# UTILITIES CODE

## TITLE 1. GENERAL PROVISIONS

## CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 1.003. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## TITLE 2. PUBLIC UTILITY REGULATORY ACT

## SUBTITLE A. PROVISIONS APPLICABLE TO ALL UTILITIES
## CHAPTER 11. GENERAL PROVISIONS

Sec. 11.001. SHORT TITLE. This title may be cited as the Public Utility Regulatory Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.002. PURPOSE AND FINDINGS. (a) This title is enacted to protect the public interest inherent in the rates and services of public utilities. The purpose of this title is to establish a comprehensive and adequate regulatory system for public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

(b) Public utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

(c) Significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was originally adopted. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law. It is the purpose of this title to grant the Public Utility Commission of Texas authority to make and enforce rules necessary to protect customers of telecommunications and electric services consistent with the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1579, Sec. 1, eff. Aug. 30, 1999.

Sec. 11.003. DEFINITIONS. In this title:

(1) "Affected person" means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(2) "Affiliate" means:

(A) a person who directly or indirectly owns or holds at least five percent of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility;

(C) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least five percent of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least five percent of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Section 11.006.

(3) "Allocation" means the division among municipalities or among municipalities and unincorporated areas of the plant, revenues, expenses, taxes, and reserves of a utility used to provide public utility service in a municipality or for a municipality and unincorporated areas.

(4) "Commission" means the Public Utility Commission of Texas.

(5) "Commissioner" means a member of the Public Utility Commission of Texas.

(6) "Cooperative corporation" means:

(A) an electric cooperative; or

(B) a telephone cooperative corporation organized under Chapter 162 or a predecessor statute to Chapter 162 and operating under that chapter.

(7) "Corporation" means a domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee,

trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by this title.

(8) "Counsellor" means the public utility counsel.

(9) "Electric cooperative" means:

(A) a corporation organized under Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter; or

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas.

(C) Deleted by Acts 2003, 78th Leg., ch. 1327, Sec. 1.

(10) "Facilities" means all of the plant and equipment of a public utility, and includes the tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public utility.

(11) "Municipally owned utility" means a utility owned, operated, and controlled by a municipality or by a nonprofit corporation the directors of which are appointed by one or more municipalities.

(12) "Office" means the Office of Public Utility Counsel.

(13) "Order" means all or a part of a final disposition by a regulatory authority in a matter other than rulemaking, without regard to whether the disposition is affirmative or negative or injunctive or declaratory. The term includes:

(A) the issuance of a certificate of convenience and necessity; and

(B) the setting of a rate.

(14) "Person" includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(15) "Proceeding" means a hearing, investigation, inquiry, or other procedure for finding facts or making a decision under this title. The term includes a denial of relief or dismissal of a complaint.

(16) "Rate" includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity described in the definition of utility in Section 31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(17) "Ratemaking proceeding" means a proceeding in which a rate is changed.

(18) "Regulatory authority" means either the commission or the governing body of a municipality, in accordance with the context.

(19) "Service" has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under this title to its patrons, employees, other public utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(20) "Test year" means the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(21) "Trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional persons who are employed by public utilities or utility competitors to assist the public utility industry, a utility competitor, or the industry's or competitor's employees in dealing with mutual business or professional problems and in promoting their common interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1327, Sec. 1, eff. Sept. 1, 2003.

Sec. 11.004. DEFINITION OF UTILITY. In Subtitle A, "public utility" or "utility" means:

(1) an electric utility, as that term is defined by Section 31.002; or

(2) a public utility or utility, as those terms are defined by Section 51.002.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.0042. DEFINITION OF AFFILIATE. (a) The term "person" or "corporation" as used in the definition of "affiliate" provided by Section 11.003(2) does not include:

(1) a broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(2) a bank or insurance company as defined under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(3) an investment adviser registered under state law or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.); or

(4) an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.); or

(5) an employee benefit plan, pension fund, endowment fund, or other similar entity that may, directly or indirectly, own, hold, or control five percent or more of the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:

(A) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(B) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

(b) For the purpose of determining whether a person is an affiliate under Section 11.006(a)(3), the term "person" does not include an entity that may, directly or indirectly, own, hold, or control the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:

(1) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(2) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

(c) A report filed by an entity described by Subsection (a)(5) or (b) with the Securities and Exchange Commission is conclusive evidence of the entity's intent if the report confirms that the voting securities were not acquired:

(1) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(2) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

Added by Acts 2005, 79th Leg., Ch. 413 (S.B. 1668), Sec. 2, eff. June 17, 2005.

Sec. 11.005. ENTITY, COMPETITOR, OR SUPPLIER AFFECTED IN MANNER OTHER THAN BY SETTING OF RATES. In this title, an entity, including a utility competitor or utility supplier, is considered to be affected in a manner other than by the setting of rates for that class of customer if during a relevant calendar year the entity provides fuel, utility-related goods, utility-related products, or utility-related services to a regulated or unregulated provider of telecommunications or electric services or to an affiliate in an amount equal to the greater of $10,000 or 10 percent of the person's business.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.006. PERSON DETERMINED TO BE AFFILIATE. (a) The commission may determine that a person is an affiliate for purposes of this title if the commission after notice and hearing finds that the person:

(1) actually exercises substantial influence or control over the policies and actions of a public utility;

(2) is a person over which a public utility exercises the control described by Subdivision (1);

(3) is under common control with a public utility; or

(4) together with one or more persons with whom the person is related by ownership or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of a public utility even though neither person may qualify as an affiliate individually.

(b) For purposes of Subsection (a)(3), "common control with a public utility" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of

another, without regard to whether that power is established through ownership or voting of securities or by any other direct or indirect means.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.007. ADMINISTRATIVE PROCEDURE. (a) Chapter 2001, Government Code, applies to a proceeding under this title except to the extent inconsistent with this title.

(b) A communication of a member or employee of the commission with any person, including a party or a party's representative, is governed by Section 2001.061, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.008. LIBERAL CONSTRUCTION. This title shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that this construction preserves the validity of this title and its provisions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.009. CONSTRUCTION WITH FEDERAL AUTHORITY. This title shall be construed to apply so as not to conflict with any authority of the United States.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 12. ORGANIZATION OF COMMISSION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.001. PUBLIC UTILITY COMMISSION OF TEXAS. The Public Utility Commission of Texas exercises the jurisdiction and powers conferred by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.002. OFFICE. (a) The principal office of the commission is in Austin.

(b) The office shall be open daily during usual business hours. The office is not required to be open on Saturday, Sunday, or a legal holiday.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.003. SEAL. (a) The commission has a seal bearing the inscription: "Public Utility Commission of Texas."

(b) The seal shall be affixed to each record and to an authentication of a copy of a record. The commission may require the seal to be affixed to other instruments.

(c) A court of this state shall take judicial notice of the seal.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.004. REPRESENTATION BY THE ATTORNEY GENERAL. The attorney general shall represent the commission in a matter before a state court, a court of the United States, or a federal public utility regulatory commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2023.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.08(a),

eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.01, eff. September 1, 2013.

**SUBCHAPTER B. COMMISSION APPOINTMENT AND FUNCTIONS**

Sec. 12.051. APPOINTMENT; TERM. (a) The commission is composed of three commissioners appointed by the governor with the advice and consent of the senate.

(b) An appointment to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Commissioners serve staggered, six-year terms.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.052. PRESIDING OFFICER. (a) The governor shall designate a commissioner as the presiding officer.

(b) The presiding officer serves in that capacity at the pleasure of the governor.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.053. MEMBERSHIP QUALIFICATIONS. (a) To be eligible for appointment, a commissioner must:

(1) be a qualified voter;

(2) be a citizen of the United States;

(3) be a competent and experienced administrator;

(4) be well informed and qualified in the field of public utilities and utility regulation; and

(5) have at least five years of experience in the administration of business or government or as a practicing attorney or certified public accountant.

(b) A person is not eligible for appointment as a commissioner if the person:

(1) at any time during the two years preceding appointment:

(A) personally served as an officer, director, owner, employee, partner, or legal representative of a public utility regulated by the commission or of an affiliate or direct competitor

of a public utility regulated by the commission; or

(B) owned or controlled, directly or indirectly, more than a 10 percent interest in a public utility regulated by the commission or in an affiliate or direct competitor of a public utility regulated by the commission; or

(2) is not qualified to serve under Section 12.151, 12.152, or 12.153.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.02, eff. September 1, 2013.

Sec. 12.054. REMOVAL OF COMMISSIONER. (a) It is a ground for removal from the commission if a commissioner:

(1) does not have at the time of appointment or maintain during service on the commission the qualifications required by Section 12.053;

(2) violates a prohibition provided by Section 12.053 or by Subchapter D;

(3) cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled commission meetings that the commissioner is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that the action is taken when a ground for removal of a commissioner exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.055. PROHIBITION ON SEEKING ANOTHER OFFICE. A person may not seek nomination or election to another civil office of this state or of the United States while serving as a commissioner. If a commissioner files for nomination or election to another civil office of this state or of the United States, the person's office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.056. EFFECT OF VACANCY. A vacancy or disqualification does not prevent the remaining commissioner or commissioners from exercising the powers of the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.057. COMPENSATION. The annual salary of the commissioners is determined by the legislature.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.058. MEETINGS. The commission shall hold meetings at its office and at other convenient places in this state as expedient and necessary for the proper performance of the commission's duties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.059. TRAINING PROGRAM FOR COMMISSIONERS. (a) Before a commissioner may assume the commissioner's duties and before the commissioner may be confirmed by the senate, the commissioner must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the commissioner regarding:

(1) the enabling legislation that created the commission and its policymaking body to which the commissioner is appointed to serve;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of Chapters 551, 552, and 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person who is appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 2, eff. September 1, 2005.

## SUBCHAPTER C. COMMISSION PERSONNEL

Sec. 12.101. COMMISSION EMPLOYEES. The commission shall employ:

(1) an executive director; and

(2) officers and other employees the commission considers necessary to administer this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 3, eff. Sept. 1, 1999.

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate the policymaking

responsibilities of the commission and the management responsibilities of the commission employees.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 3, eff. September 1, 2005.

Sec. 12.103. DUTIES OF EXECUTIVE DIRECTOR. The executive director is responsible for the daily operations of the commission and shall coordinate the activities of commission employees.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS; MERIT PAY. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for commission employees. The program shall require intra-agency posting of each position concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. Merit pay for commission employees must be based on the system established under this subsection.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement under Subsection (a) must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements

of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address the underuse.

(c) A policy statement prepared under Subsection (b) must:

(1) cover an annual period;

(2) be updated at least annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(4) be filed with the governor's office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports to the legislature.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. PROHIBITED RELATIONSHIPS AND ACTIVITIES**

Sec. 12.151. REGISTERED LOBBYIST. A person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission may not serve as a commissioner.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 4, eff. Sept. 1, 1999.

Sec. 12.152. CONFLICT OF INTEREST. (a) A person is not eligible for appointment as a commissioner or executive director of the commission if:

(1) the person serves on the board of directors of a company that supplies fuel, utility-related services, or utility-related products to regulated or unregulated electric or telecommunications utilities; or

(2) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the commission;

(B) directly or indirectly owns or controls more than a 10 percent interest in:

(i) a business entity or other organization that is regulated by or receives funds from the commission; or

(ii) a utility competitor, utility supplier, or other entity affected by a commission decision in a manner other than by the setting of rates for that class of customer;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(D) notwithstanding Paragraph (B), has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings at the time of appointment is in a single utility, utility competitor, or utility supplier in this state and the person does not disclose this information to the governor, senate, commission, or other entity, as appropriate.

(b) A person otherwise ineligible because of Subsection (a)(2)(B) may be appointed to the commission and serve as a commissioner or may be employed as executive director if the person:

(1) notifies the attorney general and commission that the person is ineligible because of Subsection (a)(2)(B); and

(2) divests the person or the person's spouse of the ownership or control:

(A) before beginning service or employment; or

(B) if the person is already serving or employed, within a reasonable time.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.03, eff. September 1, 2013.

Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person may

not serve as a commissioner or be a commission employee who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person is:

(1) an officer, employee, or paid consultant of a trade association; or

(2) the spouse of an officer, manager, or paid consultant of a trade association.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 4, eff. September 1, 2005.

Sec. 12.154. PROHIBITED ACTIVITIES. (a) During the period of service with the commission, a commissioner or commission employee may not:

(1) have a pecuniary interest, including an interest as an officer, director, partner, owner, employee, attorney, or consultant, in:

(A) a public utility or affiliate; or

(B) a person a significant portion of whose business consists of furnishing goods or services to public utilities or affiliates; or

(2) accept a gift, gratuity, or entertainment from:

(A) a public utility, affiliate, or direct competitor of a public utility;

(B) a person a significant portion of whose business consists of furnishing goods or services to public utilities, affiliates, or direct competitors of public utilities; or

(C) an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Paragraph (A) or (B).

(b) A commissioner or a commission employee may not directly or indirectly solicit, request from, or suggest or recommend to a public utility or an agent, representative, attorney, employee, officer, owner, director, or partner of a public utility the appointment to a

position or the employment of a person by the public utility or affiliate.

(c) A person may not give or offer to give a gift, gratuity, employment, or entertainment to a commissioner or commission employee if that person is:

(1) a public utility, affiliate, or direct competitor of a public utility;

(2) a person who furnishes goods or services to a public utility, affiliate, or direct competitor of a public utility; or

(3) an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Subdivision (1) or (2).

(d) A public utility, affiliate, or direct competitor of a public utility or a person furnishing goods or services to a public utility, affiliate, or direct competitor of a public utility may not aid, abet, or participate with a commissioner, commission employee, or former commission employee in conduct that violates Subsection (a)(3) or (c).

(e) Subsection (a)(1) does not apply to an interest in a nonprofit group or association, other than a trade association, that is solely supported by gratuitous contributions of money, property, or services.

(f) It is not a violation of this section if a commissioner or commission employee, on becoming the owner of stocks, bonds, or another pecuniary interest in a public utility, affiliate, or direct competitor of a public utility otherwise than voluntarily, informs the commission and the attorney general of the ownership and divests the ownership or interest within a reasonable time.

(g) It is not a violation of this section if a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund that in the normal course of business invests in diverse securities independently of the control of the commissioner or commission employee.

(h) This section does not apply to a contract for a public utility product or service or equipment for use of a public utility product when a commissioner or commission employee is acting as a consumer.

(i) In this section, a "pecuniary interest" includes income, compensation, and payment of any kind, in addition to an ownership interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.04, eff. September 1, 2013.

Sec. 12.155. PROHIBITION ON EMPLOYMENT OR REPRESENTATION. (a) A commissioner, a commission employee, or an employee of the State Office of Administrative Hearings involved in hearing utility cases may not:

(1) be employed by a public utility that was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or the State Office of Administrative Hearings; or

(2) represent a person before the commission or State Office of Administrative Hearings or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the commission or State Office of Administrative Hearings; or

(B) that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or State Office of Administrative Hearings.

(b) The prohibition of Subsection (a)(1) applies until the:

(1) second anniversary of the date the commissioner ceases to serve as a commissioner; and

(2) first anniversary of the date the employee's employment with the commission or State Office of Administrative Hearings ceases.

(c) The prohibition of Subsection (a)(2) applies while a commissioner, commission employee, or employee of the State Office of Administrative Hearings involved in hearing utility cases is associated with the commission or State Office of Administrative Hearings and at any time after.

(d) A commissioner may not be employed by an independent organization certified under Section 39.151. The prohibition under this subsection applies until the second anniversary of the date the commissioner ceases to serve as a commissioner.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.05, eff. September 1, 2013.

Sec. 12.156. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to commissioners and commission employees as often as necessary information regarding their:

(1) qualifications for office or employment under this title; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers and employees.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND REPORTS**

Sec. 12.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which a complaint is filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.202. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(b) The commission shall comply with federal and state laws related to program and facility accessibility.

(c) The commission shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the commission's programs and services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.203. BIENNIAL REPORT. Not later than January 15 of each odd-numbered year, the commission shall prepare a written report that includes suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general that the commission considers appropriate for protecting and furthering the interest of the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 94, eff. September 1, 2013.

Sec. 12.204. INTERNET FOR HEARINGS AND MEETINGS. The commission shall make publicly accessible without charge live Internet video of all public hearings and meetings the commission holds for viewing from the Internet website found at http://www.puc.state.tx.us. The commission may recover the costs of administering this section by imposing an assessment against a:

(1) public utility;

(2) corporation described by Section 32.053;

(3) retail electric provider that serves more than 250,000 customers; or

(4) power generation company that owns more than 5,000 megawatts of installed capacity in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 400 (H.B. 1783), Sec. 1, eff. September 1, 2009.

**SUBCHAPTER F. HISTORICALLY UNDERUTILIZED BUSINESSES**

Sec. 12.251. DEFINITION. In this subchapter, "historically underutilized business" has the meaning assigned by Section 481.101, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.252. COMMISSION AUTHORITY. The commission, after notice and hearing, may require each utility subject to regulation under this title to make an effort to overcome the underuse of historically underutilized businesses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.253. REPORT REQUIRED. The commission shall require each utility subject to regulation under this title to prepare and submit to the commission a comprehensive annual report detailing its use of historically underutilized businesses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.254. DISCRIMINATION PROHIBITED. The rules adopted under this subchapter may not be used to discriminate against a citizen on the basis of sex, race, color, creed, or national origin.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.255. CAUSE OF ACTION NOT CREATED. This subchapter does not create a public or private cause of action.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 13. OFFICE OF PUBLIC UTILITY COUNSEL

### SUBCHAPTER A. GENERAL PROVISIONS; POWERS AND DUTIES

Sec. 13.001. OFFICE OF PUBLIC UTILITY COUNSEL. The independent office of public utility counsel represents the interests of residential and small commercial consumers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that

chapter, the office is abolished and this chapter expires September 1, 2023.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 1, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 6.02, eff. June 17, 2011.

Sec. 13.003. OFFICE POWERS AND DUTIES. (a) The office:
(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;
(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;
(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:
(A) residential consumers, as a class, in any proceeding before the commission, including an alternative dispute resolution proceeding; and
(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;
(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:
(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or
(B) in which the counsellor determines that residential electricity consumers or small commercial electricity consumers are in need of representation;
(5) is entitled to the same access as a party, other than commission staff, to records gathered by the commission under Section 14.204;
(6) is entitled to discovery of any nonprivileged matter

that is relevant to the subject matter of a proceeding or petition before the commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning utility services that is unresolved before the commission;

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers; and

(9) may advise persons who are interested parties for purposes of Section 37.054 on procedural matters related to proceedings before the commission on an application for a certificate of convenience and necessity filed under Section 37.053.

(b) This section does not limit the authority of the commission to represent residential or small commercial consumers.

(c) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counsellor may not be grouped with any other party.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 416 (S.B. 855), Sec. 1, eff. June 17, 2011.

Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The counsellor shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The counsellor shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the office.

Added by Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 2, eff. September 1, 2005.

Sec. 13.005. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that the office has the authority to resolve. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 2, eff. September 1, 2005.

Sec. 13.006. TECHNOLOGY POLICY. The counsellor shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

Added by Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 2, eff. September 1, 2005.

## SUBCHAPTER B. PUBLIC UTILITY COUNSEL

Sec. 13.021. APPOINTMENT; TERM. (a) The chief executive of the office is the counsellor.

(b) The counsellor is appointed by the governor with the advice and consent of the senate.

(c) The appointment of the counsellor shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) The counsellor serves a two-year term that expires on

February 1 of the final year of the term.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.022. QUALIFICATIONS. (a) The counsellor must:

(1) be licensed to practice law in this state;

(2) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the public; and

(3) possess the knowledge and experience necessary to practice effectively in utility proceedings.

(b) A person is not eligible for appointment as counsellor if:

(1) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the commission;

(B) directly or indirectly owns or controls more than a 10 percent interest or a pecuniary interest with a value exceeding $10,000 in:

(i) a business entity or other organization that is regulated by or receives funds from the commission or the office; or

(ii) a utility competitor, utility supplier, or other entity affected by a commission decision in a manner other than by the setting of rates for that class of customer;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the commission or the office, other than compensation or reimbursement authorized by law for service as counsellor or for commission membership, attendance, or expenses; or

(D) notwithstanding Paragraph (B), has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings is in a single utility, utility competitor, or utility supplier in this state and the person does not disclose this information to the governor, senate, or other entity, as appropriate; or

(2) the person is not qualified to serve under Section 13.042.

(c) Repealed by Acts 2005, 79th Leg., Ch. 300, Sec. 7, eff. September 1, 2005.

(d) A person otherwise ineligible because of Subsection (b)(1)(B) may be appointed and serve as counsellor if the person:

(1) notifies the attorney general and commission that the person is ineligible because of Subsection (b)(1)(B); and

(2) divests the person or the person's spouse of the ownership or control:

(A) before beginning service; or

(B) if the person is already serving, within a reasonable time.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 7, eff. September 1, 2005.

Sec. 13.023. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office if the counsellor:

(1) does not have at the time of taking office or maintain during service as counsellor the qualifications required by Section 13.022;

(2) is ineligible for service as counsellor under Section 13.022, 13.042, or 13.043; or

(3) cannot discharge the counsellor's duties for a substantial part of the term for which the counsellor is appointed because of illness or disability.

(b) The validity of an action of the office is not affected by the fact that the action is taken when a ground for removal of the counsellor exists.

(c) If an employee has knowledge that a potential ground for removal of the counsellor exists, the employee shall notify the next highest ranking employee of the office, other than the counsellor, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 3, eff. September 1, 2005.

Sec. 13.024. PROHIBITED ACTS. (a) The counsellor may not have a direct or indirect interest in a utility company regulated under

this title, its parent, or its subsidiary companies, corporations, or cooperatives or a utility competitor, utility supplier, or other entity affected in a manner other than by the setting of rates for that class of customer.

(b) The prohibition under Subsection (a) applies during the period of the counsellor's service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 7, eff. Sept. 1, 1999.

## SUBCHAPTER C. OFFICE PERSONNEL

Sec. 13.041. PERSONNEL. (a) The counsellor may employ lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as the counsellor considers necessary to carry out this chapter.

(b) An employee receives compensation as prescribed by the legislature from the assessment imposed by Subchapter A, Chapter 16.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.042. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as counsellor or be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person is:

(1) an officer, employee, or paid consultant of a Texas trade association in the field of utilities; or

(2) the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of utilities.

(c) A person may not serve as counsellor or act as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's

activities for compensation on behalf of a profession related to the operation of the office.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 4, eff. September 1, 2005.

Sec. 13.043. PROHIBITION ON EMPLOYMENT OR REPRESENTATION. (a) A former counsel may not make any communication to or appearance before the commission or an officer or employee of the commission before the second anniversary of the date the person ceases to serve as counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence a commission decision or action, unless acting on his or her own behalf and without remuneration.

(b) A former counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the commission before the second anniversary of the date the person ceases to serve as counsel.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor.

(d) An employee of the office may not:

(1) be employed by a public utility that was in the scope of the employee's official responsibility while the employee was associated with the office; or

(2) represent a person before the commission or a court in a matter:

(A) in which the employee was personally involved while associated with the office; or

(B) that was within the employee's official responsibility while the employee was associated with the office.

(e) The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) The prohibition of Subsection (d)(2) applies while an employee of the office is associated with the office and at any time

after.

(g) For purposes of this section, "person" includes an electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 8, eff. Sept. 1, 1999.

Sec. 13.044. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS; MERIT PAY. (a) The counsellor or the counsellor's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for office employees. The program shall require intra-agency postings of each position concurrently with any public posting.

(b) The counsellor or the counsellor's designee shall develop a system of annual performance evaluations that are based on documented employee performance. Merit pay for office employees must be based on the system established under this subsection.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.045. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The counsellor or the counsellor's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement under Subsection (a) must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the office workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the office workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address the underuse.

(c) A policy statement prepared under Subsection (b) must:

(1) cover an annual period;

(2) be updated at least annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(4) be filed with the governor's office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports to the legislature.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.046. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The office shall provide to office employees as often as necessary information regarding their:

(1) qualifications for employment under this title; and

(2) responsibilities under applicable laws relating to standards of conduct for employees.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND REPORTS**

Sec. 13.061. PUBLIC INTEREST INFORMATION. The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public and appropriate state agencies.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.062. PUBLIC PARTICIPATION. (a) The office shall comply with federal and state laws related to program and facility accessibility.

(b) The office shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the office's programs and services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 13.063. ANNUAL REPORTS. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(161), eff. June 17, 2011.

(b) The office shall prepare annually a report on the office's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over the office, the house appropriations committee, the senate finance committee, and the Sunset Advisory Commission. At a minimum, the report must include:

(1) a list of the types of activities conducted by the office and the time spent by the office on each activity;

(2) the number of hours billed by the office for representing residential or small commercial consumers in proceedings;

(3) the number of staff positions and the type of work performed by each position; and

(4) the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 5, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(161), eff. June 17, 2011.

Sec. 13.064. PUBLIC HEARING. (a) The office annually shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers, an opportunity to comment on the office's functions and effectiveness.

(b) A public hearing held under this section is not subject to Chapter 551, Government Code.

(c) The office shall file notice of a public hearing held under this section with the secretary of state for publication in the Texas Register.

Added by Acts 2005, 79th Leg., Ch. 300 (S.B. 409), Sec. 6, eff.

September 1, 2005.

## CHAPTER 14. JURISDICTION AND POWERS OF COMMISSION AND OTHER REGULATORY AUTHORITIES

### SUBCHAPTER A. GENERAL POWERS OF COMMISSION

Sec. 14.001. POWER TO REGULATE AND SUPERVISE. The commission has the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.002. RULES. The commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those

procedures, as implemented by the commission.

Added by Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 5, eff. September 1, 2005.

Sec. 14.003. COMMISSION POWERS RELATING TO REPORTS. The commission may:

(1) require a public utility to report to the commission information relating to:

(A) the utility; and

(B) a transaction between the utility and an affiliate inside or outside this state, to the extent that the transaction is subject to the commission's jurisdiction;

(2) establish the form for a report;

(3) determine the time for a report and the frequency with which the report is to be made;

(4) require that a report be made under oath;

(5) require the filing with the commission of a copy of:

(A) a contract or arrangement between a public utility and an affiliate;

(B) a report filed with a federal agency or a governmental agency or body of another state; and

(C) an annual report that shows each payment of compensation, other than salary or wages subject to federal income tax withholding:

(i) to residents of this state;

(ii) with respect to legal, administrative, or legislative matters in this state; or

(iii) for representation before the legislature of this state or any governmental agency or body; and

(6) require that a contract or arrangement described by Subdivision (5)(A) that is not in writing be reduced to writing and filed with the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.004. REPORT OF SUBSTANTIAL INTEREST. The commission may require disclosure of the identity and respective interests of each owner of at least one percent of the voting securities of a

public utility or its affiliate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.005. CRITERIA AND GUIDELINES GOVERNING TERMINATION OF SERVICES TO ELDERLY AND DISABLED. The commission may establish criteria and guidelines with the utility industry relating to industry procedures used in terminating services to the elderly and disabled.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.006. INTERFERENCE WITH TERMS OR CONDITIONS OF EMPLOYMENT; PRESUMPTION OF REASONABLENESS. The commission may not interfere with employee wages and benefits, working conditions, or other terms or conditions of employment that are the product of a collective bargaining agreement recognized under federal law. An employee wage rate or benefit that is the product of the collective bargaining is presumed to be reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.007. ASSISTANCE TO MUNICIPALITY. On request by the governing body of a municipality, the commission may provide commission employees as necessary to advise and consult with the municipality on a pending matter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.008. MUNICIPAL FRANCHISES. (a) This title does not restrict the rights and powers of a municipality to grant or refuse a franchise to use the streets and alleys in the municipality or to make a statutory charge for that use.

(b) A franchise agreement may not limit or interfere with a power conferred on the commission by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. PRACTICE AND PROCEDURE

Sec. 14.051. PROCEDURAL POWERS. The commission may:

(1) call and hold a hearing;

(2) administer an oath;

(3) receive evidence at a hearing;

(4) issue a subpoena to compel the attendance of a witness or the production of a document; and

(5) make findings of fact and decisions to administer this title or a rule, order, or other action of the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.052. RULES. (a) The commission shall adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

(b) The commission shall adopt rules that authorize an administrative law judge to:

(1) limit the amount of time that a party may have to present its case;

(2) limit the number of requests for information that a party may make in a contested case;

(3) require a party to a contested case to identify contested issues and facts before the hearing begins;

(4) limit cross-examination to only those issues and facts identified before the hearing and to any new issues that may arise as a result of the discovery process; and

(5) group parties, other than the office, that have the same position on an issue to facilitate cross-examination on that issue.

(c) A rule adopted under Subsection (b)(5) must permit each party in a group to present that party's witnesses for cross-examination during the hearing.

(d) A rule adopted under this section must ensure that each party receives due process.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 228 (H.B. 2154), Sec. 23, eff. September 1, 2015.

Sec. 14.053. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The State Office of Administrative Hearings shall conduct each hearing in a contested case that is not conducted by one or more commissioners.

(b) The commission may delegate to the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For review purposes an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the commission unless a commissioner requests formal review of the decision.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 228 (H.B. 2154), Sec. 24, eff. September 1, 2015.

Sec. 14.054. SETTLEMENTS. (a) The commission by rule shall adopt procedures governing the use of settlements to resolve contested cases.

(b) Rules adopted under this section must ensure that:

(1) each party retains the right to:

(A) a full hearing before the commission on issues that remain in dispute; and

(B) judicial review of issues that remain in dispute;

(2) an issue of fact raised by a nonsettling party may not be waived by a settlement or stipulation of the other parties; and

(3) a nonsettling party may use an issue of fact raised by that party as the basis for judicial review.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.055. RECORD OF PROCEEDINGS. The regulatory authority shall keep a record of each proceeding before the authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.056. RIGHT TO BE HEARD. Each party to a proceeding before a regulatory authority is entitled to be heard by attorney or in person.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.057. ORDERS OF COMMISSION; TRANSCRIPTS AND EXHIBITS; PUBLIC RECORDS. (a) A commission order must be in writing and contain detailed findings of the facts on which it is passed.

(b) The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order.

(c) Subject to Chapter 552, Government Code, each file pertaining to a matter that was at any time pending before the commission or to a record, report, or inspection required by Section 14.003, 14.151, 14.152, 14.153, 14.201, or 14.203-14.207 or by Subtitle B or C is public information.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.058. FEES FOR ELECTRONIC ACCESS TO INFORMATION. The fees charged by the commission for electronic access to information that is stored in the system established by the commission using funds from the Texas Public Finance Authority and approved by the Department of Information Resources shall be established:

(1) by the commission in consultation with the comptroller; and

(2) in an amount reasonable and necessary to retire the debt to the Texas Public Finance Authority associated with establishing the electronic access system.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.01(a), eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.115, eff. September 1, 2007.

Sec. 14.059. TECHNOLOGY POLICY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 6, eff. September 1, 2005.

**SUBCHAPTER C. RESTRICTIONS ON CERTAIN TRANSACTIONS**

Sec. 14.101. REPORT OF CERTAIN TRANSACTIONS; COMMISSION CONSIDERATION. (a) Unless a public utility reports the transaction to the commission within a reasonable time, the public utility may not:

(1) sell, acquire, or lease a plant as an operating unit or system in this state for a total consideration of more than $10 million; or

(2) merge or consolidate with another public utility operating in this state.

(b) A public utility shall report to the commission within a reasonable time each transaction that involves the sale of at least 50 percent of the stock of the utility. On the filing of a report with the commission, the commission shall investigate the transaction, with or without a public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall consider:

(1) the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, transferred, or consolidated;

(2) whether the transaction will:

(A) adversely affect the health or safety of customers or employees;

(B) result in the transfer of jobs of citizens of this state to workers domiciled outside this state; or

(C) result in the decline of service;

(3) whether the public utility will receive consideration equal to the reasonable value of the assets when it sells, leases, or transfers assets; and

(4) whether the transaction is consistent with the public interest.

(c) If the commission finds that a transaction is not in the public interest, the commission shall take the effect of the transaction into consideration in ratemaking proceedings and disallow the effect of the transaction if the transaction will unreasonably affect rates or service.

(d) This section does not apply to:

(1) the purchase of a unit of property for replacement;

(2) an addition to the facilities of a public utility by construction; or

(3) transactions that facilitate unbundling, asset valuation, minimization of ownership or control of generation assets, or other purposes consistent with Chapter 39.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 129 (H.B. 1753), Sec. 1, eff. September 1, 2011.

Sec. 14.102. REPORT OF PURCHASE OF VOTING STOCK IN PUBLIC UTILITY. A public utility may not purchase voting stock in another public utility doing business in this state unless the utility reports the purchase to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.103. REPORT OF LOAN TO STOCKHOLDERS. A public utility may not loan money, stocks, bonds, notes, or other evidence of indebtedness to a person who directly or indirectly owns or holds any stock of the public utility unless the public utility reports the transaction to the commission within a reasonable time.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. RECORDS

Sec. 14.151. RECORDS OF PUBLIC UTILITY. (a) Each public utility shall keep and provide to the regulatory authority, in the manner and form prescribed by the commission, uniform accounts of all business transacted by the utility.

(b) The commission may prescribe the form of books, accounts, records, and memoranda to be kept by a public utility, including:

(1) the books, accounts, records, and memoranda of:

(A) the provision of and capacity for service; and

(B) the receipt and expenditure of money; and

(2) any other form, record, and memorandum that the commission considers necessary to carry out this title.

(c) For a public utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by the federal agency may be considered sufficient compliance with the system prescribed by the commission. The commission may prescribe the form of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the form of books, accounts, records, and memoranda prescribed by the commission for a public utility or class of utilities may not be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

(d) Each public utility shall:

(1) keep and provide its books, accounts, records, and memoranda accurately in the manner and form prescribed by the commission; and

(2) comply with the directions of the regulatory authority relating to the books, accounts, records, and memoranda.

(e) In this section, "public utility" includes a municipally owned utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.152. MAINTENANCE OF OFFICE AND RECORDS IN THIS STATE. (a) Each public utility shall maintain an office in this state in a county in which some part of the utility's property is located. The utility shall keep in this office all books, accounts, records, and memoranda required by the commission to be kept in this state.

(b) A book, account, record, or memorandum required by the regulatory authority to be kept in this state may not be removed from this state, except as:

(1) provided by Section 52.255; and

(2) prescribed by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.153. COMMUNICATIONS WITH REGULATORY AUTHORITY. (a) The regulatory authority shall adopt rules governing communications with the regulatory authority or a member or employee of the regulatory authority by:

(1) a public utility;

(2) an affiliate; or

(3) a representative of a public utility or affiliate.

(b) A record of a communication must contain:

(1) the name of the person contacting the regulatory authority or member or employee of the regulatory authority;

(2) the name of the business entity represented;

(3) a brief description of the subject matter of the communication; and

(4) the action, if any, requested by the public utility, affiliate, or representative.

(c) Records compiled under Subsection (b) shall be available to the public monthly.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.154. JURISDICTION OVER AFFILIATE. (a) The commission has jurisdiction over an affiliate that has a transaction with a public utility under the commission's jurisdiction to the extent of access to a record of the affiliate relating to the transaction, including a record of joint or general expenses, any portion of which may be applicable to the transaction.

(b) A record obtained by the commission relating to sale of electrical energy at wholesale by an affiliate to the public utility is confidential and is not subject to disclosure under Chapter 552, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. AUDITS AND INSPECTIONS

Sec. 14.201. INQUIRY INTO MANAGEMENT AND AFFAIRS. A regulatory authority may inquire into the management and affairs of each public utility and shall keep itself informed as to the manner and method in which each public utility is managed and its affairs are conducted.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.202. MANAGEMENT AUDITS BY COMMISSION. (a) The commission shall:

(1) inquire into the management of the business of each public utility under its jurisdiction;

(2) keep itself informed as to the manner and method in which the utility's business is managed; and

(3) obtain from the public utility any information necessary to enable the commission to perform a management audit.

(b) The commission may audit a utility under its jurisdiction as frequently as needed. Six months after an audit, the utility shall report to the commission on the status of the implementation of the recommendations of the audit and shall file subsequent reports at times the commission considers appropriate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.203. AUDIT OF ACCOUNTS. A regulatory authority may require the examination and audit of the accounts of a public or municipally owned utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.204. INSPECTION. (a) A regulatory authority and, to the extent authorized by the regulatory authority, its counsel, agent, or employee, may:

(1) inspect and obtain copies of the papers, books, accounts, documents, and other business records of a public utility

within its jurisdiction; and

(2) inspect the plant, equipment, and other property of a public utility within its jurisdiction.

(b) An action under this section must be conducted at a reasonable time for a reasonable purpose.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.205. EXAMINATIONS UNDER OATH. In connection with an action taken under Section 14.204, the regulatory authority may:

(1) examine under oath an officer, agent, or employee of a public utility; or

(2) authorize the person conducting the action to make the examination under oath.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.206. ENTERING PREMISES OF PUBLIC UTILITY. (a) A member, agent, or employee of a regulatory authority may enter the premises occupied by a public utility to conduct an inspection, examination, or test or to exercise any other authority provided by this title.

(b) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after reasonable notice to the public utility.

(c) A public utility is entitled to be represented when an inspection, examination, or test is conducted on its premises. The utility is entitled to a reasonable time to secure a representative before the inspection, examination, or test begins.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 14.207. PRODUCTION OF OUT-OF-STATE RECORDS. (a) A regulatory authority may require, by order or subpoena served on a public utility, the production, at the time and place in this state that the regulatory authority designates, of any books, accounts, papers, or records kept by that public utility outside this state or, if ordered by the commission, verified copies of the books, accounts,

papers, or records.

(b) A public utility that fails or refuses to comply with an order or subpoena under this section violates this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 15. JUDICIAL REVIEW, ENFORCEMENT, AND PENALTIES

### SUBCHAPTER A. JUDICIAL REVIEW

Sec. 15.001. RIGHT TO JUDICIAL REVIEW. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.002. COMMISSION AS DEFENDANT. The commission must be a defendant in a proceeding for judicial review.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.003. COSTS AND ATTORNEY'S FEES. (a) A party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the commission are excessive and who prevails in a proceeding for review of a commission order or decision is entitled in the same action to recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for the party's efforts before the commission and the court.

(b) The court shall set the amount of attorney's fees awarded under Subsection (a).

(c) If a court finds that an action under Section 15.001 or this section was groundless and brought in bad faith and for the purpose of harassment, the court may award reasonable attorney's fees to the defendant public utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.004. JUDICIAL STAY OR SUSPENSION. While an appeal of an order, ruling, or decision of a regulatory authority is pending,

the district court, court of appeals, or supreme court, as appropriate, may stay or suspend all or part of the operation of the order, ruling, or decision. In granting or refusing a stay or suspension, the court shall act in accordance with the practice of a court exercising equity jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. ENFORCEMENT AND PENALTIES

Sec. 15.021. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) The attorney general, on the request of the commission, shall apply in the name of the commission for a court order under Subsection (b) if the commission determines that a public utility or other person is:

(1) engaging in or about to engage in an act that violates this title or an order or rule of the commission entered or adopted under this title; or

(2) failing to comply with the requirements of this title or a rule or order of the commission.

(b) A court, in an action under this section, may:

(1) prohibit the commencement or continuation of an act that violates this title or an order or rule of the commission entered or adopted under this title; or

(2) require compliance with a provision of this title or an order or rule of the commission.

(c) The remedy under this section is in addition to any other remedy provided under this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.022. CONTEMPT. The commission may file a court action for contempt against a person who:

(1) fails to comply with a lawful order of the commission;

(2) fails to comply with a subpoena or subpoena duces tecum; or

(3) refuses to testify about a matter on which the person may be lawfully interrogated.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.023. ADMINISTRATIVE PENALTY, DISGORGEMENT ORDER, OR MITIGATION PLAN. (a) The commission may impose an administrative penalty against a person regulated under this title who violates this title or a rule or order adopted under this title.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The commission by rule shall establish a classification system for violations that includes a range of administrative penalties that may be assessed for each class of violation based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

(e) For a violation of Section 39.157, the commission shall, in addition to the assessment of a penalty, order disgorgement of all excess revenue resulting from the violation. For any other violation of the statutes, rules, or protocols relating to wholesale electric markets, the commission may, in addition to the assessment of a penalty, order disgorgement of all excess revenue resulting from the violation.

(f) The commission and a person may develop and enter into a voluntary mitigation plan relating to a violation of Section 39.157 or rules adopted by the commission under that section. If the commission and a person enter into a voluntary mitigation plan, adherence to the plan constitutes an absolute defense against an alleged violation with respect to activities covered by the plan.

(g) In this subchapter, "excess revenue" means revenue in excess of revenue that would have occurred absent a violation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 7, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 2, eff. September 1, 2011.

Sec. 15.024. ADMINISTRATIVE PENALTY ASSESSMENT OR DISGORGEMENT ORDER PROCEDURE. (a) If the executive director determines that a violation has occurred, the executive director may issue to the commission a report that states the facts on which the determination is based and the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person against whom the penalty may be assessed. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) A penalty may not be assessed under this section if the person against whom the penalty may be assessed remedies the violation before the 31st day after the date the person receives the notice under Subsection (b). A person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent. This subsection does not apply to a violation of Chapter 17, 55, or 64.

(d) Not later than the 20th day after the date the person receives the notice, the person may accept the determination and recommended penalty of the executive director in writing or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation

and the amount of the penalty.

(e) If the person accepts the executive director's determination and recommended penalty, the commission by order shall approve the determination and impose the recommended penalty.

(f) If the person requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The parties to a proceeding under this subchapter shall be limited to the person and the commission, including the independent market monitor. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or disgorgement order or may find that no violation occurred.

(g) The notice of the commission's order shall be given to the person as provided by Chapter 2001, Government Code, and must include a statement of the right of the person to judicial review of the order.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 2, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 25.001, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 4, eff. September 1, 2011.

Sec. 15.025. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date the commission's order imposing an administrative penalty is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 30th day after the date the commission's order is final as provided by Section 2001.144, Government Code, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) The executive director, on receipt of a copy of an affidavit under Subsection (b)(2), may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and

the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(e) Any excess revenue ordered disgorged under this section for a violation of the statutes, rules, or protocols relating to wholesale electric markets shall be returned to the affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. The commission shall adopt rules to prescribe how revenue shall be returned to the affected wholesale electric market participants under this subsection.

(f) For purposes of this section and Section 15.026, a reference to a penalty shall be construed to include disgorgement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 5, eff. September 1, 2011.

Sec. 15.026. JUDICIAL REVIEW OF ADMINISTRATIVE PENALTY. (a) Judicial review of a commission order imposing an administrative penalty or disgorgement is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) under the substantial evidence rule.

(b) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty or disgorgement and order the person to pay the full or reduced amount of the penalty or disgorgement. If the court does not sustain the occurrence of the violation, the court shall order that no penalty or disgorgement is owed.

(c) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the

penalty is remitted. If the person gave a supersedeas bond and the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 6, eff. September 1, 2011.

Sec. 15.027. ADMINISTRATIVE PENALTY COLLECTION; GENERAL PROVISIONS. (a) An administrative penalty collected under this subchapter shall be sent to the comptroller.

(b) A proceeding relating to an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

(c) The executive director may delegate any power or duty relating to an administrative penalty given the executive director by this subchapter to a person designated by the executive director.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.028. CIVIL PENALTY AGAINST PUBLIC UTILITY, PAY TELEPHONE SERVICE PROVIDER, OR AFFILIATE. (a) A public utility, customer-owned pay telephone service provider under Section 55.178, or affiliate is subject to a civil penalty if the utility, provider, or affiliate knowingly violates this title, fails to perform a duty imposed on it, or fails or refuses to obey an order, rule, direction, or requirement of the commission or a decree or judgment of a court.

(b) A civil penalty under this section shall be in an amount of not less than $1,000 and not more than $5,000 for each violation.

(c) A public utility or affiliate commits a separate violation each day it continues to violate Subsection (a).

(d) The attorney general shall file in the name of the commission a suit on the attorney general's own initiative or at the request of the commission to recover the civil penalty under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.029. CIVIL PENALTY FOR VIOLATING SECTION 12.055 OR 12.154. (a) A member of the commission or an officer or director of a public utility or affiliate who knowingly violates Section 12.055 or 12.154 is subject to a civil penalty of $1,000 for each violation.

(b) A person other than a person subject to Subsection (a) who knowingly violates Section 12.154 is subject to a civil penalty of $500 for each violation.

(c) A member, officer, or employee of the commission who in any action is found by a preponderance of the evidence to have violated a provision of Section 12.055 or 12.154 shall be removed from the person's office or employment.

(d) A civil penalty under this section is recoverable in a suit filed in the name of the commission by the attorney general on the attorney general's own initiative or at the request of the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.030. OFFENSE. (a) A person commits an offense if the person wilfully and knowingly violates this title.

(b) This section does not apply to an offense described by Section 55.138.

(c) An offense under this section is a felony of the third degree.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.031. PLACE FOR SUIT. A suit for an injunction or a penalty under this title may be brought in:

(1) Travis County;

(2) a county in which the violation is alleged to have occurred; or

(3) a county in which a defendant resides.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.032. PENALTIES CUMULATIVE. (a) A penalty that accrues under this title is cumulative of any other penalty.

(b) A suit for the recovery of a penalty does not bar or affect the recovery of any other penalty or bar a criminal prosecution against any person.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 15.033. DISPOSITION OF FINES AND PENALTIES. A fine or penalty collected under this title, other than a fine or penalty collected in a criminal proceeding or a penalty collected under Section 15.027(a), shall be paid to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. COMPLAINTS

Sec. 15.051. COMPLAINT BY AFFECTED PERSON. (a) An affected person may complain to the regulatory authority in writing setting forth an act or omission by a public utility in violation or claimed violation of a law that the regulatory authority has jurisdiction to administer or of an order, ordinance, or rule of the regulatory authority.

(b) The commission shall keep for a reasonable period information about each complaint filed with the commission that the commission has authority to resolve. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if the commission took no action on the complaint, an explanation of the reason the complaint was closed without action.

(c) The commission shall keep a file about each written complaint filed with the commission that the commission has authority to resolve. The commission shall provide to the person filing the complaint and to each person or entity complained about information concerning the commission's policies and procedures on complaint

investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 8, eff. September 1, 2005.

Sec. 15.052. COMPLAINT REGARDING RECREATIONAL VEHICLE PARK OWNER. (a) An affected person may complain to the regulatory authority in writing setting forth an act or omission by a recreational vehicle park owner who provides metered electric service under Subchapter C, Chapter 184, in violation or claimed violation of a law that the regulatory authority has jurisdiction to administer or of an order, ordinance, or rule of the regulatory authority.

(b) The commission shall keep for a reasonable period an information file about each complaint filed with the commission relating to a recreational vehicle park owner.

(c) The commission, at least quarterly and until final disposition of the written complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. CEASE AND DESIST ORDERS

Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter applies only to a person to whom Subtitle B applies.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

Sec. 15.102. RULES. The commission shall adopt rules to implement this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission may proceed solely under this subchapter or under this subchapter in conjunction with other applicable law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The commission on its own motion may issue a cease and desist order:

(1) after providing notice and an opportunity for a hearing if practicable or without notice or opportunity for a hearing; and

(2) if the commission determines that the conduct of a person:

(A) poses a threat to continuous and adequate electric service;

(B) is hazardous;

(C) creates an immediate danger to the public safety; or

(D) is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.

(b) The commission by order or rule may delegate to the executive director the authority to issue cease and desist orders under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

Sec. 15.105. NOTICE. (a) Notice of a proposed order must be given not later than the 10th day before the date set for a hearing if the commission requires notice and hearing before issuing the order.

(b) On issuance of an order under Section 15.104 with or without a hearing, the commission shall serve on the person affected

by the order an order that:

(1) contains a statement of the charges; and

(2) requires the person immediately to cease and desist from the acts, methods, or practices stated in the order.

(c) The commission shall serve the order by registered or certified mail, return receipt requested, to the person's last known address.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

Sec. 15.106. HEARING. (a) Chapter 2001, Government Code, does not apply to the issuance of a cease and desist order under this subchapter without a hearing. A hearing conducted before or after issuance of an order under this subchapter is a contested case under Chapter 2001, Government Code.

(b) If the commission issues an order under this subchapter without a hearing, the person affected by the order may request a hearing to affirm, modify, or set aside the order. A request must be submitted not later than the 30th day after the date the person receives the order. The commission shall set the hearing for a date that is:

(1) not later than the 10th day after the date the commission receives a request for a hearing; or

(2) agreed to by the person and the commission.

(c) At or following the hearing, the commission shall wholly or partly affirm, modify, or set aside the order. If the person affected by an order does not request a hearing in the manner provided by Subsection (b) and the commission does not hold a hearing on the order, the order is affirmed without further action by the commission.

(d) The commission may hold a hearing under this subchapter or may authorize the State Office of Administrative Hearings to hold the hearing.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a

hearing under this subchapter, an order continues in effect unless the order is stayed by the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.06, eff. September 1, 2013.

## CHAPTER 16. COMMISSION FINANCING
## SUBCHAPTER A. ASSESSMENT ON PUBLIC UTILITIES

Sec. 16.001. ASSESSMENT ON PUBLIC UTILITIES. (a) To defray the expenses incurred in the administration of this title, an assessment is imposed on each public utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier.

(b) An assessment under this section is equal to one-sixth of one percent of the public utility's, retail electric provider's, or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.

(c) An interexchange telecommunications carrier that does not provide local exchange telephone service may collect the fee imposed under this section as an additional item separately stated on the customer bill as "utility gross receipts assessment."

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 10, eff. Sept. 1, 1999.

Sec. 16.002. PAYMENT DATES. (a) The assessment is due August 15.

(b) A public utility may instead make quarterly payments due August 15, November 15, February 15, and May 15.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.003. LATE PAYMENT PENALTY. (a) An additional fee equal to 10 percent of the amount due shall be assessed for any late payment of an assessment required under this subchapter.

(b) An assessment delinquent for more than 30 days accrues interest at an annual rate of 12 percent on the amount of the

assessment and penalty due.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.004. COLLECTION BY COMPTROLLER. The comptroller shall collect the assessment and any penalty or interest due under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER B. GRANTS AND OTHER FINANCIAL ASSISTANCE**

Sec. 16.021. GRANTS OF FEDERAL FUNDS. (a) The commission may apply to an appropriate agency or officer of the United States to receive and spend federal funds available by grant or other similar form of financial assistance.

