

Such an amendment would remove any ambiguity regarding the purposes of the fund and the Commission's duty and authority to set the nonbypassable fees.

Sec. 39.903. SYSTEM BENEFIT FUND. (As amended by HB 3318)

(a) The system benefit fund is an account in the general revenue fund. Money in the account may be appropriated only for the purposes provided by this section ~~or other law~~. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund.

(b)-(c) No change

(d) The commission shall annually review and approve system benefit fund accounts, projected revenue requirements, and proposed nonbypassable fees. **The commission shall set the proposed nonbypassable fees at an amount that is sufficient to ensure that funding and cash flow are available for the purposes for which funds have been appropriated.** The commission shall report to the electric utility restructuring legislative oversight committee if the system benefit fund fee is insufficient to fund the purposes set forth in Subsection (e) to the extent required by this section

(e)-(l) No change

g. Electric System Security

Current provisions of law give the Commission authority with respect to establishing reliability standards, but they do not directly address the grid security issues related to terrorism or other possible attacks on the system. It would be appropriate to amend PURA to address the security of the electric system by authorizing the Commission to:

- prescribe and enforce grid security and emergency management rules with respect to all market participants; and
- suspend market rules in an energy emergency declared by the Governor.

Current law directs the Commission to implement service quality and reliability standards for the delivery of energy by investor-owned utilities, and requires municipal utilities, cooperatives, REPs, power marketers, and PGCs to follow the reliability rules established by an independent organization. The Commission also has oversight authority over an independent organization. The existing statutory authority should be modified to give the Commission explicit and direct authority to prescribe and enforce grid security and emergency management rules with respect to all market participants.

There is nothing in current law that expressly allows the suspension of market rules in an emergency. Such authority could prevent significant economic harm to customers and market participants in an emergency situation. The existing statutory authority should be modified to give the Commission explicit authority to suspend market rules after a catastrophic event, as declared by the Governor, that disrupts electricity markets. Legislation should also authorize the Commission to adopt streamlined procedures to carry out this responsibility. Because of the likelihood that the Commission would have to act quickly to assess the extent of an emergency and suspend market rules, the

Commission should have the authority to make such a decision outside of the context of a contested case or rulemaking proceeding.

Sec. 38.001. GENERAL STANDARD.

An electric utility, municipally owned utility, power generation company, independent organization, and an electric cooperative shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

Sec. 38.005. ELECTRIC SERVICE RELIABILITY, MEASURES SECURITY, AND EMERGENCY RESPONSE.

(a) The commission shall **adopt and enforce rules as necessary or appropriate to ensure service quality and reliability** ~~implement service quality and reliability standards~~ relating to the delivery of electricity to ~~retail~~ customers by electric utilities and transmission distribution utilities. The commission by rule shall develop reliability standards, including:

- (1) the system-average interruption frequency index (SAIFI);
- (2) the system-average interruption duration index (SAIDI);
- (3) achievement of average response time for customer service requests or inquiries; or
- (4) other standards that the commission finds reasonable and appropriate.

(b)-(f) No change

(g) A retail electric provider, municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, independent organization, or power generation company and any person scheduling power or operating electrical facilities on their behalf shall observe all reliability, security, and emergency management rules and orders established by the commission. The commission may take the following actions for failure to comply with this subsection: suspend, revoke, or amend a retail electric provider's certificate; suspend or revoke a power marketer's or power generation company's registration; and, for any entity subject to this subsection, obtain enforcement and penalties pursuant to Chapter 15, Subchapter B. This section does not authorize the commission to establish or enforce quality standards for local distribution service provided by a municipally owned utility or an electric cooperative or require reporting of local distribution service quality by a municipally owned utility or an electric cooperative.

Sec. 39.103. COMMISSION AUTHORITY TO DELAY OR SUSPEND COMPETITION AND SET NEW RATES.

(a) If the commission determines under Section 39.104 that a power region is unable to offer fair competition and reliable service to all retail customer classes on January 1, 2002, the commission shall delay customer choice for the power region and may on or after January 1, 2002, establish new rates for all electric utilities in the power region as provided by Chapter 36.

(b) **In the event of a catastrophic event that results in an energy emergency that disrupts electricity markets, as declared by the Governor, the commission may suspend competitive wholesale and retail market rules and set rates. The commission shall adopt rules that provide for a streamlined procedure to exercise its authority under this subsection, including provisions for providing notice to affected entities, but is not required to conduct a contested case to exercise its authority. If the commission determines in a contested case that an entity violated a commission order issued pursuant to this subsection, the commission may order the entity to refund any**

compensation obtained as a result of the violation and may impose administrative penalties and suspend, revoke, or amend the entity's commission-issued license pursuant to Subsection 38.005(g).

