a competitive generation tariff shall not be implemented in a manner that harms the sustainability or competitiveness of manufacturers that choose not to take advantage of competitive generation. Pursuant to the competitive generation tariff, an electric utility subject to this subsection shall purchase competitive generation service, selected by the customer, and provide the generation at retail to the customer. An electric utility subject to this subsection shall provide and price retail transmission service, including necessary ancillary services, to retail customers who
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choose to take advantage of the competitive generation tariff at a
rate that is unbundled from the utility's cost of service. Such
customers shall not be considered wholesale transmission
customers. Notwithstanding any other provision of this chapter,
the commission may not issue a decision relating to a competitive
generation tariff that is contrary to an applicable decision, rule,
or policy statement of a federal regulatory agency having
jurisdiction.

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

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

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

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

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

(1) the locations in this state that are most likely to
experience a natural disaster or other emergency;
(2) the ability of each entity described by Subsection
Section 38.073, Utilities Code, as added by this Act, to comply
with that section in the event of a natural disaster or other
emergency; and
(3) any steps an entity described by Subsection (a),
Section 38.073, Utilities Code, as added by this Act, should take to
prepare to comply with that section.

(b) An entity described by Subsection (a), Section 38.073,
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Utilities Code, as added by this Act, shall comply with any order issued by the Public Utility Commission of Texas under that subsection while the study required by Subsection (a) of this section is conducted.

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

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

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.

Joe Straus
Speaker of the House

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.

Davey Smith
Secretary of the Senate

Robert Hefner
Chief Clerk of the House

Approved: 19 Jun '09

Rick Perry
Governor

Filed in the Office of the Secretary of State

Colby Shuster, III

Jun 19 2009