(b) This section does not impair the ability of the commission to contract with or receive assistance from a state, local, or other authorized source of funds.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER C. MONEY DISPOSITION, ACCOUNTING, AND BUDGET**

Sec. 16.041. APPLICATION OF STATE FUNDS REFORM ACT. Money paid to the commission or to the office under this title is subject to Subchapter F, Chapter 404, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.042. ACCOUNTING RECORDS. The commission shall keep the accounting records required by the comptroller.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.043. AUDIT. The financial transactions of the commission are subject to audit by the state auditor under Chapter 321, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 16.044. APPROVAL OF BUDGET. The commission budget is subject to legislative approval as part of the General Appropriations Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 17. CUSTOMER PROTECTION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.001. CUSTOMER PROTECTION POLICY. (a) The legislature finds that new developments in telecommunications services and the production and delivery of electricity, as well as changes in market structure, marketing techniques, and technology, make it essential that customers have safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive business practices and against businesses that do not have the technical and financial resources to provide adequate service.

(b) The purpose of this chapter is to establish retail customer protection standards and confer on the commission authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.

(c) Nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.

(d) This chapter does not limit the constitutional, statutory, and common law authority of the office of the attorney general.

(e) Nothing in this chapter authorizes a customer to receive retail electric service from a person other than a certificated retail electric utility.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.002. DEFINITIONS. In this chapter:

(1) "Billing agent" means any entity that submits charges to the billing utility on behalf of itself or any provider of a product or service.

(2) "Billing utility" means any telecommunications

provider, as defined by Section 51.002, retail electric provider, or electric utility that issues a bill directly to a customer for any telecommunications or electric product or service.

(3) "Certificated telecommunications utility" means a telecommunications utility that has been granted either a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

(4) "Customer" means any person in whose name telephone or retail electric service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone or retail electric service.

(5) "Electric utility" has the meaning assigned by Section 31.002.

(6) "Retail electric provider" means a person that sells electric energy to retail customers in this state after the legislature authorizes a customer to receive retail electric service from a person other than a certificated retail electric utility.

(7) "Service provider" means any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing utility.

(8) "Telecommunications utility" has the meaning assigned by Section 51.002.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.003. CUSTOMER AWARENESS. (a) The commission shall promote public awareness of changes in the electric and telecommunications markets, provide customers with information necessary to make informed choices about available options, and ensure that customers have an adequate understanding of their rights.

(b) The commission shall compile a report on customer service at least once each year showing the comparative customer information from reports given to the commission it deems necessary.

(c) The commission shall adopt and enforce rules to require a certificated telecommunications utility, a retail electric provider, or an electric utility to give clear, uniform, and understandable

information to customers about rates, terms, services, customer rights, and other necessary information as determined by the commission. The rules must include a list of defined terms common to the telecommunications and electricity industries and require that applicable terms be labeled uniformly on each retail bill sent to a customer by a certificated telecommunications utility, retail electric provider, or electric utility to facilitate consumer understanding of relevant billing elements.

(d) Customer awareness efforts by the commission shall be conducted in English and Spanish and any other language as necessary.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 648 (H.B. 1822), Sec. 1, eff. September 1, 2009.

Sec. 17.004. CUSTOMER PROTECTION STANDARDS. (a) All buyers of telecommunications and retail electric services are entitled to:

(1) protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including protection from being billed for services that were not authorized or provided;

(2) choice of a telecommunications service provider, a retail electric provider, or an electric utility, where that choice is permitted by law, and to have that choice honored;

(3) information in English and Spanish and any other language as the commission deems necessary concerning rates, key terms and conditions, and the basis for any claim of environmental benefits of certain production facilities;

(4) protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location;

(5) impartial and prompt resolution of disputes with a certificated telecommunications utility, a retail electric provider, or an electric utility and disputes with a telecommunications service provider related to unauthorized charges and switching of service;

(6) privacy of customer consumption and credit information;

(7) accuracy of metering and billing;

(8) bills presented in a clear, readable format and easy-

to-understand language that uses defined terms as required by commission rules adopted under Section 17.003;

(9) information in English and Spanish and any other language as the commission deems necessary concerning low-income assistance programs and deferred payment plans;

(10) all consumer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and

(11) after retail competition begins as authorized by the legislature, programs provided by retail electric providers that offer eligible low-income customers energy efficiency programs, an affordable rate package, and bill payment assistance programs designed to reduce uncollectible accounts.

(b) The commission may adopt and enforce rules as necessary or appropriate to carry out this section, including rules for minimum service standards for a certificated telecommunications utility, a retail electric provider, or an electric utility relating to customer deposits and the extension of credit, switching fees, levelized billing programs, and termination of service and to energy efficiency programs, an affordable rate package, and bill payment assistance programs for low-income customers. The commission may waive language requirements for good cause.

(c) The commission shall request the comments of the office of the attorney general in developing the rules that may be necessary or appropriate to carry out this section.

(d) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(e) Nothing in this section shall be construed to abridge customer rights set forth in commission rules or to abridge the rights of low-income customers to receive benefits through pending or operating programs in effect at the time of the enactment of this chapter.

(f) The commission shall adopt rules to provide automatic enrollment of eligible utility customers for lifeline telephone service and reduced electric rates available to low-income households. Each state agency, on the request of the commission, shall assist in the adoption and implementation of those rules.

(g) Notwithstanding any other provision of this title, the rules adopted under Subsection (b) shall provide full, concurrent reimbursement for the costs of any programs provided under Subsection (a)(11) and for reimbursement for the difference between any affordable rate package provided under Subsection (a)(11) and any rates otherwise applicable.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 648 (H.B. 1822), Sec. 2, eff. September 1, 2009.

Sec. 17.005. PROTECTIONS FOR CUSTOMERS OF MUNICIPALLY OWNED UTILITIES. A municipally owned utility may not be deemed to be a "service provider" or "billing agent" for purposes of Sections 17.156(b) and (e). The governing body of a municipally owned utility shall adopt, implement, and enforce rules that shall have the effect of accomplishing the objectives set out in Sections 17.004(a) and (b) and 17.102, as to the municipally owned utility within its certificated service area. The governing body of a municipally owned utility or its designee shall perform the dispute resolution function provided for by Section 17.157 for disputes arising from services provided by the municipally owned utility to electric customers served within the municipally owned utility's certificated service area. With respect to electric customers served by a municipally owned utility outside its certificated service area or otherwise served through others' distribution facilities, after retail competition begins as authorized by the legislature, the provisions of this chapter as administered by the commission apply. Nothing in this chapter shall be deemed to apply to a wholesale customer of a municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.006. PROTECTIONS FOR CUSTOMERS OF ELECTRIC COOPERATIVES. An electric cooperative shall not be deemed to be a "service provider" or "billing agent" for purposes of Sections 17.156(b) and (e). The electric cooperative shall adopt, implement, and enforce rules that shall have the effect of accomplishing the

objectives set out in Sections 17.004(a) and (b) and 17.102. The board of directors of the electric cooperative or its designee shall perform the dispute resolution function provided for by Section 17.157 for electric customers served by the electric cooperative within its certificated service area. With respect to electric customers served by an electric cooperative outside its certificated service area or otherwise served through others' distribution facilities, after the legislature authorizes retail competition, the provisions of this chapter as administered by the commission shall apply. Nothing in this chapter shall be deemed to apply to a wholesale customer of an electric cooperative.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.007. ELIGIBILITY PROCESS FOR CUSTOMER SERVICE DISCOUNTS. The commission by rule shall provide for an integrated eligibility process for customer service discounts, including discounts under Sections 39.903 and 55.015.

Added by Acts 2001, 77th Leg., ch. 1451, Sec. 1, eff. Sept. 1, 2001.

Sec. 17.008. PROTECTION OF RESIDENTIAL ELECTRIC SERVICE APPLICANTS AND CUSTOMERS. (a) In this section and in Section 17.009:

(1) "Credit history":

(A) means information regarding an individual's past history of:

(i) financial responsibility;

(ii) payment habits; or

(iii) creditworthiness; and

(B) does not include an individual's outstanding balance for retail electric or telecommunications service.

(2) "Credit score" means a score, grade, or value that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), using data from a credit history in any type of model, method, or program for the purpose of grading or ranking credit report data, whether derived electronically, from an algorithm, through a computer software application model or program, or through any other analogous

process.

(3) "Utility payment data" means a measure that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), from a model specifically designed to correlate to utility payment histories.

(b) A retail electric provider may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history or credit score, but may use the applicant's utility payment data until the later of January 1, 2007, or the date on which the price to beat is no longer in effect in the geographic area in which the customer is located.

(c) Notwithstanding Subsection (b), while a retail electric provider is required to provide service to a geographic area as the affiliated retail electric provider, the provider may not deny an applicant's request to become a residential electric service customer within that geographic area on the basis of the applicant's credit history, credit score, or utility payment data.

(d) After the date described in Subsection (b), a retail electric provider, including an affiliated retail electric provider, may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history, credit score, or utility payment data but may use the applicant's electric bill payment history.

(e) A retail electric provider may not use a credit score, a credit history, or utility payment data as the basis for determining the price for month-to-month electric service or electric service that includes a fixed price commitment of 12 months or less:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential electric service customer.

(f) After the date described in Subsection (b), on request by a customer or former customer in this state, a retail electric provider or electric utility shall timely provide to the customer or former customer bill payment history information with the retail electric provider or electric utility during the preceding 12-month period. Bill payment history information may be obtained by the customer or former customer once during each 12-month period without charge. If additional copies of bill payment history information are requested during a 12-month period, the electric service provider may charge

the customer or former customer a reasonable fee for each copy.

(g) On request by a retail electric provider, another retail electric provider or electric utility shall timely verify information that purports to show a customer's service and bill payment history with the retail electric provider or electric utility.

(h) This section does not limit a retail electric provider's authority to require a deposit or advance payment as a condition of service.

(i) Notwithstanding Subsection (e), a retail electric provider may provide rewards, benefits, or credits to residential electric service customers on the basis of the customer's payment history for retail electric service to that provider.

Added by Acts 2005, 79th Leg., Ch. 926 (H.B. 412), Sec. 1, eff. September 1, 2005.

Sec. 17.009. PROTECTION OF RESIDENTIAL TELEPHONE SERVICE APPLICANTS AND CUSTOMERS. (a) A provider of basic local telecommunications services and nonbasic network services may not deny an applicant's request to become a residential customer on the basis of the applicant's credit history or credit score.

(b) A provider of basic local telecommunications services and nonbasic network services may not use a credit score or credit history as the basis for determining price for service:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential customer.

(c) This section does not limit the authority of a provider of basic local telecommunications services and nonbasic network services to require a deposit, advance payment, or credit limit as a condition of service.

Added by Acts 2005, 79th Leg., Ch. 926 (H.B. 412), Sec. 1, eff. September 1, 2005.

**SUBCHAPTER B. CERTIFICATION, REGISTRATION, AND REPORTING REQUIREMENTS**

Sec. 17.051. ADOPTION OF RULES. (a) The commission shall adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications utility, a retail

electric provider, or an electric utility, as well as all telecommunications utilities that are not dominant carriers, pay telephone providers, qualifying facilities that are selling capacity into the wholesale or retail market, exempt wholesale generators, and power marketers.

(b) The rules adopted under Subsections (a) and (c) shall be consistent with and no less effective than federal law and may not require the disclosure of highly sensitive competitive or trade secret information.

(c) The commission shall adopt rules governing the local registration of retail electric providers under Section 39.358.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 48, Sec. 1, eff. Sept. 1, 2003.

Sec. 17.052. SCOPE OF RULES. The commission may adopt and enforce rules to:

(1) require certification or registration with the commission as a condition of doing business in this state, except that this requirement does not apply to municipally owned utilities;

(2) amend certificates or registrations to reflect changed ownership and control;

(3) establish rules for customer service and protection;

(4) suspend or revoke certificates or registrations for repeated violations of this chapter or commission rules, except that the commission may not revoke a certificate of convenience and necessity of an electric utility except as provided by Section 37.059 or a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008; and

(5) order disconnection of a pay telephone service provider's pay telephones or revocation of certification or registration for repeated violations of this chapter or commission rules.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.053. REPORTS. The commission may require a telecommunications service provider, a retail electric provider, or an electric utility to submit reports to the commission concerning

any matter over which it has authority under this chapter.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

## SUBCHAPTER C. CUSTOMER'S RIGHT TO CHOICE

Sec. 17.101. POLICY. It is the policy of this state that all customers be protected from the unauthorized switching of a telecommunications service provider, a retail electric provider, or an electric utility selected by the customer to provide service, where choice is permitted by law.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.102. RULES RELATING TO CHOICE. The commission shall adopt and enforce rules that:

(1) ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders, including negative option marketing, sweepstakes, and contests that cause customers to unknowingly change their telecommunications service provider, retail electric provider, or electric utility, where choice is permitted by law;

(2) provide for clear, easily understandable identification, in each bill sent to a customer, of all telecommunications service providers, retail electric providers, or electric utilities submitting charges on the bill;

(3) ensure that every service provider submitting charges on the bill is clearly and easily identified on the bill along with its services, products, and charges, using defined terms as required by commission rules adopted under Section 17.003;

(4) provide that unauthorized changes in service be remedied at no cost to the customer within a period established by the commission;

(5) require refunds or credits to the customer in the event of an unauthorized change; and

(6) provide for penalties for violations of commission rules adopted under this section, including fines and revocation of certificates or registrations, by this action denying the certificated telecommunications utility, the retail electric provider, or the electric utility the right to provide service in

this state, except that the commission may not revoke a certificate of convenience and necessity of an electric utility except as provided by Section 37.059 or a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 648 (H.B. 1822), Sec. 3, eff. September 1, 2009.

**SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES**

Sec. 17.151. REQUIREMENTS FOR SUBMITTING CHARGES. (a) A service provider, retail electric provider, or billing agent may submit charges for a new product or service to be billed on a customer's telephone or retail electric bill on or after the effective date of this section only if:

(1) the service provider offering the product or service has thoroughly informed the customer of the product or service being offered, including all associated charges, and has explicitly informed the customer that the associated charges for the product or service will appear on the customer's telephone or electric bill;

(2) the customer has clearly and explicitly consented to obtain the product or service offered and to have the associated charges appear on the customer's telephone or electric bill and the consent has been verified as provided by Subsection (b);

(3) the service provider offering the product or service and any billing agent for the service provider:

(A) has provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions; and

(B) has contracted with the billing utility to bill for products and services on the billing utility's bill as provided by Subsection (c); and

(4) the service provider, retail electric provider, or billing agent uses defined terms on the bill as required by commission rules adopted under Section 17.003.

(b) The customer consent required by Subsection (a)(2) must be

verified by the service provider offering the product or service by authorization from the customer. A record of the customer consent, including verification, must be maintained by the service provider offering the product or service for a period of at least 24 months immediately after the consent and verification have been obtained. The method of obtaining customer consent and verification must include one or more of the following:

(1) written authorization from the customer;

(2) toll-free electronic authorization placed from the telephone number that is the subject of the product or service;

(3) oral authorization obtained by an independent third party; or

(4) any other method of authorization approved by the commission or the Federal Communications Commission.

(c) The contract required by Subsection (a)(3)(B) must include the service provider's name, business address, and business telephone number and shall be maintained by the billing utility for as long as the billing for the products and services continues and for the 24 months immediately following the permanent discontinuation of the billing.

(d) A service provider offering a product or service to be charged on a customer's telephone or electric bill and any billing agent for the service provider may not use any fraudulent, unfair, misleading, deceptive, or anticompetitive marketing practice to obtain customers, including the use of negative option marketing, sweepstakes, and contests.

(e) Unless verification is required by federal law or rules implementing federal law, Subsection (b) does not apply to customer-initiated transactions with a certificated telecommunications provider or an electric utility for which the service provider has the appropriate documentation.

(f) If a service provider is notified by a billing utility that a customer has reported to the billing utility that a charge made by the service provider is unauthorized, the service provider shall cease to charge the customer for the unauthorized product or service.

(g) This section does not apply to message telecommunications services charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services if the service provider has the necessary call detail record to establish the billing for the call or service.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 648 (H.B. 1822), Sec. 4, eff. September 1, 2009.

Sec. 17.152. RESPONSIBILITIES OF BILLING UTILITY. (a) If a customer's telephone or retail electric bill is charged for any product or service without proper customer consent or verification, the billing utility, on its knowledge or notification of any unauthorized charge, shall promptly, not later than 45 days after the date of knowledge or notification of the charge:

(1) notify the service provider to cease charging the customer for the unauthorized product or service;

(2) remove any unauthorized charge from the customer's bill;

(3) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if the unauthorized charge is not adjusted within three billing cycles, shall pay interest on the amount of the unauthorized charge;

(4) on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the unauthorized charge from the customer's bill; and

(5) maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone or electric bill and who has notified the billing utility of the unauthorized charge.

(b) A record required by Subsection (a)(5) shall contain for each unauthorized charge:

(1) the name of the service provider that offered the product or service;

(2) any affected telephone numbers or addresses;

(3) the date the customer requested that the billing utility remove the unauthorized charge;

(4) the date the unauthorized charge was removed from the customer's telephone or electric bill; and

(5) the date any money that the customer paid for the unauthorized charges was refunded or credited to the customer.

(c) A billing utility may not:

(1) disconnect or terminate telecommunications or electric service to any customer for nonpayment of an unauthorized charge; or

(2) file an unfavorable credit report against a customer who has not paid charges the customer has alleged were unauthorized unless the dispute regarding the unauthorized charge is ultimately resolved against the customer, except that the customer shall remain obligated to pay any charges that are not in dispute, and this subsection does not apply to those undisputed charges.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.153. RECORDS OF DISPUTED CHARGES. (a) Every service provider shall maintain a record of every disputed charge for a product or service placed on a customer's bill.

(b) The record required under Subsection (a) shall contain for every disputed charge:

(1) any affected telephone numbers or addresses;

(2) the date the customer requested that the billing utility remove the unauthorized charge;

(3) the date the unauthorized charge was removed from the customer's telephone or retail electric bill; and

(4) the date action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges.

(c) The record required by Subsection (a) shall be maintained for at least 24 months following the completion of all steps required by Section 17.152(a).

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.154. NOTICE. (a) A billing utility shall provide notice of a customer's rights under this section in the manner prescribed by the commission.

(b) Notice of a customer's rights must be provided by mail to each residential and retail business customer within 60 days of the effective date of this section or by inclusion in the publication of the telephone directory next following the effective date of this section. In addition, each billing utility shall send the notice to new customers at the time service is initiated or to any customer at

that customer's request.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.155. PROVIDING COPY OF RECORDS. A billing utility shall provide a copy of records maintained under Sections 17.151(c), 17.152, and 17.154 to the commission staff on request. A service provider shall provide a copy of records maintained under Sections 17.151(b) and 17.153 to the commission on request.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.156. VIOLATIONS. (a) If the commission finds that a billing utility violated this subchapter, the commission may implement penalties and other enforcement actions under Chapter 15.

(b) If the commission finds that any other service provider or billing agent subject to this subchapter has violated this subchapter or has knowingly provided false information to the commission on matters subject to this subchapter, the commission may enforce the provisions of Chapter 15 against the service provider or billing agent as if it were regulated by the commission.

(c) Neither the authority granted under this section nor any other provision of this subchapter shall be construed to grant the commission jurisdiction to regulate service providers or billing agents who are not otherwise subject to commission regulation, other than as specifically provided by this chapter.

(d) If the commission finds that a billing utility or service provider repeatedly violates this subchapter, the commission may, if the action is consistent with the public interest, suspend, restrict, or revoke the registration or certificate of the telecommunications service provider, retail electric provider, or electric utility, by this action denying the telecommunications service provider, retail electric provider, or electric utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of an electric utility except as provided by Section 37.059 or a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

(e) If the commission finds that a service provider or billing

agent has repeatedly violated any provision of this subchapter, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent.

(f) Nothing in this subchapter shall be construed to preclude a billing utility from taking action on its own to terminate or restrict its billing and collection services.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.157. DISPUTES. (a) The commission may resolve disputes between a retail customer and a billing utility, service provider, telecommunications utility, retail electric provider, or electric utility.

(b) In exercising its authority under Subsection (a), the commission may:

(1) order a billing utility, service provider, retail electric provider, or electric utility to produce information or records;

(2) require that all contracts, bills, and other communications from a billing utility, service provider, retail electric provider, or electric utility display a working toll-free telephone number that customers may call with complaints and inquiries;

(3) require a billing utility, service provider, retail electric provider, or electric utility to refund or credit overcharges or unauthorized charges with interest if the billing utility, service provider, retail electric provider, or electric utility has failed to comply with commission rules or a contract with the customer;

(4) order appropriate relief to ensure that a customer's choice of a telecommunications service provider, a retail electric provider, or an electric utility that encompasses a geographic area in which more than one provider has been certificated is honored;

(5) require the continuation of service to a residential or small commercial customer while a dispute is pending regarding charges the customer has alleged were unauthorized; and

(6) investigate an alleged violation.

(c) The commission shall adopt procedures for the resolution of disputes in a timely manner, which in no event shall exceed 60 days.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

Sec. 17.158. CONSISTENCY WITH FEDERAL LAW. Rules adopted by the commission under this subchapter shall be consistent with and not more burdensome than applicable federal laws and rules.

Added by Acts 1999, 76th Leg., ch. 1579, Sec. 3, eff. Aug. 30, 1999.

**SUBCHAPTER E. PROTECTION AGAINST UTILITY SERVICE DISCONNECTION**

Sec. 17.201. DEFINITION. In this subchapter, "nonsubmetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service that is master metered but not submetered.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 2, eff. January 1, 2014.

Sec. 17.202. NOTICE OF DISCONNECTION TO MUNICIPALITIES FOR NONSUBMETERED MASTER METERED MULTIFAMILY PROPERTIES. (a) A retail electric provider or a vertically integrated electric utility, not including a municipally owned utility or an electric cooperative, in an area where customer choice has not been introduced shall send a written notice of service disconnection to a municipality before the retail electric provider or vertically integrated electric utility disconnects service to a nonsubmetered master metered multifamily property for nonpayment if:

(1) the property is located in the municipality; and

(2) the municipality establishes an authorized representative to receive the notice as described by Section 17.203(c).

(b) The retail electric provider or vertically integrated electric utility in an area where customer choice has not been introduced shall send the notice required by this section not later than the 10th day before the date electric service is scheduled for disconnection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 2, eff.

January 1, 2014.

Sec. 17.203. ADDITIONAL SAFEGUARDS. (a) The customer safeguards provided by this subchapter are in addition to safeguards provided by other law or agency rules.

(b) This subchapter does not prohibit a municipality or the commission from adopting customer safeguards that exceed the safeguards provided by this chapter.

(c) The commission by rule shall develop a mechanism by which a municipality may provide the commission with the contact information of the municipality's authorized representative to whom the notice required by Section 17.202 must be sent. The commission shall make the contact information available to the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 2, eff. January 1, 2014.

## SUBTITLE B. ELECTRIC UTILITIES

## CHAPTER 31. GENERAL PROVISIONS

Sec. 31.001. LEGISLATIVE FINDINGS; PURPOSE OF SUBTITLE. (a) This subtitle is enacted to protect the public interest inherent in the rates and services of electric utilities. The purpose of this subtitle is to establish a comprehensive and adequate regulatory system for electric utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the electric utilities.

(b) Electric utilities are by definition monopolies in many of the services provided and areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not always operate. Public agencies regulate electric utility rates, operations, and services, except as otherwise provided by this subtitle.

(c) The wholesale electric industry, through federal legislative, judicial, and administrative actions, is becoming a more competitive industry that does not lend itself to traditional electric utility regulatory rules, policies, and principles. As a result, the public interest requires that rules, policies, and principles be formulated and applied to protect the public interest

in a more competitive marketplace. The development of a competitive wholesale electric market that allows for increased participation by electric utilities and certain nonutilities is in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.002. DEFINITIONS. In this subtitle:

(1) "Affiliated power generation company" means a power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(2) "Affiliated retail electric provider" means a retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(3) "Aggregation" includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

(4) "Customer choice" means the freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(4-a) "Distributed natural gas generation facility" means a facility installed on the customer's side of the meter that uses natural gas to generate not more than 2,000 kilowatts of electricity.

(5) "Electric Reliability Council of Texas" or "ERCOT" means the area in Texas served by electric utilities, municipally owned utilities, and electric cooperatives that is not synchronously interconnected with electric utilities outside the state.

(6) "Electric utility" means a person or river authority that owns or operates for compensation in this state equipment or

facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) this state or an agency of this state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.

(7) "Exempt wholesale generator" means a person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale and who:

(A) does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale; and

(B) has:

(i) applied to the Federal Energy Regulatory Commission for a determination under 15 U.S.C. Section 79z-5a; or

(ii) registered as an exempt wholesale generator as required by Section 35.032.

(8) "Freeze period" means the period beginning on January 1, 1999, and ending on December 31, 2001.

(9) "Independent system operator" means an entity supervising the collective transmission facilities of a power region that is charged with nondiscriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(10) "Power generation company" means a person, including a person who owns or operates a distributed natural gas generation facility, that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35, applies;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(11) "Power marketer" means a person who:

(A) becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale;

(B) does not own generation, transmission, or distribution facilities in this state;

(C) does not have a certificated service area; and

(D) has:

(i) been granted authority by the Federal Energy Regulatory Commission to sell electric energy at market-based rates; or

(ii) registered as a power marketer under Section 35.032.

(12) "Power region" means a contiguous geographical area which is a distinct region of the North American Electric Reliability

Council.

(13) "Qualifying cogenerator" and "qualifying small power producer" have the meanings assigned those terms by 16 U.S.C. Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that provides electricity to a purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(14) "Qualifying facility" means a qualifying cogenerator or qualifying small power producer.

(15) "Rate" includes a compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(16) "Retail customer" means the separately metered end-use customer who purchases and ultimately consumes electricity.

(17) "Retail electric provider" means a person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(18) "Separately metered" means metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(19) "Transmission and distribution utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under Section 39.152, but does not include a municipally owned utility or an electric cooperative.

(20) "Transmission service" includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission

determines appropriate, except that, on and after the implementation of customer choice, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control, and other services provided by generation resources are not "transmission service."

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 11, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 890 (S.B. 365), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. 943), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 979 (H.B. 2049), Sec. 1, eff. September 1, 2013.

Sec. 31.003. REPORT ON SCOPE OF COMPETITION. (a) Before January 15 of each odd-numbered year, the commission shall report to the legislature on the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets.

(b) The report under this section must include:

(1) an assessment of the effect of competition on the rates and availability of electric services for residential and small commercial customers;

(2) a summary of commission action over the preceding two years that reflects changes in the scope of competition in regulated electric markets; and

(3) recommendations to the legislature for legislation that the commission finds appropriate to promote the public interest in the context of a partially competitive electric market.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.004. ENERGY-EFFICIENT SCHOOL FACILITIES. (a) The commission may serve as a resource center to assist school districts in developing energy-efficient facilities.

(b) As a resource center under this section, the commission may:

(1) present programs to school districts relating to managing energy, training school-plant operators, and designing energy-efficient buildings;

(2) provide school districts with technical assistance in managing energy;

(3) collect and distribute information relating to energy management in school facilities; and

(4) offer energy resource workshops to educators and make available to educators a film library on energy-related matters and energy education lesson packages.

(c) The commission shall provide information to school districts regarding how a school district may finance the installation of solar electric generation panels for school district buildings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 18, eff. September 1, 2007.

Sec. 31.005. CUSTOMER-OPTION PROGRAMS. (a) This section applies to:

(1) a municipally owned electric utility;

(2) an electric cooperative;

(3) an electric utility;

(4) a power marketer;

(5) a retail electric provider; and

(6) a transmission and distribution utility.

(b) An entity to which this section applies shall consider establishing customer-option programs that encourage the reduction of air contaminant emissions, such as:

(1) an appliance retirement and recycling program;

(2) a solar water heating market transformation program;

(3) an air conditioning tune-up program;

(4) a program that allows the use of on-site energy storage as an eligible efficiency measure in existing programs;

(5) a program that encourages the deployment of advanced electricity meters;

(6) a program that encourages the installation of cool

roofing materials;

(7) a program that establishes lighting limits;

(8) a distributed energy generation technology program; and

(9) a program that encourages the use of high-efficiency building distribution transformers and variable air volume fan controls.

Added by Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 6, eff. September 1, 2005.

## CHAPTER 32. JURISDICTION AND POWERS OF COMMISSION AND OTHER REGULATORY AUTHORITIES

### SUBCHAPTER A. COMMISSION JURISDICTION

Sec. 32.001. COMMISSION JURISDICTION. (a) Except as provided by Section 32.002, the commission has exclusive original jurisdiction over the rates, operations, and services of an electric utility in:

(1) areas outside a municipality; and

(2) areas inside a municipality that surrenders its jurisdiction to the commission under Section 33.002.

(b) The commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction under this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.0015. REGULATION OF SUCCESSOR ELECTRIC UTILITY OR ELECTRIC COOPERATIVE. If an electric utility purchases, acquires, merges, or consolidates with or acquires 50 percent or more of the stock of an electric utility or electric cooperative, the commission shall regulate the successor electric utility or electric cooperative in the same manner that the commission would regulate the entity that was subject to the stricter regulation before the purchase, acquisition, merger, or consolidation.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 12, eff. Sept. 1, 1999.

Sec. 32.002. LIMITATION ON COMMISSION JURISDICTION. Except as otherwise provided by this title, this subtitle does not authorize

the commission to:

(1) regulate or supervise a rate or service of a municipally owned utility; or

(2) affect the jurisdiction, power, or duty of a municipality exercising exclusive original jurisdiction in that municipality's regulation and supervision of an electric utility in the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.003. EXEMPT AREA JURISDICTION. Notwithstanding an election under Subchapter A, Chapter 33, by a municipality on the issue of surrendering its jurisdiction, the commission may:

(1) consider an electric utility's revenues and return on investment in an area exempt from commission regulation in establishing rates and charges in an area that is not exempt from commission regulation; and

(2) exercise necessary powers to give effect to an order under this title for the benefit of an area that is not exempt from commission regulation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.004. ASSISTANCE TO MUNICIPALITY. On request of a municipality, the commission may advise and assist the municipality with respect to a question or proceeding arising under this title. Assistance provided by the commission may include aid to a municipality on a matter pending before the commission, a court, or the municipality's governing body, such as making a staff member available as a witness or otherwise providing evidence to the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. EXEMPTIONS FROM COMMISSION JURISDICTION

Sec. 32.051. EXEMPTION OF RIVER AUTHORITY FROM WHOLESALE RATE REGULATION. Notwithstanding any other provision of this title, the commission may not directly or indirectly regulate revenue

requirements, rates, fuel costs, fuel charges, or fuel acquisitions that are related to the generation and sale of electricity at wholesale, and not to ultimate consumers, by a river authority operating a steam generating plant on or before January 1, 1999.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 13, eff. Sept. 1, 1999.

Sec. 32.052. ABILITY OF CERTAIN RIVER AUTHORITIES TO CONSTRUCT IMPROVEMENTS. A river authority operating a steam generating plant on or before January 1, 1999, may acquire, finance, construct, rebuild, repower, and use new or existing power plants, equipment, transmission lines, or other assets to sell electricity exclusively at wholesale to:

(1) a purchaser in San Saba, Llano, Burnet, Travis, Bastrop, Blanco, Colorado, or Fayette County; or

(2) a purchaser in an area served by the river authority on January 1, 1975.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 13, eff. Sept. 1, 1999.

Sec. 32.053. ABILITY OF CERTAIN RIVER AUTHORITY AFFILIATES TO CONSTRUCT IMPROVEMENTS. (a) This section applies only to a corporation that:

(1) sells electricity exclusively at wholesale, and not to ultimate consumers;

(2) is authorized by Chapter 152, Water Code; and

(3) acts on behalf of a river authority.

(b) Notwithstanding a river authority's enabling legislation or Chapter 152, Water Code, a corporation may:

(1) acquire, finance, construct, rebuild, repower, operate, or sell a facility directly related to the generation of electricity;

(2) sell, at wholesale only, the output of the facility to a purchaser, other than an ultimate consumer, at any location in this state; and

(3) purchase and sell electricity, at wholesale only, to a purchaser, other than an ultimate consumer, at any location in this state.

(c) This subchapter does not prevent a corporation from purchasing transmission and related services from a river authority.

(d) Except as provided by this section, the development, financing, ownership, and operation of a facility by a corporation is subject to all other applicable laws.

(e) The property, gross receipts, and income of a corporation acting on behalf of a river authority under this section are subject to, and the corporation shall pay, taxes and assessments of the federal government, this state, a political subdivision of this state, or a taxing district of this state on the same basis as an exempt wholesale generator.

(f) The proceeds from the sale of bonds or other obligations the interest on which is exempt from taxation and that are issued by a corporation or river authority subject to this section, other than a bond or obligation available to an investor-owned utility or exempt wholesale generator, may not be used by the corporation to finance the construction or acquisition of or the rebuilding or repowering of a facility for the generation of electricity by the corporation.

(g) Notwithstanding any other law, the board of directors of a river authority may sell, lease, loan, or otherwise transfer some, all, or substantially all of the electric generation property of the river authority to a nonprofit corporation authorized under this section or Chapter 152, Water Code. The property transfer shall be made under terms and conditions approved by the board of directors of the river authority.

(h) Subsections (a)-(f) do not apply to a corporation created under Chapter 152, Water Code, to serve an area described in Section 32.052.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.400, eff. Sept. 1, 2001.

Sec. 32.054. RESTRICTIONS ON AUTHORITY OF CORPORATIONS OR RIVER AUTHORITY. (a) This subchapter does not authorize a river authority to acquire, install, construct, make additions to, or operate steam generating plants having an aggregate capacity greater than 5,000 megawatts to serve a purchaser in the area served by the river authority on January 1, 1975.

(b) A river authority or a corporation acting on behalf of a river authority under this subchapter may provide retail service only to a retail customer served by the river authority or corporation on September 1, 1995.

(c) Except as provided by this subchapter, this subchapter does not limit a power granted a river authority in its enabling legislation or other applicable law.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. REQUIRED REPORTS AND FILINGS

Sec. 32.101. TARIFF FILINGS. (a) An electric utility shall file with each regulatory authority a tariff showing each rate that is:

(1) subject to the regulatory authority's original or appellate jurisdiction; and

(2) in effect for a utility service, product, or commodity offered by the utility.

(b) The electric utility shall file as a part of the tariff required under Subsection (a) each rule that relates to or affects:

(1) a rate of the utility; or

(2) a utility service, product, or commodity furnished by the electric utility.

(c) The commission shall consider customer names and addresses, prices, individual customer contracts, and expected load and usage data as highly sensitive trade secrets. That information is not subject to disclosure under Chapter 552, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.102. DEPRECIATION ACCOUNT. The commission shall require each electric or municipally owned utility to carry a proper and adequate depreciation account in accordance with:

(1) the rates and methods prescribed by the commission under Section 36.056; and

(2) any other rule the commission adopts.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.103. ACCOUNTS OF PROFITS AND LOSSES. An electric or municipally owned utility shall keep separate accounts showing profits or losses from the sale or lease of merchandise, including an appliance, a fixture, or equipment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.104. REPORT OF CERTAIN EXPENSES. A regulatory authority may require an electric utility to annually report the utility's expenditures for:

(1) business gifts and entertainment; and

(2) advertising or public relations, including expenditures for institutional and consumption-inducing purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 33. JURISDICTION AND POWERS OF MUNICIPALITY

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by this title.

(b) Notwithstanding Subsection (a), the governing body of a municipality shall not have jurisdiction over the BPL system, BPL services, telecommunications using BPL services, or the rates, operations, or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, wholly or partly, to the construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 1, eff. September 7, 2005.

Sec. 33.002. SURRENDER OF MUNICIPAL JURISDICTION TO COMMISSION. (a) A municipality shall regulate all local utility service in the municipality until the commission assumes jurisdiction over a local utility under this subtitle.

(b) A municipality may elect to have the commission exercise exclusive original jurisdiction over electric utility rates, operations, and services in the municipality by ordinance or by submitting the question of the surrender of its jurisdiction to the voters at a municipal election.

(c) The governing body of a municipality shall submit at a municipal election the question of surrendering its jurisdiction to the commission if the governing body receives a petition signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the number of voters voting in the last preceding general election in the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.003. REINSTATEMENT OF MUNICIPAL JURISDICTION. (a) A municipality that surrenders its jurisdiction to the commission may at any time reinstate its jurisdiction by a vote of the electorate.

(b) A municipality that reinstates its jurisdiction under Subsection (a) may not surrender that jurisdiction before the fifth anniversary of the date of the election in which the municipality elected to reinstate its jurisdiction.

(c) A municipality may not, by a vote of the electorate, reinstate the jurisdiction of the governing body during the time a case involving the municipality is pending before the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.004. AREA EXEMPT FROM COMMISSION REGULATION. (a) If a municipality does not surrender its jurisdiction, local utility service in the municipality is exempt from regulation by the commission under this subtitle to the extent that this subtitle applies to local service.

(b) The municipality may exercise in the exempt area the same regulatory powers under the same standards and rules as the commission or under other consistent standards and rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.005. EXEMPT AREA REPORTING. (a) An electric utility serving an area exempt from commission regulation is subject to the reporting requirements of this title.

(b) A report must be filed with:

(1) the governing body of the municipality; and

(2) the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.006. COMMISSION POWERS IN NONEXEMPT AREAS. This subchapter does not limit the duty and power of the commission to regulate the service and rates of a municipally regulated electric utility for service provided to another area in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.007. ALLOWABLE CHARGES. A municipality that performs a regulatory function under this title may make each charge that is authorized by:

(1) this title; or

(2) the applicable franchise agreement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.008. FRANCHISE CHARGES. (a) Following the end of the freeze period for a municipality that has been served by an electric utility, and following the date a municipally owned utility or an electric cooperative has implemented customer choice for a municipality that has been served by that municipally owned utility or electric cooperative, a municipality may impose on an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative, as appropriate, that provides distribution service within the municipality a reasonable charge as specified in Subsection (b) for the use of a municipal street, alley, or public way to deliver electricity to a retail customer. A

municipality may not impose a charge on:

(1) an electric utility, or transmission and distribution utility, municipally owned utility, or electric cooperative for electric service provided outside the municipality;

(2) a qualifying facility;

(3) an exempt wholesale generator;

(4) a power marketer;

(5) a retail electric provider;

(6) a power generation company;

(7) a person that generates electricity on and after January 1, 2002; or

(8) an aggregator, as that term is defined by Section 39.353.

(b) If a municipality collected a charge or fee for a franchise to use a municipal street, alley, or public way from an electric utility, a municipally owned utility, or an electric cooperative before the end of the freeze period, the municipality, after the end of the freeze period or after implementation of customer choice by the municipally owned utility or electric cooperative, as appropriate, is entitled to collect from each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative that uses the municipality's streets, alleys, or public ways to provide distribution service a charge based on each kilowatt hour of electricity delivered by the utility to each retail customer whose consuming facility's point of delivery is located within the municipality's boundaries. The charge imposed shall be equal to the total electric franchise fee revenue due the municipality from electric utilities, municipally owned utilities, or electric cooperatives, as appropriate, for calendar year 1998 divided by the total kilowatt hours delivered during 1998 by the applicable electric utility, municipally owned utility, or electric cooperative to retail customers whose consuming facilities' points of delivery were located within the municipality's boundaries. The compensation a municipality may collect from each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative providing distribution service shall be equal to the charge per kilowatt hour determined for 1998 multiplied times the number of kilowatt hours delivered within the municipality's boundaries.

(c) The municipal franchise charges authorized by this section

shall be considered a reasonable and necessary operating expense of each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative that is subject to a charge under this section. The charge shall be included in the nonbypassable delivery charges that a customer's retail electric provider must pay under Section 39.107 to the utility serving the customer.

(d) The municipal franchise charges authorized by this section are in lieu of any franchise charges or fees payable under a franchise agreement in effect before the expiration of the freeze period or, as appropriate, before the implementation of customer choice by a municipally owned utility or electric cooperative. Except as otherwise provided by this section, this section does not affect a provision of a franchise agreement in effect before the end of the freeze period or, as appropriate, before the implementation of customer choice by a municipally owned utility or electric cooperative.

(e) A municipality may conduct an audit or other inquiry or may pursue any cause of action in relation to an electric utility's, transmission and distribution utility's, municipally owned utility's, or electric cooperative's payment of charges authorized by this section only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than two years before commencement of such audit, inquiry, or pursuit of a cause of action; provided, however, that this subsection does not apply to an audit, inquiry, or cause of action commenced before September 1, 1999. An electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative shall, on request of the municipality in connection with a municipal audit, identify the service provider and the type of service delivered for any service in addition to electricity delivered directly to retail customers through the utility's electricity-conducting facilities that are located in the municipality's streets, alleys, or public ways and for which the utility receives compensation.

(f) Notwithstanding any other provision of this section, on the expiration of a franchise agreement existing on September 1, 1999, an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative and a municipality may mutually agree to a different level of compensation or to a different method for determining the amount the municipality may charge for the

use of a municipal street, alley, or public way in connection with the delivery of electricity at retail within the municipality.

(g) After the end of the freeze period or after implementation of customer choice by the municipally owned utility or electric cooperative, as appropriate, a newly incorporated municipality or a municipality that has not previously collected compensation for the delivery of electricity at retail within the municipality may adopt and collect compensation based on the same rate per kilowatt hour that is collected by any other municipality in the same county that is served by the same electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

(h) In this section, "distribution service" means the delivery of electricity to all retail customers.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 15, eff. Sept. 1, 1999.

## SUBCHAPTER B. RATE DETERMINATION

Sec. 33.021. RATE DETERMINATION. (a) A municipality regulating an electric utility under this subtitle shall require the utility to submit information as necessary to make a reasonable determination of rate base, expenses, investment, and rate of return in the municipality.

(b) A municipality shall make a determination under Subsection (a) using the procedures and requirements prescribed by this title.

(c) A municipality shall retain personnel necessary to make the determination of reasonable rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.022. CONSIDERATION OF REVENUES AND RETURN FROM NONEXEMPT AREA. In establishing rates and charges in an area exempt from commission regulation, the governing body may consider an electric utility's revenues and return on investment in an area that is not exempt from commission regulation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.023. RATEMAKING PROCEEDINGS. (a) The governing body

of a municipality participating in or conducting a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and

(2) assist the governing body with litigation in an electric utility ratemaking proceeding before the governing body, a regulatory authority, or a court.

(b) The electric utility in the ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (a) to the extent the applicable regulatory authority determines is reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.024. STATEMENT OF INTENT. (a) Not later than the 31st day before the date an electric utility files a statement of intent under Section 36.102, the electric utility shall provide notice of intent to file the statement to each municipality having original jurisdiction.

(b) Not later than the 30th day after the date a municipality receives notice under Subsection (a), the municipality may request that the electric utility file with the municipality a statement of intent in accordance with Section 36.102.

(c) If requested by a municipality under Subsection (b), the electric utility shall file the statement of intent with the municipality at the same time the statement is filed with the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.025. MUNICIPAL STANDING. (a) A municipality has standing in each case before the commission that relates to an electric utility providing service in the municipality.

(b) A municipality's standing is subject to the right of the commission to:

(1) determine standing in a case involving a retail service area dispute that involves two or more electric utilities; and

(2) consolidate municipalities on an issue of common

interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.026. JUDICIAL REVIEW. A municipality is entitled to judicial review of a commission order relating to an electric utility providing services in the municipality as provided by Section 15.001.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER C. APPEAL OF MUNICIPAL ORDER**

Sec. 33.051. APPEAL BY PARTY. A party to a rate proceeding before a municipality's governing body may appeal the governing body's decision to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.052. APPEAL BY RESIDENTS. The residents of a municipality may appeal to the commission the decision of the municipality's governing body in a rate proceeding by filing with the commission a petition for review signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the qualified voters of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.053. FILING OF APPEAL. (a) An appeal under this subchapter is initiated by filing a petition for review with the commission and serving a copy of the petition on each party to the original rate proceeding.

(b) The appeal must be initiated not later than the 30th day after the date of the final decision by the governing body of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.054. HEARING AND ORDER. (a) An appeal under this subchapter, Subchapter D, or Subchapter E is de novo and based on the test year presented to the municipality.

(b) The commission shall enter a final order establishing the rates the commission determines the municipality should have set in the ordinance to which the appeal applies.

(c) In a proceeding involving the rates of a municipally owned utility, the commission must enter a final order on or before the 185th day after the date the appeal is perfected or the utility files a rate application as prescribed by Section 33.104.

(d) In a proceeding in which a rate change is concurrently sought from the commission under the commission's original jurisdiction, the commission must enter a final order on or before the later of the 120th day after the date the appeal is perfected or the date final action must be taken in the proceeding filed with the commission.

(e) In a proceeding not governed by Subsection (c) or (d), the commission must enter a final order on or before the 185th day after the date the appeal is perfected.

(f) If the commission fails to enter a final order before the expiration of the applicable period prescribed by Subsections (c)-(e), the rates proposed by the utility are considered to be approved by the commission and take effect on the expiration of that period.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.055. APPLICABILITY OF RATES. (a) Temporary or permanent rates set by the commission are prospective and observed from the date of the applicable commission order, except an interim rate order necessary to effect uniform system-wide rates or to provide an electric utility the opportunity to avoid confiscation during the period beginning on the date a petition for review is filed with the commission and ending on the date of a final order establishing rates.

(b) The commission shall order interim rates on a prima facie showing by the electric utility that it has experienced confiscation during that period. The electric utility shall refund or credit against future bills:

(1) money collected under the interim rates in excess of

the rate finally ordered; and

(2) interest on that money, at the current rate as determined by the commission.

(c) In this section, "confiscation" includes negative cash flow experienced by an electric utility at any time a rate case proceeding is pending.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. PROVISIONS APPLICABLE TO APPEAL BY RATEPAYERS OUTSIDE MUNICIPALITY

Sec. 33.101. APPEAL BY RATEPAYERS OUTSIDE MUNICIPALITY. (a) The ratepayers of a municipally owned utility who are outside the municipality may appeal to the commission an action of the governing body of the municipality affecting the municipally owned utility's rates by filing with the commission a petition for review signed by a number of ratepayers served by the utility outside the municipality equal to at least the lesser of 10,000 or five percent of those ratepayers.

(b) A petition for review is properly signed if signed by a person or the spouse of a person in whose name residential utility service is carried.

(c) For purposes of this section, each person who receives a separate bill is a ratepayer. A person who receives more than one bill may not be counted as more than one ratepayer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.102. IDENTIFICATION OF RATEPAYERS OUTSIDE MUNICIPALITY. (a) A municipality that owns a utility shall:

(1) disclose to any person, on request, the number of ratepayers who reside outside the municipality; and

(2) provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the municipality.

(b) The municipality may not charge a fee for disclosing the information under Subsection (a)(1). The municipality may charge a reasonable fee for providing information under Subsection (a)(2).

(c) The municipality shall provide information requested under Subsection (a)(1) by telephone or in writing, as preferred by the

person making the request.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.103. FILING OF APPEAL. (a) Not later than the 14th day after the date a governing body of a municipality makes a final decision, the municipality shall issue a written report stating the effect of the decision on each class of ratepayer.

(b) An appeal under this subchapter is initiated by filing a petition for review with the commission and serving a copy of the petition on each party to the original rate proceeding.

(c) The appeal must be initiated not later than the 45th day after the date the municipality issues the written report required by Subsection (a).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.104. RATE APPLICATION. Not later than the 90th day after the date a petition for review is filed that complies with Section 33.103, the municipality shall file with the commission a rate application that complies in all material respects with the rules and forms prescribed by the commission. The commission may, for good cause shown, extend the period for filing a rate application.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. RATE DETERMINATION AND APPEAL OF ORDERS OF CERTAIN MUNICIPAL UTILITIES

Sec. 33.121. APPLICATION OF COMMISSION REVIEW. A municipally owned utility is subject to this subchapter if the utility is a utility:

(1) whose rates are appealed under Subchapter D;

(2) for which the commission orders a decrease in annual nonfuel base revenues that exceeds the greater of $25,000,000 or 10 percent of the utility's nonfuel base revenues, as computed on a total system basis without regard to the utility's municipal boundaries and established in the appealed rate ordinance; and

(3) for which the commission finds that the rates paid by the combined residential or other major customer class, other than a class in which the municipality is the customer of the municipally owned utility, are removed from cost-of-service levels to the extent that, under the nonfuel base revenue requirement adopted by the commission as computed on a total system basis without regard to the municipality's boundaries, a change in nonfuel base rate revenues in excess of 50 percent from adjusted test year levels would be required to move that class to a relative rate of return of unity (1.00 or 100 percent) under the cost-of-service methodology adopted by the commission in an appeal under Subchapter D.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.122. REVIEW OF CERTAIN RATE DECISIONS. (a) Except as provided by Subsections (b)-(f), for a period of 10 years beginning on the later of August 28, 1989, or the effective date of the rate ordinance that is the subject of the commission's final order invoking the application of this section, the commission has appellate jurisdiction over the rates charged by the municipally owned utility, both inside and outside the municipality, in the same manner and subject to the same commission powers and authority provided by this subtitle for an electric utility.

(b) The commission has jurisdiction to review the cost allocation and rate design methodologies adopted by the governing body of a municipally owned utility subject to this section. If the commission finds that the cost-of-service methodologies result in rates that are unjust, unreasonable, or unreasonably discriminatory, or unduly preferential to a customer class, the commission may order the implementation of ratesetting methodologies the commission finds reasonable.

(c) The commission shall ensure that a customer class, other than a class in which the municipality is the customer of the municipally owned utility, does not pay rates that result in a relative rate of return of more than 115 percent under the cost-of-service methodology found reasonable by the commission. A customer class may not experience a percentage base rate increase that is greater than 1-1/2 times the system average base increase. In moving an above-cost class toward cost-of-service levels, each class

farthest above cost shall be moved sequentially toward cost so that no above-cost class moves toward cost until no other class is further removed from cost.