Additionally, current law (Chapter 551 of the Government Code) does not provide an exception to the requirement that the Commission meet in open meeting to discuss the security of the electrical network that provides service to customers in the state. While not all deliberations by the Commission related to grid security would necessarily need to be discussed in closed meeting, certain deliberations relating to plans to protect the electric network; plans to prevent, disrupt, or minimize the impact of an attack on the electric network; investigation of threats to the electric network; assessments of the vulnerability of the electric network; and plans for restoring service if electric facilities are damaged, should be considered in closed meeting. Therefore, the Commission requests that the Legislature adopt an exception to the Open Meetings Act that would allow the Commission to meet in closed meeting to deliberate matters relating to the security of the electrical network if needed.

The Legislature should also consider providing an exception to the Public Information Act (Chapter 552 of the Government Code) that would allow the Commission to except from public disclosure documents that relate to plans to protect the electric network, plans to prevent, disrupt, or minimize the impact of an attack on the electric network, investigation of threats to the electric network, assessments of the vulnerability of the electric network, and plans for restoring service if electric facilities are damaged.

h. Authority of the Commission with Respect to Qualified Scheduling Entities, Municipally Owned Utilities, and Electric Cooperatives

PURA §39.151(j) requires REPs, municipally owned utilities, electric cooperatives, power marketers, TDUs, and PGCs to observe all policies, rules, guidelines, and procedures established by ERCOT, and provides for revocation, suspension, or amendments of certain certificates or registrations or the imposition of administrative penalties for violations of that requirement.

Even though the Commission does not certificate or register municipally owned utilities or electric cooperatives, it believes that it necessarily has authority to assess administrative penalties on these entities for a failure to comply with ERCOT rules. However, while Chapter 15 of PURA permits the Commission to impose administrative penalties on “persons” who violate PURA, the definition of “person” in PURA §11.003(14) does not include a municipally owned utility or an electric cooperative, which could potentially lead these entities to argue that the Commission cannot assess administrative penalties for violations of ERCOT rules. Clarification of PURA to make it clear that the Commission can assess penalties on all market participants, including municipally owned utilities and electric cooperatives, would remove this potential ambiguity.

The Commission also believes that it necessarily has implied authority to order refunds or disgorgement of improper revenues obtained through a failure to follow ERCOT rules. However, it would be preferable to eliminate any ambiguity by stating this authority explicitly in PURA §39.151.

Additionally, the ERCOT primary rules (ERCOT Protocols), as initially approved by the Commission, established QSEs as the primary entity that interfaces with ERCOT with respect to the scheduling of power and participating in ERCOT-operated markets. The Commission believes that, because it has authority over the ERCOT Protocols, it necessarily has authority over QSEs. Clarification of this would prevent claims that the Commission does not have such authority.

Lastly, although PURA §39.151(j) requires municipally owned utilities and electric cooperatives to comply with ERCOT rules, PURA §39.002, which outlines the applicability of Chapter 39, does not include PURA §39.151(j) in the list of provisions that are applicable to municipally owned utilities and electric cooperatives. Additionally, PURA §39.002 does not include PURA §39.157(a), which provides the Commission with authority to remedy market power abuses. Corresponding references are also not included in PURA §§40.001 and 41.001. The Commission believes that all market participants, including municipally owned utilities and electric cooperatives, should be prohibited from abusing market power, and that the Commission should have appropriate tools available to enforce that prohibition.

Sec. 15.020. DEFINITIONS.

In this subchapter, the term “person” includes a municipally owned utility and an electric cooperative with respect to violations of Sections 39.151(j) and 39.157(a).

Sec. 39.002. APPLICABILITY.

This chapter, other than Sections **39.151(j)**, 39.155, **39.157(a)**, 39.157(e), 39.203, 39.903, and 39.904, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 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.

Sec. 39.151. ESSENTIAL ORGANIZATIONS.

(a)-(i) No change

(j) A retail electric provider, municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, ~~or~~ power generation company, **or any other entity scheduling power on their behalf or any entity who participates in markets operated by the independent system operator in ERCOT**, shall observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT. Failure to comply with this subsection may result in the revocation, suspension, or amendment of a certificate as provided by Section 39.356 or in the imposition of an administrative penalty ~~as provided by Section 39.357~~ **on any entity subject to this subsection. The commission may also require refunds or disgorgement of revenues that result from a failure to comply with this subsection.**

(k)-(m) No change

Sec. 40.001. APPLICABLE LAW.

(a) Notwithstanding any other provision of law, except Sections 15.020, 39.151(j), 39.155, 39.157(a), 39.157(e), 39.203, 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.

(b)-(d) No change

Sec. 41.001. APPLICABLE LAW.

Notwithstanding any other provision of law, except Sections 15.020, 39.151(j), 39.155, 39.157(a), 39.157(e), 39.203, 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.

i. Repeal of Goal for Natural Gas

The price of electricity in the wholesale market within ERCOT closely correlates to natural gas prices, and as natural gas prices increased from 2002 through 2005, wholesale and retail electricity prices also increased. Natural gas has gone from being an abundant fuel that the Legislature promoted as a fuel for electric generation to a scarce, high-priced fuel, and its promotion as a generation fuel is probably no longer appropriate.

Hurricanes Katrina and Rita caused significant damage to gas-production facilities in the Gulf of Mexico and to onshore processing and pipeline infrastructure, resulting in dramatic increases in natural gas prices. These hurricanes also revealed that the natural gas industry is vulnerable to supply interruptions from strong storms in the Gulf of Mexico. Current high prices for natural gas are stimulating exploration in many areas of the country, including Texas, and are stimulating investment in terminals that will permit the import of liquefied natural gas (LNG) into the United States. Despite these efforts, natural gas is not the highly desirable fuel for electric generation that it was in 1999, when the retail competition legislation was enacted. Companies that are developing new generation projects in Texas are more interested in wind power and coal than in natural gas, because of the price and availability of these energy sources. According to ERCOT, of the planned generation projects that are under development, 30% would be coal-fired, 23% would be natural gas-fired, 7% would be nuclear, and 37% would be wind-powered.

The Commission believes that it is appropriate for the Legislature to facilitate the diversification of the generation fuels that will be used to meet Texas' future energy needs by repealing the provisions of PURA that promoted natural gas as an electric generation fuel. To accomplish this, PURA §§39.9044 and 39.9048 should be repealed. These sections are set out below.

Sec. 39.9044. GOAL FOR NATURAL GAS.

(a) It is the intent of the legislature that 50 percent of the megawatts of generating capacity installed in this state after January 1, 2000, use natural gas. To the extent permitted by law, the commission shall establish a program to encourage utilities to comply with this section by using natural gas produced in this state as the preferential fuel. This section does not apply to generating capacity for renewable energy technologies.

(b) The commission shall establish a natural gas energy credits trading program. Any power generation company, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using natural gas technologies shall purchase sufficient natural gas energy credits to satisfy the requirements by holding natural gas energy credits in lieu of capacity from natural gas energy technologies.

(c) Not later than January 1, 2000, the commission shall adopt rules necessary to administer and enforce this section and to perform any necessary studies in cooperation with the Railroad Commission of Texas. At a minimum, the rules shall:

(1) establish the minimum annual natural gas generation requirement for each power generation company, municipally owned utility, and electric cooperative operating in this state in a manner reasonably calculated by the commission to produce, on a statewide basis, compliance with the requirement prescribed by Subsection (a); and

(2) specify reasonable performance standards that all natural gas capacity additions must meet to count against the requirement prescribed by Subsection (a) and that:

(A) are designed and operated so as to maximize the energy output from the capacity additions in accordance with then-current industry standards and best industry standards; and

(B) encourage the development, construction, and operation of new natural gas energy projects at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial natural gas resources.

(d) The commission, with the assistance of the Railroad Commission of Texas, shall adopt rules allowing and encouraging retail electric providers and municipally owned utilities and electric cooperatives that have adopted customer choice to market electricity generated using natural gas produced in this state as environmentally beneficial. The rules shall allow a provider, municipally owned utility, or cooperative to:

(1) emphasize that natural gas produced in this state is the cleanest-burning fossil fuel; and

(2) label the electricity generated using natural gas produced in this state as "green" electricity.

(e) In this section, "natural gas technology" means any technology that exclusively relies on natural gas as a primary fuel source.

Sec. 39.9048. NATURAL GAS FUEL.

It is the intent of the legislature that:

(1) the cost of generating electricity remain as low as possible; and

(2) the state establish and publicize a program to keep the costs of fuel, such as natural gas, used for generating electricity low.