(d) A municipality subject to this section may design residential rates, as a matter of intra-class rate design, to accomplish reasonable energy conservation goals, notwithstanding any other provision of this title.

(e) The commission's jurisdiction under this section may be invoked by any party to a local rate proceeding required by this section in the same manner as an appeal of the rates of an electric utility under Section 33.051.

(f) The commission's jurisdiction under this section does not extend to a municipally owned utility's:

(1) revenue requirements, whether base rate or fuel revenues;

(2) invested capital;

(3) return on invested capital;

(4) debt service coverage ratio; or

(5) level of transfer of revenues from the utility to the municipality's general fund.

(g) The governing body of a municipally owned utility subject to this section shall establish procedures similar to the procedures of a municipality that retains original jurisdiction under Section 33.001 to regulate an electric utility operating in the municipality. The procedures must include a public hearing process in which an affected ratepayer is granted party status on request and is grouped for purposes of participation in accordance with common or divergent interests, including the particular interests of all-electric residential ratepayers and residential ratepayers outside the municipality.

(h) This section does not require the governing body of a municipality or the governing board of a municipally owned utility subject to this section to adopt procedures that require the use of the Texas Rules of Evidence, the Texas Rules of Civil Procedure, or the presentation of sworn testimony or any other form of sworn evidence.

(i) The governing body of a municipally owned utility subject to this section shall appoint a consumer advocate to represent the interests of residential and small commercial ratepayers in the municipality's local rate proceedings. The consumer advocate's

reasonable costs of participating in a proceeding, including the reasonable costs of ratemaking consultants and expert witnesses, shall be funded by and recovered from residential and small commercial ratepayers.

(j) The commission shall adopt rules applicable to a party to an appeal under Subchapter D that provide for the public disclosure of financial and in-kind contributions and expenditures related to preparing and filing an appeal petition and preparing expert testimony or legal representation for an appeal. A party or customer who is a member of a party who makes a financial contribution or in-kind contribution to assist in an appeal by another party or customer class under Subchapter D shall be required, on a finding of the commission to that effect, to pay the municipally owned utility a penalty equivalent in amount to two times the amount of the contribution.

(k) This section does not limit the right of a party or customer to spend money to represent its own interests following the filing of a petition with the commission under Subchapter D.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 33.123. REVIEW OF CERTAIN DECISIONS FOR RATES CHARGED OUTSIDE MUNICIPALITY. (a) For a period of 10 years beginning on the later of August 28, 1989, or the effective date of the rate ordinance that is the subject of the commission's final order invoking the application of this section, the commission has appellate jurisdiction over the rates charged by the municipally owned utility, outside the municipality, as provided by this section.

(b) Except as otherwise provided by this section, a ratepayer of a municipally owned utility subject to this section who resides outside the municipality may appeal any action of the governing body of a municipality affecting the rates charged by the municipally owned utility outside the municipality by filing a petition for review with the commission in the manner provided for an appeal under Subchapter D. The petition must plainly disclose that the cost of the appeal will be funded by a surcharge on the monthly electric bills of ratepayers outside the municipality as prescribed by the commission.

(c) After the commission approves the sufficiency of a

petition, the appellants shall submit to the office for approval a budget itemizing the scope and expected cost of consultant services to be purchased by the appellants in the appeal.

(d) Not later than the 120th day after the date the commission enters its final order, the municipality shall assess a onetime surcharge on a per capita basis among residential ratepayers who reside outside the municipality to pay the reasonable consultant and legal costs approved by the counsellor. The municipality shall reimburse the appellants for incurred costs not later than the 90th day after the date the commission enters its final order.

(e) A municipality may not:

(1) include the costs associated with its defense of an appeal under this section in the rates charged a ratepayer outside the municipality; or

(2) if the municipality appeals an order entered by the commission under this section, include the costs associated with its appeal in the rates charged a ratepayer outside the municipality.

(f) A ratepayer who brings an appeal under this section may not receive funding for rate case expenses except from a residential ratepayer who resides outside the municipality or from another municipality inside whose boundaries the municipally owned utility provides service. The commission shall adopt rules for reporting financial and in-kind contributions in support of an appeal under this section. If the commission finds that an appellant has received contributions from a source other than from a ratepayer who resides outside the municipality or from another municipality, the appeal and each commission order entered in the appeal are void.

(g) The commission has jurisdiction in an appeal under this section to review and ensure that the revenue requirements of a municipally owned utility subject to this section are reasonable. The jurisdiction under this subsection does not extend to regulating the use and level of a transfer of the utility's revenues to the municipality's general fund.

(h) The commission has jurisdiction to review the cost allocation and rate design methodologies adopted by the governing body of a municipally owned utility subject to this section. If the commission finds that the cost-of-service methodologies result in rates that are unjust, unreasonable, or unreasonably discriminatory or unduly preferential to a customer class, the commission may order the implementation of ratesetting methodologies the commission finds

reasonable. The commission's jurisdiction under this subsection does not include intra-class residential rate design.

(i) An intervenor in an appeal under this section is limited to presenting evidence on cost allocation and rate design methodologies, except that an intervenor may present evidence in support of the municipality on an issue related to utility revenues.

(j) A ratepayer of a municipally owned utility subject to this section who resides outside the municipality may elect to petition for review under either this section or Subchapter D when appealing a rate ordinance or other ratesetting action of the governing body of a municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 35. ALTERNATIVE ENERGY PROVIDERS

### SUBCHAPTER A. COMPETITION AND TRANSMISSION ACCESS IN THE WHOLESALE MARKET

Sec. 35.001. DEFINITION. In this subchapter, "electric utility" includes a municipally owned utility and an electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 16, eff. Sept. 1, 1999.

Sec. 35.002. RIGHT TO COMPETE AT WHOLESALE. A provider of generation, including an electric utility affiliate, exempt wholesale generator, and qualifying facility, may compete for the business of selling power.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.003. PURCHASE FROM AFFILIATE; UNDUE PREFERENCE PROHIBITED. (a) An electric utility may purchase power from an affiliate in accordance with this title.

(b) An electric utility may not grant an undue preference to a person in connection with the utility's purchase or sale of electric energy at wholesale or other utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.004. PROVISION OF TRANSMISSION SERVICE. (a) An electric utility or transmission and distribution utility that owns or operates transmission facilities shall provide wholesale transmission service at rates and terms, including terms of access, that are comparable to the rates and terms of the utility's own use of its system.

(b) The commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities or transmission and distribution utilities.

(c) When an electric utility, electric cooperative, or transmission and distribution utility provides wholesale transmission service within ERCOT at the request of a third party, the commission shall ensure that the utility recovers the utility's reasonable costs in providing wholesale transmission services necessary for the transaction from the entity for which the transmission is provided so that the utility's other customers do not bear the costs of the service.

(d) The commission shall price wholesale transmission services within ERCOT based on the postage stamp method of pricing under which a transmission-owning utility's rate is based on the ERCOT utilities' combined annual costs of transmission divided by the total demand placed on the combined transmission systems of all such transmission-owning utilities within a power region. An electric utility subject to the freeze period imposed by Section 39.052 may 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 under Section 39.257. Notwithstanding Section 36.201, the commission may approve wholesale rates that may be periodically adjusted to ensure timely recovery of transmission investment. Notwithstanding Section 36.054(a), if the commission determines that conditions warrant the action, the commission may authorize the inclusion of construction work in progress in the rate base for transmission investment required by the commission under Section 39.203(e).

(e) The commission shall ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive. In this subsection, "ancillary services" means services necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services as the commission may determine by rule. On the introduction of customer choice in the ERCOT power region, acquisition of generation-related ancillary services on a nondiscriminatory basis by the independent organization in ERCOT on behalf of entities selling electricity at retail shall be deemed to meet the requirements of this subsection.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 17, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 295, Sec. 1, eff. June 18, 2003.

Sec. 35.005. AUTHORITY TO ORDER TRANSMISSION SERVICE. (a) The commission may require an electric utility to provide transmission service at wholesale to another electric utility, a qualifying facility, an exempt wholesale generator, or a power marketer and may determine whether terms for the transmission service are reasonable.

(b) The commission may require transmission service at wholesale, including the construction or enlargement of a facility.

(c) The commission may not issue a decision or rule relating to transmission service that is contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 18, eff. Sept. 1, 1999.

Sec. 35.006. RULES RELATED TO WHOLESALE TRANSMISSION SERVICE, RATES, AND ACCESS. (a) The commission shall adopt rules relating to wholesale transmission service, rates, and access. The rules:

(1) must be consistent with the standards in this subchapter;

(2) may not be contrary to federal law, including any

applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction;

(3) must require transmission services that are not less than the transmission services the Federal Energy Regulatory Commission may require in similar circumstances;

(4) must require that an electric utility provide all ancillary services associated with the utility's discounted wholesale sales at the same prices and under the same terms as the services are provided to a third person; and

(5) must require that an electric utility provide all ancillary services associated with the utility's discounted wholesale sales to a third person on request.

(b) The commission shall adopt rules relating to the registration and reporting requirements of a qualifying facility, exempt wholesale generator, and power marketer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.007. TARIFFS REQUIRED. (a) Except as provided by Subsection (b), an electric utility that owns or operates a transmission facility shall file a tariff in compliance with commission rules adopted under Section 35.006.

(b) An electric utility is not required to file a tariff under this section if the utility's terms for access and pricing for wholesale transmission service are included in another electric utility's tariff.

(c) An electric utility shall file a tariff required by this section with the appropriate state or federal regulatory agency having jurisdiction over the utility's transmission service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.008. ALTERNATIVE DISPUTE RESOLUTION. The commission may require that each party to a dispute concerning prices or terms of wholesale transmission service engage in a nonbinding alternative dispute resolution process before seeking resolution of the dispute by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.009. AMOUNTS PAID IN LIEU OF AD VALOREM TAXES FOR CERTAIN FACILITIES. A municipally owned utility that is required to apply for a certificate of public convenience and necessity to construct, install, or extend a transmission facility within ERCOT under Chapter 37 is entitled to recover, through the utility's wholesale transmission rate, reasonable payments made to a taxing entity in lieu of ad valorem taxes on that transmission facility, provided that:

(1) the utility enters into a written agreement with the governing body of the taxing entity related to the payments;

(2) the amount paid is the same as the amount the utility would have to pay to the taxing entity on that transmission facility if the facility were subject to ad valorem taxation;

(3) the governing body of the taxing entity is not the governing body of the utility; and

(4) the utility provides the commission with a copy of the written agreement and any other information the commission considers necessary in relation to the agreement.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 2, eff. September 1, 2015.

## SUBCHAPTER B. EXEMPT WHOLESALE GENERATORS, DISTRIBUTED NATURAL GAS GENERATION FACILITIES, AND POWER MARKETERS

Sec. 35.031. AUTHORITY TO OPERATE. An exempt wholesale generator or power marketer may sell electric energy only at wholesale.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.032. COMMISSION REGISTRATION AND REQUIRED REPORTS. (a) An exempt wholesale generator or power marketer that sells electric energy in this state shall, not later than the 30th day after the date it becomes subject to this section:

(1) register with the commission; or

(2) provide to the commission proof that it has registered with the Federal Energy Regulatory Commission or has been authorized

by the Federal Energy Regulatory Commission to sell electric energy at market-based rates.

(b) The exempt wholesale generator or power marketer may register by filing with the commission:

(1) a description of the location of any facility used to provide service;

(2) a description of the type of service provided;

(3) a copy of any information filed with the Federal Energy Regulatory Commission in connection with registration with that commission; and

(4) other information required by commission rule.

(c) An exempt wholesale generator or power marketer required to register under Subsection (a) shall file any report required by commission rule.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.033. AFFILIATE WHOLESALE PROVIDER. An affiliate of an electric utility may be an exempt wholesale generator or power marketer and may sell electric energy to its affiliated electric utility in accordance with laws governing wholesale sales of electric energy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 19, eff. Sept. 1, 1999.

Sec. 35.034. TRANSFER OF ASSETS. (a) Unless an electric utility receives commission approval under Subsection (b), the utility may not sell or transfer a facility to an affiliate or otherwise consider the facility to be an eligible facility as defined by federal law if on May 27, 1995, the utility had a rate or charge in effect:

(1) for or in connection with the construction of the facility;

(2) for electric energy produced by the construction of the facility; or

(3) for electric energy produced by the facility other than a portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge.

(b) The commission, after notice and hearing, may allow an electric utility to sell or transfer a facility governed by Subsection (a) to an affiliate or otherwise allow the facility to become an eligible facility only if the transaction:

(1) will benefit ratepayers of the utility making the sale or transfer;

(2) is in the public interest; and

(3) otherwise complies with state law.

(c) For purposes of this section, "electric utility" does not include a river authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 20, eff. Sept. 1, 1999.

Sec. 35.035. VALUATION AND ACCOUNTING OF TRANSFERRED ASSETS. (a) A transfer of assets from an electric utility to an affiliated exempt wholesale generator or power marketer shall be valued at the greater of net book cost or fair market value.

(b) A transfer of assets from an exempt wholesale generator or power marketer to an affiliated electric utility shall be valued at the lesser of net book cost or fair market value.

(c) At the time that a transfer of assets between an electric utility and an affiliated exempt wholesale generator or power marketer is approved, the commission shall order the utility to adjust its rates so that the utility's tariffs reflect benefits from the proceeds of the sale and exclude any costs associated with the transferred facility.

(d) For purposes of this section, "electric utility" does not include a river authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 21, eff. Sept. 1, 1999.

Sec. 35.036. DISTRIBUTED NATURAL GAS GENERATION FACILITIES. (a) A person who owns or operates a distributed natural gas generation facility may sell electric power generated by the facility. The electric utility, electric cooperative, or retail electric provider that provides retail electricity service to the facility may purchase electric power tendered to it by the owner or

operator of the facility at a value agreed to by the electric utility, electric cooperative, or retail electric provider and the owner or operator of the facility. The value of the electric power may be based wholly or partly on the clearing price of energy at the time of day and at the location at which the electric power is made available to the electric grid.

(b) At the request of the owner or operator of the distributed natural gas generation facility, the electric utility or electric cooperative shall allow the owner or operator of the facility to use transmission and distribution facilities to transmit the electric power to another entity that is acceptable to the owner or operator in accordance with commission rules or a tariff approved by the Federal Energy Regulatory Commission.

(c) Subject to Subsections (e) and (f), if the owner or operator of a distributed natural gas generation facility requests to be interconnected to an electric utility or electric cooperative that does not have a transmission tariff approved by the Federal Energy Regulatory Commission, the electric utility or electric cooperative may recover from the owner or operator of the facility the reasonable costs of interconnecting the facility with the electric utility or electric cooperative that are necessary for and directly attributable to the interconnection of the facility.

(d) Subject to Subsections (e) and (f), an electric utility or electric cooperative may recover from the owner or operator of a distributed natural gas generation facility the reasonable costs of electric facility upgrades and improvements if:

(1) the rated capacity of the distributed natural gas generation facility is greater than the rated capacity of the electric utility or electric cooperative; and

(2) the costs are necessary for and directly attributable to accommodating the distributed natural gas generation facility's capacity.

(e) An electric utility or electric cooperative may recover costs under Subsection (c) or (d) only if:

(1) the electric utility or electric cooperative provides a written good faith cost estimate to the owner or operator of the distributed natural gas generation facility; and

(2) the owner or operator of the distributed natural gas generation facility agrees in writing to pay the reasonable and necessary costs of interconnection or capacity accommodation

requested by the owner or operator and described in the estimate before the electric utility or electric cooperative incurs the costs.

(f) If an electric utility or electric cooperative seeks to recover from the owner or operator of a distributed natural gas generation facility an amount that exceeds the amount in the estimate provided under Subsection (e) by more than five percent, the commission shall resolve the dispute at the request of the owner or operator of the facility.

(g) A distributed natural gas generation facility must comply with emissions limitations established by the Texas Commission on Environmental Quality for a standard emissions permit for an electric generation facility unit installed after January 1, 1995.

(h) This section does not require an electric cooperative to transmit electricity to a retail point of delivery in the certificated service area of the electric cooperative if the electric cooperative has not adopted customer choice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 890 (S.B. 365), Sec. 3, eff. September 1, 2011.

## SUBCHAPTER C. QUALIFYING FACILITIES

Sec. 35.061. ENCOURAGEMENT OF ECONOMICAL PRODUCTION. The commission shall adopt and enforce rules to encourage the economical production of electric energy by qualifying facilities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.062. APPLICATION FOR CERTIFICATION. (a) An electric utility or a qualifying facility may submit to the commission for certification a copy of an agreement between the utility and facility for the purchase of capacity.

(b) An agreement submitted for certification under this section may provide that the agreement is contingent on certification by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.063. HEARING. (a) The commission, on its own motion

or on the request of a party to the agreement or another affected person, may conduct a hearing on an agreement for which certification is sought under Section 35.062.

(b) A request for a hearing or a commission decision to hold a hearing must be made not later than the 90th day after the date the agreement is submitted to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.064. CERTIFICATION STANDARDS. The commission shall certify an agreement submitted under Section 35.062 if the agreement:

(1) provides for payments over the contract term that are equal to or less than the electric utility's avoided costs, as established by the commission and in effect at the time the agreement was signed; and

(2) provides the electric utility the opportunity to acquire the cogeneration or small-power production installation before the installation is offered to another purchaser or provides other sufficient assurance that the electric utility will be provided with a comparable supply of electricity, if the qualifying facility ceases to operate the installation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.065. DEADLINES FOR COMMISSION ACTION. (a) Except as provided by Subsection (b), the commission shall make its determination regarding whether a certification should be granted under Section 35.064 not later than the 90th day after the date the agreement is submitted.

(b) If a hearing is held under Section 35.063, the commission shall make its determination regarding whether a certification should be granted not later than the 120th day after the date the agreement is submitted, except that this deadline is extended by two days for each day in excess of five days on which the commission conducts a hearing on the merits of the certification.

(c) If the commission does not make a determination by the date provided by Subsection (a) or (b), as applicable, the agreement is considered to meet the requirements of Section 35.064 and the certification is considered granted.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 35.066. TERM OF CERTIFICATION. A certification of an agreement granted under this subchapter is effective until the earlier of:

(1) the expiration date of the agreement; or

(2) the 15th anniversary of the date of the certification.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. STATE AUTHORITY TO SELL OR CONVEY POWER**

Sec. 35.101. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Public retail customer" means a retail customer that is an agency of this state, a state institution of higher education, a public school district, a political subdivision of this state, a military installation of the United States, or a United States Department of Veterans Affairs facility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 149, Sec. 19, eff. May 27, 2003.

Sec. 35.102. STATE AUTHORITY TO SELL OR CONVEY POWER OR NATURAL GAS. (a) The commissioner, acting on behalf of the state, may sell or otherwise convey power or natural gas generated from royalties taken in kind as provided by Sections 52.133(f), 53.026, and 53.077, Natural Resources Code, directly to a public retail customer regardless of whether the public retail customer is also classified as a wholesale customer under other provisions of this title.

(b) To ensure that the state receives the maximum benefit from the sale of power or natural gas generated from royalties taken in kind, the commissioner shall use all feasible means to sell that power or natural gas first to public retail customers that are military installations of the United States, agencies of this state, institutions of higher education, or public school districts. The remainder of the power or natural gas, if any, may be sold to public retail customers that are political subdivisions of this state or to

a United States Department of Veterans Affairs facility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 149, Sec. 20, eff. May 27, 2003.

Sec. 35.103. ACCESS TO TRANSMISSION AND DISTRIBUTION SYSTEMS; RATES. (a) Except as provided in Section 35.104, the state is entitled to have access to all transmission and distribution systems of all electric utilities, transmission and distribution utilities, municipally owned utilities, and electric cooperatives that serve public retail customers.

(b) An entity described by Subsection (a) shall provide any utility service, including transmission, distribution, and other services, which must include any stranded costs associated with providing service, to the state at the lowest applicable rate charged for similar service to other customers.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.

Sec. 35.104. LIMIT IN CERTAIN AREAS. Sections 35.102 and 35.103 do not apply to the rates, retail service area, facilities, or public retail customers of a municipally owned electric utility that has not adopted customer choice or an electric cooperative that has not adopted customer choice. In a certificated service area of an electric utility in which customer choice has not been introduced, the state may not engage in retail transactions that exceed 2.5 percent of a retail electric utility's total retail load.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.

Sec. 35.105. WHOLESALE CUSTOMERS. This subchapter does not prevent the commissioner, acting on behalf of this state, from registering as a power marketer.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.

Sec. 35.106. ACCESS TO POWER GENERATION. If pipeline capacity

is available on an existing facility of a gas utility or municipally owned utility, a gas utility or a municipally owned utility may not refuse to provide gas service to an electric utility generating facility, if the purpose of the service is to generate power for public retail customers by the state or an agency of this state.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 22, eff. Sept. 1, 1999.

## SUBCHAPTER E. ELECTRIC ENERGY STORAGE

Sec. 35.151. ELECTRIC ENERGY STORAGE. This subchapter applies to electric energy storage equipment or facilities that are intended to provide energy or ancillary services at wholesale, including electric energy storage equipment or facilities listed on a power generation company's registration with the commission or, for an exempt wholesale generator, on the generator's registration with the Federal Energy Regulatory Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. 943), Sec. 2, eff. September 1, 2011.

Sec. 35.152. GENERATION ASSETS. (a) Electric energy storage equipment or facilities that are intended to be used to sell energy or ancillary services at wholesale are generation assets.

(b) The owner or operator of electric energy storage equipment or facilities that are generation assets under Subsection (a) is a power generation company and is required to register under Section 39.351(a). The owner or operator of the equipment or facilities is entitled to:

(1) interconnect the equipment or facilities;

(2) obtain transmission service for the equipment or facilities; and

(3) use the equipment or facilities to sell electricity or ancillary services at wholesale in a manner consistent with the provisions of this title and commission rules applicable to a power generation company or an exempt wholesale generator.

(c) Notwithstanding Subsection (a), this section does not affect a determination made by the commission in a final order issued before December 31, 2010.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. 943), Sec. 2, eff. September 1, 2011.

## CHAPTER 36. RATES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES. (a) The regulatory authority may establish and regulate rates of an electric utility and may adopt rules for determining:

(1) the classification of customers and services; and

(2) the applicability of rates.

(b) A rule or order of the regulatory authority may not conflict with a ruling of a federal regulatory body.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.002. COMPLIANCE WITH TITLE. An electric utility may not charge or receive a rate for utility service except as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.003. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that each rate an electric utility or two or more electric utilities jointly make, demand, or receive is just and reasonable.

(b) A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer.

(c) An electric utility may not:

(1) grant an unreasonable preference or advantage concerning rates to a person in a classification;

(2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates; or

(3) establish or maintain an unreasonable difference concerning rates between localities or between classes of service.

(d) In establishing an electric utility's rates, the commission may treat as a single class two or more municipalities that an electric utility serves if the commission considers that treatment to

be appropriate.

(e) A charge to an individual customer for retail or wholesale electric service that is less than the rate approved by the regulatory authority does not constitute an impermissible difference, preference, or advantage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.004. EQUALITY OF RATES AND SERVICES. (a) An electric utility may not directly or indirectly charge, demand, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable tariff filed under Section 32.101.

(b) A person may not knowingly receive or accept a service from an electric utility for a compensation greater or less than the compensation prescribed by the tariff.

(c) Notwithstanding Subsections (a) and (b), an electric utility may charge an individual customer for wholesale or retail electric service in accordance with Section 36.007.

(d) This title does not prevent a cooperative corporation from returning to its members net earnings resulting from its operations in proportion to the members' purchases from or through the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.005. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the commission, an electric utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.006. BURDEN OF PROOF. In a proceeding involving a proposed rate change, the electric utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility

proposes the change; or

(2) an existing rate is just and reasonable, if the proposal is to reduce the rate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.007. DISCOUNTED WHOLESALE OR RETAIL RATES. (a) On application by an electric utility, a regulatory authority may approve wholesale or retail tariffs or contracts containing charges that are less than rates approved by the regulatory authority but not less than the utility's marginal cost. The charges must be in accordance with the principles of this title and may not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(b) The method for computing the marginal cost of the electric utility consists of energy and capacity components. The energy component includes variable operation and maintenance expense and marginal fuel or the energy component of purchased power. The capacity component is based on the annual economic value of deferring, accelerating, or avoiding the next increment of needed capacity, without regard to whether the capacity is purchased or built.

(c) The commission shall ensure that the method for determining marginal cost is consistently applied among utilities but may recognize the individual load and resource requirements of the electric utility.

(d) Notwithstanding any other provision of this title, the commission shall ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.008. STATE TRANSMISSION SYSTEM. In establishing rates for an electric utility, the commission may review the state's transmission system and make recommendations to the utility on the need to build new power lines, upgrade power lines, and make other necessary improvements and additions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 23, eff. Sept. 1, 1999.

Sec. 36.009. BILLING DEMAND FOR CERTAIN UTILITY CUSTOMERS. Notwithstanding any other provision of this code, the commission by rule shall require a transmission and distribution utility to:

(1) waive the application of demand ratchet provisions for each nonresidential secondary service customer that has a maximum load factor equal to or below a factor set by commission rule;

(2) implement procedures to verify annually whether each nonresidential secondary service customer has a maximum load factor that qualifies the customer for the waiver described by Subdivision (1);

(3) specify in the utility's tariff whether the utility's nonresidential secondary service customers that qualify for the waiver described by Subdivision (1) are to be billed for distribution service charges on the basis of:

(A) kilowatts;

(B) kilowatt-hours; or

(C) kilovolt-amperes; and

(4) modify the utility's tariff in the utility's next base rate case to implement the waiver described by Subdivision (1) and make the specification required by Subdivision (3).

Added by Acts 2011, 82nd Leg., R.S., Ch. 150 (H.B. 1064), Sec. 1, eff. May 28, 2011.

## SUBCHAPTER B. COMPUTATION OF RATES

Sec. 36.051. ESTABLISHING OVERALL REVENUES. In establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.052. ESTABLISHING REASONABLE RETURN. In establishing a reasonable return on invested capital, the regulatory authority shall consider applicable factors, including:

(1) the efforts and achievements of the utility in conserving resources;

(2) the quality of the utility's services;

(3) the efficiency of the utility's operations; and

(4) the quality of the utility's management.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 24, eff. Sept. 1, 1999.

Sec. 36.053. COMPONENTS OF INVESTED CAPITAL. (a) Electric utility rates shall be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.

(b) The original cost of property shall be determined at the time the property is dedicated to public use, whether by the utility that is the present owner or by a predecessor.

(c) In this section, the term "original cost" means the actual money cost or the actual money value of consideration paid other than money.

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), 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 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., 1st C.S., Ch. 1 (S.B. 20), Sec. 1, eff. September 1, 2005.

Sec. 36.054. CONSTRUCTION WORK IN PROGRESS. (a) Construction work in progress, at cost as recorded on the electric utility's

books, may be included in the utility's rate base. The inclusion of construction work in progress is an exceptional form of rate relief that the regulatory authority may grant only if the utility demonstrates that inclusion is necessary to the utility's financial integrity.

(b) Construction work in progress may not be included in the rate base for a major project under construction to the extent that the project has been inefficiently or imprudently planned or managed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.055. SEPARATIONS AND ALLOCATIONS. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.056. DEPRECIATION, AMORTIZATION, AND DEPLETION. (a) The commission shall establish proper and adequate rates and methods of depreciation, amortization, or depletion for each class of property of an electric or municipally owned utility.

(b) The rates and methods established under this section and the depreciation account required by Section 32.102 shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.057. NET INCOME; DETERMINATION OF REVENUES AND EXPENSES. (a) An electric utility's net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority.

(b) The regulatory authority shall determine revenues and expenses in a manner consistent with this subchapter.

(c) The regulatory authority may adopt reasonable rules with respect to whether an expense is allowed for ratemaking purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.058. CONSIDERATION OF PAYMENT TO AFFILIATE. (a) Except as provided by Subsection (b), the regulatory authority may not allow as capital cost or as expense a payment to an affiliate for:

(1) the cost of a service, property, right, or other item; or

(2) interest expense.

(b) The regulatory authority may allow a payment described by Subsection (a) only to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the commission.

(c) A finding under Subsection (b) must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price to the electric utility is not higher than the prices charged by the supplying affiliate for the same item or class of items to:

(A) its other affiliates or divisions; or

(B) a nonaffiliated person within the same market area or having the same market conditions.

(d) In making a finding regarding an affiliate transaction, the regulatory authority shall:

(1) determine the extent to which the conditions and circumstances of that transaction are reasonably comparable relative to quantity, terms, date of contract, and place of delivery; and

(2) allow for appropriate differences based on that determination.

(e) This section does not require a finding to be made before payments made by an electric utility to an affiliate are included in the utility's charges to consumers if there is a mechanism for making the charges subject to refund pending the making of the finding.

(f) If the regulatory authority finds that an affiliate expense for the test period is unreasonable, the regulatory authority shall:

(1) determine the reasonable level of the expense; and

(2) include that expense in determining the electric utility's cost of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 405, Sec. 25, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 413 (S.B. 1668), Sec. 1, eff. June 17, 2005.

Sec. 36.059. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the regulatory authority shall:

(1) balance equitably the interests of present and future customers; and

(2) apportion accordingly the benefits between consumers and the electric or municipally owned utility.

(b) If an electric utility or a municipally owned utility retains a portion of the investment tax credit, that portion shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.060. CONSOLIDATED INCOME TAX RETURNS. (a) If an expense is allowed to be included in utility rates or an investment is included in the utility rate base, the related income tax benefit must be included in the computation of income tax expense to reduce the rates. If an expense is not allowed to be included in utility rates or an investment is not included in the utility rate base, the related income tax benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates.

(b) The amount of income tax that a consolidated group of which an electric utility is a member saves, because the consolidated return eliminates the intercompany profit on purchases by the utility from an affiliate, shall be applied to reduce the cost of the property or service purchased from the affiliate.

(c) The investment tax credit allowed against federal income taxes, to the extent retained by the electric utility, shall be applied as a reduction in the rate-based contribution of the assets

to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 787 (S.B. 1364), Sec. 1, eff. September 1, 2013.

Sec. 36.061. ALLOWANCE OF CERTAIN EXPENSES. (a) The regulatory authority may not allow as a cost or expense for ratemaking purposes:

(1) an expenditure for legislative advocacy; or

(2) an expenditure described by Section 32.104 that the regulatory authority determines to be not in the public interest.

(b) The regulatory authority may allow as a cost or expense:

(1) reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority; and

(2) reasonable costs of participating in a proceeding under this title not to exceed the amount approved by the regulatory authority.

(c) An electric utility located in a portion of this state not subject to retail competition may establish a bill payment assistance program for a customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate the individual's body temperature because of severe burns received in combat. A regulatory authority shall allow as a cost or expense a cost or expense of the bill payment assistance program. The electric utility is entitled to:

(1) fully recover all costs and expenses related to the bill payment assistance program;

(2) defer each cost or expense related to the bill payment assistance program not explicitly included in base rates; and

(3) apply carrying charges at the utility's weighted average cost of capital to the extent related to the bill payment assistance program.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 597 (S.B. 981), Sec. 1, eff. June 14, 2013.

Sec. 36.062. CONSIDERATION OF CERTAIN EXPENSES. The regulatory authority may not consider for ratemaking purposes:

(1) an expenditure for legislative advocacy, made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) a payment made to cover costs of an accident, equipment failure, or negligence at a utility facility owned by a person or governmental entity not selling power in this state, other than a payment made under an insurance or risk-sharing arrangement executed before the date of loss;

(3) an expenditure for costs of processing a refund or credit under Section 36.110; or

(4) any other expenditure, including an executive salary, advertising expense, legal expense, or civil penalty or fine, the regulatory authority finds to be unreasonable, unnecessary, or not in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.063. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing an electric or municipally owned utility's rates, the regulatory authority may not consider any profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.064. SELF-INSURANCE. (a) An electric utility may self-insure all or part of the utility's potential liability or catastrophic property loss, including windstorm, fire, and explosion losses, that could not have been reasonably anticipated and included under operating and maintenance expenses.

(b) The commission shall approve a self-insurance plan under this section if the commission finds that:

(1) the coverage is in the public interest;

(2) the plan, considering all costs, is a lower cost

alternative to purchasing commercial insurance; and

(3) ratepayers will receive the benefits of the savings.

(c) In computing an electric utility's reasonable and necessary expenses under this subchapter, the regulatory authority, to the extent the regulatory authority finds is in the public interest, shall allow as a necessary expense the money credited to a reserve account for self-insurance. The regulatory authority shall determine reasonableness under this subsection:

(1) from information provided at the time the self-insurance plan and reserve account are established; and

(2) on the filing of a rate case by an electric utility that has a reserve account.

(d) After a reserve account for self-insurance is established, the regulatory authority shall:

(1) determine whether the reserve account has a surplus or shortage under Subsection (e); and

(2) subtract any surplus from or add any shortage to the utility's rate base.

(e) A surplus in the reserve account exists if the charges against the account are less than the money credited to the account. A shortage in the reserve account exists if the charges against the account are greater than the money credited to the account.

(f) The allowance for self-insurance under this title for ratemaking purposes is not applicable to nuclear plant investment.

(g) The commission shall adopt rules governing self-insurance under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.065. PENSION AND OTHER POSTEMPLOYMENT BENEFITS. (a) The regulatory authority shall include in the rates of an electric utility expenses for pension and other postemployment benefits, as determined by actuarial or other similar studies in accordance with generally accepted accounting principles, in an amount the regulatory authority finds reasonable. Expenses for pension and other postemployment benefits include, in an amount found reasonable by the regulatory authority, the benefits attributable to the service of employees who were employed by the predecessor integrated electric utility of an electric utility before the utility's unbundling under

Chapter 39 irrespective of the business activity performed by the employee or the affiliate to which the employee was transferred on or after the unbundling.

(b) Effective January 1, 2005, an electric utility may establish one or more reserve accounts for expenses for pension and other postemployment benefits. An electric utility shall periodically record in the reserve account any difference between:

(1) the annual amount of pension and other postemployment benefits approved as an operating expense in the electric utility's last general rate proceeding or, if that amount cannot be determined from the regulatory authority's order, the amount recorded for pension and other postemployment benefits under generally accepted accounting principles during the first year that rates from the electric utility's last general rate proceeding are in effect; and

(2) the annual amount of pension and other postemployment benefits as determined by actuarial or other similar studies that are chargeable to the electric utility's operating expense.

(c) A surplus in the reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is greater than the amount determined under Subsection (b)(2). A shortage in the reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is less than the amount determined under Subsection (b)(2).

(d) If a reserve account for pension and other postemployment benefits is established, the regulatory authority at a subsequent general rate proceeding shall:

(1) review the amounts recorded to the reserve account to determine whether the amounts are reasonable expenses;

(2) determine whether the reserve account has a surplus or shortage under Subsection (c); and

(3) subtract any surplus from or add any shortage to the electric utility's rate base with the surplus or shortage amortized over a reasonable time.

Added by Acts 2005, 79th Leg., Ch. 385 (S.B. 1447), Sec. 1, eff. June 17, 2005.

**SUBCHAPTER C. GENERAL PROCEDURES FOR RATE CHANGES PROPOSED BY UTILITY**

Sec. 36.101. DEFINITION. In this subchapter, "major change"

means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2-1/2 percent. The term does not include an increase in rates that the regulatory authority allows to go into effect or the electric utility makes under an order of the regulatory authority after hearings held with public notice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.102. STATEMENT OF INTENT TO CHANGE RATES. (a) Except as provided by Section 33.024, an electric utility may not change its rates unless the utility files a statement of its intent with the regulatory authority that has original jurisdiction over those rates at least 35 days before the effective date of the proposed change.

(b) The electric utility shall also mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality.

(c) The statement of intent must include:

(1) proposed revisions of tariffs; and

(2) a detailed statement of:

(A) each proposed change;

(B) the effect the proposed change is expected to have on the revenues of the utility;

(C) each class and number of utility consumers affected; and

(D) any other information required by the regulatory authority's rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.103. NOTICE OF INTENT TO CHANGE RATES. (a) The electric utility shall:

(1) publish, in conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(2) mail notice of the proposed change to any other affected person as required by the regulatory authority's rules.

(b) The regulatory authority may waive the publication of notice requirement prescribed by Subsection (a) in a proceeding that involves only a rate reduction for each affected ratepayer. The applicant shall give notice of the proposed rate change by mail to each affected utility customer.

(c) The regulatory authority by rule shall define other proceedings for which the publication of notice requirement prescribed by Subsection (a) may be waived on a showing of good cause. A waiver may not be granted in a proceeding involving a rate increase to any class or category of ratepayer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.104. EARLY EFFECTIVE DATE OF RATE CHANGE. (a) For good cause shown, the regulatory authority may allow a rate change, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 36.102; and

(2) under conditions the regulatory authority prescribes, subject to suspension as provided by this subchapter.

(b) The electric utility shall immediately revise its tariffs to include the change.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.105. DETERMINATION OF PROPRIETY OF RATE CHANGE; HEARING. (a) If a tariff changing rates is filed with a regulatory authority, the regulatory authority shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the change, enter on a hearing to determine the propriety of the change.

(b) The regulatory authority shall hold a hearing in every case in which the change constitutes a major change. The regulatory authority may, however, use an informal proceeding if the regulatory authority does not receive a complaint before the 46th day after the date notice of the change is filed.

(c) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The electric utility is not required to

provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.106. REGIONAL HEARING. The commission shall hold a regional hearing at an appropriate location in a case in which the commission determines it is in the public interest to hear testimony at a regional hearing for inclusion in the record.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.107. PREFERENCE TO HEARING. The regulatory authority shall:

(1) give preference to a hearing under this subchapter and to deciding questions arising under this subchapter and Subchapter E over any other question pending before it; and

(2) decide the questions as quickly as possible.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.108. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision:

(1) the local regulatory authority, after delivering to the electric utility a written statement of the regulatory authority's reasons, may suspend the rate change for not longer than 90 days after the date the rate change would otherwise be effective; and

(2) the commission may suspend the rate change for not longer than 150 days after the date the rate change would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a rate change before expiration of the applicable suspension period, the regulatory authority is considered to have approved the change. This approval is subject to the

authority of the regulatory authority thereafter to continue a hearing in progress.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.109. TEMPORARY RATES. (a) The regulatory authority may establish temporary rates to be in effect during the applicable suspension period under Section 36.108.

(b) If the regulatory authority does not establish temporary rates, the rates in effect when the suspended tariff was filed continue in effect during the suspension period.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.110. BONDED RATES. (a) An electric utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the commission is exercising appellate or original jurisdiction, by filing a bond with the commission if:

(1) the 150-day suspension period has been extended under Section 36.108(b); and

(2) the commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(b) The bonded rate may not exceed the proposed rate.

(c) The bond must be:

(1) payable to the commission in an amount, in a form, and with a surety approved by the commission; and

(2) conditioned on refund.

(d) The electric utility shall refund or credit against future bills:

(1) money collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on that money, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.111. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the regulatory authority finds the rates are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the rates the electric utility shall charge or apply for the service in question; and

(2) serve a copy of the order on the electric utility.

(b) The rates established in the order shall be observed thereafter until changed as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

For expiration of this section, see Subsection (g).

Sec. 36.112. COST RECOVERY AND RATE ADJUSTMENT STANDARDS AND PROCEDURES FOR CERTAIN NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) In establishing the base rates of the electric utility under this subchapter or Subchapter D, the regulatory authority shall determine the utility's revenue requirement based on, at the election of the utility:

(1) information submitted for a test year; or

(2) information submitted for a test year, updated to include information that reflects the most current actual or estimated information regarding increases and decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales.

(c) An electric utility that elects to provide updated information under Subsection (b)(2) must provide the information for a period ending not later than the 30th day before the date the applicable rate proceeding is filed.

(d) An electric utility that includes estimated information in the initial filing of a proceeding shall supplement the filing with actual information not later than the 45th day after the date the initial filing was made. The regulatory authority shall extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing, except that the extension period may not exceed 45 days.

(e) An electric utility that makes an election under Subsection

(b) is not precluded from proposing known and measurable adjustments to the utility's historical rate information as permitted by this title and regulatory authority rules.

(f) Without limiting the availability of known and measurable adjustments described by Subsection (e), the regulatory authority shall allow an affected electric utility to make a known and measurable adjustment to include in the utility's rates the prudent capital investment, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts, including any offsetting revenue, as determined by the regulatory authority, associated with a newly constructed or acquired natural gas-fired generation facility. The regulatory authority is required to allow the adjustment only if the facility is in service before the effective date of new rates. The adjustment may be made regardless of whether the investment is less than 10 percent of the utility's rate base before the date of the adjustment.

(g) This section expires September 1, 2023.

Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 1, eff. June 17, 2015.

**SUBCHAPTER D. RATE CHANGES PROPOSED BY REGULATORY AUTHORITY**

Sec. 36.151. UNREASONABLE OR VIOLATIVE EXISTING RATES. (a) If the regulatory authority, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of an electric utility for a service are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

(2) serve a copy of the order on the electric utility.

(b) The rates established under Subsection (a) constitute the legal rates of the electric utility until changed as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM

ANOTHER SOURCE. If an electric utility does not produce or generate the service that it distributes, transmits, or furnishes to the public for compensation but obtains the service from another source, the regulatory authority may investigate the cost of that production or generation in an investigation of the reasonableness of the electric utility's rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.153. RATE-FILING PACKAGE. (a) An electric utility shall file a rate-filing package with the regulatory authority not later than the 120th day after the date the authority notifies the utility that the authority will proceed with an inquiry under Section 36.151.

(b) The regulatory authority may grant an extension of the 120-day period prescribed by Subsection (a) or waive the rate-filing package requirement on agreement of the parties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.154. DEADLINE. (a) The regulatory authority shall make a final determination not later than the 185th day after the date the electric utility files the rate-filing package required by Section 36.153.

(b) The deadline prescribed by Subsection (a) is extended two days for each day the actual hearing on the merits of the case exceeds 15 days.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.155. INTERIM ORDER ESTABLISHING TEMPORARY RATES. (a) At any time after an initial complaint is filed under Section 36.151, the regulatory authority may issue an interim order establishing temporary rates for the electric utility to be in effect until a final determination is made.

(b) On issuance of a final order, the regulatory authority:

(1) may require the electric utility to refund to customers or to credit against future bills:

(A) money collected under the temporary rates in excess of the rate finally ordered; and

(B) interest on that money, at the current interest rate as determined by the commission; or

(2) shall authorize the electric utility to surcharge bills to recover:

(A) the amount by which the money collected under the temporary rates is less than the money that would have been collected under the rate finally ordered; and

(B) interest on that amount, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.156. AUTOMATIC TEMPORARY RATES. (a) The rates charged by the electric utility on the 185th day after the date the utility files the rate-filing package required by Section 36.153 automatically become temporary rates if:

(1) the 185-day period has been extended under Section 36.154(b); and

(2) the regulatory authority has not issued a final order or established temporary rates for the electric utility on or before the 185th day.

(b) On issuance of a final order, the regulatory authority:

(1) shall require the electric utility to refund to customers or to credit against future bills:

(A) money collected under the temporary rates in excess of the rate finally ordered; and

(B) interest on that money, at the current interest rate as determined by the commission; or

(2) shall authorize the electric utility to surcharge bills to recover:

(A) the amount by which the money collected under the temporary rates is less than the money that would have been collected under the rate finally ordered; and

(B) interest on that amount, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. COST RECOVERY AND RATE ADJUSTMENT

Sec. 36.201. AUTOMATIC ADJUSTMENT FOR CHANGES IN COSTS. Except as permitted by Section 36.204, the commission may not establish a rate or tariff that authorizes an electric utility to automatically adjust and pass through to the utility's customers a change in the utility's fuel or other costs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 26, eff. Sept. 1, 1999.

Sec. 36.202. ADJUSTMENT FOR CHANGE IN TAX LIABILITY. (a) The commission, on its own motion or on the petition of an electric utility, shall provide for the adjustment of the utility's billing to reflect an increase or decrease in the utility's tax liability to this state if the increase or decrease:

(1) results from Chapter 5, Acts of the 72nd Legislature, 1st Called Session, 1991; and

(2) is attributable to an activity subject to the commission's jurisdiction.

(b) The commission shall apportion pro rata to each type and class of service provided by the utility any billing adjustment under this section. The adjustment:

(1) shall be made effective at the same time as the increase or decrease of tax liability described by Subsection (a)(1) or as soon after that increase or decrease as is reasonably practical; and

(2) remains effective only until the commission alters the adjustment as provided by this section or enters an order for the utility under Subchapter C or D.

(c) Each year after an original adjustment, the commission shall:

(1) review the utility's increase or decrease of tax liability described by Subsection (a)(1); and

(2) alter the adjustment as necessary to reflect the increase or decrease.

(d) A proceeding under this section is not a rate case under Subchapter C.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.203. FUEL COST RECOVERY; ADJUSTMENT OF FUEL FACTOR. (a) Section 36.201 does not prohibit the commission from reviewing and providing for adjustments of a utility's fuel factor.

(b) The commission by rule shall implement procedures that provide for the timely adjustment of a utility's fuel factor, with or without a hearing. The procedures must require that:

(1) the findings required by Section 36.058 regarding fuel transactions with affiliated interests are made in a fuel reconciliation proceeding or in a rate case filed under Subchapter C or D; and

(2) an affected party receive notice and have the opportunity to request a hearing before the commission.

(c) The commission may adjust a utility's fuel factor without a hearing if the commission determines that a hearing is not necessary. If the commission holds a hearing, the commission may consider at the hearing any evidence that is appropriate and in the public interest.

(d) The commission shall render a timely decision approving, disapproving, or modifying the adjustment to the utility's fuel factor.

(e) The commission by rule shall provide for the reconciliation of a utility's fuel costs on a timely basis.

(f) A proceeding under this section is not a rate case under Subchapter C.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.204. COST RECOVERY AND INCENTIVES. In establishing rates for an electric utility, the commission may:

(1) allow timely recovery of the reasonable costs of conservation, load management, and purchased power, notwithstanding Section 36.201; and

(2) authorize additional incentives for conservation, load management, purchased power, and renewable resources.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 27, eff. Sept. 1, 1999.

Sec. 36.205. PURCHASED POWER COST RECOVERY. (a) This section applies only to an increase or decrease in the cost of purchased

electricity that has been:

(1) accepted by a federal regulatory authority; or

(2) approved after a hearing by the commission.

(b) The commission may use any appropriate method to provide for the adjustment of the cost of purchased electricity on terms determined by the commission.

(c) Purchased electricity costs may be recovered:

(1) concurrently with the effective date of the changed costs to the purchasing electric utility; or

(2) as soon after the effective date as reasonably practical.

(d) The commission may provide a mechanism to allow an electric utility that has a noncontiguous geographical service area and that purchases power for resale for that noncontiguous service area from electric utilities that are not members of the Electric Reliability Council of Texas to recover purchased power costs for the area in a manner that reflects the purchased power cost for that specific geographical noncontiguous area. The commission may not require an electric cooperative corporation to use the mechanism provided under this section unless the electric cooperative corporation requests its use.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.206. MARK-UPS. (a) A cost recovery factor established for the recovery of purchased power costs may include:

(1) the cost the electric utility incurs in purchasing capacity and energy;

(2) a mark-up added to the cost or another mechanism the commission determines will reasonably compensate the utility for any financial risk associated with purchased power obligations; and

(3) the value added by the utility in making the purchased power available to customers.

(b) The mark-ups and cost recovery factors, if allowed, may be those necessary to encourage the electric utility to include economical purchased power as part of the utility's energy and capacity resource supply plan.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.207. USE OF MARK-UPS. Any mark-ups approved under Section 36.206 are an exceptional form of rate relief that the electric utility may recover from ratepayers only on a finding by the commission that the relief is necessary to maintain the utility's financial integrity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 28, eff. Sept. 1, 1999.

Sec. 36.208. PAYMENT TO QUALIFYING FACILITY. In establishing an electric utility's rates, the regulatory authority shall:

(1) consider a payment made to a qualifying facility under an agreement certified under Subchapter C, Chapter 35, to be a reasonable and necessary operating expense of the electric utility during the period for which the certification is effective; and

(2) allow full, concurrent, and monthly recovery of the amount of the payment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.209. RECOVERY BY CERTAIN NON-ERCOT UTILITIES OF CERTAIN TRANSMISSION COSTS. (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.

(b) The commission, after notice and hearing, may allow an electric utility to recover on an annual basis its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility under a tariff approved by a federal regulatory authority to the extent that the costs or charges have not otherwise been recovered. The commission may allow the electric utility to recover only the costs allocable to retail customers in the state and may not allow the electric utility to over-recover costs.

Added by Acts 2005, 79th Leg., Ch. 1024 (H.B. 989), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1226 (S.B. 1492), Sec. 1, eff. June 19, 2009.

For expiration of this section, see Subsection (i).

Sec. 36.210. PERIODIC RATE ADJUSTMENTS. (a) The commission or a regulatory authority, on the petition of an electric utility, may approve a tariff or rate schedule in which a nonfuel rate may be periodically adjusted upward or downward, based on changes in the parts of the utility's invested capital, as described by Section 36.053, that are categorized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks in accordance with commission rules adopted after consideration of the uniform system of accounts prescribed by the Federal Energy Regulatory Commission. A periodic rate adjustment must:

(1) be approved or denied in accordance with an expedited procedure that:

(A) provides for appropriate updates of information;

(B) allows for participation by the office and affected parties; and

(C) extends for not less than 60 days;

(2) take into account changes in the number of an electric utility's customers and the effects, on a weather-normalized basis, that energy consumption and energy demand have on the amount of revenue recovered through the electric utility's base rates;

(3) be consistent with the manner in which costs for invested capital described by this subsection were allocated to each rate class, as approved by the commission, in an electric utility's most recent base rate statement of intent proceeding with changes to residential and commercial class rates reflected in volumetric charges to the extent that residential and commercial class rates are collected in that manner based on the electric utility's most recent base rate statement of intent proceeding;

(4) not diminish the ability of the commission or a regulatory authority, on its own motion or on complaint by an affected person as provided by Subchapter D, after reasonable notice and hearing, to change the existing rates of an electric utility for a service after finding that the rates are unreasonable or in violation of law;

(5) be applied by an electric utility on a system-wide basis; and

(6) be supported by the sworn statement of an appropriate employee of the electric utility that affirms that:

(A) the filing is in compliance with the provisions of the tariff or rate schedule; and

(B) the filing is true and correct to the best of the employee's knowledge, information, and belief.