3. Potential Actions if Electric Competition is Not Producing Adequate Benefits for Residential Electric Customers

Despite the fact that residential customers have been able to achieve significant savings by switching to a rate plan other than the price to beat, many residential customers have not done so. As a result, these customers have paid a rate that is higher than most of the competitive rates being offered by competitive REPs. With the end of the price to beat on January 1, 2007, some customers are paying rates that are significantly higher than rates available in the market. If their past behavior is useful in predicting their future behavior, many of them can be expected to continue paying rates that are higher than rates available in the market.

If the Legislature determines that retail competition is not producing adequate benefits to the residential customer class, the Commission recommends that the Legislature consider the following options, which could provide additional benefits to residential customers.

a. Mandate the Disclosure of the Names of Residential Customers Served by the AREP Under the PTB at the End of the PTB Period

Sec. 39.101. CUSTOMER SAFEGUARDS.

(a) Before customer choice begins on January 1, 2002, the commission shall ensure that retail customer protections are established that entitle a customer:

(1) to safe, reliable, and reasonably priced electricity, including protection against service disconnections in an extreme weather emergency as provided by Subsection (h) or in cases of medical emergency or nonpayment for unrelated services;

(2) to privacy of customer consumption and credit information, **but the release of information identifying residential customers that were served by the affiliated retail electric provider at the end of the price to beat period to competitive retail electric providers shall not be deemed as a violation of customer privacy;**

(3) to bills presented in a clear format and in language readily understandable by customers;

(4) to the option to have all electric services on a single bill, except in those instances where multiple bills are allowed under Chapters 40 and 41;

(5) to protection from discrimination on the basis of race, color, sex, nationality, religion, or marital status;

(6) to accuracy of metering and billing;

(7) to information in English and Spanish and any other language as necessary concerning rates, key terms and conditions, in a standard format that will permit comparisons between price and service offerings, and the environmental impact of certain production facilities;

(8) to information in English and Spanish and any other language as necessary concerning low-income assistance programs and deferred payment plans; and

(9) to other information or protections necessary to ensure high-quality service to customers.

(b)-(h) No change

Sec. 39.202. PRICE TO BEAT.

(a)-(p) No change

(q) After the expiration of the price to beat period, on a schedule to be determined by the commission, the affiliated retail electric providers shall release information to the competitive retail electric providers that identifies the residential customers receiving retail electric service from the affiliated retail electric providers.

b. Require Residential Customers to Select a REP After the End of the PTB

The Commission could require the selection of a REP by residential customers who were receiving price to beat service from an affiliated REP at the end of 2006. The Commission envisions using a balloting process for selecting a competitive REP, but the language recommended below gives the Commission some flexibility in conducting such a program, if the Legislature concludes that such a program is appropriate.

Sec. 39.101. CUSTOMER SAFEGUARDS.

(a) No change

(b) A customer is entitled:

(1) to be informed about rights and opportunities in the transition to a competitive electric industry;

(2) to choose the customer's retail electric provider consistent with this chapter, to have that choice honored, and to assume that the customer's chosen provider will not be changed without the customer's informed consent. **Nothing in this provision shall prevent a residential customer receiving service from an affiliated retail electric provider under a month-to-month service plan from being transferred to a competitive retail electric provider after the end of the price to beat period in any commission authorized reallocation plan;**

(3) to have access to providers of energy efficiency services, to on-site distributed generation, and to providers of energy generated by renewable energy resources;

(4) to be served by a provider of last resort that offers a commission-approved standard service package;

(5) to receive sufficient information to make an informed choice of service provider;

(6) to be protected from unfair, misleading, or deceptive practices, including protection from being billed for services that were not authorized or provided; and

(7) to have an impartial and prompt resolution of disputes with its chosen retail electric provider and transmission and distribution utility.

(c)-(h) No change

claim that the information is competitively sensitive information or is exempt from disclosure under Chapter 552 of the Government Code. On its own motion or in response to a request for disclosure of the information, the commission may review such claims in a commission proceeding. If the commission determines that such information is not competitively sensitive information; is not subject to an exemption under Chapter 552 of the Government Code; and that release of the information is in the public interest, the commission may, by rule or order, declassify the information and make it publicly available. The commission may adopt rules establishing the types of information that qualify as competitively sensitive information under this Subtitle.

c. Implementation of Retail Competition in Non-ERCOT Areas

Chapter 39 of PURA allowed the Commission to delay retail competition in areas that were not able to offer fair competition and reliable service to all retail customer classes on January 1, 2002, but some provisions of PURA establish dates for events that are related to the introduction of retail competition that are based on a January 2002 date for initiating competition. The specificity of these dates causes confusion regarding the Commission's authority to set dates for events in areas where competition has been delayed. The Commission's authority should be clarified to ensure that it may adjust the dates for other important events, where it establishes a different date for the beginning of retail competition.