(b) An electric utility in the ERCOT power region, or an unbundled electric utility outside the ERCOT power region in whose service area retail competition is available, that requests a periodic rate adjustment under this section shall:

(1) except as provided by Subsection (f)(3) and to the extent possible, implement simultaneously all nonfuel rates to be adjusted in a 12-month period that are charged by the utility to retail electric providers; and

(2) provide notice to retail electric providers of the approved rates not later than the 45th day before the date the rates take effect.

(c) A periodic rate adjustment approved under this section may not be used to adjust the portion of a nonfuel rate relating to the generation of electricity.

(d) An electric utility may adjust the utility's rates under this section not more than once per year and not more than four times between comprehensive base rate proceedings.

(e) A periodic rate adjustment approved under this section may not include indirect corporate costs or capitalized operations and maintenance expenses.

(f) Nothing in this section is intended to:

(1) conflict with a provision contained in a financing order issued under Subchapter I of this chapter or Subchapter G or J, Chapter 39;

(2) affect the limitation on the commission's jurisdiction under Section 32.002;

(3) include in a periodic rate adjustment authorized by this section costs adjusted under a transmission cost-of-service adjustment approved under Section 35.004(d);

(4) limit the jurisdiction of a municipality over the rates, operations, and services of an electric utility as provided by Section 33.001;

(5) limit the ability of a municipality to obtain a reimbursement under Section 33.023 for the reasonable cost of services of a person engaged in an activity described by that section; or

(6) prevent the commission from:

(A) reviewing the investment costs included in a periodic rate adjustment or in the following comprehensive base rate proceeding to determine whether the costs were prudent, reasonable, and necessary; or

(B) refunding to customers any amount improperly recovered through the periodic rate adjustments, with appropriate carrying costs.

(g) The commission shall adopt rules necessary to implement this section. The rules must provide for:

(1) a procedure by which a tariff or rate schedule is to be reviewed and approved;

(2) filing requirements and discovery consistent with the expedited procedure described by Subsection (a)(1);

(3) an earnings monitoring report that allows the commission or regulatory authority to reasonably determine whether a utility is earning in excess of the utility's allowed return on investment as normalized for weather;

(4) denial of the electric utility's filing if the electric utility is earning more than the utility's authorized rate of return on investment, on a weather-normalized basis, at the time the periodic rate adjustment request is filed; and

(5) a mechanism by which the commission may refund customers any amounts determined to be improperly recovered through a periodic rate adjustment, including any interest on the amounts.

(h) The commission shall undertake a study and conduct a report analyzing any periodic rate adjustment established under this section. The study shall be available for the legislature's review by January 31, 2019, so that the legislature may properly be informed as to the need to continue the commission's authority to allow periodic rate adjustments. The report shall contain but shall not be limited to:

(1) an analysis of all periodic rate adjustments approved by the commission;

(2) an analysis of the amounts in real dollars and percentages of the approved amounts by the commission and the effects

on all classes of ratepayers;

(3) the costs savings, if any, realized by all parties by utilizing periodic rate adjustment as opposed to ratemaking proceedings;

(4) an analysis on distribution costs included in periodic rate adjustments, and their appropriateness for inclusion in periodic rate adjustments; and

(5) an analysis submitted by the office on the effects of periodic rate adjustments.

(h-1) The commission shall conduct a study and make a report analyzing alternative ratemaking mechanisms adopted by other states and shall make recommendations regarding appropriate reforms to the ratemaking process in this state. The commission shall include in the report an analysis that demonstrates how the commission's recommended reforms would improve the efficiency and effectiveness of the oversight of electric utilities and ensure that electric rates are just and reasonable, as required by this chapter. The commission may retain an independent consultant, at the expense of electric utilities, to conduct the study. The commission shall provide the report to the legislature not later than January 15, 2017.

(i) This section expires September 1, 2019.

Added by Acts 2011, 82nd Leg., R.S., Ch. 196 (S.B. 1693), Sec. 1, eff. May 28, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 20 (S.B. 774), Sec. 1, eff. September 1, 2015.

For expiration of this section, see Subsection (f).

Sec. 36.211. RELATION BACK OF RATES FOR CERTAIN NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) In a rate proceeding under Subchapter D, or if requested by an electric utility in the utility's statement of intent initiating a rate proceeding under Subchapter C, notwithstanding Section 36.109(a), the final rate set in the proceeding, whether a rate increase or rate decrease, shall be made effective for consumption on and after the 155th day after the date the rate-filing package is filed.

(c) The regulatory authority shall:

(1) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 155th day after the date the rate-filing package is filed; or

(2) authorize the electric utility to surcharge bills to recover the amount by which the money collected on or after the 155th day after the date the rate-filing package is filed is less than the money that would have been collected under the rate finally ordered.

(d) The regulatory authority may require refunds or surcharges of amounts determined under Subsection (c) over a period not to exceed 18 months, along with appropriate carrying costs. The regulatory authority shall make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding.

(e) A utility may not assess more than one surcharge authorized by Subsection (c)(2) at the same time.

(f) This section expires September 1, 2023.

Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 2, eff. June 17, 2015.

For expiration of this section, see Subsection (g).

Sec. 36.212. RATE CASE REQUIREMENT FOR CERTAIN NON-ERCOT UTILITIES. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) The commission shall require an electric utility to make the filings with regulatory authorities required by Subchapter B, Chapter 33, and to file a rate-filing package under Subchapter D with the commission to initiate a comprehensive base rate proceeding before all of the utility's regulatory authorities:

(1) on or before the fourth anniversary of the date of the final order in the electric utility's most recent comprehensive base rate proceeding; or

(2) if, before the anniversary described by Subdivision (1), the electric utility earns materially more than the utility's authorized rate of return on investment, on a weather-normalized basis, in the utility's two most recent consecutive commission earnings monitoring reports.

(c) The electric utility must make the filings described by

Subsection (b) not later than the 120th day after the date the commission notifies the utility of the requirement described by Subsection (b). The 120-day period may be extended in the manner provided by Section 36.153(b).

(d) The commission may extend the time period described by Subsection (b)(1) and set a new deadline if the commission determines that a comprehensive base rate case would not result in materially different rates. The commission shall give interested parties a reasonable opportunity to present materials and argument before making a determination under this subsection.

(e) The commission shall adopt rules implementing this section, including appropriate notice and scheduling requirements.

(f) This section does not limit the authority of a regulatory authority under Subchapter D.

(g) This section expires September 1, 2023.

Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 3, eff. June 17, 2015.

## SUBCHAPTER H. RATES FOR GOVERNMENTAL ENTITIES

Sec. 36.351. DISCOUNTED RATES FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION. (a) Notwithstanding any other provision of this title, each electric utility and municipally owned utility shall discount charges for electric service provided to a facility of a four-year state university, upper-level institution, Texas State Technical College, or college.

(b) The discount is a 20-percent reduction of the utility's base rates that would otherwise be paid under the applicable tariffed rate.

(c) An electric or municipally owned utility is exempt from this section if the 20-percent discount results in a reduction equal to more than one percent of the utility's total annual revenues.

(d) A municipally owned utility is exempt from this section if the municipally owned utility, on September 1, 1995, discounted base commercial rates for electric service provided to all four-year state universities or colleges in its service area by 20 percent or more.

(e) This section does not apply to a rate charged to an institution of higher education by a municipally owned utility that provides a discounted rate to the state for electric services below

rates in effect on January 1, 1995, if the discounted rate provides a greater financial discount to the state than is provided to the institution of higher education through the discount provided by this section.

(f) An investor-owned electric utility may not recover from residential customers or any other customer class the assigned and allocated costs of serving a state university or college that receives a discount under this section.

(g) Each electric utility shall file tariffs with the commission reflecting the discount required under this section. The initial tariff filing is not a rate change for purposes of Subchapter C.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.352. SPECIAL RATE CLASS. Notwithstanding any other provision of this title, if the commission, on or before September 1, 1995, approved the establishment of a separate rate class for electric service for a university and grouped public schools in a separate rate class, the commission shall include community colleges in the rate class with public school customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.353. PAYMENT IN LIEU OF TAX. (a) A payment made in lieu of a tax by a municipally owned utility to the municipality by which the utility is owned may not be considered an expense of operation in establishing the utility's rate for providing utility service to a school district or hospital district.

(b) A rate a municipally owned utility receives from a school district or hospital district may not be used to make or to cover the cost of making payments in lieu of taxes to the municipality that owns the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.354. DISCOUNTED RATES FOR MILITARY BASES. (a) Notwithstanding any other provision of this title, each municipally

owned utility, electric cooperative, or electric utility in an area where customer choice is not available or the commission has delayed the implementation of full customer choice in accordance with Section 39.103 shall discount charges for electric service provided to a military base.

(b) The discount under Subsection (a) is a 20 percent reduction of the base commercial rate that the municipally owned utility, electric cooperative, or electric utility would otherwise charge the military installation.

(c) An electric utility, municipally owned utility, or electric cooperative may assess a surcharge to all of the utility's retail customers in the state to recover the difference in revenue between the revenues from the discounted rate for military bases provided under Subsection (a) and the base commercial rate. This subsection does not apply to an electric utility, municipally owned utility, or electric cooperative that was providing electric service to a military base on December 31, 2002, at a rate constituting a discount of 20 percent or more from the utility's base commercial rate that the utility would otherwise charge the military base.

(d) Each electric utility shall file a tariff with the commission reflecting the discount required by Subsection (a) and may file a tariff reflecting the surcharge provided by Subsection (c). Not later than the 30th day after the date the commission receives the electric utility's tariff reflecting the surcharge, the commission shall approve the tariff. A proceeding under this subsection is not a rate change for purposes of Subchapter C.

(e) An electric utility, municipally owned utility, or electric cooperative is exempt from the requirements of Subsection (a) if:

(1) the 20 percent discount would result in a reduction of revenue in an amount that is greater than one percent of the utility's total annual revenues; or

(2) the utility:

(A) was providing electric service to a military base on December 31, 2002, at a rate constituting a discount of 20 percent or more from the utility's base commercial rate that the utility would otherwise charge the military base; and

(B) continues to provide electric service to the military base at a rate constituting a discount of 20 percent or more from the utility's base commercial rate that the utility would otherwise charge the military base.

(f) Each electric utility shall provide the Texas Military Preparedness Commission with the base commercial rate that the utility would otherwise charge the military base and the rate the utility is charging the military base.

(g) For the purposes of this section, the term "military base" does not include a military base:

(1) that has been closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) and its subsequent amendments;

(2) that is administered by an authority established by a municipality under Chapter 379B, Local Government Code;

(3) that is operated by or for the benefit of the Texas National Guard, as defined by Section 437.001, Government Code, unless the base is served by a municipally owned utility owned by a city with a population of 650,000 or more; or

(4) for which a municipally owned utility has acquired the electric distribution system under 10 U.S.C. Section 2688.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 21, eff. May 27, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.23, eff. September 1, 2013.

## SUBCHAPTER I. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS

Sec. 36.401. SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE. (a) The purpose of this subchapter is to enable an electric utility to obtain timely recovery of system restoration costs and to use securitization financing to recover these costs, because that type of debt will lower the carrying costs associated with the recovery of these costs, relative to the costs that would be incurred using conventional financing methods. The proceeds of the transition bonds may be used only for the purposes of reducing the amount of recoverable system restoration costs, as determined by the commission in accordance with this subchapter, including the refinancing or retirement of utility debt or equity.

(b) It is the intent of the legislature that:

(1) securitization of system restoration costs will be accomplished using the same procedures, standards, and protections

for securitization authorized under Subchapter G, Chapter 39, as in effect on the effective date of this section, except as provided by this subchapter; and

(2) the commission will ensure that securitization of system restoration costs provides greater tangible and quantifiable benefits to ratepayers than would have been achieved without the issuance of transition bonds.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.402. SYSTEM RESTORATION COSTS; STANDARDS AND DEFINITIONS. (a) In this subchapter, "system restoration costs" means reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, deferred, capitalized, or otherwise financed, that are incurred by an electric utility due to any activity or activities conducted by or on behalf of the electric utility in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electric utility as the result of any tropical storm or hurricane, ice or snow storm, flood, or other weather-related event or natural disaster that occurred in calendar year 2008 or thereafter. System restoration costs include mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities. System restoration costs shall include reasonable estimates of the costs of an activity or activities conducted or expected to be conducted by or on behalf of the electric utility in connection with the restoration of service or infrastructure associated with electric power outages, but such estimates shall be subject to true-up and reconciliation after the actual costs are known.

(b) System restoration costs shall include carrying costs at the electric utility's weighted average cost of capital as last approved by the commission in a general rate proceeding from the date on which the system restoration costs were incurred until the date that transition bonds are issued or until system restoration costs are otherwise recovered pursuant to the provisions of this subchapter.

(c) To the extent a utility subject to this subchapter receives

insurance proceeds, governmental grants, or any other source of funding that compensate it for system restoration costs, those amounts shall be used to reduce the utility's system restoration costs recoverable from customers. If the timing of a utility's receipt of those amounts prevents their inclusion as a reduction to the system restoration costs that are securitized, or the commission later determines as a result of the true-up and reconciliation provided for in Subsection (a) that the actual costs incurred are less than estimated costs included in the determination of system restoration costs, the commission shall take those amounts into account in:

(1) the utility's next base rate proceeding; or

(2) any subsequent proceeding, other than a true-up proceeding under Section 39.307, in which the commission considers system restoration costs.

(d) If the commission determines that the insurance proceeds, governmental grants, or other sources of funding that compensate the electric utility for system restoration costs, or the amount resulting from a true-up of estimated system restoration costs are of a magnitude to justify a separate tariff rider, the commission may establish a tariff rider to credit such amounts against charges, other than transition charges or system restoration charges as defined in Section 36.403, being collected from customers.

(e) To the extent that the electric utility receives insurance proceeds, governmental grants, or any other source of funding that is used to reduce system restoration costs, the commission shall impute interest on those amounts at the same cost of capital included in the utility's system restoration costs until the date that those amounts are used to reduce the amount of system restoration costs that are securitized or otherwise reflected in the rates of the utility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.403. STANDARDS AND PROCEDURES GOVERNING SECURITIZATION AND RECOVERY OF SYSTEM RESTORATION COSTS. (a) The procedures and standards of this subchapter and the provisions of Subchapter G, Chapter 39, govern an electric utility's application for, and the commission's issuance of, a financing order to provide for the

securitization of system restoration costs, or to otherwise provide for the recovery of system restoration costs.

(b) Subject to the standards, procedures, and tests contained in this subchapter and Subchapter G, Chapter 39, the commission shall adopt a financing order on the application of the electric utility to recover its system restoration costs. If on its own motion or complaint by an affected person, the commission determines that it is likely that securitization of system restoration costs would meet the tests contained in Section 36.401(b), the commission shall require the utility to file an application for a financing order. On the commission's issuance of a financing order allowing for recovery and securitization of system restoration costs, the provisions of this subchapter and Subchapter G, Chapter 39, continue to govern the financing order and the rights and interests established in the order, and this subchapter and Subchapter G, Chapter 39, continue to govern any transition bonds issued pursuant to the financing order. To the extent any conflict exists between the provisions of this subchapter and Subchapter G, Chapter 39, in cases involving the securitization of system restoration costs, the provisions of this subchapter control.

(c) For purposes of this subchapter, "financing order," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes a financing order authorizing the securitization of system restoration costs.

(d) For purposes of this subchapter, "qualified costs," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes 100 percent of the electric utility's system restoration costs, net of any insurance proceeds, governmental grants, or other source of funding that compensate the utility for system restoration costs, received by the utility at the time it files an application for a financing order. Qualified costs also include the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding existing debt and equity securities of an electric utility subject to this subchapter in connection with the issuance of transition bonds. For purposes of this subchapter, the term qualified costs also includes:

(1) the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under this subchapter; and

(2) costs associated with ancillary agreements such as any

bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with the issuance or payment of transition bonds.

(e) For purposes of this subchapter, "transition bonds," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes transition bonds issued in association with the recovery of system restoration costs. Transition bonds issued to securitize system restoration costs may be called "system restoration bonds" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(f) For purposes of this subchapter, "transition charges," as defined by Section 39.302 and as used in Subchapter G, Chapter 39, includes nonbypassable amounts to be charged for the use of electric services, approved by the commission under a financing order to recover system restoration costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order. Transition charges approved by the commission under a financing order to recover system restoration costs may be called "system restoration charges" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(g) Notwithstanding Section 39.303(c), system restoration costs shall be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the electric utility's current base rates. For an electric utility operating within the Electric Reliability Council of Texas, system restoration costs that are properly includable in the transmission cost of service mechanism adopted under Section 35.004 and associated deferred costs not included under Section 35.004 shall be recovered under the method of pricing provided for in that section and commission rules promulgated under that section; provided, however, that an electric utility operating under a rate freeze or other limitation on its ability to pass through wholesale costs to its customers may defer such costs and accrue carrying costs at its weighted average cost of capital as last approved by the commission in a general rate proceeding until such time as the freeze or limitation expires.

(h) The amount of any accumulated deferred federal income taxes offset, used to determine the securitization total, may not be

considered in future rate proceedings. Any tax obligation of the electric utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, shall be recovered by the electric utility through the commission's implementation of this subchapter.

(i) Notwithstanding a rate freeze or limitations on an electric utility's ability to change rates authorized or imposed by any other provision of this title or by a regulatory authority, an electric utility is entitled to recover system restoration costs consistent with the provisions of this subchapter.

(j) If in the course of a proceeding to adopt a financing order the commission determines that the recovery of all or any portion of an electric utility's system restoration costs, using securitization, is not beneficial to ratepayers of the electric utility, under one or more of the tests applied to determine those benefits, the commission shall nonetheless use the proceeding to issue an order permitting the electric utility to recover the remainder of its system restoration costs through an appropriate customer surcharge mechanism, including carrying costs at the electric utility's weighted average cost of capital as last approved by the commission in a general rate proceeding, to the extent that the electric utility has not securitized those costs. A rate proceeding under Subchapter C or D shall not be required to determine and implement this surcharge mechanism. On the final implementation of rates resulting from the filing of a rate proceeding under Subchapter C or D that provides for the recovery of all remaining system restoration costs, a rider or surcharge mechanism adopted under this subsection shall expire. This subsection is limited to instances in which an electric utility has incurred system restoration costs of $100 million or more in any calendar year after January 1, 2008.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.404. NONBYPASSABLE CHARGES. The commission shall include terms in the financing order to ensure that the imposition and collection of transition charges associated with the recovery of system restoration costs are nonbypassable by imposing restrictions on bypassability of the type provided for in Chapter 39 or by

alternative means of ensuring nonbypassability, as the commission considers appropriate, consistent with the purposes of securitization.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.405. DETERMINATION OF SYSTEM RESTORATION COSTS. (a) An electric utility is entitled to recover system restoration costs consistent with the provisions of this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including system restoration costs not yet incurred at the time an application is filed under Subsection (b), in its next base rate proceeding or through any other proceeding authorized by Subchapter C or D.

(b) An electric utility may file an application with the commission seeking a determination of the amount of system restoration costs eligible for recovery and securitization. The commission may by rule prescribe the form of the application and the information reasonably needed to support the application; provided, however, that if such a rule is not in effect, the electric utility shall not be precluded from filing its application and such application cannot be rejected as being incomplete.

(c) The commission shall issue an order determining the amount of system restoration costs eligible for recovery and securitization not later than the 150th day after the date an electric utility files its application. The 150-day period begins on the date the electric utility files the application, even if the filing occurs before the effective date of this section.

(d) An electric utility may file an application for a financing order prior to the expiration of the 150-day period provided for in Subsection (c). The commission shall issue a financing order not later than 90 days after the utility files its request for a financing order; provided, however, that the commission need not issue the financing order until it has determined the amount of system restoration costs eligible for recovery and securitization.

(e) To the extent the commission has made a determination of the eligible system restoration costs of an electric utility before the effective date of this section, that determination may provide

the basis for the utility's application for a financing order pursuant to this subchapter and Subchapter G, Chapter 39. A previous commission determination does not preclude the utility from requesting recovery of additional system restoration costs eligible for recovery under this subchapter, but not previously authorized by the commission.

(f) A rate proceeding under Subchapter C or D shall not be required to determine the amount of recoverable system restoration costs, as provided by this section, or for the issuance of a financing order.

(g) A commission order under this subchapter is not subject to rehearing. A commission order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

Sec. 36.406. SEVERABILITY. Effective on the date the first utility transition bonds associated with system restoration costs are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter, Subchapter G, Chapter 39, as it applies to this subchapter, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, and those provisions shall

remain in full force and effect.

Added by Acts 2009, 81st Leg., R.S., Ch. 1 (S.B. 769), Sec. 1, eff. April 16, 2009.

## CHAPTER 37. CERTIFICATES OF CONVENIENCE AND NECESSITY

### SUBCHAPTER A. DEFINITIONS

Sec. 37.001. DEFINITIONS. In this chapter:

(1) "Certificate" means a certificate of convenience and necessity.

(2) "Electric utility" includes an electric cooperative.

(3) "Retail electric utility" means a person, political subdivision, electric cooperative, or agency that operates, maintains, or controls in this state a facility to provide retail electric utility service. The term does not include a corporation described by Section 32.053 to the extent that the corporation sells electricity exclusively at wholesale and not to the ultimate consumer. A qualifying cogenerator that sells electric energy at retail to the sole purchaser of the cogenerator's thermal output under Sections 35.061 and 36.007 is not for that reason considered to be a retail electric utility. The owner or operator of a qualifying cogeneration facility who was issued the necessary environmental permits from the Texas Natural Resource Conservation Commission after January 1, 1998, and who commenced construction of such qualifying facility before July 1, 1998, may provide electricity to the purchasers of the thermal output of that qualifying facility and shall not for that reason be considered an electric utility or a retail electric utility, provided that the purchasers of the thermal output are owners of manufacturing or process operation facilities that are located on a site entirely owned before September, 1987, by one owner who retained ownership after September, 1987, of some portion of the facilities and that those facilities now share some integrated operations, such as the provision of services and raw materials.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 29, eff. Sept. 1, 1999.

### SUBCHAPTER B. CERTIFICATE OF CONVENIENCE AND NECESSITY

Sec. 37.051. CERTIFICATE REQUIRED. (a) An electric utility or other person may not directly or indirectly provide service to the public under a franchise or permit unless the utility or other person first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.

(b) Except as otherwise provided by this chapter, a retail electric utility may not furnish or make available retail electric utility service to an area in which retail electric utility service is being lawfully furnished by another retail electric utility unless the utility first obtains a certificate that includes the area in which the consuming facility is located.

(c) Notwithstanding any other provision of this chapter, including Subsection (a), an electric cooperative is not required to obtain a certificate of public convenience and necessity for the construction, installation, operation, or extension of any generating facilities or necessary interconnection facilities.

(c-1) Notwithstanding any other provision of this title except Section 11.009, and except as provided by Subsection (c-2), a person, including an electric utility or municipally owned utility, may not interconnect a facility to the ERCOT transmission grid that enables additional power to be imported into or exported out of the ERCOT power grid unless the person obtains a certificate from the commission stating that public convenience and necessity requires or will require the interconnection. The person must apply for the certificate not later than the 180th day before the date the person seeks any order from the Federal Energy Regulatory Commission related to the interconnection. The commission shall apply Section 37.056 in considering an application under this subsection. In addition, the commission must determine that the application is consistent with the public interest before granting the certificate. The commission may adopt rules necessary to implement this subsection. This subsection does not apply to a facility that is in service on December 31, 2014.

(c-2) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (c-1) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC

regions under Sections 210, 211, and 212 of the Federal Power Act (16 U.S.C. Sections 824i, 824j, and 824k). In approving the application, the commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

(c-3) Nothing in Subsection (c-1) or (c-2) is intended to restrict the authority of the commission or the independent organization certified under Section 39.151 for the ERCOT power region to adopt rules or protocols of general applicability.

(d) A certificate may be granted to an electric utility or other person under this section for a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity.

(e) The commission may consider an application filed by a person not currently certificated as an electric utility for a certificate of convenience and necessity to construct transmission capacity that serves the ERCOT power region. Before granting a certificate under this section, the commission must find, after notice and hearing, that:

(1) the applicant has the technical ability, financial ability, and sufficient resources in this state to own, operate, and maintain reliable transmission facilities;

(2) the applicant has the resources and ability to comply with commission rules, requirements of the independent organization certified under Section 39.151 for the ERCOT power region, and requirements of the National Electric Reliability Council applicable to the provisions of transmission service; and

(3) for an application filed by a person that is not an electric utility, granting the application will not adversely affect wholesale transmission rates, as compared to the rates projected to be charged if an existing electric utility were to build the transmission facility.

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

(1) is selected by the commission as a transmission provider under a plan adopted by the commission under 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.

(g) A municipally owned utility or a municipal power agency created under Chapter 163 may not directly or indirectly construct, install, or extend a transmission facility outside of the municipal boundaries of the municipality that owns the municipally owned utility, or the power agency's boundaries, which for the purposes of this subsection consist of the municipal boundaries of the participating public entities, unless the municipally owned utility or power agency first obtains from the commission, through the application process provided by Section 37.053, a certificate that states that the public convenience and necessity requires or will require the transmission facility. Section 37.056 applies to an application under this subsection. This subsection does not apply to a transmission facility placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, a municipally owned utility was contractually obligated to purchase at least 190 megawatts of capacity.

(h) The commission shall adopt rules as necessary to provide exemptions to the application of Subsection (g) that are similar to the exemptions to the application of this section to an electric utility, including exemptions for:

(1) upgrades to an existing transmission line that do not require any additional land, right-of-way, easement, or other property not owned by the municipally owned utility; and

(2) the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021.

(i) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (g) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act (16 U.S.C. Sections 824i, 824j, and 824k). In approving the application, the

commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 30, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1275 (S.B. 933), Sec. 1, eff. September 1, 2015.

Sec. 37.052. EXCEPTIONS TO CERTIFICATE REQUIREMENT FOR SERVICE EXTENSION. (a) An electric utility is not required to obtain a certificate for an:

(1) extension into territory that is:

(A) contiguous to the territory the electric utility serves;

(B) not receiving similar service from another electric utility; and

(C) not in another electric utility's certificated area;

(2) extension in or to territory the utility serves or is authorized to serve under a certificate; or

(3) operation, extension, or service in progress on September 1, 1975.

(b) An extension allowed under Subsection (a) is limited to a device used:

(1) to interconnect existing facilities; or

(2) solely to transmit electric utility services from an existing facility to a customer of retail electric utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.0521. EXCEPTION FOR RETAIL SALES BY CERTAIN QUALIFYING COGENERATORS. (a) Notwithstanding Section 37.001(3), a qualifying cogenerator may sell electric energy at retail to more than one

purchaser of the cogenerator's thermal output.

(b) Selling electric energy at retail to more than one purchaser does not, as a result of that sale, subject a qualifying cogenerator to regulation as:

(1) a retail electric provider or power generation company; or

(2) a retail electric utility under Chapter 37.

(c) This section does not apply to sales in an area:

(1) in which customer choice has not been adopted and where a municipally owned utility or an electric cooperative is certificated to provide retail electric utility service; or

(2) that is served by an electric utility that operates solely outside of ERCOT.

Added by Acts 2013, 83rd Leg., R.S., Ch. 979 (H.B. 2049), Sec. 2, eff. September 1, 2013.

Sec. 37.053. APPLICATION FOR CERTIFICATE. (a) An electric utility or other person that wants to obtain or amend a certificate must submit an application to the commission.

(b) The applicant shall file with the commission evidence the commission requires to show the applicant has received the consent, franchise, or permit required by the proper municipal or other public authority.

(c) The commission may not require the applicant to designate a preferred route for a proposed transmission line facility.

(d) For transmission facilities ordered or approved by the commission under Chapter 37 or 39, the rights extended to an electric corporation under Section 181.004 include all public land, except land owned by the state, on which the commission has approved the construction of the line. This subsection does not limit a municipality's rights or an electric utility's obligations under Chapter 33. Nothing in this subsection shall be interpreted to prevent a public entity from expressing a route preference in a proceeding under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 949 (H.B. 971), Sec. 1, eff. June 17, 2011.

Sec. 37.054. NOTICE AND HEARING ON APPLICATION. (a) When an application for a certificate is filed, the commission shall:

(1) give notice of the application to interested parties and to the office; and

(2) if requested:

(A) set a time and place for a hearing; and

(B) give notice of the hearing.

(b) A person or electric cooperative interested in the application may intervene at the hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 31, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 416 (S.B. 855), Sec. 2, eff. June 17, 2011.

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).

Added by Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 1, eff. June 19, 2009.

Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) An electric utility or other person that wants to exercise a right or privilege

under a franchise or permit that the utility or other person anticipates obtaining but has not been granted may apply to the commission for a preliminary order under this section.

(b) The commission may issue a preliminary order declaring that the commission, on application and under commission rules, will grant the requested certificate on terms the commission designates, after the electric utility or other person obtains the franchise or permit.

(c) The commission shall grant the certificate on presentation of evidence satisfactory to the commission that the electric utility or other person has obtained the franchise or permit.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 4, eff. June 19, 2009.

Sec. 37.056. GRANT OR DENIAL OF CERTIFICATE. (a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

(1) grant the certificate as requested;

(2) grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or

(3) refuse to grant the certificate.

(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;

(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, 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 295, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 949 (H.B. 971), Sec. 2(a), eff. June 17, 2011.

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. The commission may grant a certificate for a new transmission facility to a qualified applicant that meets the requirements of this subchapter.

The commission must approve or deny an application for a certificate for a new transmission facility not later than the first anniversary of the date the application is filed. If the commission does not approve or deny the application on or before that date, a party may seek a writ of mandamus in a district court of Travis County to compel the commission to decide on the application.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 4, eff. June 19, 2009.

Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) This section applies

only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility may file with the commission a request that the commission:

(1) grant a certificate for an electric generating facility;

(2) make a public interest determination for the purchase of an existing electric generating facility under Section 14.101; or

(3) both grant a certificate and make a determination.

(c) Notwithstanding any other law, in a proceeding involving the purchase of an existing electric generating facility, the commission shall issue a final order on a certificate for the facility or making a determination on the facility required by Section 14.101, as applicable, not later than the 181st day after the date a request for the certificate or determination is filed with the commission under Subsection (b). For generating facilities granted a certificate under this subsection, notwithstanding Section 36.053, the utility's recoverable invested capital included in rates shall be determined by the commission.

(d) Notwithstanding any other law, in a proceeding involving a newly constructed generating facility, the commission shall issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under Subsection (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 4, eff. June 17, 2015.

Sec. 37.059. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The commission may revoke or amend a certificate after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.

(b) The commission may require one or more electric utilities to provide service in an area affected by the revocation or amendment of a certificate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.060. DIVISION OF MULTIPLY CERTIFICATED SERVICE AREAS.

(a) This subsection and Subsections (b)-(g) 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. For purposes of this subsection, an electric cooperative or a municipally owned electric utility shall be deemed to be providing customer choice if it has approved a resolution adopting customer choice that is effective on January 1, 2002, or effective within 24 months after the date of the resolution adopting customer choice. All other retail electric utilities shall be deemed to be providing customer choice if customer choice will be allowed for customers of the retail electric utility on January 1, 2002. In areas in which each certificated retail electric utility is providing customer choice, the commission, if requested by a retail electric utility, shall examine all areas within the service area of the retail electric utility making the request that are also certificated to one or more other retail electric utilities and, after notice and hearing, shall amend the retail electric utilities' certificates so that only one retail electric utility is certificated to provide distribution services in any such area. Only retail electric utilities certificated to serve an area on June 1, 1999, may continue to serve the area or portion of the area under an amended certificate issued under this subsection.

(b) This section does not apply in any area in which a municipally owned utility is certificated to provide retail electric utility service if the municipally owned utility serving the area files with the commission by October 1, 2001, a request that areas within the certificated service area of the municipally owned utility remain as presently certificated.

(c) The commission shall enter its order dividing multiply certificated areas within one year of the date a request is received.

(d) In amending certificates under this section, the commission shall take into consideration the factors prescribed by Section 37.056.

(e) Notwithstanding Section 37.059, the commission shall revoke certificates to the extent necessary to achieve the division of retail electric service areas as provided by this section.

(f) Unless otherwise agreed by the affected retail electric utilities, each retail electric utility shall be allowed to continue to provide service to the location of electricity-consuming facilities it is serving on the date an application for division of

the affected multiply certificated service areas is filed. No customer located within the affected multiply certificated service areas shall be permitted to switch from one retail electric utility to another while an application for division of the affected multiply certificated service areas is pending.

(g) If on June 1, 1999, retail service is being provided in an area by another retail electric utility with the written consent of the retail electric utility certificated to serve the area, that consent shall be filed with the commission. On notification of that consent and a request by an affected retail electric utility to amend the relevant certificates, the commission may grant an exception or amend a retail electric utility's certificate. This provision shall not be construed to limit the commission's authority to grant exceptions or to amend a retail electric utility's certificate, upon request and notification, for areas to which retail service is being provided pursuant to written consent granted after June 1, 1999.

(h) The commission may not grant an additional retail electric utility certificate to serve an area if the effect of the grant would cause the area to be multiply certificated unless the commission finds that the certificate holders are not providing service to any part of the area for which a certificate is sought and are not capable of providing adequate service to the area in accordance with applicable standards. However, neither this subsection nor the deadline of June 1, 1999, provided by Subsection (a) shall apply to any application for multiple certification filed with the commission on or before February 1, 1999, and those applications may be processed in accordance with applicable law in effect on the date the application was filed. Applications for multiple certification filed with the commission on or before February 1, 1999, may not be amended to expand the area for which a certificate is sought except for contiguous areas within municipalities that provide consent, as required by Section 37.053(b), not later than June 1, 1999.

(i) Notwithstanding any other provision of this section, if requested by a municipally owned utility, the commission shall examine all areas within the municipally owned utility's service area that are also certificated to one or more other retail electric utilities and, after notice and hearing, may amend the retail electric utilities' certificates so that only one retail electric utility is certificated to provide distribution services in the area, provided that:

(1) the application is filed with the commission within 12 months of the effective date of this provision and is limited to single certification of the area within the municipality's boundaries as of February 1, 1999;

(2) the commission preserves the right of an electric utility or an electric cooperative to serve its existing customers, including any property owned or leased by any customer; and

(3) the municipality is a member city of a municipal power agency, as that term is used in Section 40.059.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 32, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 796, Sec. 1, eff. June 14, 2001.

Sec. 37.061. EXISTING SERVICE AREA AGREEMENTS. (a) Notwithstanding any other provision of this title, the commission shall allow a municipally owned utility to amend the service area boundaries of its certificate if:

(1) the municipally owned utility was the holder of a certificate as of January 1, 1999;

(2) the municipally owned utility has an agreement existing before January 1, 1999, with a public utility serving the area that the public utility will not contest an application to amend the certificate to add municipal territory; and

(3) the area for which a certificate is requested is not certificated to a retail electric utility that is not a party to the agreement and that has not consented in writing to certification of the area to the municipality.

(b) The commission may not amend the certificate of the public utility serving the affected area based on the granting of a certificate to the municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 32, eff. Sept. 1, 1999.

## SUBCHAPTER C. MUNICIPALITIES

Sec. 37.101. SERVICE IN ANNEXED OR INCORPORATED AREA. (a) If an area is or will be included within a municipality as the result of annexation, incorporation, or another reason, each electric utility and each electric cooperative that holds or is entitled to hold a certificate under this title to provide service or operate a facility

in the area before the inclusion has the right to continue to provide the service or operate the facility and extend service within the utility's or cooperative's certificated area in the annexed or incorporated area under the rights granted by the certificate and this title.

(b) Notwithstanding any other law, an electric utility has the right to:

(1) continue and extend service within the utility's certificated area; and

(2) use roads, streets, highways, alleys, and public property to furnish retail electric utility service.

(c) The governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street by:

(1) giving the electric utility 30 days' notice; and

(2) specifying the new location for the facility along the right-of-way of the street.

(d) This section does not:

(1) limit the power of a city, town, or village to incorporate or of a municipality to extend its boundaries by annexation; or

(2) prohibit a municipality from levying a tax or other special charge for the use of the streets as authorized by Section 182.025, Tax Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 33, eff. Sept. 1, 1999.

Sec. 37.102. GRANT OF CERTIFICATE FOR CERTAIN MUNICIPALITIES. (a) If a municipal corporation offers retail electric utility service in a municipality having a population of more than 145,000 that is located in a county having a population of more than 2 million, the commission shall singly certificate areas in the municipality's boundaries in which more than one electric utility provides electric utility service.

(b) In singly certificating an area under Subsection (a), the commission shall preserve the right of an electric utility to serve the customers the electric utility was serving on June 17, 1983. This subsection does not apply to a customer at least partially

served by a nominal 69,000 volts system who gave notice of termination to the utility servicing that customer before June 17, 1983.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 179, eff. September 1, 2011.

**SUBCHAPTER D. REGULATION OF SERVICES, AREAS, AND FACILITIES**

Sec. 37.151. PROVISION OF SERVICE. Except as provided by this section, Section 37.152, and Section 37.153, a certificate holder, other than one granted a certificate under Section 37.051(d), shall:

(1) serve every consumer in the utility's certificated area; and

(2) provide continuous and adequate service in that area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 4, eff. June 19, 2009.

Sec. 37.152. GROUNDS FOR REDUCTION OF SERVICE. (a) Unless the commission issues a certificate that the present and future convenience and necessity will not be adversely affected, a certificate holder may not discontinue, reduce, or impair service to any part of the holder's certificated service area except for:

(1) nonpayment of charges;

(2) nonuse; or

(3) another similar reason that occurs in the usual course of business.

(b) A discontinuance, reduction, or impairment of service must be in compliance with and subject to any condition or restriction the commission prescribes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.153. REQUIRED REFUSAL OF SERVICE. A certificate holder

shall refuse to serve a customer in the holder's certificated area if the holder is prohibited from providing the service under Section 212.012, 232.029, or 232.0291, Local Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 13, eff. September 1, 2005.

Sec. 37.154. TRANSFER OF CERTIFICATE. (a) An electric utility may sell, assign, or lease a certificate or a right obtained under a certificate if the commission determines that the purchaser, assignee, or lessee can provide adequate service.

(b) A sale, assignment, or lease of a certificate or a right is subject to conditions the commission prescribes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.155. APPLICATION OF CONTRACTS. A contract approved by the commission between retail electric utilities that designates areas and customers to be served by the utilities:

(1) is valid and enforceable; and

(2) shall be incorporated into the appropriate areas of certification.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.156. INTERFERENCE WITH ANOTHER UTILITY. If an electric utility constructing or extending the utility's lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of another utility, the commission by order may:

(1) prohibit the construction or extension; or

(2) prescribe terms for locating the affected lines, plants, or systems.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.157. MAPS. An electric utility shall file with the commission one or more maps that show each utility facility and that separately illustrate each utility facility for the generation, transmission, or distribution of the utility's services on a date the commission orders.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 38. REGULATION OF ELECTRIC SERVICES

### SUBCHAPTER A. STANDARDS

Sec. 38.001. GENERAL STANDARD. An electric utility and an electric cooperative shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 34, eff. Sept. 1, 1999.

Sec. 38.002. AUTHORITY OF REGULATORY AUTHORITY CONCERNING STANDARDS. A regulatory authority, on its own motion or on complaint and after reasonable notice and hearing, may:

(1) adopt just and reasonable standards, classifications, rules, or practices an electric utility must follow in furnishing a service;

(2) adopt adequate and reasonable standards for measuring a condition, including quantity, quality, pressure, and initial voltage, relating to the furnishing of a service;

(3) adopt reasonable rules for examining, testing, and measuring a service; and

(4) adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.003. RULE OR STANDARD. (a) An electric utility may not impose a rule except as provided by this title.

(b) An electric utility may file with the regulatory authority a standard, classification, rule, or practice the utility follows.

(c) The standard, classification, rule, or practice continues in force until:

(1) amended by the utility; or

(2) changed by the regulatory authority as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.004. MINIMUM CLEARANCE STANDARD. Notwithstanding any other law, a transmission or distribution line owned by an electric utility or an electric cooperative must be constructed, operated, and maintained, as to clearances, in the manner described by the National Electrical Safety Code Standard ANSI (c)(2), as adopted by the American National Safety Institute and in effect at the time of construction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 35, eff. Sept. 1, 1999.

Sec. 38.005. ELECTRIC SERVICE RELIABILITY MEASURES. (a) The commission shall implement service quality and reliability standards relating to the delivery of electricity to retail customers by electric utilities and transmission and 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) The commission may take appropriate enforcement action under this section, including action against a utility, if any of the utility's feeders with 10 or more customers has had a SAIDI or SAIFI average that is more than 300 percent greater than the system average of all feeders during any two-year period, beginning in the year 2000. In determining the appropriate enforcement action, the commission shall consider:

(1) the feeder's operating and maintenance history;

(2) the cause of each interruption in the feeder's service;

(3) any action taken by a utility to address the feeder's performance;

(4) the estimated cost and benefit of remediating a feeder's performance; and

(5) any other relevant factor as determined by the commission.

(c) The standards implemented under Subsection (a) shall require each electric utility and transmission and distribution utility subject to this section to maintain adequately trained and experienced personnel throughout the utility's service area so that the utility is able to fully and adequately comply with the appropriate service quality and reliability standards.

(d) The standards shall ensure that electric utilities do not neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas, with regard to system reliability.

(e) The commission may require each electric utility and transmission and distribution utility to supply data to assist the commission in developing the reliability standards.

(f) Each electric utility, transmission and distribution utility, electric cooperative, municipally owned utility, and generation provider shall be obligated to comply with any operational criteria duly established by the independent organization as defined by Section 39.151 or adopted by the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 36, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 424 (H.B. 2052), Sec. 1, eff. June 19, 2009.

**SUBCHAPTER B. PROHIBITIONS ON PREFERENCES AND DISCRIMINATION**

Sec. 38.021. UNREASONABLE PREFERENCE OR PREJUDICE CONCERNING SERVICE PROHIBITED. In providing a service to persons in a classification, an electric utility may not:

(1) grant an unreasonable preference or advantage to a person in the classification; or

(2) subject a person in the classification to an unreasonable prejudice or disadvantage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.022. DISCRIMINATION AND RESTRICTION ON COMPETITION. An electric utility may not:

(1) discriminate against a person or electric cooperative who sells or leases equipment or performs services in competition with the electric utility; or

(2) engage in a practice that tends to restrict or impair that competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 37, eff. Sept. 1, 1999.

**SUBCHAPTER C. EXAMINATIONS, TESTS, AND INSPECTIONS**

Sec. 38.051. EXAMINATION AND TEST OF INSTRUMENT OR EQUIPMENT; INSPECTION. (a) A regulatory authority may:

(1) examine and test equipment, including meters and instruments, used to measure service of an electric utility; and

(2) set up and use on the premises occupied by an electric utility an apparatus or appliance necessary for the examination or test.

(b) The electric utility is entitled to be represented at an examination, test, or inspection made under this section.

(c) The electric utility and its officers and employees shall facilitate the examination, test, or inspection by giving reasonable aid to the regulatory authority and to any person designated by the regulatory authority for the performance of those duties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.052. INSPECTION FOR CONSUMER. (a) A consumer may have a meter or other measuring device tested by an electric utility:

(1) once without charge, after a reasonable period of presumed accuracy the regulatory authority establishes by rule; and

(2) at a shorter interval on payment of a reasonable fee established by the regulatory authority.

(b) The regulatory authority shall establish reasonable fees to be paid for other examining or testing of a measuring device on the

request of a consumer.

(c) If the consumer requests the test under Subsection (a)(2) and the measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer, the fee the consumer paid at the time of the request shall be refunded.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. IMPROVEMENTS IN SERVICE

Sec. 38.071. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. The commission, after notice and hearing, may:

(1) order an electric utility to provide specified improvements in its service in a specified area if:

(A) service in the area is inadequate or substantially inferior to service in a comparable area; and

(B) requiring the company to provide the improved service is reasonable; or

(2) order two or more electric utilities or electric cooperatives to establish specified facilities for interconnecting service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 38, eff. Sept. 1, 1999.

Sec. 38.072. PRIORITIES FOR POWER RESTORATION TO CERTAIN MEDICAL FACILITIES. (a) In this section:

(1) "Assisted living facility" has the meaning assigned by Section 247.002, Health and Safety Code.

(2) "Extended power outage" has the meaning assigned by Section 13.1395, Water Code.

(3) "Hospice services" has the meaning assigned by Section 142.001, Health and Safety Code.

(4) "Nursing facility" has the meaning assigned by Section 242.301, Health and Safety Code.

(b) The commission by rule shall require an electric utility to give to the following the same priority that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended power outage:

(1) a nursing facility;

(2) an assisted living facility; and

(3) a facility that provides hospice services.

(c) The rules adopted by the commission under Subsection (b) must allow an electric utility to exercise the electric utility's discretion to prioritize power restoration for a facility after an extended power outage in accordance with the facility's needs and with the characteristics of the geographic area in which power must be restored.

(d) A municipally owned utility shall report the emergency operations plan for restoring power to a facility listed in Subsection (b) to the municipality's governing body or the body vested with the power to manage and operate the municipally owned utility.

(e) An electric cooperative shall report the emergency operations plan for restoring power to a facility listed in Subsection (b) to the board of directors of the electric cooperative.

Added by Acts 2011, 82nd Leg., R.S., Ch. 640 (S.B. 937), Sec. 1, eff. September 1, 2011.

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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1226 (S.B. 1492), Sec. 2, eff. June 19, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 2.02, eff. September 1, 2009.

## SUBCHAPTER E. INFRASTRUCTURE IMPROVEMENT AND MAINTENANCE REPORT

Sec. 38.101. REPORT ON INFRASTRUCTURE IMPROVEMENT AND MAINTENANCE. (a) Not later than May 1 of each year, each electric utility shall submit to the commission a report describing the utility's activities related to:

(1) identifying areas that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas;

(2) vegetation management; and

(3) inspecting distribution poles.

(b) Each electric utility shall include in a report required under Subsection (a) a summary of the utility's activities related to preparing for emergency operations.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 2.03, eff. September 1, 2009.

# CHAPTER 39. RESTRUCTURING OF ELECTRIC UTILITY INDUSTRY

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 39.001. LEGISLATIVE POLICY AND PURPOSE. (a) The legislature finds that the production and sale of electricity is not a monopoly warranting regulation of rates, operations, and services and that the public interest in competitive electric markets requires that, except for transmission and distribution services and for the recovery of stranded costs, electric services and their prices should be determined by customer choices and the normal forces of competition. As a result, this chapter is enacted to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry.

(b) The legislature finds that it is in the public interest to:

(1) implement on January 1, 2002, a competitive retail electric market that allows each retail customer to choose the customer's provider of electricity and that encourages full and fair competition among all providers of electricity;

(2) allow utilities with uneconomic generation-related assets and purchased power contracts to recover the reasonable excess costs over market of those assets and purchased power contracts;

(3) educate utility customers about anticipated changes in the provision of retail electric service to ensure that the benefits of the competitive market reach all customers; and

(4) protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice.

(c) Regulatory authorities, excluding the governing body of a municipally owned electric utility that has not opted for customer choice or the body vested with power to manage and operate a municipally owned electric utility that has not opted for customer choice, may not make rules or issue orders regulating competitive electric services, prices, or competitors or restricting or conditioning competition except as authorized in this title and may not discriminate against any participant or type of participant during the transition to a competitive market and in the competitive market.

(d) Regulatory authorities, excluding the governing body of a municipally owned electric utility that has not opted for customer choice or the body vested with power to manage and operate a municipally owned electric utility that has not opted for customer choice, shall authorize or order competitive rather than regulatory

methods to achieve the goals of this chapter to the greatest extent feasible and shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition.

(e) Judicial review of competition rules adopted by the commission shall be conducted under Chapter 2001, Government Code, except as otherwise provided by this chapter. Judicial review of the validity of competition rules shall be commenced in the Court of Appeals for the Third Court of Appeals District and shall be limited to the commission's rulemaking record. The rulemaking record consists of:

(1) the notice of the proposed rule;

(2) the comments of all interested persons;

(3) all studies, reports, memoranda, or other materials on which the commission relied in adopting the rule; and

(4) the order adopting the rule.

(f) A person who challenges the validity of a competition rule must file a notice of appeal with the court of appeals and serve the notice on the commission not later than the 15th day after the date on which the rule as adopted is published in the Texas Register. The notice of appeal shall designate the person challenging the rule as the appellant and the commission as the appellee. The commission shall prepare the rulemaking record and file it with the court of appeals not later than the 30th day after the date the notice of appeal is served on the commission. The court of appeals shall hear and determine each appeal as expeditiously as possible with lawful precedence over other matters. The appellant, and any person who is permitted by the court to intervene in support of the appellant's claims, shall file and serve briefs not later than the 30th day after the date the commission files the rulemaking record. The commission, and any person who is permitted by the court to intervene in support of the rule, shall file and serve briefs not later than the 60th day after the date the appellant files the appellant's brief. The court of appeals may, on its own motion or on motion of any person for good cause, modify the filing deadlines prescribed by this subsection. The court of appeals shall render judgment affirming the rule or reversing and, if appropriate on reversal, remanding the rule to the commission for further proceedings, consistent with the court's opinion and judgment. The Texas Rules of Appellate Procedure apply to an appeal brought under this section to the extent not

inconsistent with this section.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

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), 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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 19, eff. September 1, 2007.

Sec. 39.003. CONTESTED CASES. Unless specifically provided otherwise, each commission proceeding under this chapter, other than a rulemaking proceeding, report, notification, or registration, shall be conducted as a contested case and the burden of proof is on the incumbent electric utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

**SUBCHAPTER B. TRANSITION TO COMPETITIVE RETAIL ELECTRIC MARKET**

Sec. 39.051. UNBUNDLING. (a) On or before September 1, 2000, each electric utility shall separate from its regulated utility activities its customer energy services business activities that are otherwise also already widely available in the competitive market.

(b) Not later than January 1, 2002, each electric utility shall separate its business activities from one another into the following units:

(1) a power generation company;
(2) a retail electric provider; and
(3) a transmission and distribution utility.

(c) An electric utility may accomplish the separation required by Subsection (b) either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission and distribution utilities. Notwithstanding any other provision of this chapter, an electric utility that does not have stranded costs described by Section 39.254 and that on September 1, 2005, has not finalized unbundling pursuant to a commission order approving an unbundling plan may also meet the requirements of Subsection (b) for generation facilities existing on September 1, 2005, in the Electric Reliability Council of Texas if it meets and maintains compliance with the following requirements:

(1) the electric utility has no more than 400 megawatts of Texas jurisdictional capacity from generating units within the Electric Reliability Council of Texas that have not been mothballed or retired;

(2) the electric utility has a contract or contracts with separate nonaffiliated companies or separate affiliated companies for the sale of all of the output from its generating units that have not been mothballed or retired with a contract term that is no shorter than 20 years or the life of the generating units, whichever is shorter; and

(3) the electric utility has a separate division within the electric utility for its generation business activities.

(c-1) A separate division described by Subsection (c)(3) is subject to Subsection (d) and, for the purposes of this chapter, is considered a separate affiliated power generation company and a competitive affiliate.

(d) Each electric utility shall unbundle under this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with Section 39.157(d).

(e) Each electric utility shall file with the commission a plan to implement this section by January 10, 2000.

(f) The commission shall adopt the utility's plan for business separation required by Subsection (b), adopt the plan with changes, or reject the plan and require the utility to file a new plan.

(g) Transactions by electric utilities involving sales, transfers, or other disposition of assets to accomplish the purposes of this section are not subject to Section 14.101, 35.034, or 35.035.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 413 (S.B. 1668), Sec. 3, eff. June 17, 2005.

Sec. 39.052. FREEZE ON EXISTING RETAIL BASE RATE TARIFFS. (a) Until January 1, 2002, an electric utility shall provide retail electric service within its certificated service area in accordance with the electric utility's retail base rate tariffs in effect on September 1, 1999, including its purchased power cost recovery factor.

(b) During the freeze period, an electric utility may not increase its retail base rates above the rates provided by this section except for losses caused by force majeure as provided by Section 39.055.

(c) Notwithstanding any other provision of this title, during the freeze period the regulatory authority may not reduce the retail base rates of an electric utility, except as may be ordered as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999.

(d) During the freeze period, the retail base rates, overall revenues, return on invested capital, and net income of an electric utility are not subject to complaint, hearing, or determination as to reasonableness.

(e) An electric utility that has a rate proceeding pending before the commission as of January 2, 1999, shall provide service in accordance with the tariffs approved in that proceeding from the date of approval until the end of the freeze period.

(f) Nothing in this section affects the authority of the commission to fulfill its obligations under Section 39.262.

(g) Nothing in this section shall deny a utility its right to have the commission conduct proceedings and issue a final order pertaining to any matter that may be remanded to the commission by a court having jurisdiction, except that the final order may not affect the rates charged to customers during the freeze period but shall be taken into account during the utility's true-up proceeding under Section 39.262.

(h) Nothing in this title shall be construed to prevent an electric utility or a transmission and distribution utility from

filing, and the commission from approving, a change in wholesale transmission service rates during the freeze period.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.053. COST RECOVERY ADJUSTMENTS. This subchapter does not limit or alter the ability of an electric utility during the freeze period to revise its fuel factor or to reconcile fuel expenses and to either refund fuel overcollections or surcharge fuel undercollections to customers, as authorized by its tariffs and Sections 36.203 and 36.205.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.054. RETAIL ELECTRIC SERVICE DURING FREEZE PERIOD. (a) An electric utility shall provide retail electric service during the freeze period in accordance with any contract terms applicable to a particular retail customer approved by the regulatory authority and in effect on December 31, 1998.

(b) Nothing in Sections 39.052(c) and (d) shall be construed to restrict any customer's right to complain during the freeze period to the regulatory authority regarding the quality of retail electric service provided by the electric utility or the applicability of an electric utility's particular tariff to the customer.

(c) Nothing in this title shall be construed to restrict an electric utility, voluntarily and at its sole discretion, from offering new services or new tariff options to its customers during the freeze period, consistent with Section 39.051(a).

(d) Any offering of new services or tariff options under this section shall be equal to or greater than an electric utility's long-run marginal cost and may not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(e) Revenue from any new offering under this section shall be accounted for in a manner consistent with Section 36.007.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.055. FORCE MAJEURE. (a) An electric utility may

recover losses resulting from force majeure through an increase in its retail base rates during the freeze period.

(b) Notwithstanding Subchapter C, Chapter 36, the regulatory authority, after a hearing to determine the electric utility's losses from force majeure, shall permit the utility to fully collect any approved force majeure increase through an appropriate customer surcharge mechanism.

(c) For purposes of this section, "force majeure" means a major event or combination of major events, including new or expanded state or federal statutory or regulatory requirements; hurricanes, tornadoes, ice storms, or other natural disasters; or acts of war, terrorism, or civil disturbance, beyond the control of an electric utility that the regulatory authority finds increases the utility's total reasonable and necessary nonfuel costs or decreases the utility's total nonfuel revenues related to the generation and delivery of electricity by more than 10 percent for any calendar year during the freeze period. The term does not include any changes in general economic conditions such as inflation, interest rates, or other factors of general application.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER C. RETAIL COMPETITION

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;

(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) 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;

(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) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not refuse to provide retail electric or electric generation service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status. A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not refuse to provide retail electric or electric generation service

to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services. The commission shall require a provider to comply with this subsection as a condition of certification or registration.

(d) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service shall submit reports to the commission and the office annually and on request relating to the person's compliance with this section. The commission by rule shall specify the form in which a report must be submitted. A report must include:

(1) information regarding the extent of the person's coverage;

(2) information regarding the service provided, compiled by zip code and census tract; and

(3) any other information the commission or the office considers relevant to determine compliance.

(e) The commission has the authority to adopt and enforce such rules as may be necessary or appropriate to carry out Subsections (a)-(d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit, switching fees, levelized billing programs, interconnection and use of on-site generation, termination of service, and quality of service. The commission has jurisdiction over all providers of electric service in enforcing Subsections (a)-(d) and may assess civil and administrative penalties under Section 15.023 and seek civil penalties under Section 15.028.

(f) On or before June 30, 2001, the commission shall modify its current rules regarding customer protections to ensure that at least the same level of customer protection against potential abuses and the same quality of service that exists on December 31, 1999, is maintained in a restructured electric industry.

(g) Compliance with Subsections (a)-(e) by a provider of electric service which is a municipally owned utility shall be administered solely by the governing body of the municipally owned utility, which shall adopt, implement, and enforce, as to the municipally owned utility, rules having the effect of accomplishing the objectives of Subsections (a)-(e). Reports containing the information required by Subsection (d) shall be filed by the municipally owned utility with the governing body.

(h) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not disconnect service to a residential customer during an extreme weather emergency or on a weekend day. The entity providing service shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills. For purposes of this subsection, "extreme weather emergency" means a period when:

(1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports; or

(2) the National Weather Service issues a heat advisory for any county in the relevant service territory, or when such an advisory has been issued on any one of the previous two calendar days.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.102. RETAIL CUSTOMER CHOICE. (a) Each retail customer in this state, except retail customers of electric cooperatives and municipally owned utilities that have not opted for customer choice, shall have customer choice on and after January 1, 2002.

(b) The affiliated retail electric provider of the electric utility serving a retail customer on December 31, 2001, may continue to serve that customer until the customer chooses service from a different retail electric provider, an electric cooperative offering customer choice, or a municipally owned utility offering customer choice.

(c) An electric utility that has in effect a systemwide freeze for residential and commercial customers in effect September 1, 1997, extending beyond December 31, 2001, that has been found by a regulatory authority to be in the public interest is not subject to this chapter. At the expiration of the utility's freeze period, the utility shall be subject to this chapter and, at that time, has no claim for stranded cost recovery.

(d) The commission shall oversee the compliance with this chapter by electric utilities that were not subject to this chapter

before September 1, 2003, and in so doing shall establish schedules and procedures and require commission approvals as it deems necessary to achieve the objectives of this chapter. This subsection does not apply to an electric utility to which Subsection (c) applies.

(e) In establishing a schedule under Subsection (d), the commission shall consider:

(1) the effect of customer choice on the reliability of service provided by the electric utility;

(2) whether the electric utility's service area is located in more than one power region;

(3) whether any applicable power region has been certified as a qualifying power region under Section 39.152(a);

(4) whether other electric utilities in the power region offer retail customer choice; and

(5) any other relevant factor.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1327, Sec. 2, eff. Sept. 1, 2003.

Sec. 39.1025. LIMITATIONS ON TELEPHONE SOLICITATION. (a) A person may not make or cause to be made a telephone solicitation to a nonresidential electric customer who has given notice to the commission of the customer's objection to receiving telephone solicitations relating to the customer's choice of retail electric providers.

(b) The commission shall establish and provide for the operation of a database to compile a list of nonresidential electric customers who object to receiving telephone solicitations. The commission may operate the database or contract with another entity to operate the database.

(c) A customer shall pay a fee of not more than $5 for inclusion in the database. The commission shall prescribe the amount of the fee.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 171 (H.B. 210), Sec. 3, eff. May 27, 2005.

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

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.104. CUSTOMER CHOICE PILOT PROJECTS. (a) Customer choice pilot projects may be used to allow the commission to evaluate the ability of each power region and electric utility to implement customer choice. However, in a multiply certificated area, an electric utility may not include customers that were served by an electric cooperative or a municipally owned utility on May 1, 1999.

(b) The commission shall require each electric utility to offer customer choice in its service area within this state amounting to five percent of the utility's combined load of all customer classes within this state beginning on June 1, 2001.

(c) The load designated for customer choice under this section shall be distributed among all customer classes of a utility consistent with the purpose of this section and subject to commission approval.

(d) Customers participating in a pilot project under this section may buy electric energy from any retail electric provider certified by the commission under Section 39.352, including an affiliated retail electric provider; provided, however, that a retail electric provider may not participate in a pilot project in the certificated service area served by the electric utility with which it is affiliated.

(e) Each utility operating a pilot project under this section shall charge residential and small commercial customers in accordance with Section 39.052.

(f) The commission may prescribe reporting requirements it considers necessary to evaluate a pilot project consistent with the purpose of this section.

(g) Customers having customer choice under this section shall be billed as provided by Section 39.107.

(h) The commission may prescribe terms and conditions it considers necessary to prohibit anticompetitive practices and to encourage customer choice offered under this section.

(i) Notwithstanding any other provision of this title, a retail electric provider participating in a pilot project under this section is not an electric utility or a retail electric utility.

(j) Twenty percent of the load designated for customer choice under this section shall be initially set aside for aggregated loads.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.105. LIMITATION ON SALE OF ELECTRICITY. (a) After January 1, 2002, a transmission and distribution utility may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs.

(b) A person or retail electric utility may not provide, furnish, or make available electric service at retail within the certificated service area of an electric cooperative that has not adopted customer choice or a municipally owned utility that has not adopted customer choice. However, this subsection does not prohibit the provision of electric service in multiply certificated service areas to customers of any other retail electric utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.106. PROVIDER OF LAST RESORT. (a) The commission shall designate retail electric providers in areas of the state in which customer choice is in effect to serve as providers of last resort.

(b) A provider of last resort shall offer a standard retail service package for each class of customers designated by the commission at a fixed, nondiscountable rate approved by the commission.

(c) A provider of last resort shall provide the standard retail service package to any requesting customer in the territory for which it is the provider of last resort.

(d) The commission shall designate the provider or providers of last resort not later than June 1, 2001.

(e) The commission shall determine the procedures and criteria,

which may include the solicitation of bids, for designating a provider or providers of last resort. The commission may redesignate the provider of last resort according to a schedule it considers appropriate.

(f) In the event that no retail electric provider applies to be the provider of last resort for a given area of the state on reasonable terms and conditions, the commission may require a retail electric provider to become the provider of last resort as a condition of receiving or maintaining a certificate under Section 39.352.

(g) In the event that a retail electric provider fails to serve any or all of its customers, the provider of last resort shall offer that customer the standard retail service package for that customer class with no interruption of service to any customer.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.107. METERING AND BILLING SERVICES. (a) On introduction of customer choice in a service area, metering services for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice. Metering services provided to commercial and industrial customers that are required by the independent system operator to have an interval data recorder meter may be provided on a competitive basis.

(b) Metering services provided to residential customers and to nonresidential customers other than those required by the independent system operator to have an interval data recorder meter shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice. Retail electric providers serving residential and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter may request that the transmission and distribution utility provide specialized meters, meter features, or add-on accessories so long as they are technically feasible and generally available in the market and provided that the retail electric provider pays the differential cost of such a meter or accessory. Metering and billing services provided to residential customers shall

be governed by the customer safeguards adopted by the commission under Section 39.101. All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information. A customer may authorize its data to be provided to one or more retail electric providers under rules and charges established by the commission.

(c) Beginning on the date of introduction of customer choice in a service area, tenants of leased or rented property that is separately metered shall have the right to choose a retail electric provider, an electric cooperative offering customer choice, or a municipally owned utility offering customer choice, and the owner of the property must grant reasonable and nondiscriminatory access to transmission and distribution utilities, retail electric providers, electric cooperatives, and municipally owned utilities for metering purposes.

(d) Beginning on the date of introduction of customer choice in a service area, a transmission and distribution utility, or an electric cooperative or municipally owned utility providing the customer's energy requirements shall bill a customer's retail electric provider for nonbypassable delivery charges as determined under Section 39.201. The retail electric provider or the electric cooperative or municipally owned utility, as appropriate, must pay these charges.

(e) A transmission and distribution utility may bill retail customers at the request of a retail electric provider or, if an electric cooperative or municipally owned utility is providing the customer's energy requirements, at the request of the electric cooperative or municipally owned utility. A transmission and distribution utility that provides billing service on such request shall offer billing service on comparable terms and conditions to those of any such requesting retail electric provider or, as applicable, the electric cooperative or municipally owned utility providing energy requirements to a customer served by the transmission and distribution utility.

(f) Beginning on the date of introduction of customer choice in a service area, any charges for metering and billing services shall comply with rules adopted by the commission relating to nondiscriminatory rates of service.

(g) Metered electric service sold to residential customers on a prepaid basis may not be sold at a price that is higher than the price charged by the provider of last resort.

(h) The commission shall establish a nonbypassable surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The commission shall ensure that the nonbypassable surcharge reflects a deployment of advanced meters that is no more than one-third of the utility's total meters over each calendar year and shall ensure that the nonbypassable surcharge does not result in the utility recovering more than its actual, fully allocated meter and meter information network costs. The expenses must be allocated to the customer classes receiving the services, based on the electric utility's most recently approved tariffs.

(i) Subject to the restrictions in Subsection (h), it is the intent of the legislature that net metering and advanced meter information networks be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives.

(j) Notwithstanding Subsection (b), a nonresidential customer may have a meter installed and metering services provided on a competitive basis as part of an energy savings performance contract.

(k) The commission by rule shall prohibit an electric utility or transmission and distribution utility from selling, sharing, or disclosing information generated, provided, or otherwise collected from an advanced metering system or meter information network, including information used to calculate charges for service, historical load data, and any other customer information. The commission shall allow an electric utility or transmission and distribution utility to share information with an affiliated corporation, or other third-party entity, if the information is to be used only for the purpose of providing electric utility service to the customer or other customer-approved services.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 7, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 10, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 20, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(110), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.07, eff. September 1, 2013.

Sec. 39.108. CONTRACTUAL OBLIGATIONS. This chapter may not:

(1) interfere with or abrogate the rights or obligations of any party, including a retail or wholesale customer, to a contract with an investor-owned electric utility, river authority, municipally owned utility, or electric cooperative;

(2) interfere with or abrogate the rights or obligations of a party under a contract or agreement concerning certificated utility service areas; or

(3) result in a change in wholesale power costs to wholesale customers in Texas purchasing electricity under wholesale power contracts the pricing provisions of which are based on formulary rates, fuel adjustments, or average system costs.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.109. NEW OWNER OR SUCCESSOR. (a) To ensure the continued safe and reliable operation of electric generating facilities, the commission shall require a generating facility that is transferred to a new owner or successor in interest between June 1, 1999, and January 1, 2002, to continue to be operated and maintained by the same operating personnel for not less than two years, except that the personnel may be dismissed for cause.

(b) This section shall apply only if the facility is actually operated during the two-year period after the sale.

(c) This section shall not require that the purchaser cause the facility to be operated in whole or in part, nor shall it preclude a temporary closure of the facility during the two-year period.

(d) This section shall not create any obligation extending

after the two-year period following the sale.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.112. NOTICE OF EXPIRATION AND PRICE CHANGE. (a) In this section, "fixed rate product" means a retail electric product with a term of at least three months for which the price for each billing period, including recurring charges, does not change throughout the term of the contract, except that the price may vary to reflect actual changes in transmission and distribution utility charges, changes to ERCOT or Texas Regional Entity administrative fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or costs that are not within the retail electric provider's control.

(b) A retail electric provider shall provide a residential customer who has a fixed rate product with at least one written notice of the date the fixed rate product will expire. The notice must:

(1) be sent to the customer's billing address by mail at least 30, but not more than 60, days preceding the date the contract will expire;

(2) be sent to the customer's e-mail address, if available to the provider and if the customer has agreed to receive notices electronically, at least 30, but not more than 60, days preceding the date the contract will expire;

(3) include on the outside of the envelope in which the notice is sent, a statement that reads: "Contract Expiration Notice. See Enclosed.";

(4) if included with a customer's bill, be printed on a separate page; and

(5) include a description of any fees or charges associated with the early termination of the customer's fixed rate product.

(c) A retail electric provider shall include on each billing statement the end date of the fixed rate product.

(d) No provision in this section shall be construed to prohibit the commission from adopting rules that would provide a greater degree of customer protection.

Added by Acts 2009, 81st Leg., R.S., Ch. 648 (H.B. 1822), Sec. 5, eff. September 1, 2009.

## SUBCHAPTER D. MARKET STRUCTURE

Sec. 39.151. ESSENTIAL ORGANIZATIONS. (a) A power region must establish one or more independent organizations to perform the following functions:

(1) ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms;

(2) ensure the reliability and adequacy of the regional electrical network;

(3) ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and

(4) ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with

the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission shall require an independent organization certified by the commission under this section to submit to the commission the organization's entire proposed annual budget. The commission shall review the proposed budgets either annually or biennially and may approve, disapprove, or modify any item included in a proposed budget. The commission by rule shall establish the type of information or documents needed to effectively evaluate the proposed budget and reasonable dates for the submission of that information or those documents. The commission shall establish a procedure to provide public notice of and public participation in the budget review process.

(d-2) Except as otherwise agreed to by the commission and an independent organization certified by the commission under this section, the organization must submit to the commission for review and approval proposals for obtaining debt financing or for refinancing existing debt. The commission may approve, disapprove, or modify a proposal.

(d-3) An independent organization certified by the commission under this section shall develop proposed performance measures to track the organization's operations. The independent organization must submit the proposed performance measures to the commission for review and approval. The commission shall review the organization's performance as part of the budget review process under Subsection (d-1). The commission shall prepare a report at the time the commission approves the organization's budget detailing the organization's performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility

issues.

(d-4) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) After approving the budget of an independent organization under Subsection (d-1), the commission shall authorize the organization to charge to wholesale buyers and sellers a system administration fee, within a range determined by the commission, that is reasonable and competitively neutral to fund the independent organization's approved budget. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the reasonableness and neutrality of the fee or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate the fee. The commission shall require the organization to closely match actual revenues generated by the fee and other sources of revenue

with revenue necessary to fund the budget, taking into account the effect of a fee change on market participants and consumers, to ensure that the budget year does not end with surplus or insufficient funds. The commission shall require the organization to submit to the commission, on a schedule determined by the commission, reports that compare actual expenditures with budgeted expenditures.

(e-1) The review and approval of a proposed budget under Subsection (d-1) or a proceeding to authorize and set the range for the amount of a fee under Subsection (e) is not a contested case for purposes of Chapter 2001, Government Code.

(f) In implementing this section, the commission may cooperate with the utility regulatory commission of another state or the federal government and may hold a joint hearing or make a joint investigation with that commission.

(g) To maintain certification as an independent organization under this section, an organization's governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;

(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer of the independent organization as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives;

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term;

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term; and

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms.

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

(i) The commission may delegate authority to the existing independent system operator in ERCOT to enforce operating standards within the ERCOT regional electrical network and to establish and oversee transaction settlement procedures. The commission may establish the terms and conditions for the ERCOT independent system operator's authority to oversee utility dispatch functions after the introduction of customer choice.

(j) A retail electric provider, municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or power generation company 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.

(k) To the extent the commission has authority over an independent organization outside of ERCOT, the commission may delegate authority to the independent organization consistent with Subsection (i).

(l) No operational criteria, protocols, or other requirement established by an independent organization, including the ERCOT independent system operator, may adversely affect or impede any manufacturing or other internal process operation associated with an

industrial generation facility, except to the minimum extent necessary to assure reliability of the transmission network.

(m) A power region outside of ERCOT shall be deemed to have met the requirement to establish an independent organization to perform the transmission functions specified in Subsection (a) if the Federal Energy Regulatory Commission has approved a regional transmission organization for the region and found that the regional transmission organization meets the requirements of Subsection (a).

(n) An independent organization certified by the commission under this section is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The independent organization shall be reviewed during the periods in which the Public Utility Commission of Texas is reviewed.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 9, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.09(a), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.08, eff. September 1, 2013.

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at

the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

(c) The commission shall ensure that an independent organization certified under Section 39.151 makes publicly accessible without charge live Internet video of all public meetings subject to this section for viewing from an Internet website.

Added by Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 10, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 400 (H.B. 1783), Sec. 2, eff. September 1, 2009.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

Added by Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 10, eff. September 1, 2005.

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the fee authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to

ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

Added by Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 10, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.09, eff. September 1, 2013.

Sec. 39.152. QUALIFYING POWER REGIONS. (a) The commission shall certify a power region if:

(1) a sufficient number of interconnected utilities in the power region fall under the operational control of an independent organization as described by Section 39.151;

(2) the power region has a generally applicable tariff that guarantees open and nondiscriminatory access for all users to transmission and distribution facilities in the power region as provided by Section 39.203; and

(3) no person owns and controls more than 20 percent of the installed generation capacity located in or capable of delivering electricity to a power region, as determined according to Section 39.154.

(b) In determining whether a power region not entirely within the state meets the requirements of this section, the commission

shall consider the extent to which the available transmission facilities limit the delivery of electricity from generators located outside the state to areas of the power region within the state.

(c) For a power region outside of ERCOT, the requirements of Subsection (a)(2) shall be deemed to have been met if power aggregating to approximately 50,000 megawatts can be delivered to the portion of the power region that is in this state through the payment of not more than one transmission tariff.

(d) For a power region outside of ERCOT, a power generation company that is affiliated with an electric utility may elect to demonstrate that it meets the requirements of Subsection (a)(3) by showing that it does not own and control more than 20 percent of the installed capacity in a geographic market that includes the power region, using the guidelines, standards, and methods adopted by the Federal Energy Regulatory Commission.

(e) In a power region outside of ERCOT, if customer choice is introduced before the requirements of Subsection (a) are met, an affiliated retail electric provider may not compete for retail customers in any area of the power region that is within this state and outside of the affiliated transmission and distribution utility's certificated service area unless the affiliated power generation company makes a commitment to maintain and does maintain rates that are based on cost of service for any electric cooperative or municipally owned utility that was a wholesale customer on January 1, 1999, and was purchasing power at rates that were based on cost of service. This subsection requires a power generation company to sell power at rates that are based on cost of service, notwithstanding the expiration of a contract for that service, until the requirements of Subsection (a) are met.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.153. CAPACITY AUCTION. (a) Each electric utility subject to this section shall sell at auction, at least 60 days before the date set for customer choice to begin, entitlements to at least 15 percent of the electric utility's Texas jurisdictional installed generation capacity. For the purposes of this section, the term "electric utility" includes any affiliated power generation company that is unbundled from the electric utility in accordance

with Section 39.051, but does not include any entity owning less than 400 megawatts of installed generation capacity.

(b) The obligation to auction the entitlements shall continue until the earlier of 60 months after the date customer choice is introduced or the date the commission determines that 40 percent or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is provided by nonaffiliated retail electric providers.

(c) An affiliate of the electric utility selling entitlements in the auction required by this section may not purchase entitlements from the affiliated electric utility at the auction. Entitlements may only be purchased by entities lawfully able to sell electricity in Texas.

(d) An electric utility may choose to auction additional entitlements beyond those required by Subsection (a) or continue to auction entitlements after the period required by Subsection (b) in order to comply with Section 39.154.

(e) The commission shall adopt rules by December 31, 2000, that define the scope of the capacity entitlements to be auctioned. Entitlements may be auctioned in blocks of less than 15 percent. The rules shall state the minimum amount of capacity that can be sold at auction as an entitlement. At a minimum, the rules shall provide that the entitlements:

(1) may be sold and purchased in periods of not less than one month nor more than four years;

(2) may be resold to any lawful purchaser, except for a retail electric provider affiliated with the electric utility that originally auctioned the entitlement;

(3) include no possessory interest in the unit from which the power is produced;

(4) include no obligations of a possessory owner of an interest in the unit from which the power is produced; and

(5) give the purchaser the right to designate the dispatch of the entitlement, subject to planned outages, outages beyond the control of the utility operating the unit, and other considerations subject to the oversight of the applicable independent organization.

(f) The commission shall adopt rules by December 31, 2000, that prescribe the procedure for the auction of the entitlements. The

rules shall include:

(1) a process for conducting the auction or auctions, including who shall conduct it, how often it shall be conducted, and how winning bidders shall be determined;

(2) a process for the electric utility to designate which generation units or combination of units are offered for auction;

(3) a provision for the utility to establish an opening bid price based on the electric utility's expected cost, with the commission prescribing the means for determining the opening bid price, which may not include return on equity; and

(4) a provision that allows a bidder to specify the magnitude and term of the entitlement, subject to the conditions established in Subsection (e).

(g) In adopting the process under Subsection (f)(2), the commission shall consider the furtherance of the development of the competitive market, the cost of transmission, physical constraints of the transmission system, the proximity of the generation to load, economic efficiency, and any other factors the commission finds relevant. The process may provide for commission approval of the designation before auction. The commission may consult with the applicable independent organization to develop the process.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.154. LIMITATION OF OWNERSHIP OF INSTALLED CAPACITY. (a) Beginning on the date of introduction of customer choice, a power generation company may not own and control more than 20 percent of the installed generation capacity located in, or capable of delivering electricity to, a power region.

(b) In a power region not entirely within the state, the commission may waive or modify the requirement in Subsection (a) on a finding of good cause.

(c) In determining the percentage shares of installed generation capacity under this section, the commission shall combine capacity owned and controlled by a power generation company and any entity that is affiliated with that power generation company within the power region, reduced by the installed generation capacity of those facilities that are made subject to capacity auctions under Sections 39.153(a) and (d).

(d) In this chapter, "installed generation capacity" means all potentially marketable electric generation capacity, including the capacity of:

(1) generating facilities that are connected with a transmission or distribution system;

(2) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(3) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(e) In determining the percentage shares of installed generation capacity owned and controlled by a power generation company under this section and Section 39.156, the commission shall, for purposes of calculating the numerator, reduce the installed generation capacity owned and controlled by that power generation company by the installed generation capacity of any "grandfathered facility" within an ozone nonattainment area as of September 1, 1999, for which that power generation company has commenced complying or made a binding commitment to comply with Section 39.264. This subsection applies only to a power generation company that is affiliated with an electric utility that owned and controlled more than 27 percent of the installed generation capacity in the power region on January 1, 1999.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.155. COMMISSION ASSESSMENT OF MARKET POWER. (a) Each person, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in this state shall report to the commission its installed generation capacity, the total amount of capacity available for sale to others, the total amount of capacity under contract to others, the total amount of capacity dedicated to its own use, its annual wholesale power sales in the state, its annual retail power sales in the state, and any other information necessary for the commission to assess market power or the development of a competitive retail market in the state. The commission shall by rule prescribe the nature and detail of the reporting requirements and shall administer those reporting requirements in a manner that ensures the confidentiality of competitively sensitive information.

(b) The ERCOT independent system operator shall submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT, alternatives for meeting system needs, and recommendations for meeting system needs. The first report shall be submitted on or before October 1, 1999. Subsequent reports shall be submitted by January 15 of each year or as determined necessary by the commission.

(c) Before the date of introduction of customer choice in a power region other than ERCOT, each electric utility owning transmission and distribution facilities in that region shall submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs in the power region, alternatives for meeting system needs, and recommendations for meeting system needs as directed by the commission.

(d) In a qualifying power region, the reports required by Subsections (b) and (c) shall be submitted by the independent organization or organizations having authority over the power region or discrete areas thereof.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.156. MARKET POWER MITIGATION PLAN. (a) In this section, "market power mitigation plan" or "plan" means a written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by Section 39.154.

(b) An electric utility or power generation company owning and controlling more than 20 percent of the generation capacity located in, or capable of delivering electricity to, a power region shall file a market power mitigation plan with the commission not later than December 1, 2000.

(c) The plan may provide for:

(1) the sale of generation assets to a nonaffiliated person;

(2) the exchange of generation assets with a nonaffiliated person located in a different power region;

(3) the auctioning of generation capacity entitlements as part of a capacity auction required by Section 39.153;

(4) the sale of the right to capacity to a nonaffiliated person for at least four years; or

(5) any reasonable method of mitigation.

(d) For the purposes of this section, generation capacity shall be net of the generation capacity subject to an auction under Section 39.153.

(e) The plan shall be in a form prescribed by the commission and shall provide information the commission finds reasonably necessary to evaluate the plan.

(f) The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under Subsection (b). The commission may not modify a plan to require divestiture by the electric utility or the power generation company.

(g) In reaching its determination under Subsection (f), the commission shall consider:

(1) the degree to which the electric utility's or power generation company's stranded costs, if any, are minimized;

(2) whether on disposition of the generation assets the reasonable value is likely to be received;

(3) the effect of the plan on the electric utility's or power generation company's federal income taxes;

(4) the effect of the plan on current and potential competitors in the generation market; and

(5) whether the plan is consistent with the public interest.

(h) An electric utility or power generation company with an approved mitigation plan may request to amend or repeal its plan. On a showing of good cause, the commission shall modify or repeal an electric utility's or power generation company's mitigation plan.

(i) If an electric utility's or a power generation company's market power mitigation plan is not approved before January 1 of the year it is to take effect, the commission may order the electric utility or power generation company to auction generation capacity entitlements according to Section 39.153, subject to commission approval, of any capacity exceeding the maximum allowable capacity prescribed by Section 39.154 until the time a mitigation plan is approved.

(j) An auction under Subsection (i) shall be held not later than 60 days after the date the order is entered.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.157. COMMISSION AUTHORITY TO ADDRESS MARKET POWER. (a) The commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power abuses or other violations of this section are occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15, by imposing an administrative penalty as authorized by Chapter 15, by ordering the disgorgement of excess revenue as authorized by Chapter 15, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356. Section 15.024(c) does not apply to an administrative penalty imposed under this section. For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. A violation of the code of conduct provided by Subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this sentence shall not affect the application of state and federal antitrust laws.

(b) Beginning on the date of introduction of customer choice, a person that owns generation facilities may not own transmission or distribution facilities in this state except for those facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under Section 31.002. However, nothing in this chapter shall prohibit a power generation company affiliated with a transmission

and distribution utility from owning generation facilities.

(c) The commission shall monitor market shares of installed capacity to ensure that the limitations in Section 39.154 are not exceeded. If the commission finds that a person has violated a limitation in Section 39.154, the commission shall order the person to file, within 60 days of the date of the order, a market power mitigation plan consistent with the requirements in Section 39.156.

(d) Not later than January 10, 2000, the commission shall adopt rules and enforcement procedures to govern transactions or activities between a transmission and distribution utility and its competitive affiliates to avoid potential market power abuses and cross-subsidizations between regulated and competitive activities both during the transition to and after the introduction of competition. Nothing in this subsection is intended to affect or modify the obligations or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission or the Securities and Exchange Commission. A utility that is subject to statutes or regulations in other states that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause. The rules adopted under this section shall ensure that:

(1) a utility makes any products and services, other than corporate support services, that it provides to a competitive affiliate available, contemporaneously and in the same manner, to the competitive affiliate's competitors and applies its tariffs, prices, terms, conditions, and discounts for those products and services in the same manner to all similarly situated entities;

(2) a utility does not:

(A) give a competitive affiliate or a competitive affiliate's customers any preferential advantage, access, or treatment regarding services other than corporate support services; or

(B) act in a manner that is discriminatory or anticompetitive with respect to a nonaffiliated competitor of a competitive affiliate;

(3) a utility providing electric transmission or distribution services:

(A) provides those services on nondiscriminatory terms and conditions;

(B) does not establish as a condition for the provision of those services the purchase of other goods or services from the utility or the competitive affiliate; and

(C) does not provide competitive affiliates preferential access to the utility's transmission and distribution systems or to information about those systems;

(4) a utility does not release any proprietary customer information to a competitive affiliate or any other entity, other than an independent organization as defined by Section 39.151 or a provider of corporate support services for the purposes of providing the services, without obtaining prior verifiable authorization, as determined from the commission, from the customer;

(5) a utility does not:

(A) communicate with a current or potential customer about products or services offered by a competitive affiliate in a manner that favors a competitive affiliate; or

(B) allow a competitive affiliate, before September 1, 2005, to use the utility's corporate name, trademark, brand, or logo unless the competitive affiliate includes on employee business cards and in its advertisements of specific services to existing or potential residential or small commercial customers locating within the utility's certificated service area a disclaimer that states, "(Name of competitive affiliate) is not the same company as (name of utility) and is not regulated by the Public Utility Commission of Texas, and you do not have to buy (name of competitive affiliate)'s products to continue to receive quality regulated services from (name of utility).";

(6) a utility does not conduct joint advertising or promotional activities with a competitive affiliate in a manner that favors the competitive affiliate;

(7) a utility is a separate, independent entity from any competitive affiliates and, except as provided by Subdivisions (8) and (9), does not share employees, facilities, information, or other resources, other than permissible corporate support services, with those competitive affiliates unless the utility can prove to the commission that the sharing will not compromise the public interest;

(8) a utility's office space is physically separated from the office space of the utility's competitive affiliates by being located in separate buildings or, if within the same building, by a method such as having the offices on separate floors or with separate

access, unless otherwise approved by the commission;

(9) a utility and a competitive affiliate:

(A) may, to the extent the utility implements adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner inconsistent with Subsection (g) or (i), share common officers and directors, property, equipment, offices to the extent consistent with Subdivision (8), credit, investment, or financing arrangements to the extent consistent with Subdivision (17), computer systems, information systems, and corporate support services; and

(B) are not required to enter into prior written contracts or competitive solicitations for non-tariffed transactions between the utility and the competitive affiliate, except that the commission by rule may require the utility and the competitive affiliate to enter into prior written contracts or competitive solicitations for certain classes of transactions, other than corporate support services, that have a per unit value of more than $75,000 or that total more than $1 million;

(10) a utility does not temporarily assign, for less than one year, employees engaged in transmission or distribution system operations to a competitive affiliate unless the employee does not have knowledge of information that is intended to be protected under this section;

(11) a utility does not subsidize the business activities of an affiliate with revenues from a regulated service;

(12) a utility and its affiliates fully allocate costs for any shared services, corporate support services, and other items described by Subdivisions (8) and (9);

(13) a utility and its affiliates keep separate books of accounts and records and the commission may review records relating to a transaction between a utility and an affiliate;

(14) assets transferred or services provided between a utility and an affiliate, other than transfers that facilitate unbundling under Section 39.051 or asset valuation under Section 39.262, are priced at a level that is fair and reasonable to the customers of the utility and reflects the market value of the assets or services or the utility's fully allocated cost to provide those assets or services;

(15) regulated services that a utility provides on a routine or recurring basis are included in a tariff that is subject

to commission approval;

(16) each transaction between a utility and a competitive affiliate is conducted at arm's length; and

(17) a utility does not allow an affiliate to obtain credit under an arrangement that would include a specific pledge of assets in the rate base of the utility or a pledge of cash reasonably necessary for utility operations.

(e) The commission shall by rule establish a code of conduct that must be observed by electric cooperatives and municipally owned utilities and their affiliates to protect against anticompetitive practices. The rules adopted by the commission under this subsection shall be consistent with Chapters 40 and 41 and may not be more restrictive than the rules adopted under Subsection (d).

(f) Following review of the annual reports submitted to it under Sections 39.155(b) and (c), the commission shall determine whether specific transmission or distribution constraints or bottlenecks within this state give rise to market power in specific geographic markets in the state. The commission, on a finding that specific transmission or distribution constraints or bottlenecks within this state give rise to market power, may order reasonable mitigation of that potential market power by ordering, under Section 39.203(e), one or more electric utilities or transmission and distribution utilities to construct additional transmission or distribution capacity, or both, subject to the certification provisions of this title.

(g) The sharing of corporate support services in accordance with this section may not allow or provide a means for the transfer of confidential information from a utility to an affiliate, create the opportunity for preferential treatment or an unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(h) A utility or competitive affiliate may not circumvent the provisions or the intent of the provisions of Subsection (d) by using any utility affiliate to provide information, services, or subsidies between the utility and a competitive affiliate.

(i) In this section:

(1) "Competitive affiliate" means an affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy related.

(2) "Corporate support services" means services shared by a utility, its parent holding company, or a separate affiliate created to perform corporate support services, with its affiliates of joint corporate oversight, governance, support systems, and personnel. Examples of services that may be shared, to the extent the services comply with the requirements prescribed by Subsections (d) and (g), include human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning. Examples of services that may not be shared include engineering, purchasing of electric transmission, transmission and distribution system operations, and marketing.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 996 (H.B. 2133), Sec. 7, eff. September 1, 2011.

Sec. 39.158. MERGERS AND CONSOLIDATIONS. (a) An owner of electric generation facilities that offers electricity for sale in the state and proposes to merge, consolidate, or otherwise become affiliated with another owner of electric generation facilities that offers electricity for sale in this state shall obtain the approval of the commission before closing if the electricity offered for sale in the power region by the merged, consolidated, or affiliated entity will exceed one percent of the total electricity for sale in the power region. The approval shall be requested at least 120 days before the date of the proposed closing. The commission shall approve the transaction unless the commission finds that the transaction results in a violation of Section 39.154. If the commission finds that the transaction as proposed would violate Section 39.154, the commission may condition approval of the transaction on adoption of reasonable modifications to the transaction as prescribed by the commission to mitigate potential market power abuses.

(b) Nothing in this chapter shall be construed to confer

immunity from state or federal antitrust laws. This chapter is intended to complement other state and federal antitrust provisions. Therefore, antitrust remedies may also be sought in state or federal court to remedy anticompetitive activities.

(c) This section may not be deemed to authorize commission review or approval of transactions entered into between or among municipally owned utilities, river authorities, special districts created by law, or other political subdivisions, whether or not those transactions may be characterized as mergers, consolidations, or other affiliations, when the transaction is authorized or structured under state law.

(d) Notwithstanding any other provision of this title, an electric utility which, before the effective date of this chapter, entered into a stipulation or agreement in support of approval of a merger which was approved by the commission on or after January 1, 1996, requiring the utility to pass through to ratepayers the savings resulting from the merger of that utility with another utility shall continue to be bound by the terms of that stipulation or agreement. The commission shall ensure that the pass-through of all merger savings required under any such stipulation or agreement shall be fully implemented during the freeze period and shall be reflected in setting the price to beat for that utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER E. PRICE REGULATION AFTER COMPETITION

Sec. 39.201. COST OF SERVICE TARIFFS AND CHARGES. (a) Each electric utility shall, on or before April 1, 2000, file proposed tariffs for its proposed transmission and distribution utility.

(b) The filing under this section shall include supporting cost data for determination of nonbypassable delivery charges, which shall be the sum of:

(1) transmission and distribution utility charges by customer class based on a forecasted 2002 test year;

(2) a system benefit fund fee; and

(3) an expected competition transition charge, if any.

(c) Each electric utility shall also identify the unbundled generation and retail energy service costs by customer class.

(d) In accordance with a schedule and procedures it

establishes, the commission shall hold a hearing and approve or modify and make effective as of January 1, 2002, the transmission and distribution utility's proposed tariffs for transmission and distribution services, the system benefit fund fee, and the expected competition transition charge as determined under Subsections (g) and (h) and as implemented under Subsections (i)-(l), if any.

(e) The system benefit fund fee shall be that established by the commission under Section 39.903.

(f) The expected competition transition charge shall be that as determined under Subsections (g) and (h) and as implemented under Subsections (i)-(l).

(g) The expected competition transition charge approved by the commission shall be calculated from the amount of stranded costs as defined in Subchapter F that are reasonably projected to exist on the last day of the freeze period modified to reflect any adjustments determined appropriate by the commission under Section 39.261(c).

(h) The electric utility shall use the ECOM administrative model referenced in Section 39.262 to determine estimated stranded costs. The model must include updated company-specific inputs. Natural gas prices used in the model must be market-based natural gas forward prices, where available. Growth rates in generating plant operations and maintenance costs and allocated administrative and general costs shall be benchmarked by comparing those costs to the best available information on cost trends for comparable generating plants. Capital additions shall be benchmarked using the limitation in Section 39.259(b).

(i) An electric utility may:

(1) at any time after the start of the freeze period, securitize 100 percent of its regulatory assets as defined by Section 39.302 and up to 75 percent of its estimated stranded costs as defined by this section and recover those charges through a transition charge, in accordance with a financing order issued by the commission under Section 39.303;

(2) implement, under bond, a nonbypassable charge of up to 100 percent of its estimated stranded costs; or

(3) use a combination of the two methods under Subdivisions (1) and (2).

(j) Any competition transition charge shall be allocated among retail customer classes according to Section 39.253.

(k) In determining the length of time over which stranded costs

under Subsection (h) may be recovered, the commission shall consider:

(1) the electric utility's rates as of the end of the freeze period;

(2) the sum of the transmission and distribution charges and the system benefit fund fees;

(3) the proportion of estimated stranded costs to the invested capital of the electric utility; and

(4) any other factor consistent with the public interest as expressed in this chapter.

(l) Two years after customer choice is introduced, the stranded cost estimate under this section shall be reviewed and, if necessary, adjusted to reflect a final, actual valuation in the true-up proceeding under Section 39.262. If, based on that proceeding, the competition transition charge is not sufficient, the commission may extend the collection period for the charge or, if necessary, increase the charge. Alternatively, if it is found in the true-up proceeding that the competition transition charge is larger than is needed to recover any remaining stranded costs, the commission may:

(1) reduce the competition transition charge, to the extent it has not been securitized;

(2) reverse, in whole or in part, the depreciation expense that has been redirected under Section 39.256;

(3) reduce the transmission and distribution utility's rates; or

(4) implement a combination of the elements in Subdivisions (1)-(3).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.202. PRICE TO BEAT. (a) From January 1, 2002, until January 1, 2007, an affiliated retail electric provider shall make available to residential and small commercial customers of its affiliated transmission and distribution utility rates that, on a bundled basis, are six percent less than the affiliated electric utility's corresponding average residential and small commercial rates, on a bundled basis, that were in effect on January 1, 1999, adjusted to reflect the fuel factor determined as provided by Subsection (b) and adjusted for any base rate reduction as stipulated to by an electric utility in a proceeding for which a final order had

not been issued by January 1, 1999. These rates on a bundled basis shall be known as the "price to beat" for residential and small commercial customers, except that the "price to beat" for a utility is the rate in effect as a result of a settlement approved by the commission after January 1, 1999, if the commission determines that base rates for that utility have been reduced by more than 12 percent as a result of a final order issued by the commission after October 1, 1998.

(b) The commission shall determine the fuel factor for each electric utility as of December 31, 2001.

(c) After the date of customer choice, each affiliated power generation company shall file a final fuel reconciliation for the period ending the day before the date customer choice is introduced. The final fuel balance from that reconciliation shall be included in the true-up proceeding under Section 39.262.

(d) An affiliated retail electric provider shall make public its price to beat in a manner that provides adequate disclosure as determined by the commission.

(e) The affiliated retail electric provider may not charge rates for residential or small commercial customers that are different from the price to beat until the earlier of 36 months after the date customer choice is introduced or:

(1) for service to residential customers, the date the commission determines that 40 percent or more of the electric power consumed by residential customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is committed to be served by nonaffiliated retail electric providers; or

(2) for service to small commercial customers, the date the commission determines that 40 percent or more of the electric power consumed by small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is committed to be served by nonaffiliated retail electric providers.

(f) Notwithstanding Subsection (e), the affiliated retail electric provider may charge rates that are different from the price to beat for service to aggregated loads of nonresidential customers having an aggregated peak demand greater than 1,000 kilowatts, provided that all affected customers are:

(1) commonly owned; or

(2) franchisees of the same franchisor.

(g) The affiliated retail electric provider may not encourage or provide an incentive to a customer to switch to a nonaffiliated retail electric provider, promote any nonaffiliated retail electric provider, or exchange customers with any nonaffiliated retail electric provider to comply with the requirements of Subsection (e)(1) or (2).

(h) The following standards shall be used for measuring electric power consumption during the period before the onset of customer choice:

(1) the consumption of residential and small commercial customers with an annual peak demand less than or equal to 20 kilowatts shall be based on the average annual consumption of those respective groups during the year 2000;

(2) consumption for all small commercial customers with an annual peak demand larger than 20 kilowatts shall be based on each customer's usage during the year 2000; and

(3) for purposes of determining whether an affiliated retail electric provider has met the requirements of Subsection (e)(2), the aggregated loads of nonresidential customers having a peak demand greater than 1,000 kilowatts that are served by the affiliated retail electric provider at a rate different from the price to beat under Subsection (f) shall be deducted from the electric power consumption of small commercial customers during the period before the onset of customer choice.

(i) For purposes of Subsection (h)(2), if less than 12 months of consumption history exists for any such customer, the usage history shall be supplemented with the prior history of that customer's location. For service to a new location, the annual consumption shall be determined as the transmission and distribution utility's estimate of the maximum annual kilowatt demand used in sizing the electric service to that customer multiplied by 8,760 hours, and that product multiplied by the average annual customer load factor for small commercial customers with loads greater than 20 kilowatts for the year 2000.

(j) On determining that its affiliated retail electric provider has met the requirements of Subsection (e)(1) or (2), an electric utility or a transmission and distribution utility shall make a filing with the commission attesting to the fact that those requirements have been met and that the restrictions of Subsection

(e)(1) or (2) and the true-up in Section 39.262(e) are no longer applicable. The commission shall adopt appropriate procedures to enable it to accept or reject the filing within 30 days.

(k) Following the true-up proceedings conducted under Section 39.262, the commission may adjust the price to beat.

(l) An affiliated retail electric provider may request that the commission adjust the fuel factor established under Subsection (b) not more than twice a year if the affiliated retail electric provider demonstrates that the existing fuel factor does not adequately reflect significant changes in the market price of natural gas and purchased energy used to serve retail customers.

(m) In a power region outside of ERCOT, if customer choice is introduced before the requirements of Section 39.152(a) are met, an affiliated retail electric provider shall charge rates to customers other than residential and small commercial customers that are no higher than the rates that, on a bundled basis, were in effect on January 1, 1999, adjusted to reflect the fuel factor as provided by Subsection (b) and adjusted for any base rate reduction as stipulated to by an electric utility in a proceeding for which a final order had not been issued by January 1, 1999.

(n) Notwithstanding Subsection (a), in a power region outside of ERCOT, if customer choice is introduced before the requirements of Section 39.152(a) are met, an affiliated retail electric provider shall continue to offer the price to beat to residential and small commercial customers, unless the price is changed by the commission in accordance with this chapter, until the later of 60 months after the date customer choice is introduced or the requirements of Section 39.152(a) are met.

(o) In this section, "small commercial customer" means a commercial customer having a peak demand of 1,000 kilowatts or less.

(p) On finding that a retail electric provider will be unable to maintain its financial integrity if it complies with Subsection (a), the commission shall set the retail electric provider's price to beat at the minimum level that will allow the retail electric provider to maintain its financial integrity. However, in no event shall the price to beat exceed the level of rates, on a bundled basis, charged by the affiliated electric utility on September 1, 1999, adjusted for fuel as provided by Subsection (b).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.203. TRANSMISSION AND DISTRIBUTION SERVICE. (a) All transmission and distribution utilities shall provide transmission service at wholesale under Subchapter A, Chapter 35. In addition, on and after January 1, 2002, a transmission and distribution utility shall provide transmission or distribution service, or both, at retail to an electric utility, a retail electric provider, a municipally owned utility, an electric cooperative, or an end-use customer at rates, terms of access, and conditions that are comparable to those that apply to the transmission and distribution utility and its affiliates. A municipally owned utility offering customer choice or an electric cooperative offering customer choice shall likewise provide transmission or distribution service, or both, at retail to all such entities in accordance with the commission's rules applicable to terms and conditions of access and at rates adopted in accordance with Sections 40.055(a)(1) and 41.055(1), respectively.

(b) When necessary to serve a wholesale customer an electric utility, an electric cooperative that has not opted for customer choice, or a municipally owned utility that has not opted for customer choice shall provide wholesale transmission service at distribution voltage. A customer of a municipally owned utility that has not opted for customer choice or of an electric cooperative that has not opted for customer choice may not claim the status of a wholesale customer or be designated as a wholesale customer if the customer is being or has been served under a retail rate schedule of the municipally owned utility or electric cooperative.

(c) On or before January 1, 2002, the commission shall establish for all retail electric utilities offering customer choice reasonable and comparable terms and conditions, in accordance with Section 39.201, that comply with Subsection (a) for open access on distribution facilities and shall establish, for all retail electric utilities offering customer choice other than municipally owned utilities and electric cooperatives, reasonable and comparable rates for open access on distribution facilities.

(d) The terms of access, conditions, and rates established under Subsection (c) shall be comparable to the terms of access, conditions, and rates that the electric utility applies to itself or its affiliates. The rules shall also provide that all ancillary

services provided by the utility to itself or its affiliates are also available to third parties on request on a nondiscriminatory basis.

(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.

(f) The commission's rules must be consistent with the standards of this title and may not be contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction.