While most of Texas has retail competition because it is located within ERCOT, the remaining areas of the state are in three other power regions in which retail competition has been delayed, either by action of the Commission or by legislation. The area served by EPE is located in WECC. The service areas of SPS and SWEPCO, as well as a portion of the service area of AEP TNC, are located in SPP. Finally, the EGSI service area is located in the Southeastern Electric Reliability Council (SERC).

Chapter 39 of PURA envisioned that all areas of Texas would be able to begin retail customer choice beginning January 1, 2002, and retail customer choice began as scheduled in ERCOT. PURA §39.103 authorized the Commission to delay customer choice in a power region if the Commission determined that the power region was not able to offer fair competition and reliable service to all retail customer classes on January 1, 2002. Because the areas in the remaining power regions have not been able to meet the required standard, the implementation of retail competition has been delayed in those areas.

In November 2004, the Commission adopted PUC SUBST. R. 25.421, which delays the implementation of retail customer choice in the EPE service area until the completion of a five-stage process designed to develop the necessary conditions for ensuring fair competition and reliable service for all customer classes.⁹⁹ In September 2006, the Commission adopted PUC SUBST. R. 25.422, which established a similar four-stage process for initiation of retail competition in the SWEPCO service area and the SPP

⁹⁹ Project No. 28971, *loc. cit.*

APPENDIX: ACRONYMS

AEP	American Electric Power
AEP TCC	AEP Texas Central Company
AEP TNC	AEP Texas North Company
AEP-TNC-SPP	Southwest Power Pool portion of the AEP Texas North Company service area
AREP	affiliated retail electric provider
BPL	Broadband over Powerline
Cap Rock	Cap Rock Energy Corporation
CCN	Certificate of Convenience and Necessity
CenterPoint	CenterPoint Energy Houston Electric, LLC
CPL	CPL Retail Energy
CREP	competitive retail electric provider
CREZ	competitive renewable energy zone
CTC	competition transition charge
EGSI	Entergy Gulf States, Inc.
EIS	Energy Imbalance Services
EPAct	federal Energy Policy Act of 2005
EPE	El Paso Electric Company
ERCOT	Electric Reliability Council of Texas
ERO	electric reliability organization
FERC	Federal Energy Regulatory Commission
ICE	Intercontinental Exchange
IMM	Independent Market Monitor
IPP	independent power producer
kWh	kilowatt-hour
LITE-UP	Low-Income Telephone and Electric Utilities Program
LNG	liquefied natural gas
MCPE	Market Clearing Price of Energy
MCSM	Modified Competitive Solution Method
ME SPP	Mutual Energy SWEPCO, LP d/b/a Mutual Energy SPP
MMBtu	million British thermal units
MW	megawatt
MWh	megawatt-hour
NERC	North American Electric Reliability Council
NOV	Notice of Violation
NRC	Nuclear Regulatory Commission
NUS	non-unanimous settlement
NYMEX	New York Mercantile Exchange
OOMC	Out-of-Merit Capacity

OOME	Out-of-Merit Energy
OPUC	Office of Public Utility Counsel
PGC	power generation company
PNM	PNM Resources, Inc.
POLR	Provider of Last Resort
PSA	public service announcement
PTB	price to beat
PURA	Public Utility Regulatory Act
QSE	qualified scheduling entity
REC	Renewable Energy Credit
REP	retail electric provider
RMO	Retail Market Oversight Section of PUC's Electric Industry Oversight Division
RMR	Reliability-Must-Run
RPS	Renewable Portfolio Standard
RTO	Regional Transmission Organization
SBF	System Benefit Fund
SERC	Southeastern Electric Reliability Council
SOAH	State Office of Administrative Hearings
SPP	Southwest Power Pool
SPS	Southwestern Public Service Company
SWEPCO	Southwestern Electric Power Company
TCEQ	Texas Commission on Environmental Quality
TDU	transmission and distribution utility
TNMP	Texas-New Mexico Power Company
TPIA	Texas Public Information Act
TXU ED	TXU Electric Delivery Company
UCOS	unbundled cost of service
WACC	weighted average cost of capital
WECC	Western Electricity Coordinating Council
WMO	Wholesale Market Oversight Section of PUC's Electric Industry Oversight Division
WTU	WTU Retail Energy