(g) Each power region shall have generally applicable tariffs approved by the commission or a federal regulatory agency having jurisdiction that guarantees open and nondiscriminatory access as required by Section 39.152. This subsection may not be deemed to vest in the commission power to set or approve distribution access rates of a municipally owned utility or an electric cooperative that has adopted customer choice.

(h) A customer in a multiply certificated service area may switch its retail distribution service provider among certificated

retail electric utilities only by disconnecting from the facilities of one retail electric utility and connecting to the facilities of another retail electric utility.

(i) The commission, in cooperation with transmission and distribution utilities and the ERCOT independent system operator, shall study whether existing transmission and distribution planning processes are sufficient to provide adequate infrastructure for seawater desalination projects. If the commission determines that statutory changes are needed to ensure that adequate infrastructure is developed for projects of that kind, the commission shall include recommendations in the report required by Section 31.003.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 295, Sec. 3, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., 1st C.S., Ch. 1 (S.B. 20), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 1, eff. June 17, 2015.

Sec. 39.204. TARIFFS FOR OPEN ACCESS. Each transmission and distribution utility shall file a tariff implementing the open access rules with the commission or the federal regulatory authority having jurisdiction over the transmission and distribution service of the utility not later than the 90th day before the date customer choice is offered by that utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD. At the conclusion of the freeze period, any remaining costs associated with nuclear decommissioning obligations continue to be subject to cost of service rate regulation and shall be included as a nonbypassable charge to retail customers. The commission may adopt rules necessary to ensure that money for decommissioning is prudently collected, managed, and spent for its intended purpose and that money that remains unspent after decommissioning is completed is returned to retail customers.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 121 (S.B. 1464), Sec. 2, eff. September 1, 2005.

Sec. 39.206. NUCLEAR GENERATING UNIT DECOMMISSIONING COST PLAN. (a) For purposes of this section:

(1) "Decommissioning" includes decommissioning and decontamination of a nuclear generating unit consistent with federal Nuclear Regulatory Commission requirements.

(2) "Nuclear decommissioning trust" means an external and irrevocable trust created for the purpose of funding decommissioning obligations for a nuclear generating unit, consistent with federal Nuclear Regulatory Commission requirements.

(3) "Nuclear generating unit" means an electric generating facility that uses nuclear energy to generate electricity for sale and is licensed by the Nuclear Regulatory Commission.

(4) "Power generation company" has the meaning assigned by Section 31.002.

(5) "Retail electric customer" means a retail electric customer:

(A) in a geographic area of this state in which retail customer choice has been implemented; or

(B) of a municipally owned utility or electric cooperative that has an agreement to purchase power from a nuclear generating unit.

(b) This section applies only to the first six nuclear generating units the construction of which begins on or after January 1, 2013, and before January 1, 2033, and which are owned in whole or in part by a power generation company that elects to utilize the decommissioning mechanism set forth in this section.

(c) Nothing in this section shall be construed to require a power generation company to use a commission approved method to provide funds for decommissioning, if the power generation company can otherwise satisfy the decommissioning financial assurance requirements of the federal Nuclear Regulatory Commission.

(d) A power generation company that owns a nuclear generating unit shall fund out of operating revenues on an annual basis:

(1) the costs associated with funding the decommissioning

obligations for the nuclear generating unit; or

(2) the power generation company's portion of the decommissioning costs for the nuclear generating unit in proportion to the company's ownership interest in the nuclear generating unit if the unit is owned by more than one person.

(e) The obligation to fund a nuclear decommissioning trust fund is not dischargeable in bankruptcy.

(f) A power generation company shall establish a nuclear decommissioning trust for a nuclear generating unit it owns or for the proportionate share of a nuclear generating unit of which it owns a part. The funding obligations for the trust must begin before the nuclear generating unit commences its initial fuel load and begins commercial operation to generate power for sale. The terms of the trust must be consistent with trust terms and conditions the federal Nuclear Regulatory Commission requires for providing financial assurance for decommissioning.

(g) The commission by order shall establish for a nuclear generating unit the amount of annual decommissioning funding necessary to meet the decommissioning obligations for the nuclear generating unit over the unit's operating license period as established by the federal Nuclear Regulatory Commission or over a shorter period of time at the election of the power generation company. The power generation company shall perform a study on the cost of decommissioning to establish the decommissioning obligations before the nuclear generating unit begins commercial operation to generate power for sale. The study shall be performed by the power generation company at least once in each three-year period during the unit's operating license period using the most current reasonably available information on the cost of decommissioning. The commission shall conduct a proceeding at least once in each three-year period to review the study and other current reasonably available information on the cost of decommissioning and determine the reasonableness of the study.

(h) A power generation company shall file an annual report to provide the status of the decommissioning trust fund and to update the commission as to its ability to fund the decommissioning trust fund. In determining the amount of the annual decommissioning funding under this subsection, at least once in each three-year period, the commission shall conduct a proceeding to review the balance of each nuclear decommissioning trust and the projected

amount of annual decommissioning funding for the associated nuclear generating unit. On the conclusion of the review proceeding, the commission by order shall revise the amount of annual funding for the nuclear generating unit in order to ensure that the nuclear decommissioning trust fund is adequately funded.

(i) A power generation company shall remit the appropriate amount of annual decommissioning funding to the nuclear decommissioning trust created for its proportionate ownership position in a nuclear generating unit in accordance with the commission's funding order issued under Subsection (g) or (h). The commission shall take appropriate actions to ensure proper funding of the nuclear decommissioning trust, including possibly terminating the power generation company's registration to operate, if the company violates this subsection.

(j) A power generation company that owns a nuclear generating unit is the funds administrator of the nuclear decommissioning trust for the associated nuclear generating unit. The company, as funds administrator, shall invest the trust funds in accordance with guidelines established by commission rule and consistent with the federal Nuclear Regulatory Commission guidelines so that the decommissioning funds, plus the amounts earned from investment of the funds, will be available at the time of decommissioning. The commission shall adopt rules to define the company's specific duties as funds administrator and requirements regarding prudent management and investment of nuclear decommissioning trust funds.

(k) The commission shall adopt rules necessary to ensure that:

(1) a power generation company remits sufficient funds to a nuclear decommissioning trust on an annual basis, including projected earnings to approximate the amount remaining to be accumulated to cover the cost of decommissioning a nuclear generating unit at the end of its operating license period divided by the remaining years of the license and in accordance with applicable state and federal laws and regulations or over a shorter period of time at the election of the power generation company;

(2) the periodic cost studies and reviews described in Subsections (g) and (h) include all current reasonably available information as determined necessary and appropriate by the commission;

(3) all funds remitted to a nuclear decommissioning trust are prudently managed and spent for their intended purpose;

(4) the funds remitted to a nuclear decommissioning trust and the amounts earned from investing the funds, will be available for, and restricted to the purpose of decommissioning of the associated nuclear generating unit, including if the trust or nuclear generating unit is transferred to another person; and

(5) before a power generation company is allowed to take advantage of the mechanisms in this section, the company meets creditworthiness standards established by the commission to minimize the risk that retail electric customers will be responsible for funding any shortfall in the cost of decommissioning a nuclear generating unit.

(l) In addition to the nuclear decommissioning trust required by Subsection (f), for purposes of Subsection (k), the power generation company and its parent and affiliates shall provide financial assurances that funds will be available to satisfy up to 16 years of annual decommissioning funding in the event the power generation company defaults on its obligation to make annual funding to the decommissioning trust. Within 180 days after the effective date of this section, the commission by rule shall establish the acceptable forms of financial assurance, which shall include, but not be limited to, parent guarantees and support agreements, letters of credit, surety or insurance, and such other requirements necessary to ensure compliance with this section. In establishing the acceptable forms of assurance, and the eligibility requirements for each form of assurance, the commission shall consider the relative risk factors and creditworthiness attributes of potential applicant financial characteristics in order to minimize exposure of retail electric customers to default by power generation companies under this section. The power generation company may choose the manner of financial assurance for which it is eligible under the commission's rules.

(m) In the event the financial assurances provided by Subsection (k) are insufficient to meet the annual funding requirements of the decommissioning trust, the retail electric customers shall be responsible for funding any shortfall in the cost of decommissioning the nuclear generating unit.

(n) The commission shall determine the manner in which any shortfall in the cost of decommissioning a nuclear generating unit shall be recovered from retail electric customers in the state, consistent with law.

(o) For retail electric customers of a municipally owned utility or an electric cooperative that has an agreement to purchase power from a nuclear generating unit, the amount of the shortfall in the cost of decommissioning the nuclear generating unit that the customers are responsible for is limited to a portion of that shortfall that bears the same proportion to the total shortfall as the amount of electric power generated by the nuclear generating unit and purchased by the municipally owned utility or electric cooperative bears to the total amount of power the nuclear generating unit generated.

(p) If retail electric customers in this state become responsible for the costs of decommissioning a nuclear generating unit and incur costs under this section and the nuclear generating unit is operational, as a condition of operating the generating unit, the power generation company or any new owner shall repay the costs the electric customers incurred in the manner determined by the commission. The commission may authorize the repayment to occur over a period established by the commission.

(q) The commission shall, in conjunction with the Nuclear Regulatory Commission, investigate the development of a mechanism whereby the State of Texas could ensure that funds for decommissioning will be obtained when necessary in the same manner as if the State of Texas were the licensee under federal law. The commission shall file legislative recommendations regarding any changes in law that may be necessary to carry out the purposes of this subsection prior to January 15, 2009, which may be combined with the report required by Section 31.003.

(r) The commission by rule shall ensure that:

(1) money for decommissioning a nuclear generating unit is prudently collected, managed, and spent for its intended purposes; and

(2) decommissioning money that remains unspent after decommissioning of the nuclear generating unit is complete is returned to the power generation company and the retail electric customers based on the proportionate amount of money the power generation company and retail electric customers paid into the fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1019 (H.B. 1386), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 55 (H.B. 994), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 55 (H.B. 994), Sec. 2, eff. May 18, 2013.

## SUBCHAPTER F. RECOVERY OF STRANDED COSTS THROUGH COMPETITION TRANSITION CHARGE

Sec. 39.251. DEFINITIONS. In this subchapter:

(1) "Above market purchased power costs" means wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) "Existing purchased power contract" means a purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(3) "Generation assets" means all assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(4) "Market value" means, for nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under Section 39.262(h) or, for certain nuclear assets, as described by Section 39.262(i), the value determined under the method provided by that subsection.

(5) "Purchased power market value" means the value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(6) "Retail stranded costs" means that part of net stranded cost associated with the provision of retail service.

(7) "Stranded cost" means the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets,

any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards No. 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of this chapter. For purposes of Section 39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under Section 39.262(h), whichever is earlier, and shall include stranded costs incurred under Section 39.263.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.252. RIGHT TO RECOVER STRANDED COSTS. (a) An electric utility is allowed to recover all of its net, verifiable, nonmitigable stranded costs incurred in purchasing power and providing electric generation service.

(b)(1) Recovery of retail stranded costs by an electric utility shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999. A retail customer may not avoid stranded cost recovery charges by switching to new on-site generation except as provided by Section 39.262(k). For purposes of this subchapter, "new on-site generation" means electric generation capacity greater than 10 megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities and which was not, on or before December 31, 1999, either:

(A) a fully operational facility; or

(B) a project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission in effect at the time of filing.

(2) If a customer commences taking energy from new on-site generation which materially reduces the customer's use of energy delivered through the utility's facilities, the customer shall pay an amount each month computed by multiplying the output of the on-site generation by the new sum of competition transition charges under Section 39.201 and transition charges under Subchapter G which are in effect during that month. Payment shall be made to the utility, its

successors, an assignee, or other collection agent responsible for collecting the competition transition charges and transition charges and shall be collected in addition to the competition transition charges and transition charges applicable to energy actually delivered to the customer through the utility's facilities.

(c) In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric utility, electric cooperative, or municipally owned utility after May 1, 1999. A customer in a multiply certificated service area that requested to switch providers on or before May 1, 1999, or was not taking service from an electric utility on May 1, 1999, and does not do so after that date is not responsible for paying retail stranded costs of that utility.

(d) An electric utility shall pursue commercially reasonable means to reduce its potential stranded costs, including good faith attempts to renegotiate above-cost fuel and purchased power contracts or the exercise of normal business practices to protect the value of its assets. The commission shall consider the utility's efforts under this subsection when determining the amount of the utility's stranded costs; provided, however, that nothing in this section authorizes the commission to substitute its judgment for a market valuation of generation assets determined under Sections 39.262(h) and (i).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.253. ALLOCATION OF STRANDED COSTS. (a) Any capital costs incurred by an electric utility to improve air quality under Section 39.263 or 39.264 that are included in a utility's invested capital in accordance with those sections shall be allocated among customer classes as follows:

(1) 50 percent of those costs shall be allocated in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design; and

(2) the remainder shall be allocated on the basis of the energy consumption of the customer classes.

(b) All other retail stranded costs shall be allocated among retail customer classes in accordance with Subsections (c)-(i).

(c) The allocation to the residential class shall be determined by allocating to all customer classes 50 percent of the stranded costs in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design and allocating the remainder of the stranded costs on the basis of the energy consumption of the classes.

(d) After the allocation to the residential class required by Subsection (c) has been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design. Non-firm industrial customers shall be allocated stranded costs equal to 150 percent of the amount allocated to that class.

(e) After the allocation to the residential class required by Subsection (c) and the allocation to the nonfirm industrial class required by Subsection (d) have been calculated, the remaining stranded costs shall be allocated to the remaining customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(f) Notwithstanding any other provision of this section, to the extent that the total retail stranded costs, including regulatory assets, of investor-owned utilities exceed $5 billion on a statewide basis, any stranded costs in excess of $5 billion shall be allocated among retail customer classes in accordance with the methodology used to allocate the costs of the underlying assets in the electric utility's most recent commission order addressing rate design.

(g) The energy consumption of the customer classes used in Subsections (a)(2) and (c) shall be based on the relevant class characteristics as of May 1, 1999, adjusted for normal weather conditions.

(h) For purposes of this section, "stranded costs" includes regulatory assets.

(i) Except as provided by Section 39.262(k), no customer or customer class may avoid the obligation to pay the amount of stranded costs allocated to that customer class.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.254. USE OF REVENUES FOR UTILITIES WITH STRANDED COSTS. This subchapter provides a number of tools to an electric utility to mitigate stranded costs. Each electric utility that was reported by the commission to have positive "excess costs over market" (ECOM), denoted as the "base case" for the amount of stranded costs before full retail competition in 2002 with respect to its Texas jurisdiction, in the April 1998 Report to the Texas Senate Interim Committee on Electric Utility Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update," must use these tools to reduce the net book value of, otherwise referred to as "accelerate" the cost recovery of, its stranded costs each year. Any positive difference under the report required by Section 39.257(b) shall be applied to the net book value of generation assets.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.255. USE OF REVENUES FOR UTILITIES WITH NO STRANDED COSTS. (a) An electric utility that does not have stranded costs described by Section 39.254 shall be permitted to use any positive difference under the report required by Section 39.257(b) on capital expenditures to improve or expand transmission or distribution facilities, or on capital expenditures to improve air quality, as approved by the commission. Any such capital expenditures shall be made in the calendar year immediately following the year for which the report required by Section 39.257 is calculated. The capital expenditures shall be reflected in any future proceeding under this chapter to set transmission or distribution rates as a reduction to the utility's transmission and distribution invested capital, as approved by the commission.

(b) To the extent that positive differences under the report required by Section 39.257(b) are not used for capital expenditures, the amounts shall be flowed back to the electric utility's Texas jurisdictional customers through the power cost recovery factor.

(c) This section applies only to the use of positive differences under the report required by Section 39.257(b) for each year during the freeze period.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.256. OPTION TO REDIRECT DEPRECIATION. (a) For the calendar years of 1998, 1999, 2000, and 2001, an electric utility described by Section 39.254 may redirect all or a part of the depreciation expense relating to transmission and distribution assets to its net generation plant assets.

(b) The electric utility shall report a decision under Subsection (a) to the commission and any other applicable regulatory authority.

(c) Any adjustments made to the book value of transmission and distribution assets or the creation of any related regulatory assets resulting from the redirection under this section shall be accepted and applied by the commission for establishing net invested capital and transmission and distribution rates for retail customers in all future proceedings.

(d) Notwithstanding Subsection (c), the design of post-freeze-period retail rates may not:

(1) shift the allocation of responsibility for stranded costs;

(2) include the adjusted costs in wholesale transmission and distribution rates; or

(3) apply the adjustments for the purpose of establishing net invested capital and transmission and distribution rates for wholesale customers.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.257. ANNUAL REPORT. (a) Beginning with the 1999 calendar year, each electric utility shall file a report with the commission not later than 90 days after the end of each year during the freeze period under a schedule and a format determined by the commission.

(b) The report shall identify any positive difference between annual revenues, reduced by the amount of annual revenues under Sections 36.203 and 36.205, the revenues received under the interutility billing process as adopted by the commission to implement Sections 35.004, 35.006, and 35.007, revenues associated with transition charges as defined by Section 39.302, and annual

costs.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.258. ANNUAL REPORT: DETERMINATION OF ANNUAL COSTS. For the purposes of determining the annual costs in each annual report, the following amounts shall be used:

(1) the lesser of:

(A) the utility's Texas jurisdictional operation and maintenance expense reflected in each utility's Federal Energy Regulatory Commission Form 1 of the report year, plus factoring expenses not included in operation and maintenance, adjusted for:

(i) costs under Sections 36.062, 36.203, and 36.205; and

(ii) revenues recorded under the interutility billing process adopted by the commission to implement Sections 35.004, 35.006, and 35.007; or

(B) the Texas jurisdictional operation and maintenance expense reflected in each utility's 1996 Federal Energy Regulatory Commission Form 1, plus factoring expenses not included in operation and maintenance, adjusted for:

(i) costs under Sections 36.062, 36.203, and 36.205, and not indexed for inflation;

(ii) any difference between the annual revenues and the expenses recorded under the interutility billing process adopted by the commission to implement Sections 35.004, 35.006, and 35.007; and

(iii) the annual percentage change in the average number of utility customers;

(2) the amount of nuclear decommissioning expense approved in the electric utility's last rate proceeding before the commission, as may be required to be adjusted to comply with applicable federal regulatory requirements;

(3) the depreciation rates approved in the electric utility's last rate proceeding before the commission;

(4) the amortization expense approved in the electric utility's last rate proceeding before the commission or in any other proceeding in which deferred costs and the amortization of those costs are established, except that if the items are fully amortized

during the freeze period, the expense shall be adjusted accordingly;

(5) taxes and fees, including municipal franchise fees to the extent not included in Subdivision (1), other than federal income taxes, and assessments incurred that year;

(6) federal income tax expense, computed according to the stand-alone methodology and using the actual capital structure and actual cost of debt as of December 31 of the report year;

(7) return on invested capital, computed by multiplying invested capital as of December 31 of the report year, determined as provided by Section 39.259, by the cost of capital approved in the electric utility's most recent rate proceeding before the commission in which the cost of capital was specifically adopted, or, in the case of a range, the midpoint of the range, if the final rate order for the proceeding was issued on or after January 1, 1992, or if such an order does not exist, a cost of capital of 9.6 percent shall be used; and

(8) the amount resulting from any operation and maintenance expense savings tracker from a merger of two utilities and contained in a settlement agreement approved by the commission before January 1, 1999.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.259. ANNUAL REPORT: DETERMINATION OF INVESTED CAPITAL. (a) For the purposes of determining invested capital in each annual report, the net plant in service, regulatory assets, and deferred federal income taxes shall be updated each year, and generation-related invested capital shall be reduced by the amount of securitization under Sections 39.201(i) and 39.262(c) to the extent otherwise included in invested capital.

(b) Capital additions to a plant in an amount less than 1-1/2 percent of the electric utility's net plant in service on December 31, 1998, less plant items previously excluded by the commission, for each of the years 1999 through 2001 are presumed prudent.

(c) All other items in invested capital shall be as approved in the electric utility's last rate proceeding before the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.260. USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. (a) The definition and identification of invested capital and other terms used in this subchapter and Subchapter G that affect the net book value of generation assets and the treatment of transactions performed under Section 35.035 and other transactions authorized by this title or approved by the regulatory authority that affect the net book value of generation assets during the freeze period shall be treated in accordance with generally accepted accounting principles as modified by regulatory accounting rules generally applicable to utilities.

(b) The principles and criteria described by Subsection (a), including the criteria for applicability of Statement of Financial Accounting Standards No. 71 ("Accounting for the Effects of Certain Types of Regulation"), shall be applied for purposes of this subchapter as they existed on January 1, 1999.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.261. REVIEW OF ANNUAL REPORT. (a) The annual report filed under this subchapter is a public document and shall be reviewed by the staff of the commission and the office. Both staffs may review work papers and supporting documents and engage in discussions with the utility about the data underlying the reports.

(b) The staff of the commission and the office shall communicate in writing to an electric utility not later than the 180th day after the date the report is filed if they have any disagreements with the data or computations.

(c) The commission shall finalize and resolve any disagreements related to the annual report, consistent with the requirements of Section 39.258, as follows:

(1) for each calendar year, the commission shall finalize the annual report before establishing the competition transition charge under Section 39.201; and

(2) for each calendar year, the commission shall finalize the annual report and reflect the result as part of the true-up proceeding under Section 39.262.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.262. TRUE-UP PROCEEDING. (a) An electric utility, together with its affiliated retail electric provider and its affiliated transmission and distribution utility, may not be permitted to overrecover stranded costs through the procedures established by this section or through the application of the measures provided by the other sections of this chapter.

(b) After the freeze period, an electric utility located in a power region that is not certified under Section 39.152 shall continue to file annual reports under Sections 39.257, 39.258, and 39.259 as if the freeze period remained in effect, until the time the power region qualifies as certified under Section 39.152. In addition, the commission staff and the office shall continue to review the annual reports as provided by Section 39.261.

(c) After January 10, 2004, at a schedule and under procedures to be determined by the commission, each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company shall jointly file to finalize stranded costs under Subsections (h) and (i) and reconcile those costs with the estimated stranded costs used to develop the competition transition charge in the proceeding held under Section 39.201. Any resulting difference shall be applied to the nonbypassable delivery rates of the transmission and distribution utility, except that at the utility's option, any or all of the amounts recovered under this section may be securitized under Subchapter G.

(d) The affiliated power generation company shall reconcile, and either credit or bill to the transmission and distribution utility, the net sum of:

(1) the former electric utility's final fuel balance determined under Section 39.202(c); and

(2) any difference between the price of power obtained through the capacity auctions under Sections 39.153 and 39.156 and the power cost projections that were employed for the same time period in the ECOM model to estimate stranded costs in the proceeding under Section 39.201.

(e) To the extent that the price to beat exceeded the market price of electricity, the affiliated retail electric provider shall reconcile and credit to the affiliated transmission and distribution utility any positive difference between the price to beat established under Section 39.202, reduced by the nonbypassable delivery charge

established under Section 39.201, and the prevailing market price of electricity during the same time period. A reconciliation for the applicable customer class is not required under this subsection for an affiliated retail electric provider that satisfies the requirements of Section 39.202(e)(1) or (2) before the expiration of two years from the introduction of customer choice. If a reconciliation is required, in no event shall the amount credited exceed an amount equal to the number of residential or small commercial customers served by the affiliated transmission and distribution utility that are buying electricity from the affiliated retail electric provider at the price to beat on the second anniversary of the beginning of competition, minus the number of new customers obtained outside the service area, multiplied by $150.

(f) To the extent that any amount of regulatory assets included in a transition charge or competition transition charge exceeds the amount of regulatory assets approved in a rate order which became effective on or before September 1, 1999, the commission shall conduct a review during the true-up proceeding to determine whether such amounts were appropriately calculated and constituted reasonable and necessary costs pursuant to Subchapter B, Chapter 36. If the commission finds that the amount of regulatory assets specified in Section 39.302(5) is subject to modification, a credit or other rate adjustment shall be made to the transmission and distribution utility's nonbypassable delivery rates; provided, however, that no adjustment may be made to a transition charge established under Subchapter G.

(g) Based on the credits or bills received from its affiliates under Subsections (d), (e), and (f), the transmission and distribution utility shall make necessary adjustments to the nonbypassable delivery rates it charges to retail electric providers. If the commission determines that the nonbypassable delivery rates are not sufficient, the commission may extend the original collection period for the charge or, if necessary, increase the charge. Alternatively, if the commission determines that the nonbypassable delivery rates are larger than are needed to recover the transmission and distribution utility's costs, the commission shall correspondingly reduce:

(1) the competition transition charge, to the extent it has not been securitized;

(2) the depreciation expense that has been redirected under

Section 39.256;

(3) the transmission and distribution utility's rates; or

(4) a combination of the elements in Subdivisions (1)-(3).

(h) Except as provided in Subsection (i), for the purpose of finalizing the stranded cost estimate used to establish the competition transition charge under Section 39.201, the affiliated power generation company shall quantify its stranded costs using one or more of the following methods:

(1) Sale of Assets. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has sold some or all of its generation assets, which sale shall include all generating assets associated with each generating plant that is sold, in a bona fide third-party transaction under a competitive offering, the total net value realized from the sale establishes the market value of the generation assets sold. If not all assets are sold, the market value of the remaining generation assets shall be established by one or more of the other methods in this section.

(2) Stock Valuation Method. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has transferred some or all of its generation assets, including, at the election of the electric utility or power generation company, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, not less than 51 percent of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the filing required under Subsection (c) establishes the market value of the common stock equity in each transferee corporation. The book value of each transferee corporation's debt and preferred stock securities shall be added to the market value of its assets. The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by each transferee corporation from any entity other than the affiliated electric utility or power generation company. The resulting market value of the assets establishes the market value of the generation assets transferred by the electric utility or power

generation company to each separate corporation. If not all assets are disposed of in this manner, the market value of the remaining assets shall be established by one or more of the other methods in this section.

(3) Partial Stock Valuation Method. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has transferred some or all of its generation assets, including, at the election of the electric utility or power generation company, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, at least 19 percent, but less than 51 percent, of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the filing required under Subsection (c) shall be presumed to establish the market value of the common stock equity in each transferee corporation. The commission may accept the market valuation to conclusively establish the value of the common stock equity in each transferee corporation or convene a valuation panel of three independent financial experts to determine whether the percentage of common stock sold is fairly representative of the total common stock equity or whether a control premium exists for the retained interest. The valuation panel must consist of financial experts, chosen from proposals submitted in response to commission requests, from the top 10 nationally recognized investment banks with demonstrated experience in the United States electric industry as indicated by the dollar amount of public offerings of long-term debt and equity of United States investor-owned electric companies over the immediately preceding three years as ranked by the publications "Securities Data" or "Institutional Investor." If the panel determines that a control premium exists for the retained interest, the panel shall determine the amount of the control premium, and the commission shall adopt the determination but may not increase the market value by a control premium greater than 10 percent. The costs and expenses of the panel, as approved by the commission, shall be paid by each transferee corporation. The determination of the commission based on the finding of the panel conclusively establishes the value of the common stock of each transferee corporation. The

book value of each transferee corporation's debt and preferred stock securities shall be added to the market value of its assets. The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by each transferee corporation from any entity other than the affiliated electric utility or power generation company. The resulting market value of the assets establishes the market value of the generation assets transferred by the electric utility or power generation company to each separate corporation.

(4) Exchange of Assets. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has transferred some or all of its generation assets, including any fuel and fuel transportation contracts related to those assets, in a bona fide third-party exchange transaction, the stranded costs related to the transferred assets shall be the difference between the book value and the market value of the transferred assets at the time of the exchange, taking into account any other consideration received or given. The market value of the transferred assets may be determined through an appraisal by a nationally recognized independent appraisal firm, if the market value is subject to a market valuation by means of an offer of sale in accordance with this subdivision. To obtain a market valuation by means of an offer of sale, the owner of the asset shall offer it for sale to other parties under procedures that provide broad public notice of the offer and a reasonable opportunity for other parties to bid on the asset. The owner of the asset may establish a reserve price for any offer based on the sum of the appraised value of the asset and the tax impact of selling the asset, as determined by the commission.

(i) Unless an electric utility or its affiliated power generation company combines all of its remaining generation assets into one or more transferee corporations as described in Subsections (h)(2) and (3), the electric utility shall quantify its stranded costs for nuclear assets using the ECOM method. The ECOM method is the estimation model prepared for and described by the commission's April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update." The methodology used in the model must be the same as that used in the 1998 report to determine the "base case." At the time of the proceeding under this section, the ECOM model shall be rerun using updated company-specific inputs required by the

model, updating the market price of electricity, and using updated natural gas price forecasts and the capacity cost based on the long-run marginal cost of the most economic new generation technology then available. Natural gas price projections used in the model must be market-based natural gas forward prices, where available. Growth rates in generating plant operations and maintenance costs and allocated administrative and general costs shall be benchmarked by comparing those costs to the best available information on cost trends for comparable generating plants. Capital additions shall be benchmarked using the limitation in Section 39.259(b).

(j) The commission shall issue a final order not later than the 150th day after the date of the filing under this section by the transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company, and the resulting order shall be subject to judicial review under Chapter 2001, Government Code.

(k) Notwithstanding Section 39.252, to the extent that a customer's actual load has been lawfully served by a fully operational qualifying facility before September 1, 2001, or by an on-site power production facility with a rated capacity of 10 megawatts or less, any charge for recovery of stranded costs under this section or Subchapter G assessed on that customer after the facility becomes fully operational shall be included only in those tariffs or charges associated with the services actually provided by the transmission and distribution utility, if any, to the customer after the facility became fully operational and may not include any costs associated with the service provided to the customer by the electric utility or its affiliated transmission and distribution utility under their tariffs before the operation of that qualifying facility. To qualify under this subsection, a qualifying facility must have made substantially complete filings on or before December 31, 1999, for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission in effect at the time of filing.

(l) To protect retail customers in this state, and ensure the appropriateness of the nonbypassable rates of electric utilities and transmission and distribution utilities, notwithstanding any other provision of this title, an electric utility or transmission and distribution utility must report to and obtain approval of the commission before closing any transaction in which:

(1) the electric utility or transmission and distribution utility will be merged or consolidated with another electric utility or transmission and distribution utility;

(2) at least 50 percent of the stock of the electric utility or transmission and distribution utility will be transferred or sold; or

(3) a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred.

(m) The commission shall approve a transaction under Subsection (l) if the commission finds that the transaction is in the public interest. In making its determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility or transmission and distribution utility. The commission shall make the determination concerning a transaction under this subsection not later than the 180th day after the date the commission receives the relevant report. If the commission has not made a determination before the 181st day after that date, the transaction is considered approved.

(n) Subsections (l) and (m) do not apply to a transaction described by Subsection (l) for which a definitive agreement was executed before April 1, 2007, if an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility made a filing for review of the transaction under Section 14.101 before May 1, 2007, and the resulting proceeding was not withdrawn.

(o) If an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility files with the commission a stipulation, representation, or commitment in advance of or as part of a filing under Subsection (l) or under Section 14.101, the commission may enforce the stipulation, representation, or commitment to the extent that the stipulation, representation, or commitment is consistent with the standards provided by this section and Section 14.101. The commission may reasonably interpret and enforce conditions adopted under this section.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1186 (H.B. 624), Sec. 1, eff. June 15, 2007.

Sec. 39.263. STRANDED COST RECOVERY OF ENVIRONMENTAL CLEANUP COSTS. (a) Subject to Subsection (c), capital costs incurred by an electric utility to improve air quality before January 1, 2002, are eligible for inclusion as net invested capital under Section 39.259, notwithstanding the limitations imposed under Sections 39.259(b) and (c).

(b) Subject to Subsection (c), capital costs incurred by an electric utility or an affiliated power generation company to improve air quality after January 1, 2002, and before May 1, 2003, are eligible for inclusion in the determination of invested capital in the true-up proceeding under Section 39.262.

(c) Reasonable costs incurred under Subsections (a) and (b) shall be included as invested capital and considered in an electric utility's stranded cost determination only to the extent that:

(1) the cost is applied to offset or reduce the emission of airborne contaminants from an electric generating facility, where:

(A) the reduction or offset is determined by the Texas Natural Resource Conservation Commission to be an essential component in achieving compliance with a national ambient air quality standard; or

(B) the reduction or offset is necessary in order for an unpermitted electric generating facility to obtain a permit in the manner provided by Section 39.264;

(2) the retrofit decision is determined to be the most cost-effective after consideration of alternative measures, including the retirement of the generating facility; and

(3) the amount and location of resulting emission reductions is consistent with the air quality goals and policies of the Texas Natural Resource Conservation Commission.

(d) If the retirement of a generating facility is the most cost-effective alternative, taking into account the cost of replacement generating capacity, the net book value, including retirement costs and offsetting salvage value, of the affected facility shall be included in the electric utility's stranded cost determination, notwithstanding Section 39.259(c).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.264. EMISSIONS REDUCTIONS OF "GRANDFATHERED FACILITIES". (a) In this section:

(1) "Conservation commission" means the Texas Natural Resource Conservation Commission.

(2) "Electric generating facility" means a facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(b) This section applies only to an electric generating facility existing on January 1, 1999, that is not subject to the requirement to obtain a permit under Section 382.0518(g), Health and Safety Code.

(c) It is the intent of the legislature that, for the 12-month period beginning on May 1, 2003, and for each 12-month period after the end of that period, total annual emissions of nitrogen oxides from facilities subject to this section may not exceed levels equal to 50 percent of the total emissions of that pollutant during 1997, as reported to the conservation commission, and total annual emissions of sulphur dioxides from coal-fired facilities subject to this section may not exceed levels equal to 75 percent of the total emissions of that pollutant during 1997, as reported to the conservation commission. The limitations prescribed by this subsection may be met through an emissions allocation and allowance transfer system described by this section.

(d) A municipal corporation, electric cooperative, or river authority may exclude any electric generating facilities of 25 megawatts or less from the requirements prescribed by this section. Not later than January 1, 2000, a municipal corporation, electric cooperative, or river authority must inform the conservation commission of its intent to exclude those facilities.

(e) The owner or operator of an electric generating facility shall apply to the conservation commission for a permit for the emission of air contaminants on or before September 1, 2000. A permit issued by the conservation commission under this section shall require the facility to achieve emissions reductions or trading emissions allowances as provided by this section. If the facility uses coal as a fuel, the permit must also be conditioned on the

facility's emissions meeting opacity limitations provided by conservation commission rules. Notwithstanding Section 382.0518(g), Health and Safety Code, a facility that does not obtain a permit as required by this subsection may not operate after May 1, 2003, unless the conservation commission finds good cause for an extension.

(f) The conservation commission shall develop rules for the permitting of electric generating facilities. The rules adopted under this subsection shall provide, by region, for the allocation of emissions allowances of sulphur dioxides and nitrogen oxides among electric generating facilities and for facilities to trade emissions allowances for those contaminants.

(g) The conservation commission by rule shall establish an East Texas Region, a West Texas Region, and an El Paso Region for allocation of air contaminants under the permitting program under Subsection (f). The East Texas Region must contain all counties traversed by or east of Interstate Highway 35 or Interstate Highway 37, including Bosque, Coryell, Hood, Parker, Somervell, and Wise counties. The West Texas Region includes all of the state not contained in the East Texas Region or the El Paso Region. The El Paso Region includes El Paso County.

(h) Not later than January 1, 2000, the conservation commission shall allocate to each electric generating facility in each region a number of annual emissions allowances, with each allowance equal to one ton of sulphur dioxides or of nitrogen oxides emitted in a year, that permit emissions of the contaminants from the facility in that year. The conservation commission must allocate to each facility a number of emissions allowances equal to an emissions rate measured in pounds per million British thermal units divided by 2,000 and multiplied by the facility's total heat input in terms of million British thermal units during 1997. For the East Texas Region, the emissions rate shall be 0.14 pounds per million British thermal units for nitrogen oxides and 1.38 pounds per million British thermal units for sulphur dioxides. For the West Texas and El Paso regions, the emissions rate shall be 0.195 pounds per million British thermal units for nitrogen oxides. Allowances for sulphur dioxides may only be allocated among coal-fired facilities.

(i) A person, municipal corporation, electric cooperative, or river authority that owns and operates an electric generating facility not covered by this section may elect to designate that facility to become subject to the requirements of this section and to

receive emissions allowances for the purpose of complying with the emissions limitations prescribed by Subsection (c). The conservation commission shall adopt rules governing this election that:

(1) require an owner or operator of an electric generating facility to designate to the conservation commission in its permit application under Subsection (e) any facilities that will become subject to this section;

(2) require the conservation commission, notwithstanding the allocation mechanism provided by Subsection (h), to allocate additional allowances to facilities governed by this subsection in an amount equal to each facility's actual emissions in tons in 1997;

(3) provide that any unit designated under this subsection may not transfer or bank allowances conserved as a result of reduced utilization or shutdown, except that the allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this subsection with thermal energy generated by any other unit; and

(4) provide that emissions reductions from electing facilities designated in this subsection may only be used to satisfy the emissions reductions for grandfathered facilities defined in Subsection (c) to the extent that reductions used to satisfy the limitations in Subsection (c) are beyond the requirements of any other state or federal standard, or both.

(j) The conservation commission by rule shall permit a facility to trade emissions allocations with other electric generating facilities only in the same region.

(k) The conservation commission by rule shall provide methods for the conservation commission to determine whether a facility complies with the permit issued under this section. The rules must provide for:

(1) monitoring and reporting actual emissions of sulphur dioxides and nitrogen oxides from each facility;

(2) provisions for saving unused allowances for use in later years; and

(3) a system for tracking traded allowances.

(l) A facility may not trade an unused allowance for a contaminant for use as a credit for another contaminant.

(m) A person possessing market power shall not withhold emissions allowances from the market in a manner that is unreasonably

discriminatory or tends to unreasonably restrict, impair, or reduce the level of competition.

(n) The conservation commission shall penalize a facility that emits an air contaminant that exceeds the facility's allowances for that contaminant by:

(1) enforcing an administrative penalty, in an amount determined by conservation commission rules, for each ton of air contaminant emissions by which the facility exceeds its allocated emissions allowances; and

(2) reducing the facility's emissions allowances for the next year by an amount of emissions equal to the excessive emissions in the year the facility emitted the excessive air contaminants.

(o) The conservation commission may penalize a facility that emits an air contaminant that exceeds the facility's allowances for that contaminant by:

(1) ordering the facility to cease operations; or

(2) taking other enforcement action provided by conservation commission rules.

(p) The conservation commission by rule shall provide for a facility in the El Paso Region to meet emissions allowances by using credits from emissions reductions achieved in Ciudad Juarez, United Mexican States.

(q) If the conservation commission or the United States Environmental Protection Agency determines that reductions in nitrogen oxides emissions in the El Paso Region otherwise required by this section would result in increased ambient ozone levels in El Paso County, facilities in the El Paso Region are exempt from the nitrogen oxides reduction requirements.

(r) An applicant for a permit under Subsection (e) shall publish notice of intent to obtain the permit in accordance with Section 382.056, Health and Safety Code. The conservation commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Subsection (e) in the same manner as provided by Sections 382.0561 and 382.0562, Health and Safety Code. The conservation commission shall review and renew a permit issued under this section in accordance with Section 382.055, Health and Safety Code.

(s) This section does not limit the authority of the conservation commission to require further reductions of nitrogen

oxides, sulphur dioxides, or any other pollutant from generating facilities subject to this section or Section 39.263.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.265. RIGHTS NOT AFFECTED. This chapter is not intended to alter any rights of utilities to recover stranded costs from wholesale customers.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

**SUBCHAPTER G. SECURITIZATION**

Sec. 39.301. PURPOSE. The purpose of this subchapter is to enable utilities to use securitization financing to recover regulatory assets, all other amounts determined under Section 39.262, and any amounts being recovered under a competition transition charge determined as a result of the proceedings under Sections 39.201 and 39.262. This type of debt will lower the carrying costs of the assets relative to the costs that would be incurred using conventional utility financing methods. The proceeds of the transition bonds shall be used solely for the purposes of reducing the amount of recoverable regulatory assets and other amounts, as determined by the commission in accordance with this chapter, through the refinancing or retirement of utility debt or equity. The commission shall ensure that securitization provides tangible and quantifiable benefits to ratepayers, greater than would have been achieved absent the issuance of transition bonds. The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order. The amount securitized may not exceed the present value of the revenue requirement over the life of the proposed transition bond associated with the regulatory assets or other amounts sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the transition bonds.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1186 (H.B. 624), Sec. 2, eff.

June 15, 2007.

Sec. 39.302. DEFINITIONS. In this subchapter:

(1) "Assignee" means any individual, corporation, or other legally recognized entity to which an interest in transition property is transferred, other than as security, including any assignee of that party.

(2) "Financing order" means an order of the commission adopted under Section 39.201 or 39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

(3) "Financing party" means a holder of transition bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(4) "Qualified costs" means 100 percent of an electric utility's regulatory assets and 75 percent of its recoverable costs determined by the commission under Section 39.201 and any remaining amounts determined under Section 39.262 together with the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of transition bonds. The term includes the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under Section 39.201 and this subchapter.

(5) "Regulatory assets" means the generation-related portion of the Texas jurisdictional portion of the amount reported by the electric utility in its 1998 annual report on Securities and Exchange Commission Form 10-K as regulatory assets and liabilities, offset by the applicable portion of generation-related investment tax credits permitted under the Internal Revenue Code of 1986.

(6) "Transition bonds" means bonds, debentures, notes, certificates of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured by or payable from transition property. If certificates of participation, beneficial interest, or ownership are issued, references in this subchapter to principal, interest, or premium shall refer to comparable amounts under those certificates.

(7) "Transition charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

(8) "Transition property" means the property described in Section 39.304.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1186 (H.B. 624), Sec. 3, eff. June 15, 2007.

Sec. 39.303. FINANCING ORDERS; TERMS. (a) The commission shall adopt a financing order, on application of a utility to recover the utility's regulatory assets and other amounts determined under Section 39.201 or 39.262, on making a finding that the total amount of revenues to be collected under the financing order is less than the revenue requirement that would be recovered over the remaining life of the regulatory assets or other amounts using conventional financing methods and that the financing order is consistent with the standards in Section 39.301.

(b) The financing order shall detail the amount of regulatory assets and other amounts to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years. If an amount determined under Section 39.262 is subject to judicial review at the time of the securitization proceeding, the financing order shall include an adjustment mechanism requiring the utility to adjust its rates, other than transition charges, or provide credits, other than credits to transition charges, in a manner that would refund over the remaining life of the transition bonds any overpayments resulting from securitization of amounts in excess of the amount resulting from a final determination after completion of all appellate reviews. The adjustment mechanism may not affect the stream of revenue available to service the transition bonds. An adjustment may not be made under this subsection until all appellate reviews, including, if applicable, appellate reviews following a commission decision on

remand of its original orders, have been completed.

(c) Transition charges shall be collected and allocated among customers in the same manner as competition transition charges under Section 39.201.

(d) A financing order shall become effective in accordance with its terms, and the financing order, together with the transition charges authorized in the order, shall thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as permitted by Section 39.307.

(e) The commission shall issue a financing order under Subsections (a) and (g) not later than 90 days after the utility files its request for the financing order.

(f) A financing order is not subject to rehearing by the commission. A financing order may be reviewed by appeal only to a Travis County district court by a party to the proceeding filed within 15 days after the financing order is signed by the commission. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this chapter.

(g) At the request of an electric utility, the commission may adopt a financing order providing for retiring and refunding transition bonds on making a finding that the future transition charges required to service the new transition bonds, including transaction costs, will be less than the future transition charges required to service the transition bonds being refunded. On the retirement of the refunded transition bonds, the commission shall adjust the related transition charges accordingly.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1186 (H.B. 624), Sec. 4, eff. June 15, 2007.

Sec. 39.304. PROPERTY RIGHTS. (a) The rights and interests of an electric utility or successor under a financing order, including the right to impose, collect, and receive transition charges authorized in the order, shall be only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of transition bonds, at which time they will become "transition property."

(b) Transition property shall constitute a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of transition charges depends on further acts of the utility or others that have not yet occurred. The financing order shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described in Section 39.310.

(c) All revenues and collections resulting from transition charges shall constitute proceeds only of the transition property arising from the financing order.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.305. NO SETOFF. The interest of an assignee or pledgee in transition property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.306. NO BYPASS. A financing order shall include terms ensuring that the imposition and collection of transition charges authorized in the order shall be nonbypassable.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.307. TRUE-UP. A financing order shall include a

mechanism requiring that transition charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the transition bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the transition bonds.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.308. TRUE SALE. An agreement by an electric utility or assignee to transfer transition property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the transition property is transferred. This true sale shall apply regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the transition property, the fact that the electric utility acts as the collector of transition charges relating to the transition property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.309. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. (a) Transition property does not constitute an account or general intangible under Section 9.106, Business & Commerce Code. The creation, granting, perfection, and enforcement of liens and security interests in transition property are governed by this section and not by the Business & Commerce Code.

(b) A valid and enforceable lien and security interest in transition property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of transition bonds. The lien and security interest shall attach automatically from the time that value is received for the bonds and, on perfection through the filing of notice with the secretary of state in accordance with the rules

prescribed under Subsection (d), shall be a continuously perfected lien and security interest in the transition property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. If notice is filed within 10 days after value is received for the transition bonds, the security interest shall be perfected retroactive to the date value was received, otherwise, the security interest shall be perfected as of the date of filing.

(c) Transfer of an interest in transition property to an assignee shall be perfected against all third parties, including subsequent judicial or other lien creditors, when the financing order becomes effective, transfer documents have been delivered to the assignee, and a notice of that transfer has been filed in accordance with the rules prescribed under Subsection (d); provided, however, that if notice of the transfer has not been filed in accordance with this subsection within 10 days after the delivery of transfer documentation, the transfer of the interest is not perfected against third parties until the notice is filed.

(d) The secretary of state shall implement this section by establishing and maintaining a separate system of records for the filing of notices under this section and prescribing the rules for those filings based on Chapter 9, Business & Commerce Code, adapted to this subchapter and using the terms defined in this subchapter.

(e) The priority of a lien and security interest perfected under this section is not impaired by any later modification of the financing order under Section 39.307 or by the commingling of funds arising from transition charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If transition property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(f) If a default or termination occurs under the transition bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any transition property as if they were secured parties under Chapter 9, Business & Commerce Code, and the commission may order that amounts arising from transition charges be transferred to a separate account for the financing parties' benefit, to which their lien and security

interest shall apply. On application by or on behalf of the financing parties, a district court of Travis County shall order the sequestration and payment to them of revenues arising from the transition charges.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.310. PLEDGE OF STATE. Transition bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power. The state pledges, however, for the benefit and protection of financing parties and the electric utility, that it will not take or permit any action that would impair the value of transition property, or, except as permitted by Section 39.307, reduce, alter, or impair the transition charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related transition bonds have been paid and performed in full. Any party issuing transition bonds is authorized to include this pledge in any documentation relating to those bonds.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.311. TAX EXEMPTION. Transactions involving the transfer and ownership of transition property and the receipt of transition charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.312. NOT PUBLIC UTILITY. An assignee or financing party may not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this subchapter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.313. SEVERABILITY. Effective on the date the first utility transition bonds are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter, Section 39.201, 39.251, 39.252, or 39.262, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER H. CERTIFICATION AND REGISTRATION; PENALTIES

Sec. 39.351. REGISTRATION OF POWER GENERATION COMPANIES. (a) A person may not generate electricity unless the person is registered with the commission as a power generation company in accordance with this section. A person may register as a power generation company by filing the following information with the commission:

(1) a description of the location of any facility used to generate electricity;

(2) a description of the type of services provided;

(3) a copy of any information filed with the Federal Energy Regulatory Commission in connection with registration with that commission; and

(4) any other information required by commission rule, provided that in requiring that information the commission shall protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information.

(b) A power generation company shall comply with the reliability standards adopted by an independent organization certified by the commission to ensure the reliability of the regional electrical network for a power region in which the power generation company is generating or selling electricity.

(c) The commission may establish simplified filing requirements for distributed natural gas generation facilities.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 890 (S.B. 365), Sec. 4, eff. September 1, 2011.

Sec. 39.352. CERTIFICATION OF RETAIL ELECTRIC PROVIDERS. (a) After the date of customer choice, a person, including an affiliate of an electric utility, may not provide retail electric service in this state unless the person is certified by the commission as a retail electric provider, in accordance with this section.

(b) The commission shall issue a certificate to provide retail electric service to a person applying for certification who demonstrates:

(1) the financial and technical resources to provide continuous and reliable electric service to customers in the area for which the certification is sought;

(2) the managerial and technical ability to supply electricity at retail in accordance with customer contracts;

(3) the resources needed to meet the customer protection requirements of this title; and

(4) ownership or lease of an office located within this state for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of this subchapter.

(c) A person applying for certification under this section shall comply with all applicable customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and by this title.

(d) Notwithstanding Subsections (b)(1)-(3), if a retail electric provider files with the commission a signed, notarized affidavit from each retail customer with which it has contracted to provide one megawatt or more of capacity stating that the customer is satisfied that the retail electric provider meets the standards prescribed by Subsections (b)(1)-(3) and Subsection (c), the retail electric provider shall be certified for purposes of serving those customers only, so long as it demonstrates that it meets the requirements of Subsection (b)(4).

(e) A retail electric provider may apply for certification any time after September 1, 2000.

(f) The commission shall use any information required in this

section in a manner that ensures the confidentiality of competitively sensitive information.

(g) If a retail electric provider serves an aggregate load in excess of 300 megawatts within this state, not less than five percent of the load in megawatt hours must consist of residential customers. This requirement applies to an affiliated retail electric provider only with respect to load served outside of the electric utility's service area, and, in relation to that load, the affiliated retail electric provider shall meet the requirements of this subsection by serving residential customers outside of the electric utility's service area. For the purpose of this subsection, the load served by retail electric providers that are under common ownership shall be combined. A retail electric provider may meet the requirements of this subsection by demonstrating on an annual basis that it serves residential load amounting to five percent of its total load, by demonstrating that another retail electric provider serves sufficient qualifying residential load on its behalf, or by paying an amount into the system benefit fund equal to $1 multiplied by a number equal to the difference between the number of megawatt hours it sold to residential customers and the number of megawatt hours it was required to sell to such customers, or in the case of an affiliated retail electric provider, $1 multiplied by a number equal to the difference between the number of megawatt hours sold to residential customers outside of the electric utility's service area and the number of megawatt hours it was required to sell to such customers outside of the electric utility's service area. Qualifying residential load may not include customers served by an affiliated retail electric provider in its own service area. Each retail electric provider shall file reports with the commission that are necessary to implement this subsection. This subsection applies for 36 months after retail competition begins. The commission shall adopt rules to implement this subsection.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.353. REGISTRATION OF AGGREGATORS. (a) A person may not provide aggregation services in the state unless the person is registered with the commission as an aggregator.

(b) In this subchapter, "aggregator" means a person joining two

or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(c) A person registering under this section shall comply with all customer protection provisions, all disclosure requirements, and all marketing guidelines established by the commission and by this title.

(d) The commission shall establish terms and conditions it determines necessary to regulate the reliability and integrity of aggregators in the state by June 1, 2000.

(e) An aggregator may register any time after September 1, 2000.

(f) The commission shall have up to 60 days to process applications for registration filed by aggregators.

(g) Registration is not required of a customer that is aggregating loads from its own location or facilities.

(h) The commission shall work with the Texas Department of Economic Development to communicate information about opportunities for operation as aggregators to potential new aggregators, including small and historically underutilized businesses.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.3535. MILITARY BASES AGGREGATORS. (a) In this section, "military bases aggregator" means a person joining two or more military bases that are located in areas of the state offering customer choice under this chapter into a single purchasing unit to negotiate electricity purchases from retail electric providers.

(b) It is the policy of this state to encourage military bases located in areas of the state offering customer choice under this chapter to aggregate their facilities into a single purchasing unit as a method to reduce costs of electricity consumed by those bases. The commission shall provide assistance to a military bases aggregator regarding the evaluation of offers from retail electric providers on the request of the military bases aggregator.

(c) An aggregator registered under another section of this subchapter may provide aggregation services to military bases.

(d) A person, including a state agency, may register as a military bases aggregator to provide aggregation services exclusively to military bases located in areas of the state offering customer choice under this chapter.

(e) A person registered as a military bases aggregator under Subsection (d) is not required to comply with customer protection provisions, disclosure requirements, or marketing guidelines prescribed by this title or established by the commission while providing aggregation services exclusively to military bases.

(f) The commission shall expedite consideration of an application submitted by an applicant for registration under Subsection (d).

Added by Acts 2003, 78th Leg., ch. 149, Sec. 22, eff. May 27, 2003.

Sec. 39.354. REGISTRATION OF MUNICIPAL AGGREGATORS. (a) A municipal aggregator may not provide aggregation services in the state unless the municipal aggregator registers with the commission.

(b) In this section, "municipal aggregator" means a person authorized by two or more municipal governing bodies to join the bodies into a single purchasing unit to negotiate the purchase of electricity from retail electric providers or aggregation by a municipality under Chapter 304, Local Government Code.

(c) A municipal aggregator may register any time after September 1, 2000.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 21.002(22), eff. Sept. 1, 2001.

Sec. 39.3545. REGISTRATION OF POLITICAL SUBDIVISION AGGREGATORS. (a) A political subdivision aggregator may not provide aggregation services in the state unless the political subdivision aggregator registers with the commission.

(b) In this section, "political subdivision aggregator" means a person or political subdivision corporation authorized by two or more political subdivision governing bodies to join the bodies into a single purchasing unit or multiple purchasing units to negotiate the purchase of electricity from retail electric providers for the facilities of the aggregated political subdivisions or aggregation by

a person or political subdivision under Chapter 304, Local Government Code.

(c) A political subdivision aggregator may register any time after September 1, 2000.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 21.002(23), eff. Sept. 1, 2001.

Sec. 39.355. REGISTRATION OF POWER MARKETERS. A person may not sell electric energy at wholesale as a power marketer unless the person registers with the commission pursuant to Section 35.032.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.356. REVOCATION OF CERTIFICATION. (a) The commission may suspend, revoke, or amend a retail electric provider's certificate for significant violations of this title or the rules adopted under this title or of any reliability standard adopted by an independent organization certified by the commission to ensure the reliability of a power region's electrical network, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the independent organization. The commission may also suspend or revoke a retail electric provider's certificate if the provider no longer has the financial or technical capability to provide continuous and reliable electric service.

(b) The commission may suspend or revoke a power generation company's registration for significant violations of this title or the rules adopted under this title or of the reliability standards adopted by an independent organization certified by the commission to ensure the reliability of a power region's electrical network, including the failure to observe any scheduling, operating, planning, reliability, or settlement protocols established by the independent organization.

(c) The commission may suspend or revoke an aggregator's registration for significant violations of this title or of the rules adopted under this title.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.357. ADMINISTRATIVE PENALTY. In addition to the suspension, revocation, or amendment of a certification, the commission may impose an administrative penalty, as provided by Section 15.023, for violations described by Section 39.356.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.358. LOCAL REGISTRATION OF RETAIL ELECTRIC PROVIDER. (a) A municipality may require a retail electric provider to register with the municipality as a condition of serving residents of the municipality. The municipality may assess a reasonable administrative fee for this purpose.

(b) The municipality may suspend or revoke a retail electric provider's registration and operation in that municipality for significant violations of this chapter or the rules adopted under this chapter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.359. BILL PAYMENT ASSISTANCE FOR BURNED VETERANS. (a) A retail electric provider may establish a bill payment assistance program for a customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate the individual's body temperature because of severe burns received in combat.

(b) The commission shall compile a list of programs described by Subsection (a) that are available from retail electric providers. The commission shall publish the list on the commission's Internet website and the office shall provide on the office's Internet website a link to the list.

(c) A retail electric provider shall provide to the commission information necessary to compile the list in the form, manner, and frequency the commission by rule requires.

Added by Acts 2013, 83rd Leg., R.S., Ch. 597 (S.B. 981), Sec. 2, eff. June 14, 2013.

## SUBCHAPTER I. PROVISIONS FOR CERTAIN NON-ERCOT UTILITIES

Sec. 39.401. APPLICABILITY. This subchapter shall apply to investor-owned electric utilities operating solely outside of ERCOT having fewer than six synchronous interconnections with voltage levels above 69 kilovolts systemwide on the effective date of this subchapter. The legislature finds that circumstances exist that require that areas served by such utilities be treated as competitive development areas in which it is not in the public interest to transition to full retail customer choice at this time.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1041, Sec. 1, eff. June 15, 2001.

Sec. 39.402. REGULATION OF UTILITY AND TRANSITION TO COMPETITION. (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, 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.

(b) Until the date on which an electric utility subject to this subchapter implements customer choice, Section 33.008 does not apply and the utility shall pay franchise fees to a municipality as required by the utility's franchise agreement with the municipality. After the date on which an electric utility subject to this subchapter implements customer choice, Section 33.008 applies. However, for purposes of computing the franchise fees as provided by Section 33.008(b), the calendar year immediately preceding the implementation of customer choice shall be substituted for the year

1998.

(c) On or after January 1, 2007, an electric utility subject to this subchapter may choose to participate in customer choice. An electric utility that chooses to participate in customer choice shall file a transition to competition plan with the commission. This transition to competition plan shall identify how utilities subject to this subchapter intend to mitigate market power and achieve full customer choice, including specific alternatives for constructing additional transmission facilities, auctioning rights to generation capacity, divesting generation capacity, or any other measure that is consistent with the public interest. The utility shall also include in the transition to competition plan a provision to establish a price to beat for residential customers and commercial customers having a peak load of 1,000 kilowatts or less. The commission may prescribe additional information or provisions that must be included in the plan. The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under this section; provided, however, that if a hearing is requested by any party to the proceeding, the 180-day deadline will be extended one day for each day of hearings. The transition to competition plan may be updated or amended annually, subject to commission approval until the applicable power region is certified as a qualifying power region under Section 39.152.

(d) On implementation of customer choice, an electric utility subject to this subchapter is subject to the provisions of this subtitle and Subtitle A to the same extent as other electric utilities, including the provisions of Chapter 37 concerning certificates of convenience and necessity.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1041, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 182 (S.B. 1150), Sec. 1, eff. May 28, 2011.

Sec. 39.407. CUSTOMER CHOICE AND RELEVANT MARKET AND RELATED MATTERS. (a) If an electric utility chooses on or after January 1, 2007, to participate in customer choice, the commission may not

authorize customer choice until the applicable power region has been certified as a qualifying power region under Section 39.152(a). Except as otherwise provided by this subsection, the commission shall certify that the requirements of Section 39.152(a)(3) are met for electric utilities subject to this subchapter only upon a finding that the total capacity owned and controlled by each such electric utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the constrained geographic region served by each such electric utility plus the total available transmission capacity capable of delivering firm power and energy to that constrained geographic region. Not later than May 1, 2002, each electric utility subject to this subchapter shall submit to the electric utility restructuring legislative oversight committee an analysis of the needed transmission facilities necessary to make the electric utility's service area transmission capability comparable to areas within the ERCOT power region. On or after September 1, 2003, each electric utility subject to this subchapter shall file the utility's plans to develop the utility's transmission interconnections with the utility's power region or other adjacent power regions. The commission shall review the plan and not later than the 180th day after the date the plan is filed, determine the additional transmission facilities necessary to provide access to power and energy that is comparable to the access provided in areas within the ERCOT power region; provided, however, that if a hearing is requested by any party to the proceeding, the 180-day deadline will be extended one day for each day of hearings. The commission shall, as a part of the commission's approval of the plan, approve a rate rider mechanism for the recovery of the incremental costs of those facilities after the facilities are completed and in-service. A finding of need under this subsection shall meet the requirements of Sections 37.056(c)(1), (2), and (4)(E). The commission may certify that the requirements of Section 39.152(a)(3) are met for electric utilities subject to this subchapter if the commission finds that:

(1) each such utility has sufficient transmission facilities to provide customers access to power and energy from capacity controlled by suppliers not affiliated with the incumbent utility that is comparable to the access to power and energy from capacity controlled by suppliers not affiliated with the incumbent utilities in areas of the ERCOT power region; and

(2) the total capacity owned and controlled by each such electric utility and its affiliates does not exceed 20 percent of the total installed generation capacity within the power region.

(b) In the area of a power region served by an electric utility subject to this subchapter, the electric utility may not choose to participate in customer choice unless the affiliated power generation company makes a commitment to maintain and does maintain rates that are based on cost of service for any electric cooperative or municipally owned utility that was a wholesale customer on the date the utility chooses to participate in customer choice and was purchasing power at rates that were based on cost of service. This subsection requires a power generation company to sell power at rates that are based on cost of service, notwithstanding the expiration of a contract for that service, until the requirements of Section 39.152(a) are met.

(c) If the requirements of Section 39.152(a) have not been met for an electric utility subject to this subchapter when the electric utility chooses to participate in customer choice, then any power generation company in the power region affiliated with an electric utility subject to this subchapter shall maintain adequate supply and facilities to provide electric service to persons who were retail customers of the electric utility on the date the utility chooses to participate in customer choice. The obligation provided by this subsection remains in effect until the commission determines that the requirements of Section 39.152(a) have been met for the region.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1041, Sec. 1, eff. June 15, 2001.

For expiration of this section, see Subsection (g).

Sec. 39.408. HIRING ASSISTANCE FOR FEDERAL PROCEEDINGS. (a) The commission may retain any consultant, accountant, auditor, engineer, or attorney the commission considers necessary to represent the commission in a proceeding before the Federal Energy Regulatory Commission, or before a court reviewing proceedings of that federal commission, related to:

(1) the relationship of an electric utility subject to this subchapter to a power region, regional transmission organization, or

independent system operator;

(2) the approval of an agreement among the electric utility and the electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates; or

(3) other matters related to the electric utility subject to this subchapter that may affect the ultimate rates paid by retail customers in this state.

(b) Assistance for which a consultant, accountant, auditor, engineer, or attorney may be retained under Subsection (a) may include:

(1) conducting a study;

(2) conducting an investigation;

(3) presenting evidence;

(4) advising the commission; or

(5) representing the commission.

(c) The electric utility shall pay timely the reasonable costs of the services of a person retained under Subsection (a), as determined by the commission. The total costs an electric utility is required to pay under this subsection may not exceed $1.5 million in a 12-month period.

(d) The commission shall allow the electric utility to recover both the total costs the electric utility paid under Subsection (c) and the carrying charges for those costs through a rider established annually to recover the costs paid and carrying charges incurred during the preceding calendar year. The rider may not be implemented before the rider is reviewed and approved by the commission.

(e) The commission shall consult the attorney general before the commission retains a consultant, accountant, auditor, or engineer under Subsection (a). The retention of an attorney under Subsection (a) is subject to the approval of the attorney general under Section 402.0212, Government Code.

(f) The commission shall be precluded from engaging any individual who is required to register under Section 305.003, Government Code.

(g) This section expires September 1, 2023.

Added by Acts 2015, 84th Leg., R.S., Ch. 849 (S.B. 932), Sec. 1, eff. September 1, 2015.

Sec. 39.409. RECOUPMENT OF TRANSITION TO COMPETITION COSTS. An electric utility subject to this subchapter is entitled to recover, as provided by this section, all reasonable and necessary expenditures made or incurred before September 1, 2001, to comply with the provisions of this chapter. Not later than December 1, 2001, each electric utility subject to this subchapter may file with the commission an application for recovery detailing the amounts spent or incurred. After notice and hearing, the commission shall review the amounts and, if found to be reasonable and necessary, approve a transition to competition retail rate rider mechanism for the recovery of the approved transition to competition costs. A rate rider implemented to recover approved transition to competition costs shall expire not later than December 31, 2006.

Added by Acts 2001, 77th Leg., ch. 1041, Sec. 2, eff. June 15, 2001.

Sec. 39.410. CONTRACTUAL OBLIGATIONS. This subchapter may not:

(1) interfere with or abrogate the rights or obligations of any party, including a retail or wholesale customer, to a contract with an investor-owned electric utility, river authority, municipally owned utility, or electric cooperative;

(2) interfere with or abrogate the rights or obligations of a party under a contract or agreement concerning certificated utility service areas; or

(3) result in a change in wholesale power costs to wholesale customers in Texas purchasing electricity under wholesale power contracts the pricing provisions of which are based on formulary rates, fuel adjustments, or average system costs.

Added by Acts 2001, 77th Leg., ch. 1041, Sec. 2, eff. June 15, 2001.

## SUBCHAPTER J. TRANSITION TO COMPETITION IN CERTAIN NON-ERCOT AREAS

Sec. 39.451. APPLICABILITY. This subchapter applies only to an investor-owned electric utility that is operating solely outside of ERCOT in areas of this state that were included in the Southeastern Electric Reliability Council on January 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June

18, 2005.

Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO COMPETITION. (a) Until the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice under Section 39.453, the rates of the electric utility shall be regulated under traditional cost-of-service regulation and the electric utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37.

(b) An electric 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 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.

(c) That portion of any commission order issued before the effective date of this section requiring the electric utility to comply with a provision of this chapter is void.

(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, 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.

(e) An electric utility subject to this subchapter may proceed with and complete jurisdictional separation to establish two vertically integrated utilities, one of which is solely subject to the retail jurisdiction of the commission and one of which is solely subject to the retail jurisdiction of the Louisiana Public Service Commission.

(f) Not later than January 1, 2006, an electric utility subject to this subchapter shall file a plan with the commission for identifying the applicable power region or power regions, enumerating the steps to achieve the certification of a power region in accordance with Section 39.453, and specifying the schedule for achieving the certification of a power region. The utility may amend the plan as appropriate. The commission may, on its own motion or the motion of any affected person, initiate a proceeding to certify a qualified power region under Section 39.152 when the conditions supporting such a proceeding exist.

(g) Not later than the earlier of January 1, 2007, or the 90th day after the date the applicable power region is certified in accordance with Section 39.453, the electric utility shall file a transition to competition plan. The transition to competition plan must:

(1) identify how the electric utility intends to mitigate market power and to achieve full customer choice, including specific alternatives for constructing additional transmission facilities, auctioning rights to generation capacity, divesting generation capacity, or any other measure that is consistent with the public interest;

(2) include a provision to reinstate a customer choice pilot project and to establish a price to beat for residential customers and commercial customers having a peak load of 1,000 kilowatts or less; and

(3) include any other additional information or provisions that the commission may require.

(h) The commission shall approve, modify, or reject a plan filed under Subsection (g) not later than the 180th day after the date the plan is filed unless a hearing is requested by any party to the proceeding. A modification to the plan by the commission may not be in conflict with the jurisdiction or orders of the Federal Energy Regulatory Commission or result in significant additional cost without allowing for timely recovery for that cost. If a hearing is requested, the 180-day deadline is extended one day for each day of the hearing. The transition to competition plan shall be updated or amended annually, subject to commission approval, until the initiation of customer choice by an electric utility subject to this subchapter. Consistent with its jurisdiction, the commission shall have the authority in approving or modifying the transition to competition plan to require the electric utility to take reasonable steps to facilitate the development of a wholesale generation market within the boundaries of the electric utility's service territory.

(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).

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

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 1, eff. May 31, 2006.
Acts 2009, 81st Leg., R.S., Ch. 1226 (S.B. 1492), Sec. 3, eff. June 19, 2009.

For expiration of this section, see Subsection (g).

Sec. 39.4525. HIRING ASSISTANCE FOR FEDERAL PROCEEDINGS. (a) The commission may retain any consultant, accountant, auditor, engineer, or attorney the commission considers necessary to represent the commission in a proceeding before the Federal Energy Regulatory Commission, or before a court reviewing proceedings of that federal commission, related to:

(1) the relationship of an electric utility subject to this subchapter to a power region, regional transmission organization, or independent system operator;

(2) the approval of an agreement among the electric utility and the electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates; or

(3) other matters related to the electric utility subject to this subchapter that may affect the ultimate rates paid by retail customers in this state.

(b) Assistance for which a consultant, accountant, auditor, engineer, or attorney may be retained under Subsection (a) may include:

(1) conducting a study;

(2) conducting an investigation;

(3) presenting evidence;

(4) advising the commission; or

(5) representing the commission.

(c) The electric utility shall pay timely the reasonable costs of the services of a person retained under Subsection (a), as determined by the commission. The total costs an electric utility is required to pay under this subsection may not exceed $1.5 million in a 12-month period.

(d) The commission shall allow the electric utility to recover both the total costs the electric utility paid under Subsection (c) and the carrying charges for those costs through a rider established annually to recover the costs paid and carrying charges incurred during the preceding calendar year. The rider may not be implemented before the rider is reviewed and approved by the commission.

(e) The commission shall consult the attorney general before the commission retains a consultant, accountant, auditor, or engineer under Subsection (a). The retention of an attorney under Subsection (a) is subject to the approval of the attorney general under Section 402.0212, Government Code.

(f) The commission shall be precluded from engaging any individual who is required to register under Section 305.003, Government Code.

(g) This section expires September 1, 2023.

Added by Acts 2011, 82nd Leg., R.S., Ch. 100 (S.B. 1153), Sec. 1, eff. May 20, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 849 (S.B. 932), Sec. 2, eff. September 1, 2015.

Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND RELATED MATTERS. (a) The commission may not authorize customer choice until the commission certifies the applicable power region as a qualifying power region under Section 39.152(a). Sections 39.152(b)-(d) also apply to the electric utility and commission in determining whether to certify the applicable power region.

(b) The commission shall certify that the requirement of Section 39.152(a)(3) is met for an electric utility subject to this subchapter only if the commission finds that the total capacity owned and controlled by the electric utility and the utility's affiliates does not exceed 20 percent of the total installed generation capacity

within the power region of that utility.

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June 18, 2005.

Sec. 39.454. RECOUPMENT OF TRANSITION TO COMPETITION COSTS. An electric utility subject to this subchapter is entitled to recover, as provided by this section, all reasonable and necessary expenditures made or incurred before the effective date of this section to comply with this chapter, to the extent the costs have not otherwise been recovered. The electric utility may file with the commission an application for recovery that gives details of the amounts spent or incurred. After notice and hearing, the commission shall review the amounts and, if the amounts are found to be reasonable and necessary and not otherwise previously recovered, approve a transition to competition retail rate rider mechanism for the recovery of the approved transition to competition costs. A rate proceeding under Chapter 36 is not required to implement the rider. A rate rider implemented to recover approved transition to competition costs shall provide for recovery of those costs over a period not to exceed 15 years, with appropriate carrying costs.

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June 18, 2005.

Sec. 39.455. RECOVERY OF INCREMENTAL CAPACITY COSTS. An electric utility subject to this subchapter is entitled to recover, through a rate rider mechanism, reasonable and necessary costs of incremental resources required to meet load requirements to the extent those costs result in the utility expending more for capacity costs under purchase power agreements than were included in the utility's last base rate case, adjusted for load growth. Any rider under this section shall be implemented after review and approval by the commission, after notice and opportunity for hearing. Following the initial implementation of the rider, an electric utility subject to this subchapter may request revisions semiannually, after notice and opportunity for hearing, on the dates provided in the commission's rules for filing petitions to revise the utility's fuel factor. In conjunction with the utility's fuel reconciliation

proceedings, the commission shall reconcile the costs recovered under the rider and the actual incremental capacity costs eligible for recovery under this section. The rider shall expire on the introduction of customer choice or on the implementation of rates resulting from the filing of a Subchapter C, Chapter 36, rate proceeding. In no event may the amount recovered annually under the rider exceed five percent of the utility's annual base rate revenues.

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June 18, 2005.

Sec. 39.456. FRANCHISE AGREEMENTS. A municipality, with the agreement of an electric utility, may accelerate the expiration date of a franchise agreement that was in existence on September 1, 1999. Any new franchise agreement must be approved by the governing body of the municipality. To the extent that a new franchise agreement would result in an increase in the payment of franchise fees to the municipality, and subject to the terms of the franchise agreement, either the electric utility or the municipality, without the need for a rate proceeding under Chapter 36, may file with the commission for approval of a rider for the electric utility's recovery of franchise payments resulting from the agreement, so long as such rider is collected only from customers of the electric utility that are located within the boundaries of the municipality.

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June 18, 2005.

Sec. 39.457. CONTRACTUAL RIGHTS. In the event that the electric utility subject to this subchapter either merges, consolidates, or otherwise becomes affiliated with another owner of electric generation, or completes the jurisdictional separation authorized by Section 39.452(e) and the resulting vertically integrated utility proposes to join a regional transmission organization, and either action adversely affects the rights or obligations of an electric cooperative under a wholesale generation or transmission agreement entered into before the effective date of this subchapter or otherwise adversely affects the electric cooperative's access to its existing generation resources under said

agreements, then the utility shall submit a proposal agreeable to the cooperative and the utility for addressing such rights and obligations in the appropriate regulatory proceeding. Such proposal shall be consistent with applicable law regarding the rights and obligations of the electric cooperative and the utility under such existing generation or transmission agreements.

Added by Acts 2005, 79th Leg., Ch. 1072 (H.B. 1567), Sec. 1, eff. June 18, 2005.

Sec. 39.458. RECOVERY AND SECURITIZATION OF HURRICANE RECONSTRUCTION COSTS; PURPOSE. (a) The purpose of this section and of Sections 39.459-39.463 is to enable an electric utility subject to this subchapter to obtain timely recovery of hurricane reconstruction costs and to use securitization financing to recover these costs, because that type of debt will lower the carrying costs associated with the recovery of hurricane reconstruction costs relative to the costs that would be incurred using conventional financing methods. The proceeds of the transition bonds may be used only for the purposes of reducing the amount of recoverable hurricane reconstruction costs, as determined by the commission in accordance with this subchapter, through the refinancing or retirement of utility debt or equity.

(b) It is the intent of the legislature that:

(1) securitization of hurricane reconstruction costs will be subject to the same procedures, standards, and protections for the securitization of stranded costs and regulatory assets under Subchapter G in effect on the effective date of this section, except as provided by this subchapter; and

(2) the commission will ensure that securitization of hurricane reconstruction costs provides greater tangible and quantifiable benefits to ratepayers than would have been achieved without the issuance of transition bonds.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 2, eff. May 31, 2006.

Sec. 39.459. HURRICANE RECONSTRUCTION COSTS. (a) In this subchapter:

(1) "Hurricane reconstruction costs" means reasonable and necessary costs, including costs expensed, charged to the storm reserve, or capitalized, that are incurred by an electric utility subject to this subchapter due to any activity or activities conducted by or on behalf of the electric utility in connection with the restoration of service associated with electric power outages affecting customers of the electric utility as the result of Hurricane Rita, including mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities.

(2) "Hurricane Rita" means the hurricane of that name that struck the coastal region of this state in September 2005.

(b) If the commission determines it to be appropriate, hurricane reconstruction costs may include carrying costs from the date on which the hurricane reconstruction costs were incurred until the date that transition bonds are issued.

(c) To the extent a utility subject to this subchapter receives insurance proceeds, governmental grants, or any other source of funding that compensates it for hurricane reconstruction costs, those amounts shall be used to reduce the utility's hurricane reconstruction costs recoverable from customers. If the timing of a utility's receipt of those amounts prevents their inclusion as a reduction to the hurricane reconstruction costs that are securitized, the commission shall take those amounts into account in:

(1) the utility's next base rate proceeding; or

(2) any proceeding in which the commission considers hurricane reconstruction costs.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 2, eff. May 31, 2006.

Sec. 39.460. STANDARDS AND PROCEDURES GOVERNING SECURITIZATION OF HURRICANE RECONSTRUCTION COSTS. (a) The procedures and standards of this subchapter and the provisions of Subchapter G govern the application for, and the commission's issuance of, a financing order to provide for the securitization of hurricane reconstruction costs by an electric utility subject to this subchapter.

(b) Subject to the standards, procedures, and tests contained in this subchapter and Subchapter G, the commission shall adopt a

financing order on the application of the utility to recover its hurricane reconstruction costs. On the commission's issuance of a financing order allowing for recovery and securitization of hurricane reconstruction costs, the provisions of this subchapter and Subchapter G continue to govern the financing order and the rights and interests established in the order, and this subchapter and Subchapter G continue to govern any transition bonds issued pursuant to the financing order. To the extent any conflict exists between the provisions of this subchapter and Subchapter G in cases involving the securitization of hurricane reconstruction costs, the provisions of this subchapter control.

(c) For purposes of this subchapter, "financing order," as defined by Section 39.302 and as used in Subchapter G, includes a financing order authorizing the securitization of hurricane reconstruction costs.

(d) For purposes of this subchapter, "qualified costs," as defined by Section 39.302 and as used in Subchapter G, includes 100 percent of the electric utility's hurricane reconstruction costs together with the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding existing debt and equity securities of an electric utility subject to this subchapter in connection with the issuance of transition bonds. For purposes of this subchapter, the term also includes the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under this subchapter.

(e) For purposes of this subchapter, "transition bonds," as defined by Section 39.302 and as used in Subchapter G, includes transition bonds issued in association with the recovery of hurricane reconstruction costs. Transition bonds issued to securitize hurricane reconstruction costs may be called "hurricane reconstruction bonds" or may be called by any other name acceptable to the issuer and the underwriters of the transition bonds.

(f) For purposes of this subchapter, "transition charges," as defined by Section 39.302 and as used in Subchapter G, includes nonbypassable amounts to be charged for the use of electric services, approved by the commission under a financing order to recover hurricane reconstruction costs, that shall be collected by an electric utility subject to this subchapter, its successors, an assignee, or other collection agents as provided for in the financing order.

(g) Notwithstanding Section 39.303(c), hurricane reconstruction costs shall be functionalized and allocated to customers in the same manner as the corresponding facilities and related expenses are functionalized and allocated in the utility's current base rates.

(h) The amount of any accumulated deferred federal income taxes offset, used to determine the securitization total, may not be considered in future rate proceedings. Any tax obligation of the electric utility arising from its receipt of securitization bond proceeds, or from the collection and remittance of transition charges, shall be recovered by the electric utility through the commission's implementation of Section 39.458, Section 39.459, this section, and Sections 39.461-39.463.

(i) If the commission determines that recovery of all or any portion of an electric utility's hurricane reconstruction costs using securitization is not beneficial to ratepayers of the electric utility, under one or more of the tests applied to determine those benefits, the commission shall permit the electric utility to recover the entirety of the hurricane reconstruction costs through an appropriate customer surcharge mechanism, including appropriate carrying costs, provided that the electric utility has not securitized any portion of its hurricane reconstruction costs. A rate proceeding under Chapter 36 may not be required to determine and implement this surcharge mechanism. A rider adopted under this subsection must expire on the implementation of rates resulting from the filing of a Subchapter C, Chapter 36, rate proceeding.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 2, eff. May 31, 2006.

Sec. 39.461. NONBYPASSABLE CHARGES. The commission may include terms in the financing order to ensure that the imposition and collection of transition charges associated with the recovery of hurricane reconstruction costs are nonbypassable by imposing restrictions on bypassability of the type provided for in this chapter or by alternative means of ensuring nonbypassability, as the commission considers appropriate, consistent with the purposes of securitization.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 2, eff. May 31, 2006.

Sec. 39.462. DETERMINATION OF HURRICANE RECONSTRUCTION COSTS. (a) An electric utility subject to this subchapter is entitled to recover hurricane reconstruction costs consistent with the provisions of this subchapter and is entitled to seek recovery of amounts not recovered under this subchapter, including hurricane reconstruction costs not yet incurred at the time an application is filed under Subsection (b), in its next base rate proceeding or through any other proceeding authorized by Subchapter C, Chapter 36.

(b) The commission shall issue an order determining the amount of hurricane reconstruction costs eligible for recovery and securitization not later than the 150th day after the date an electric utility subject to this subchapter files an application seeking that determination. The 150-day period begins on the date the electric utility files the application, even if the filing occurs before the effective date of this section.

(c) On issuance by the commission of an order determining the amount of eligible hurricane reconstruction costs, an electric utility subject to this subchapter may file an application for a financing order, which shall be governed by the procedures in Subchapter G.

(d) To the extent the commission has made a determination of the eligible hurricane reconstruction costs of an electric utility subject to this subchapter before the effective date of this section, that determination may provide the basis for the utility's application for a financing order pursuant to this subchapter and Subchapter G. A previous commission determination does not preclude the utility from requesting recovery of additional hurricane reconstruction costs eligible for recovery under this subchapter, but not previously authorized by the commission.

(e) A rate proceeding under Chapter 36 is not required to determine the amount of recoverable hurricane reconstruction costs as provided by this section.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 2, eff. May 31, 2006.

Sec. 39.463. SEVERABILITY. Effective on the date the first

utility transition bonds associated with hurricane reconstruction costs are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter, Subchapter G as it applies to an electric utility subject to this subchapter, or any part of those provisions, or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of transition bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, and those provisions shall remain in full force and effect.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 11 (H.B. 163), Sec. 2, eff. May 31, 2006.

## SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN AREAS OUTSIDE OF ERCOT

Sec. 39.501. APPLICABILITY. (a) This subchapter applies to an investor-owned electric utility:

(1) that is operating solely outside of ERCOT in areas of this state that were included in the Southwest Power Pool on January 1, 2008;

(2) that was not affiliated with the Southeastern Electric Reliability Council on January 1, 2008; and

(3) to which Subchapter I does not apply.

(b) The legislature finds that an electric utility subject to this subchapter is unable at this time to offer fair competition and reliable service to all retail customer classes in the area served by the utility. As a result, the introduction of retail competition for such an electric utility is delayed until fair competition and reliable service are available to all retail customer classes as determined under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 128 (S.B. 547), Sec. 1, eff. September 1, 2009.

Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Until the date on which an electric utility subject to this subchapter is authorized

by the commission under Section 39.503(f) to implement retail customer choice, the rates of the utility are subject to regulation under Chapter 36.

(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 Sections 39.904 and 39.905, do not apply to that utility.

Added by Acts 2009, 81st Leg., R.S., Ch. 128 (S.B. 547), Sec. 1, eff. September 1, 2009.

Sec. 39.503. TRANSITION TO COMPETITION. (a) The events prescribed by Subsections (b)-(f) shall be followed to introduce retail competition in the service area of an electric utility subject to this subchapter. The commission may modify the sequence of events required by Subsections (b)-(e), but not the substance of the requirements. Full retail competition may not begin in the service area of an electric utility subject to this subchapter until all actions prescribed by those subsections are completed.

(b) The first stage for the transition to competition consists of the following activities:

(1) approval of a regional transmission organization by the Federal Energy Regulatory Commission for the power region that includes the electric utility's service area and commencement of independent operation of the transmission network under the approved regional transmission organization;

(2) development of retail market protocols to facilitate retail competition; and

(3) completion of an expedited proceeding to develop non-bypassable delivery rates for the customer choice pilot project to be implemented under Subsection (c)(1).

(c) The second stage for the transition to competition consists of the following activities:

(1) initiation of the customer choice pilot project in accordance with Section 39.104;

(2) development of a balancing energy market, a market for ancillary services, and a market-based congestion management system for the wholesale market in the power region in which the regional transmission organization operates; and

(3) implementation of a seams agreement with adjacent power regions to reduce barriers to entry and facilitate competition.

(d) The third stage for the transition to competition consists of the following activities:

(1) the electric utility filing with the commission:

(A) an application for business separation in accordance with Section 39.051;

(B) an application for unbundled transmission and distribution rates in accordance with Section 39.201;

(C) an application for certification of a qualified power region in accordance with Section 39.152; and

(D) an application for price-to-beat rates in accordance with Section 39.202;

(2) the commission:

(A) approving a business separation plan for the utility;

(B) setting unbundled transmission and distribution rates for the utility;

(C) certifying a qualified power region, which includes conducting a formal evaluation of wholesale market power in the region, in accordance with Section 39.152;

(D) setting price-to-beat rates for the utility; and

(E) determining which competitive energy services must be separated from regulated utility activities in accordance with Section 39.051; and

(3) completion of the testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions, by the regional transmission organization, the registration agent, and market participants.

(e) The fourth stage for the transition to competition consists of the following activities:

(1) commission evaluation of the results of the pilot project;

(2) initiation by the electric utility of a capacity auction in accordance with Section 39.153 at a time to be determined by the commission; and

(3) separation by the utility of competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy

services.

(f) The fifth stage for the transition to competition consists of the following activities:

(1) evaluation by the commission of whether the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, and:

(A) if the commission concludes that the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order initiating retail competition for the utility; and

(B) if the commission determines that the electric utility cannot offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order further delaying retail competition for the utility; and

(2) on the issuance of an order from the commission initiating retail competition for the utility, completion by the utility of the business separation and unbundling in accordance with the commission order approving the unbundling.

Added by Acts 2009, 81st Leg., R.S., Ch. 128 (S.B. 547), Sec. 1, eff. September 1, 2009.

For expiration of this section, see Subsection (g).

Sec. 39.504. HIRING ASSISTANCE FOR FEDERAL PROCEEDINGS. (a) The commission may retain any consultant, accountant, auditor, engineer, or attorney the commission considers necessary to represent the commission in a proceeding before the Federal Energy Regulatory Commission, or before a court reviewing proceedings of that federal commission, related to:

(1) the relationship of an electric utility subject to this subchapter to a power region, regional transmission organization, or independent system operator;

(2) the approval of an agreement among the electric utility and the electric utility's affiliates concerning the coordination of the operations of the electric utility and the electric utility's affiliates; or

(3) other matters related to the electric utility subject to this subchapter that may affect the ultimate rates paid by retail

customers in this state.

(b) Assistance for which a consultant, accountant, auditor, engineer, or attorney may be retained under Subsection (a) may include:

(1) conducting a study;

(2) conducting an investigation;

(3) presenting evidence;

(4) advising the commission; or

(5) representing the commission.

(c) The electric utility shall pay timely the reasonable costs of the services of a person retained under Subsection (a), as determined by the commission. The total costs an electric utility is required to pay under this subsection may not exceed $1.5 million in a 12-month period.

(d) The commission shall allow the electric utility to recover both the total costs the electric utility paid under Subsection (c) and the carrying charges for those costs through a rider established annually to recover the costs paid and carrying charges incurred during the preceding calendar year. The rider may not be implemented before the rider is reviewed and approved by the commission.

(e) The commission shall consult the attorney general before the commission retains a consultant, accountant, auditor, or engineer under Subsection (a). The retention of an attorney under Subsection (a) is subject to the approval of the attorney general under Section 402.0212, Government Code.

(f) The commission shall be precluded from engaging any individual who is required to register under Section 305.003, Government Code.

(g) This section expires September 1, 2023.

Added by Acts 2015, 84th Leg., R.S., Ch. 849 (S.B. 932), Sec. 3, eff. September 1, 2015.

## SUBCHAPTER L. TRANSITION TO COMPETITION AND OTHER PROVISIONS FOR CERTAIN AREAS OUTSIDE OF ERCOT

Sec. 39.551. APPLICABILITY. (a) This subchapter applies only to an investor-owned electric utility:

(1) that is operating solely outside of ERCOT in areas of this state that were included in the Western Electricity Coordinating

Council on January 1, 2011;

(2) that was not affiliated with ERCOT on January 1, 2011; and

(3) to which Subchapters I, J, and K do not apply.

(b) The legislature finds that an electric utility subject to this subchapter is unable at this time to offer fair competition and reliable service to all retail customer classes in the area served by the utility. As a result, the introduction of retail competition for such an electric utility is delayed until fair competition and reliable service are available to all retail customer classes as determined under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1113 (S.B. 1910), Sec. 1, eff. June 17, 2011.

Sec. 39.552. COST-OF-SERVICE REGULATION. (a) Until the date on which an electric utility subject to this subchapter is authorized by the commission under Section 39.553(f) to implement retail customer choice, the rates of the utility are subject to regulation under Chapter 36.

(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 Sections 39.904 and 39.905, do not apply to that utility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1113 (S.B. 1910), Sec. 1, eff. June 17, 2011.

Sec. 39.553. TRANSITION TO COMPETITION. (a) The events prescribed by Subsections (b)-(f) shall be followed to introduce retail competition in the service area of an electric utility subject to this subchapter. The commission shall ensure that the listed items in each stage are completed before the next stage is initiated. Unless stated otherwise, the commission shall conduct each activity with the electric utility and other interested parties. The commission may modify the sequence of events required by Subsections (b)-(e), but not the substance of the requirements, if the commission finds good cause to do so. Full retail competition may not begin in the service area of an electric utility subject to this subchapter

until all actions prescribed by those subsections are completed.

(b) The first stage for the transition to competition consists of the following activities:

(1) approval of a regional transmission organization by the Federal Energy Regulatory Commission for the power region that includes the electric utility's service area and commencement of independent operation of the transmission network under the approved regional transmission organization;

(2) development of retail market protocols to facilitate retail competition; and

(3) completion of an expedited proceeding to develop nonbypassable delivery rates for the customer choice pilot project to be implemented under Subsection (c)(1).

(c) The second stage for the transition to competition consists of the following activities:

(1) initiation of the customer choice pilot project in accordance with Section 39.104;

(2) development of a balancing energy market, a market for ancillary services, and a market-based congestion management system for the wholesale market in the power region in which the regional transmission organization operates; and

(3) implementation of a seams agreement with adjacent power regions to reduce barriers to entry and facilitate competition.

(d) The third stage for the transition to competition consists of the following activities:

(1) the electric utility filing with the commission:

(A) an application for business separation in accordance with Section 39.051;

(B) an application for unbundled transmission and distribution rates in accordance with Section 39.201;

(C) an application for certification of a qualified power region in accordance with Section 39.152; and

(D) an application for price-to-beat rates in accordance with Section 39.202;

(2) the commission:

(A) approving a business separation plan for the utility;

(B) setting unbundled transmission and distribution rates for the utility;

(C) certifying a qualified power region, which includes

conducting a formal evaluation of wholesale market power in the region, in accordance with Section 39.152;

(D) setting price-to-beat rates for the utility; and

(E) determining which competitive energy services must be separated from regulated utility activities in accordance with Section 39.051; and

(3) completion of the testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions, by the regional transmission organization, the registration agent, and market participants.

(e) The fourth stage for the transition to competition consists of the following activities:

(1) commission evaluation of the results of the pilot project;

(2) initiation by the electric utility of a capacity auction in accordance with Section 39.153 at a time to be determined by the commission; and

(3) separation by the utility of competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy services.

(f) The fifth stage for the transition to competition consists of the following activities:

(1) evaluation by the commission of whether the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, and:

(A) if the commission concludes that the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order initiating retail competition for the utility; and

(B) if the commission determines that the electric utility cannot offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order further delaying retail competition for the utility; and

(2) on the issuance of an order from the commission initiating retail competition for the utility, completion by the utility of the business separation and unbundling in accordance with the commission order approving the unbundling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1113 (S.B. 1910), Sec. 1, eff. June 17, 2011.

Sec. 39.554. INTERCONNECTION OF DISTRIBUTED RENEWABLE GENERATION. (a) In this section:

(1) "Distributed renewable generation" has the meaning assigned by Section 39.916.

(2) "Distributed renewable generation owner" means an owner of distributed renewable generation that is a retail electric customer.

(3) "Interconnection" has the meaning assigned by Section 39.916.

(b) A distributed renewable generation owner in the service area of an electric utility subject to this subchapter may request interconnection by filing an application for interconnection with the utility. An application for interconnection is subject to the utility's safety and reliability requirements. The utility's procedures for the submission and processing of an application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(c) An electric utility that approves an application of a distributed renewable generation owner under Subsection (b):

(1) shall install, maintain, and retain ownership of the meter and metering equipment; and

(2) may install load research metering equipment on the premises of the owner, at no expense to the owner.

(d) At the request of an electric utility that approves an application of a distributed renewable generation owner under Subsection (b), the owner shall:

(1) provide and install a meter socket, a metering cabinet, or both a socket and cabinet at a location designated by the utility on the premises of the owner; and

(2) provide, at no expense to the utility, a suitable location for the utility to install meters and equipment associated with billing and load research.

(e) An electric utility that approves an application of a distributed renewable generation owner under Subsection (b) shall provide to the owner the metering options described by Section 39.916(f) and an option to interconnect with the utility through a

single meter that runs forward and backward if:

(1) the owner:

(A) intends to interconnect the distributed renewable generation at an apartment house, as defined by Section 184.011, occupied by low-income elderly tenants that qualifies for master metering under Section 184.012(b) and the distributed renewable generation is reasonably expected to generate not less than 50 percent of the apartment house's annual electricity use; or

(B) has a qualifying facility with a design capacity of not more than 50 kilowatts; and

(2) the distributed renewable generation or qualifying facility that is the subject of the application is rated to produce an amount of electricity that is less than or equal to:

(A) the owner's estimated annual kilowatt hour consumption for a new apartment house or qualifying facility; or

(B) the amount of electricity the owner consumed in the year before installation of the distributed renewable generation or qualifying facility.

(f) For a distributed renewable generation owner that chooses interconnection through a single meter under Subsection (e):

(1) the amount of electricity the owner generates through distributed renewable generation or a qualifying facility for a given billing period offsets the owner's consumption for that billing period; and

(2) any electricity the owner generates through distributed renewable generation or a qualifying facility that exceeds the owner's consumption for a given billing period shall be credited to the owner under Subsection (g).

(g) An electric utility that purchases surplus electricity under Subsection (f)(2) shall purchase the electricity from the distributed renewable generation owner at the cost of the utility as determined by commission rule. The utility shall take reasonable steps to inform the owner of the amount of surplus electricity purchased from the owner in kilowatt hours during the owner's most recent billing cycle. A credit balance of not more than $50 on the owner's monthly bill may be carried forward onto the owner's next monthly bill. The utility shall refund to the owner a credit balance that is not carried forward or the portion of a credit balance that exceeds $50 if the credit balance is carried forward.

(h) In a base rate proceeding or fuel cost recovery proceeding

conducted under Chapter 36, the commission shall ensure that any additional cost associated with the metering and payment options described by Subsections (e), (f), and (g) is allocated only to customer classes that include distributed renewable generation owners who have chosen those metering options.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1113 (S.B. 1910), Sec. 1, eff. June 17, 2011.

Sec. 39.555. MARKETING OF ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS. An electric utility subject to this subchapter may market an energy efficiency or renewable energy program directly to a retail electric customer in its service territory and provide rebate or incentive funds directly to a customer to promote or facilitate the success of programs implemented under Section 39.905.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1113 (S.B. 1910), Sec. 1, eff. June 17, 2011.

## SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 39.9016. NUCLEAR SAFETY FEE. An electric utility that operates a nuclear asset located in a county on the coast of the Gulf of Mexico shall pay a nuclear safety fee for the year 2000 and the year 2001 to each taxing unit in which the nuclear asset is located, other than a school district, in an amount equal to the difference between the ad valorem taxes imposed by the taxing unit in 1999 and the amount of ad valorem taxes imposed by the unit in the year for which the fee is due, except that the amount of the fee may not exceed one-half the taxes imposed on the asset by the unit in 1999. The nuclear safety fee shall be considered a tax or fee under Section 39.258(5).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.902. CUSTOMER EDUCATION. (a) On or before January 1, 2001, the commission shall develop and implement an educational program to inform customers, including low-income and non-English-speaking customers, about changes in the provision of electric

service resulting from the opening of the retail electric market and the customer choice pilot program under this chapter. The educational program shall be neutral and nonpromotional and shall provide customers with the information necessary to make informed decisions relating to the source and type of electric service available for purchase and other information the commission considers necessary. The educational program shall inform customers of their rights and of the protections available through the commission and the office. The educational program may not duplicate customer information efforts undertaken by retail electric providers or other private entities. The educational program may not be targeted to areas served by municipally owned utilities or electric cooperatives that have not adopted customer choice. In planning and implementing this program, the commission shall consult with the office, with the Texas Department of Housing and Community Affairs, and with customers of and providers of retail electric service. The commission may enter into contracts for professional services to carry out the customer education program.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(162), eff. June 17, 2011.

(c) After the opening of the retail electric market, the commission shall conduct ongoing customer education designed to help customers make informed choices of electric services and retail electric providers. As part of ongoing education, the commission may provide customers information concerning specific retail electric providers, including instances of complaints against them and records relating to quality of customer service.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(162), eff. June 17, 2011.

Sec. 39.9025. HOME ELECTRIC ENERGY REPORTS. The commission may encourage retail electric providers to deliver individualized home electric energy reports to educate consumers about electric energy use and energy efficiency to assist consumers to use energy more efficiently.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 21,

eff. September 1, 2007.

For expiration of this section, see Subsection (m).

Sec. 39.903. SYSTEM BENEFIT FUND. (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) The system benefit fund is financed by a nonbypassable fee set by the commission in an amount not to exceed 65 cents per megawatt hour. The system benefit fund fee is allocated to customers based on the amount of kilowatt hours used.

(c) The nonbypassable fee may not be imposed on the retail electric customers of a municipally owned utility or electric cooperative before the sixth month preceding the date on which the utility or cooperative implements customer choice. Money distributed from the system benefit fund to a municipally owned utility or an electric cooperative shall be proportional to the nonbypassable fee paid by the municipally owned utility or the electric cooperative, subject to the reimbursement provided by Subsection (i). On request by a municipally owned utility or electric cooperative, the commission shall reduce the nonbypassable fee imposed on retail electric customers served by the municipally owned utility or electric cooperative by an amount equal to the amount provided by the municipally owned utility or electric cooperative or its ratepayers for local low-income programs and local programs that educate customers about the retail electric market in a neutral and nonpromotional manner.

(d) The commission shall annually review and approve system benefit fund accounts, projected revenue requirements, and proposed nonbypassable fees.

(e) Money in the system benefit fund may be appropriated to provide funding solely for the following regulatory purposes, in the following order of priority:

(1) programs to:

(A) assist low-income electric customers by providing the 10 percent reduced rate prescribed by Subsection (h); and

(B) provide one-time bill payment assistance to

electric customers who are or who have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment;

(2) customer education programs, administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter;

(3) programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2);

(4) programs to assist low-income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h); and

(5) reimbursement to the commission and the Health and Human Services Commission for expenses incurred in the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to retail electric service, including outreach expenses the commission determines are reasonable and necessary.

(f) Notwithstanding Section 39.106(b), the commission shall adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice. The programs may not be targeted to areas served by municipally owned utilities or electric cooperatives that have not adopted customer choice. The programs shall include:

(1) reduced electric rates as provided by Subsections (h)-(l); and

(2) targeted energy efficiency programs to be administered by the Texas Department of Housing and Community Affairs in coordination with existing weatherization programs.

(g) Until customer choice is introduced in a power region, an electric utility may not reduce, in any manner, programs already offered to assist low-income electric customers.

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The

reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

(i) A retail electric provider, municipally owned utility, or electric cooperative seeking reimbursement from the system benefit fund may not charge an eligible low-income customer a rate higher than the appropriate rate determined under Subsection (h). A retail electric provider not subject to the price to beat, or a municipally owned utility or electric cooperative subject to the nonbypassable fee under Subsection (c), shall be reimbursed from the system benefit fund for the difference between the reduced rate and the rate established under Section 39.106 or, as appropriate, the rate established under Section 40.053 or 41.053. A retail electric provider who is subject to the price to beat shall be reimbursed from the system benefit fund for the difference between the reduced rate and the price to beat. The commission shall adopt rules providing for the reimbursement.

(j) The commission shall adopt rules providing for methods of enrolling customers eligible to receive reduced rates under Subsection (h). The rules must provide for automatic enrollment as one enrollment option. The Texas Department of Human Services, on request of the commission, shall assist in the adoption and

implementation of these rules. The commission and the Texas Department of Human Services shall enter into a memorandum of understanding establishing the respective duties of the commission and the department in relation to the automatic enrollment.

(j-1) The commission shall adopt rules governing the bill payment assistance program provided under Subsection (e)(1)(B). The rules must provide that a customer is eligible to receive the assistance only if the assistance is necessary to prevent the disconnection of service for nonpayment of bills and the electric customer is or has in the customer's household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection. The commission may prescribe the documentation necessary to demonstrate eligibility for the assistance and may establish additional eligibility criteria. The Health and Human Services Commission, on request of the commission, shall assist in the adoption and implementation of these rules.

(k) A retail electric provider is prohibited from charging the customer a fee for participation in the reduced rate program.

(l) For the purposes of this section, a "low-income electric customer" is an electric customer:

(1) whose household income is not more than 125 percent of the federal poverty guidelines; or

(2) who receives food stamps from the Texas Department of Human Services or medical assistance from a state agency administering a part of the medical assistance program.

(m) This section expires September 1, 2017.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1466, Sec. 19(a), eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1394, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1451, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 211, Sec. 2.02, eff. June 16, 2003; Acts 2003, 78th Leg., ch. 1296, Sec. 4(a), eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 412 (S.B. 1652), Sec. 17, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 21.001, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 12, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 14.01, eff. August 29, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 16, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 706 (H.B. 1101), Sec. 1, eff. June 17, 2015.

For expiration of this section, see Subsection (c).

Sec. 39.9039. ELIMINATION OF SYSTEM BENEFIT FUND BALANCE. (a) Notwithstanding Section 39.903(b), the commission shall set the nonbypassable system benefit fund fee at the amount of zero cents per megawatt hour for the period beginning September 1, 2013, and ending September 1, 2017.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 448, Sec. 42

(b) Notwithstanding Section 39.903(e), money in the system benefit fund may be appropriated:

(1) for the state fiscal year beginning September 1, 2013, a program established by the commission to assist low-income electric customers by providing a reduced rate for the months of September, 2013, and May through August, 2014, in the manner prescribed by Section 39.903(h) at a rate of up to 82 percent;

(2) for the state fiscal year beginning September 1, 2014, a program established by the commission to assist low-income electric customers by providing a reduced rate for the months of September, 2014, and May through August, 2015, in the manner prescribed by Section 39.903(h) at a rate of up to 15 percent;

(3) for the state fiscal year beginning September 1, 2015, a program established by the commission to assist low-income electric customers by providing a reduced rate in the manner prescribed by Section 39.903(h) at a rate the commission determines is necessary to exhaust the system benefit fund; and

(4) for customer education programs and administrative expenses incurred by the commission in implementing and administering

this chapter.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 706, Sec. 2

(b) Notwithstanding Section 39.903(e), money in the system benefit fund may be appropriated:

(1) for the state fiscal year beginning September 1, 2014, to a program established by the commission to assist low-income electric customers by providing a reduced rate for the months of September, 2014, and May through August, 2015, in the manner prescribed by Section 39.903(h), at a rate of up to 15 percent;

(2) for the state fiscal year beginning September 1, 2015, to a program established by the commission to assist low-income electric customers by providing a reduced rate for the months of September, 2015, through August, 2016, in the manner prescribed by Section 39.903(h), at the rate the commission determines is necessary to exhaust the system benefit fund;

(3) for the state fiscal year beginning September 1, 2016, if any money remains in the fund, to a program established by the commission to assist low-income electric customers by providing a reduced rate for the months of September, 2016, through August, 2017, in the manner prescribed by Section 39.903(h), at the rate the commission determines is necessary to exhaust the system benefit fund; and

(4) for customer education programs and administrative expenses incurred by the commission in implementing and administering this chapter.

(c) This section expires September 1, 2017.

Added by Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 17, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 42, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 706 (H.B. 1101), Sec. 2, eff. June 17, 2015.

Sec. 39.904. GOAL FOR RENEWABLE ENERGY. (a) It is the intent of the legislature that by January 1, 2015, an additional 5,000 megawatts of generating capacity from renewable energy technologies

will have been installed in this state. The cumulative installed renewable capacity in this state shall total 5,880 megawatts by January 1, 2015, and the commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The cumulative installed renewable capacity in this state shall total 2,280 megawatts by January 1, 2007, 3,272 megawatts by January 1, 2009, 4,264 megawatts by January 1, 2011, 5,256 megawatts by January 1, 2013, and 5,880 megawatts by January 1, 2015. Of the renewable energy technology generating capacity installed to meet the goal of this subsection after September 1, 2005, the commission shall establish a target of having at least 500 megawatts of capacity from a renewable energy technology other than a source using wind energy.

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

(c) Not later than January 1, 2000, the commission shall adopt rules necessary to administer and enforce this section. At a minimum, the rules shall:

(1) establish the minimum annual renewable energy requirement for each retail electric provider, 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 renewable 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

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

(d) In this section, "renewable energy technology" means any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(e) A municipally owned utility operating a gas distribution system may credit toward satisfaction of the requirements of this section any production or acquisition of landfill gas supplied to the gas distribution system, based on conversion to kilowatt hours of the thermal energy content in British thermal units of the renewable source and using for the conversion factor the annual heat rate of the most efficient gas-fired unit of the combined utility's electric system as measured in British thermal units per kilowatt hour and using the British thermal unit measurement based on the higher heating value measurement.

(f) A municipally owned utility operating a gas distribution system may credit toward satisfaction of the requirements of this section any production or acquisition of landfill gas supplied to the gas distribution system, based on conversion to kilowatt hours of the thermal energy content in British thermal units of the renewable source and using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in British thermal units per kilowatt hour.

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable

energy zones; and

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of public convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) A renewable energy credit retired for purposes other than to meet the requirements of Subsection (c)(1) may not affect the minimum annual renewable energy requirement under Subsection (c)(1) for a retail electric provider, municipally owned utility, or

electric cooperative.

(m-1) As provided by this subsection, the commission shall reduce the requirement under Subsection (c)(1) for a retail electric provider, municipally owned utility, or electric cooperative that is subject to a renewable energy requirement under this section and that serves a customer receiving electric service at transmission-level voltage if, before any year for which the commission calculates renewable energy requirements under Subsection (c)(1), the customer notifies the commission in writing that the customer chooses not to support the goal for renewable energy generation under this section for that year. The commission shall exclude from the calculation of a retail electric provider's, municipally owned utility's, or electric cooperative's requirement under Subsection (c)(1) energy sold by the retail electric provider, municipally owned utility, or electric cooperative at transmission-level voltage to customers who have submitted the notice to the commission under this subsection for the applicable year.

(m-2) The commission shall determine the reporting requirements and schedule necessary to implement Subsections (m) and (m-1).

(m-3) Subsections (m), (m-1), and (m-2) do not alter the renewable energy goals or targets established in Subsection (a) or reduce the minimum statewide renewable energy requirements of Subsection (c)(1).

(n) Notwithstanding any other provision of law, the commission shall have the authority to cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if such suspension is necessary to protect the reliability and operation of the grid.

(o) The commission may establish an alternative compliance payment. An entity that has a renewable energy purchase requirement under this section may elect to pay the alternative compliance payment instead of applying renewable energy credits toward the satisfaction of the entity's obligation under this section. The commission may establish a separate alternative compliance payment for the goal of 500 megawatts of capacity from renewable energy technologies other than wind energy. The alternative compliance payment for a renewable energy purchase requirement that could be satisfied with a renewable energy credit from wind energy may not be less than $2.50 per credit or greater than $20 per credit. Prior to September 1, 2009, an alternative compliance payment under this

subsection may not be set above $5 per credit. In implementing this subsection, the commission shall consider:

(1) the effect of renewable energy credit prices on retail competition;

(2) the effect of renewable energy credit prices on electric rates;

(3) the effect of the alternative compliance payment level on the renewable energy credit market; and

(4) any other factors necessary to ensure the continued development of the renewable energy industry in this state while protecting ratepayers from unnecessary rate increases.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., 1st C.S., Ch. 1 (S.B. 20), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 2, eff. September 1, 2007.

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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.905. GOAL FOR ENERGY EFFICIENCY. (a) It is the goal of the legislature that:

(1) electric utilities will administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner but will not offer underlying competitive services;

(2) all customers, in all customer classes, will have a choice of and access to energy efficiency alternatives and other choices from the market that allow each customer to reduce energy consumption, summer and winter peak demand, or energy costs;

(3) each electric utility annually will provide, through market-based standard offer programs or through targeted market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency, subject to cost ceilings established by the commission, for the utility's residential and commercial customers equivalent to:

(A) not less than:

(i) 30 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31 of each year beginning with the 2013 calendar year; and

(ii) the amount of energy efficiency to be acquired for the utility's residential and commercial customers for the most recent preceding year; and

(B) for an electric utility whose amount of energy efficiency to be acquired under this subsection is equivalent to at least four-tenths of one percent of the electric utility's summer weather-adjusted peak demand for residential and commercial customers in the previous calendar year, not less than:

(i) four-tenths of one percent of the utility's summer weather-adjusted peak demand for residential and commercial customers by December 31 of each subsequent year; and

(ii) the amount of energy efficiency to be acquired for the utility's residential and commercial customers for the most recent preceding year;

(4) each electric utility in the ERCOT region shall use its best efforts to encourage and facilitate the involvement of the region's retail electric providers in the delivery of efficiency programs and demand response programs under this section, including programs for demand-side renewable energy systems that:

(A) use distributed renewable generation, as defined by Section 39.916; or

(B) reduce the need for energy consumption by using a renewable energy technology, a geothermal heat pump, a solar water heater, or another natural mechanism of the environment;

(5) retail electric providers in the ERCOT region, and electric utilities outside of the ERCOT region, shall provide customers with energy efficiency educational materials; and

(6) notwithstanding Subsection (a)(3), electric utilities shall continue to make available, at 2007 funding and participation levels, any load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007.

(b) The commission shall provide oversight and adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including:

(1) establishing an energy efficiency cost recovery factor for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of this section;

(2) establishing an incentive under Section 36.204 to reward utilities administering programs under this section that exceed the minimum goals established by this section;

(3) providing a utility that is unable to establish an energy efficiency cost recovery factor in a timely manner due to a rate freeze with a mechanism to enable the utility to:

(A) defer the costs of complying with this section; and

(B) recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period;

(4) ensuring that the costs associated with programs provided under this section and any shareholder bonus awarded are borne by the customer classes that receive the services under the programs;

(5) ensuring the program rules encourage the value of the incentives to be passed on to the end-use customer;

(6) ensuring that programs are evaluated, measured, and

verified using a framework established by the commission that promotes effective program design and consistent and streamlined reporting; and

(7) ensuring that an independent organization certified under Section 39.151 allows load participation in all energy markets for residential, commercial, and industrial customer classes, either directly or through aggregators of retail customers, to the extent that load participation by each of those customer classes complies with reasonable requirements adopted by the organization relating to the reliability and adequacy of the regional electric network and in a manner that will increase market efficiency, competition, and customer benefits.

(b-1) The energy efficiency cost recovery factor under Subsection (b)(1) may not result in an over-recovery of costs but may be adjusted each year to change rates to enable utilities to match revenues against energy efficiency costs and any incentives to which they are granted. The factor shall be adjusted to reflect any over-collection or under-collection of energy efficiency cost recovery revenues in previous years.

(b-2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 180, Sec. 3, eff. September 1, 2011.

(b-3) Beginning not later than January 1, 2008, the commission, in consultation with the State Energy Conservation Office, annually for a period of five years shall compute and report to ERCOT the projected energy savings and demand impacts for each entity in the ERCOT region that administers standard offer programs, market transformation programs, combined heating and power technology, demand response programs, solar incentive programs, appliance efficiency standards, energy efficiency programs in public buildings, and any other relevant programs that are reasonably anticipated to reduce electricity energy or peak demand or that serve as substitutes for electric supply.

(b-4) The commission and ERCOT shall develop a method to account for the projected efficiency impacts under Subsection (b-3) in ERCOT's annual forecasts of future capacity, demand, and reserves.

(c) A standard offer program provided under Subsection (a)(3) must be neutral with respect to technologies, equipment, and fuels, including thermal, chemical, mechanical, and electrical energy storage technologies.

(d) The commission shall establish a procedure for reviewing

and evaluating market-transformation program options described by this subsection and other options. In evaluating program options, the commission may consider the ability of a program option to reduce costs to customers through reduced demand, energy savings, and relief of congestion. Utilities may choose to implement any program option approved by the commission after its evaluation in order to satisfy the goal in Subsection (a), including:

(1) energy-smart schools;

(2) appliance retirement and recycling;

(3) air conditioning system tune-ups;

(4) the installation of variable speed air conditioning systems, motors, and drives;

(5) the use of trees or other landscaping for energy efficiency;

(6) customer energy management and demand response programs;

(7) high performance residential and commercial buildings that will achieve the levels of energy efficiency sufficient to qualify those buildings for federal tax incentives;

(8) commissioning services for commercial and institutional buildings that result in operational and maintenance practices that reduce the buildings' energy consumption;

(9) programs for customers who rent or lease their residence or commercial space;

(10) programs providing energy monitoring equipment to customers that enable a customer to better understand the amount, price, and time of the customer's energy use;

(11) energy audit programs for owners and other residents of single-family or multifamily residences and for small commercial customers;

(12) net-zero energy new home programs;

(13) solar thermal or solar electric programs;

(14) programs for using windows and other glazing systems, glass doors, and skylights in residential and commercial buildings that reduce solar gain by at least 30 percent from the level established for the federal Energy Star windows program;

(15) data center efficiency programs; and

(16) energy use programs with measurable and verifiable results that reduce energy consumption through behavioral changes that lead to efficient use patterns and practices.

(e) An electric utility may use money approved by the commission for energy efficiency programs to perform necessary energy efficiency research and development to foster continuous improvement and innovation in the application of energy efficiency technology and energy efficiency program design and implementation. Money the utility uses under this subsection may not exceed 10 percent of the greater of:

(1) the amount the commission approved for energy efficiency programs in the utility's most recent full rate proceeding; or

(2) the commission-approved expenditures by the utility for energy efficiency in the previous year.

(f) Unless funding is provided under Section 39.903, each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program as described by Section 39.903(f)(2), and the savings achieved by the program shall count toward the transmission and distribution utility's energy efficiency goal. The commission shall determine the appropriate level of funding to be allocated to both targeted and standard offer low-income energy efficiency programs in each unbundled transmission and distribution utility service area. The level of funding for low-income energy efficiency programs shall be provided from money approved by the commission for the transmission and distribution utility's energy efficiency programs. The commission shall ensure that annual expenditures for the targeted low-income energy efficiency programs of each unbundled transmission and distribution utility are not less than 10 percent of the transmission and distribution utility's energy efficiency budget for the year. A targeted low-income energy efficiency program must comply with the same audit requirements that apply to federal weatherization subrecipients. In an energy efficiency cost recovery factor proceeding related to expenditures under this subsection, the commission shall make findings of fact regarding whether the utility meets requirements imposed under this subsection. The state agency that administers the federal weatherization assistance program shall participate in energy efficiency cost recovery factor proceedings related to expenditures under this subsection to ensure that targeted low-income weatherization programs are consistent with federal weatherization programs and adequately funded.

(g) The commission may provide for a good cause exemption to a

utility's liability for an administrative penalty or other sanction if the utility fails to meet a goal for energy efficiency under this section and the utility's failure to meet the goal is caused by one or more factors outside of the utility's control, including:

(1) insufficient demand by retail electric providers and competitive energy service providers for program incentive funds made available by the utility through its programs;

(2) changes in building energy codes; and

(3) changes in government-imposed appliance or equipment efficiency standards.

(h) For an electric utility operating in an area not open to competition, the utility may achieve the goal of this section by:

(1) providing rebate or incentive funds directly to customers to promote or facilitate the success of programs implemented under this section; or

(2) developing, subject to commission approval, new programs other than standard offer programs and market transformation programs, to the extent that the new programs satisfy the same cost-effectiveness requirements as standard offer programs and market transformation programs.

(i) For an electric utility operating in an area open to competition, on demonstration to the commission, after a contested case hearing, that the requirements under Subsection (a) cannot be met in a rural area through retail electric providers or competitive energy service providers, the utility may achieve the goal of this section by providing rebate or incentive funds directly to customers in the rural area to promote or facilitate the success of programs implemented under this section.

(j) An electric utility may use energy audit programs to achieve the goal of this section if:

(1) the programs do not constitute more than three percent of total program costs under this section; and

(2) the addition of the programs does not cause a utility's portfolio of programs to no longer be cost-effective.

(k) To help a residential or nongovernmental nonprofit customer make informed decisions regarding energy efficiency, the commission may consider program designs that ensure, to the extent practicable, the customer is provided with information using standardized forms and terms that allow the customer to compare offers for varying degrees of energy efficiency attainable using a measure the customer

is considering by cost, estimated energy savings, and payback periods.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 328 (S.B. 712), Sec. 1, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 22, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 180 (S.B. 1125), Sec. 1, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 180 (S.B. 1125), Sec. 3, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1346 (S.B. 1434), Sec. 1, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 4.01, eff. September 1, 2013.

Sec. 39.9051. ENERGY EFFICIENCY FOR MUNICIPALLY OWNED UTILITIES. (a) In this section, "municipally owned utility" has the meaning assigned by Section 11.003.

(b) This section applies only to a municipally owned utility that had retail sales of more than 500,000 megawatt hours in 2005.

(c) It is the goal of the legislature that:

(1) municipally owned utilities will administer energy savings incentive programs;

(2) customers of a municipally owned utility will have a choice of and access to energy efficiency alternatives that allow customers to reduce energy consumption, peak demand, or energy costs; and

(3) each municipally owned utility will provide incentives sufficient for municipally owned utilities to acquire additional cost-effective energy efficiency.

(d) The governing body of a municipally owned utility shall provide oversight and adopt rules and procedures, as necessary, to ensure that the utility can achieve the goal of this section.

(e) If a municipally owned utility adopts customer choice by decision of the governing body under Chapter 40, the commission shall provide oversight and adopt rules and procedures, as necessary, to

ensure that the municipally owned utility can achieve the goal in this section in a market-neutral, nondiscriminatory manner. The commission shall, to the extent possible, include existing energy efficiency programs already adopted by the municipally owned utility.

(f) Beginning April 1, 2012, a municipally owned utility must report each year to the State Energy Conservation Office, on a standardized form developed by the office, information regarding the combined effects of the energy efficiency activities of the utility from the previous calendar year, including the utility's annual goals, programs enacted to achieve those goals, and any achieved energy demand or savings goals.

(g) The State Energy Conservation Office shall provide the reports made under Subsection (f) to the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System. The laboratory shall calculate the energy savings and estimated pollution reductions that resulted from the reported activities.

(h) The energy systems laboratory shall share the results of the analysis with the Public Utility Commission of Texas, ERCOT, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 23, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1068 (S.B. 924), Sec. 1, eff. September 1, 2011.

Sec. 39.9052. ENERGY EFFICIENCY FOR ELECTRIC COOPERATIVES. (a) An electric cooperative shall consider adopting and implementing energy efficiency programs that reduce the cooperative's annual growth in demand in a manner consistent with standards established in the state for other utilities.

(b) Beginning April 1, 2012, an electric cooperative that had retail sales of more than 500,000 megawatt hours in 2005 must report each year to the State Energy Conservation Office, on a standardized form developed by the office, information regarding the combined effects of the energy efficiency activities of the electric cooperative from the previous calendar year, including the electric

cooperative's annual goals, programs enacted to achieve those goals, and any achieved energy demand or savings goals.

(c) The State Energy Conservation Office shall provide the reports made under Subsection (b) to the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System. The laboratory shall calculate the energy savings and estimated pollution reductions that resulted from the reported activities.

(d) The energy systems laboratory shall share the results of the analysis with the Public Utility Commission of Texas, ERCOT, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 23, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1068 (S.B. 924), Sec. 2, eff. September 1, 2011.

Sec. 39.9054. ENERGY EFFICIENCY PLANS AND REPORTS; PUBLIC INFORMATION. (a) An electric utility shall submit electronically an energy efficiency plan and report in a searchable form prescribed by the commission on or before April 1 of each year. The commission by rule shall adopt a form that will permit the public to easily compare information submitted by different electric utilities. The plan and report must:

(1) provide information on the utility's performance in achieving energy efficiency goals for the previous five years;

(2) describe how the utility intends to achieve future goals; and

(3) provide any other information the commission considers relevant.

(b) On the Internet website found at http://www.puc.state.tx.us, the commission shall publish information on energy efficiency programs, including:

(1) an explanation of the goal for energy efficiency in this state;

(2) a description of the types of energy efficiency programs available to certain classes of eligible customers;

(3) a link to the plans and reports filed as prescribed by Subsection (a); and

(4) a list of persons who install or provide energy efficiency measures or services by area.

(c) This section does not require the commission to warrant that the list required to be displayed under Subsection (b) constitutes a complete or accurate list of all persons who install energy efficiency measures or services in the marketplace.

Added by Acts 2011, 82nd Leg., R.S., Ch. 180 (S.B. 1125), Sec. 2, eff. September 1, 2011.

Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF SEAWATER DESALINATION PROJECTS. The commission and the ERCOT independent system operator shall study the potential for seawater desalination projects to participate in existing demand response opportunities in the ERCOT market. To the extent feasible, the study shall determine whether the operational characteristics of seawater desalination projects enable projects of that kind to participate in ERCOT-operated ancillary services markets or other competitively supplied demand response opportunities. The study shall also determine the potential economic benefit to a seawater desalination project if the project is able to reduce its demand during peak pricing periods. The commission shall include the results of the study in the report required by Section 31.003.

Added by Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 2, eff. June 17, 2015.

Sec. 39.906. DISPLACED WORKERS. In order to mitigate potential negative impacts on utility personnel directly affected by electric industry restructuring, the commission shall allow the recovery of reasonable employee-related transition costs incurred and projected for severance, retraining, early retirement, outplacement, and related expenses for the employees.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.908. EFFECT OF SUNSET PROVISION. (a) If the commission is abolished and the other provisions of this title expire as provided by Chapter 325, Government Code (Texas Sunset Act), this subchapter, including the provisions of this title referred to in this subchapter, continues in full force and effect and does not expire.

(b) The authorities, duties, and functions of the commission under this chapter shall be performed and carried out by a successor agency to be designated by the legislature before abolishment of the commission or, if the legislature does not designate the successor, by the secretary of state.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 39.909. PLAN AND REPORT OF WORKFORCE DIVERSITY AND OTHER BUSINESS PRACTICES. (a) In this section, "small business" and "historically underutilized business" have the meanings assigned by former Section 481.191, Government Code, as that section existed on January 1, 2015.

(b) Before January 1, 2000, each electric utility shall develop and submit to the commission a comprehensive five-year plan to enhance diversity of its workforce in all occupational categories and to increase contracting opportunities for small and historically underutilized businesses. The plan must consist of:

(1) the electric utility's historical and current performance with regard to workforce diversity and contracting with small and historically underutilized businesses;

(2) initiatives that the electric utility will pursue in these areas over the period of the plan;

(3) a listing of programs and activities the electric utility will undertake to achieve each of those initiatives; and

(4) a listing of the business partnership initiatives the electric utility will undertake to facilitate small and historically underutilized business entry into the electric energy market as generators and retail energy providers taking into account opportunities for contracting and joint ventures.

(c) Each electric utility shall submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and

historically underutilized businesses. The report must be submitted on October 1 of each year or may be included as part of any other annual report submitted by the electric utility to the commission. The report must include:

(1) the diversity of the electric utility's workforce as of the time of the report;

(2) the electric utility's level of contracting with small and historically underutilized businesses;

(3) the specific progress made under the plan under Subsection (b);

(4) the specific initiatives, programs, and activities undertaken under the plan during the preceding year;

(5) an assessment of the success of each of those initiatives, programs, and activities;

(6) the extent to which the electric utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses; and

(7) the initiatives, programs, and activities the electric utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 364 (H.B. 2667), Sec. 4, eff. September 1, 2015.

Sec. 39.910. INCENTIVE PROGRAM AND GOAL FOR ENERGY EFFICIENCY FOR MILITARY BASES. (a) The commission by rule shall establish an electric energy efficiency incentive program under which each electric utility in an area where customer choice is not available will provide incentives sufficient for military bases, retail electric providers, or competitive energy service providers to install energy efficiency devices or other alternatives at military bases. The commission shall design the program to provide military bases with a variety of choices for cost-effective energy efficiency devices and other alternatives from the market to reduce energy consumption and energy costs.

(b) The commission shall establish a goal for the program to reduce, before January 1, 2005, the consumption of electricity by military bases in this state by five percent as compared to consumption levels in 2002.

(c) The commission shall approve a nonbypassable surcharge or other rate mechanism to recover costs associated with the program established under this section.

(d) An electric utility shall administer the electric energy efficiency incentive program in a market-neutral, nondiscriminatory manner. An electric utility may not offer underlying competitive services.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 23, eff. May 27, 2003.

Sec. 39.911. ALTERNATIVE FUNDING FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY SYSTEMS. The State Energy Conservation Office, in coordination with the governor, the Department of Agriculture, the Texas Commission on Environmental Quality, the Texas Education Agency, the commission, and other appropriate state agencies, shall solicit gifts, grants, and other financial resources available to fund energy efficiency improvements and renewable energy systems for public and private facilities in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 23, eff. September 1, 2007.

Sec. 39.912. REPORT ON COMBINED HEATING AND POWER TECHNOLOGY. The commission shall study the installation and use of combined heating and power technology in this state, and shall submit a report regarding the commission's findings to the 81st Legislature. The report shall include:

(1) an explanation describing combined heating and power technology and its use; and

(2) an explanation of how combined heating and power technology can be implemented in this state to meet energy efficiency goals.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 23, eff. September 1, 2007.

Sec. 39.913. COMBINING CERTAIN REPORTS. The commission may combine the reports required under Sections 39.905(b-2) and 39.912.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 23, eff. September 1, 2007.

Sec. 39.914. CREDIT FOR SURPLUS SOLAR GENERATION BY PUBLIC SCHOOLS. (a) An electric utility or retail electric provider shall provide for net metering and contract with an independent school district so that:

(1) surplus electricity produced by a school building's solar electric generation panels is made available for sale to the electric transmission grid and distribution system; and

(2) the net value of that surplus electricity is credited to the district.

(b) For areas of this state in which customer choice has not been introduced, the commission by rule shall require that credits for electricity produced by a school building's solar electric generation panels reflect the value of the electricity that is made available for sale to the electric utility in accordance with federal regulations.

(c) For independent school districts in areas in which customer choice has been introduced, the district must sell the school buildings' surplus electricity produced to the retail electric provider that serves the school district's load at a value agreed to between the district and the provider that serves the district's load. The agreed value may be based on the clearing price of energy at the time of day that the electricity is made available to the grid. The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a district under this section is accounted for in settling the total load served by the provider that serves the district's load. A district requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(d) A transmission and distribution utility shall make

available to an independent school district for purposes of this section metering required for services provided under this section, including separate meters that measure the load and generator output or a single meter capable of measuring separately in-flow and out-flow at the point of common coupling meter point. The district must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section.

(e) A municipally owned utility or electric cooperative shall consider and complete the determinations regarding net metering service as provided by the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Section 2601 et seq., as amended by the federal Energy Policy Act of 2005 (Pub. L. No. 109-58)) after proceedings conducted in accordance with that law. A municipally owned utility or electric cooperative shall report the determinations made under this subsection to the State Energy Conservation Office and include in that report information regarding metering electricity generated by solar panels on public school building rooftops.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 24, eff. September 1, 2007.

Sec. 39.915. CONSIDERATION AND APPROVAL OF CERTAIN TRANSACTIONS. (a) To protect retail customers in this state, and to ensure the continuation of cost-effective energy efficiency measures and delivery systems, notwithstanding any other provision of this title, an electric utility or transmission and distribution utility must report to and obtain approval of the commission before closing any transaction in which:

(1) the electric utility or transmission and distribution utility will be merged or consolidated with another electric utility or transmission and distribution utility;

(2) at least 50 percent of the stock of the electric utility or transmission and distribution utility will be transferred or sold; or

(3) a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred.

(b) The commission shall approve a transaction under Subsection

(a) if the commission finds that the transaction is in the public interest. In making its determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility or transmission and distribution utility. The commission shall make the determination concerning a transaction under this subsection not later than the 180th day after the date the commission receives the relevant report. If the commission has not made a determination before the 181st day after that date, the transaction is considered approved.

(c) Subsections (a) and (b) do not apply to a transaction described by Subsection (a) for which a definitive agreement was executed before April 1, 2007, if an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility made a filing for review of the transaction under Section 14.101 before May 1, 2007, and the resulting proceeding was not withdrawn.

(d) If an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility files with the commission a stipulation, representation, or commitment in advance of or as part of a filing under this section or under Section 14.101, the commission may enforce the stipulation, representation, or commitment to the extent that the stipulation, representation, or commitment is consistent with the standards provided by this section and Section 14.101. The commission may reasonably interpret and enforce conditions adopted under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 25, eff. September 1, 2007.

Sec. 39.916. INTERCONNECTION OF DISTRIBUTED RENEWABLE GENERATION. (a) In this section:

(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.

(2) "Distributed renewable generation owner" means:

(A) an owner of distributed renewable generation;

(B) a retail electric customer on whose side of the meter distributed renewable generation is installed and operated, regardless of whether the customer takes ownership of the distributed renewable generation; or

(C) a person who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the premises of the customer on the customer's side of the meter.

(3) "Interconnection" means the right of a distributed renewable generation owner to physically connect distributed renewable generation to an electricity distribution system, and the technical requirements, rules, or processes for the connection.

(b) A transmission and distribution utility or electric utility shall allow interconnection if:

(1) the distributed renewable generation to be interconnected has a five-year warranty against breakdown or undue degradation; and

(2) the rated capacity of the distributed renewable generation does not exceed the transmission and distribution utility or electric utility service capacity.

(c) A customer may request interconnection by filing an application for interconnection with the transmission and distribution utility or electric utility. Procedures of a transmission and distribution utility or electric utility for the submission and processing of a customer's application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(d) The commission by rule shall establish safety, technical, and performance standards for distributed renewable generation that may be interconnected. In adopting the rules, the commission shall consider standards published by the Underwriters Laboratories, the National Electric Code, the National Electric Safety Code, and the Institute of Electrical and Electronics Engineers.

(e) A transmission and distribution utility, electric utility, or retail electric provider may not require a distributed renewable generation owner whose distributed renewable generation meets the standards established by rule under Subsection (d) to purchase an amount, type, or classification of liability insurance the distributed renewable generation owner would not have in the absence of the distributed renewable generation.

(f) A transmission and distribution utility or electric utility shall make available to a distributed renewable generation owner for purposes of this section metering required for services provided under this section, including separate meters that measure the load and generator output or a single meter capable of measuring in-flow and out-flow at the point of common coupling meter point. The distributed renewable generation owner must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section.

(g) A renewable energy credit that is earned by a distributed renewable generation owner through the interconnection of a renewable electric system is the sole property of the distributed renewable generation owner unless the distributed renewable generation owner engages in a transaction to sell or trade the credit under Section 39.904. For electric utilities, the commission shall address the ownership of renewable energy credits associated with power sold to the utility.

(h) An electric utility or retail electric provider may contract with a distributed renewable generation owner so that:

(1) surplus electricity produced by distributed renewable generation is made available for sale to the transmission grid and distribution system; and

(2) the net value of that surplus electricity is credited to the distributed renewable generation owner.

[(i) reserved]

(j) For distributed renewable generation owners in areas in which customer choice has been introduced, the distributed renewable generation owner must sell the owner's surplus electricity produced to the retail electric provider that serves the distributed renewable generation owner's load at a value agreed to between the distributed renewable generation owner and the provider that serves the owner's load which may include, but is not limited to, an agreed value based on the clearing price of energy at the time of day that the electricity is made available to the grid or it may be a credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed. The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a distributed renewable generation owner under this section is

accounted for in settling the total load served by the provider that serves that owner's load by January 1, 2009. A distributed renewable generation owner requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(k) Neither a retail electric customer that uses distributed renewable generation nor the owner of the distributed renewable generation that the retail electric customer uses is an electric utility, power generation company, or retail electric provider for the purposes of this title and neither is required to register with or be certified by the commission if at the time distributed renewable generation is installed, the estimated annual amount of electricity to be produced by the distributed renewable generation is less than or equal to the retail electric customer's estimated annual electricity consumption.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 26, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1070 (S.B. 981), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1070 (S.B. 981), Sec. 2, eff. September 1, 2011.

## CHAPTER 40. COMPETITION FOR MUNICIPALLY OWNED UTILITIES AND RIVER AUTHORITIES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. APPLICABLE LAW. (a) Notwithstanding any other provision of law, except Sections 39.155, 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) Except as specifically provided in this subsection, Chapter 39 does not apply to a river authority operating a steam generating plant on or before January 1, 1999, or a corporation authorized by

Chapter 152, Water Code, or Section 32.053. A river authority operating a steam generating plant on or before January 1, 1999, is subject to Sections 39.051(a)-(c), 39.108, 39.155, 39.157(e), and 39.203.

(c) For purposes of Section 39.051, hydroelectric assets may not be deemed to be generating assets, and the transfer of generating assets to a corporation authorized by Chapter 152, Water Code, satisfies the requirements of Section 39.051.

(d) Accommodation shall be made in the code of conduct established under Section 39.157(e) for the provisions of Chapter 152, Water Code, and the commission may not prohibit a river authority and any related corporation from sharing officers, directors, employees, equipment, and facilities or from providing goods or services to each other at cost without the need for a competitive bid.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.401, eff. Sept. 1, 2001.

Sec. 40.002. DEFINITION. For purposes of this chapter, "body vested with the power to manage and operate a municipally owned utility" means a body created in accordance with Section 1502.070, Government Code, or Subchapter G, Chapter 552, Local Government Code, or by municipal charter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.402, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(29), eff. April 1, 2009.

Sec. 40.003. SECURITIZATION. (a) Municipally owned utilities and river authorities may adopt and use securitization provisions having the effect of the provisions provided by Subchapter G, Chapter 39, to recover through appropriate charges their stranded costs, at a recovery level deemed appropriate by the municipally owned utility or river authority up to 100 percent, under rules and procedures that

shall be established:

(1) in the case of a municipally owned utility, by the municipal governing body or a body vested with the power to manage and operate the municipally owned utility, including procedures providing for rate orders of the governing body having the effect of financing orders, providing for a separate nonbypassable charge approved by the governing body, in the nature of a transition charge, to be collected from all retail electric customers of the municipally owned utility, identified as of a date determined by the governing body, to fund the recovery of the stranded costs of the municipally owned utility and of all reasonable related expenses, as determined by the governing body, and providing for the issuance of bonds, having a term and other characteristics as determined by the governing body, as necessary to recover the amount deemed appropriate by the governing body through securitization financing; and

(2) in the case of a river authority, by the commission.

(b) In order to implement securitization financing under the rules and procedures established by and for a municipally owned utility under Subsection (a)(1), municipalities are expressly authorized and empowered to issue bonds, notes, or other obligations, including refunding bonds, payable from and secured by a lien on and pledge of the revenues collected under an order of the governing body of the municipality, and the bonds shall be issued, without an election or any requirement of giving notice of intent to issue the bonds, by ordinance adopted by the governing body of the municipality, in the form and manner and sold on a negotiated basis or on receipt of bids and on the terms and conditions as shall be determined by the governing body of the municipality.

(c) Bonds issued under the authority conferred by Subsections (a)(1) and (2) and Subsection (b) may be issued in the form and manner, with or without credit enhancement or liquidity enhancement and using the procedures as provided in Chapter 1201, Government Code, or other laws applicable to the issuance of bonds, including Subchapters A-C, Chapter 1207, Government Code, and Chapter 1371, Government Code, as if those laws were fully restated in this section and made a part of this section for all purposes, and a municipality or river authority shall have the right and authority to use those other laws, notwithstanding any applicable restrictions contained in those laws, to the extent convenient or necessary to carry out any power or authority, express or implied, granted under this section,

in the issuance of bonds by a municipality or river authority in connection with securitization financing. This section is wholly sufficient authority for the issuance of bonds, notes, or other obligations, including refunding bonds, and the performance of the other authorized acts and procedures, without reference to any other laws or any restrictions or limitations contained in those laws. To the extent of any conflict or inconsistency between the provisions of this authorization and any provisions of any other law or home-rule charter, the authorization and power to issue bonds conferred on municipalities or river authorities under this section shall prevail and control.

(d) The rules and procedures for securitization established by the commission under Subsection (a)(2) shall include procedures for the recovery of qualified costs under the terms of a financing order adopted by the governing body of the river authority.

(e) The rules and procedures for securitization established by the commission under Subsection (a)(2) shall include rules and procedures for the issuance of transition bonds. Findings made by the governing body of a river authority in a financing order issued under the rules and procedures described in this subsection shall be conclusive, and any transition charge incorporated in the rate order to recover the principal, interest, and all reasonable expenses associated with any transition bonds shall constitute property rights, as described in Subchapter G, Chapter 39, and otherwise conform in all material respects to the transition charges provided by Subchapter G, Chapter 39.

(f) The rules and procedures established under this section shall be consistent with other law applicable to municipally owned utilities and river authorities and with the terms of any resolutions, orders, charter provisions, or ordinances authorizing outstanding bonds or other indebtedness of the municipalities or river authorities.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.403, eff. Sept. 1, 2001.

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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER B. MUNICIPALLY OWNED UTILITY CHOICE

Sec. 40.051. GOVERNING BODY DECISION. (a) The municipal governing body or a body vested with the power to manage and operate a municipally owned utility has the discretion to decide when or if the municipally owned utility will provide customer choice.

(b) Municipally owned utilities may choose to participate in customer choice at any time on or after January 1, 2002, by adoption of an appropriate resolution of the municipal governing body or a body vested with power to manage and operate the municipally owned

utility. The decision to participate in customer choice by the adoption of a resolution is irrevocable.

(c) After a decision to offer customer choice has been made, Subchapters D and E, Chapter 33, do not apply to any action taken under this chapter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.052. UTILITY NOT OFFERING CUSTOMER CHOICE. (a) A municipally owned utility that has not chosen to participate in customer choice may not offer electric energy at unregulated prices directly to retail customers outside its certificated retail service area.

(b) A municipally owned utility under Subsection (a) retains the right to offer and provide a full range of customer service and pricing programs to the customers within its certificated area and to purchase and sell electric energy at wholesale without geographic restriction.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.053. RETAIL CUSTOMER'S RIGHT OF CHOICE. (a) If a municipally owned utility chooses to participate in customer choice, after that choice all retail customers served by the municipally owned utility within the certificated retail service area of the municipally owned utility shall have the right of customer choice consistent with the provisions of this chapter, and the municipally owned utility shall provide open access for retail service.

(b) Notwithstanding Section 39.107, the metering function may not be deemed a competitive service for customers of the municipally owned utility within that service area and may, at the option of the municipally owned utility, continue to be offered by the municipally owned utility as sole provider.

(c) On its initiation of customer choice, a municipally owned utility shall designate itself or another entity as the provider of last resort for customers within the municipally owned utility's certificated service area as that area existed on the date of the utility's initiation of customer choice. The municipally owned utility shall fulfill the role of default provider of last resort in

the event no other entity is available to act in that capacity.

(d) If a customer is unable to obtain service from a retail electric provider, on request by the customer, the provider of last resort shall offer the customer the standard retail service package for the appropriate customer class, with no interruption of service, at a fixed, nondiscountable rate that is at least sufficient to cover the reasonable costs of providing that service, as approved by the governing body of the municipally owned utility that has the authority to set rates.

(e) The governing body of a municipally owned utility may establish the procedures and criteria for designating the provider of last resort and may redesignate the provider of last resort according to a schedule it considers appropriate.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.054. SERVICE OUTSIDE AREA. (a) A municipally owned utility participating in customer choice shall have the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without regard to geographic location.

(b) In providing service under Subsection (a) to retail customers outside its certificated retail service area as that area exists on the date of adoption of customer choice, a municipally owned utility is subject to the commission's rules establishing a code of conduct regulating anticompetitive practices.

(c) For municipally owned utilities participating in customer choice, the commission shall have jurisdiction to establish terms and conditions, but not rates, for access by other retail electric providers to the municipally owned utility's distribution facilities.

(d) Accommodation shall be made in the commission's terms and conditions for access and in the code of conduct for specific legal requirements imposed by state or federal law applicable to municipally owned utilities.

(e) The commission does not have jurisdiction to require unbundling of services or functions of, or to regulate the recovery of stranded investment of, a municipally owned utility or, except as provided by this section, jurisdiction with respect to the rates, terms, and conditions of service for retail customers of a

municipally owned utility within the utility's certificated service area.

(f) A municipally owned utility shall maintain separate books and records of its operations from those of the operations of any affiliate.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.055. JURISDICTION OF MUNICIPAL GOVERNING BODY. (a) The municipal governing body or a body vested with the power to manage and operate a municipally owned utility has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the municipally owned utility, subject to Sections 40.054 and 40.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under this subtitle, provided that the rates for distribution access established by the municipal governing body shall be comparable to the distribution access rates that apply to the municipally owned utility and the municipally owned utility's affiliates;

(2) determine whether to unbundle any energy-related activities and, if the municipally owned utility chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the municipally owned utility's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time, provided that recovery of retail stranded costs shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999;

(5) determine the extent to which the municipally owned utility will provide various customer services at the distribution level, including other services that the municipally owned utility is legally authorized to provide, or will accept the services from other providers;

(6) manage and operate the municipality's electric utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality and reliability standards and consumer safeguards designed to protect retail electric customers, including safeguards that will accomplish the objectives of Sections 39.101(a) and (b), consistent with this chapter;

(8) determine whether a base rate reduction is appropriate for the municipally owned utility;

(9) determine any other utility matters that the municipal governing body or body vested with power to manage and operate the municipally owned utility believes should be included;

(10) make any other decisions affecting the municipally owned utility's participation in customer choice that are not inconsistent with this chapter; and

(11) determine the extent to which the municipally owned utility offers energy efficiency programs and how the programs are administered by the utility, except as provided by Section 39.9051(e).

(b) In multiply certificated areas, a retail customer, including a retail customer of an electric cooperative or a municipally owned utility, may not avoid stranded cost recovery charges by switching to another electric utility, electric cooperative, or municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 27, eff. September 1, 2007.

Sec. 40.056. ANTICOMPETITIVE ACTIONS. (a) If, on complaint by a retail electric provider, the commission finds that a municipal rule, action, or order relating to customer choice is anticompetitive or does not provide other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities or customers within the municipally owned utility's certificated retail service area that are comparable to the municipally owned utility's and its affiliates' terms and conditions of access to distribution facilities or customers, the commission

shall notify the municipally owned utility.

(b) The municipally owned utility shall have three months to cure the anticompetitive or noncompliant behavior described in Subsection (a), following opportunity for hearing on the complaint. If the rule, action, or order is not fully remedied within that time, the commission may prohibit the municipally owned utility or affiliate from providing retail service outside its certificated retail service area until the rule, action, or order is remedied.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.057. BILLING. (a) A municipally owned utility that opts for customer choice may continue to bill directly electric customers located in its certificated retail service area, as that area exists on the date of adoption of customer choice, for all transmission and distribution services. The municipally owned utility may also bill directly for generation services and customer services provided by the municipally owned utility to those customers.

(b) A municipally owned utility that opts for customer choice may not adopt anticompetitive billing practices that would discourage customers in its service area from choosing a retail electric provider.

(c) A customer that is being provided wires service by a municipally owned utility at distribution or transmission voltage and that is served by a retail electric provider for retail service has the option of being billed directly by each service provider or to receive a single bill for distribution, transmission, and generation services from the municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.058. TARIFFS FOR OPEN ACCESS. A municipally owned utility that owns or operates transmission and distribution facilities shall file with the commission tariffs implementing the open access rules established by the commission under Section 39.203 and shall file with the commission the rates for open access on distribution facilities as set by the municipal regulatory authority, before the 90th day preceding the date the utility offers customer

choice. The commission does not have authority to determine the rates for distribution access service for a municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.059. MUNICIPAL POWER AGENCY; RECOVERY OF STRANDED COSTS. (a) In this section, "member city" means a municipality that participated in the creation of a municipal power agency formed under Chapter 163 by the adoption of a concurrent resolution by the municipality on or before August 1, 1975.

(b) After a member city adopts a resolution choosing to participate in customer choice under Section 40.051(b), a member city may include stranded costs described in Subsection (c) in its distribution costs and may recover those costs through a nonbypassable charge. The nonbypassable charge shall be as determined by the member city's governing body and may be spread over 16 years.

(c) The stranded costs that may be recovered under this section are those costs that were determined by the commission and stated in the commission's April 1998 Report to the Texas Senate Interim Committee on Electric Utility Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update" and specifically stated in the report at Appendix A (ECOM Estimates Including the Effects of Transition Plans) under the commission base case benchmark base market price for the year 2002.

(d) The stranded cost amounts described in this section may not be included in the generation costs used in setting rates by the member city's governing body.

(e) The 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 to the member cities.

(f) The municipal power agency shall extinguish the agency's indebtedness by sale of the electric facility to one or more purchasers, by way of a sale through the issuance of taxable or tax-exempt debt to the member cities, or by any other method. The agency shall set as an objective the extinguishment of the agency's debt by September 1, 2000. In the event this objective is not met, the

agency shall provide detailed reasons to the electric utility restructuring legislative oversight committee by November 1, 2000, why the agency was not able to meet this objective.

(g) The municipal power agency or its successor in interest may, at its option, use the rate of return method for calculating its transmission cost of service. If the rate of return method is used, the return component for the transmission cost of service revenue requirement shall be sufficient to meet the transmission function's pro rata share of levelized debt service and debt service coverage ratio (1.50) and other annual debt obligations; provided, however, that the total levelized debt service may not exceed the total debt service under the current payment schedule. Any additional revenue generated by the methodology described in this subsection shall be applied to reduce the agency's outstanding indebtedness.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.060. NO POWER TO AMEND CERTIFICATES. Nothing in this chapter empowers a municipal governing body or a body vested with the power to manage and operate a municipally owned utility to issue, amend, or rescind a certificate of public convenience and necessity granted by the commission. This subsection does not affect the ability of a municipal governing body or a body vested with the power to manage and operate the municipally owned utility to pass a resolution under Section 40.051(b).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 40.101. INTERFERENCE WITH CONTRACT. (a) This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with a municipally owned utility or river authority.

(b) This subtitle may not interfere with or abrogate the rights or obligations of a party under a contract or agreement concerning certificated utility service areas.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.102. ACCESS TO WHOLESALE MARKET. Nothing in this subtitle shall limit the access of municipally owned utilities to the wholesale electric market.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.103. PROTECTION OF BONDHOLDERS. Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between this state, river authorities, municipalities, and the bondholders of revenue bonds issued by the river authorities or municipalities.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 40.104. TAX-EXEMPT STATUS. Nothing in this subtitle may impair the tax-exempt status of municipalities, electric cooperatives, or river authorities, nor shall anything in this subtitle compel any municipality, electric cooperative, or river authority to use its facilities in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to facilities financed by tax-exempt debt. Notwithstanding any other provision of law, the decision to participate in customer choice by the adoption of a resolution in accordance with Section 40.051(b) is irrevocable.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## CHAPTER 41. ELECTRIC COOPERATIVES AND COMPETITION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. APPLICABLE LAW. Notwithstanding any other provision of law, except Sections 39.155, 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.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.002. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of an electric cooperative as described in Section 161.071.

(2) "Rate" includes any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric cooperative for any service, product, or commodity and any rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(3) "Stranded investment" means:

(A) the excess, if any, of the net book value of generation assets over the market value of the generation assets; and

(B) any above market purchased power costs.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.003. SECURITIZATION. (a) Electric cooperatives may adopt and use securitization provisions having the effect of the provisions provided by Subchapter G, Chapter 39, to recover through rates stranded costs at a recovery level deemed appropriate by the board of directors up to 100 percent, under rules and procedures that shall be established by the commission.

(b) The rules and procedures for securitization established under Subsection (a) shall include rules and procedures for the recovery of stranded costs under the terms of a rate order adopted by the board of directors of the electric cooperative, which rate order shall have the effect of a financing order.

(c) The rules and procedures established by the commission under Subsection (b) shall include rules and procedures for the issuance of transition bonds issued in a securitized financing transaction. The issuance of any transition bonds issued in a securitized financing transaction by an electric cooperative is expressly authorized and shall be governed by the laws governing the issuance of bonds or other obligations by the electric cooperative. Findings made by the board of directors of an electric cooperative in

a rate order issued under the rules and procedures described by this subsection shall be conclusive, and any transition charges incorporated in the rate order to recover the principal, interest, and all reasonable expenses associated with any securitized financing transaction shall constitute property rights, as described in Subchapter G, Chapter 39, and shall otherwise conform in all material respects to the transition charges provided by Subchapter G, Chapter 39.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.004. JURISDICTION OF COMMISSION. Except as specifically provided otherwise in this chapter, the commission has jurisdiction over electric cooperatives only as follows:

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

(2) to regulate certification to the extent provided in Chapter 37;

(3) to establish a code of conduct as provided in Section 39.157(e) subject to Section 41.054;

(4) to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives providing customer choice, as provided in Section 39.203; and

(5) to require reports of electric cooperative operations only to the extent necessary to:

(A) ensure the public safety;

(B) enable the commission to satisfy its responsibilities relating to electric cooperatives under this chapter;

(C) enable the commission to determine the aggregate electric load and energy requirements in the state and the resources available to serve that load; or

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

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.005. LIMITATION ON MUNICIPAL AUTHORITY.

Notwithstanding any other provision of this title, a municipality may not directly or indirectly regulate the rates, operations, and services of an electric cooperative, except, with respect to operations, to the extent necessary to protect the public health, safety, or welfare. This section does not prohibit a municipality from making a lawful charge for the use of public rights-of-way within the municipality as provided by Section 182.025, Tax Code, and Section 33.008. An electric cooperative shall be an electric utility for purposes of Section 182.025, Tax Code, and Section 33.008.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

## SUBCHAPTER B. ELECTRIC COOPERATIVE UTILITY CHOICE

Sec. 41.051. BOARD DECISION. (a) The board of directors has the discretion to decide when or if the electric cooperative will provide customer choice.

(b) Electric cooperatives that choose to participate in customer choice may do so at any time on or after January 1, 2002, by adoption of an appropriate resolution of the board of directors. The decision to participate in customer choice by the adoption of a resolution may be revoked only if no customer has opted for choice within four years of the resolution's adoption. An electric cooperative may initiate a customer choice pilot project at any time.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.052. ELECTRIC COOPERATIVES NOT OFFERING CUSTOMER CHOICE. (a) An electric cooperative that chooses not to participate in customer choice may not offer electric energy at unregulated prices directly to retail customers outside its certificated retail service area.

(b) An electric cooperative under Subsection (a) retains the right to offer and provide a full range of customer service and pricing programs to the customers within its certificated retail service area and to purchase and sell electric energy at wholesale without geographic restriction.

(c) A generation and transmission electric cooperative may offer electric energy at unregulated prices directly to retail customers outside of its parent electric cooperatives' certificated

service areas only if a majority of the parent electric cooperatives of the generation and transmission electric cooperative have chosen to offer customer choice.

(d) A subsidiary of an electric cooperative may not provide electric energy at unregulated prices outside of its parent electric cooperative's certificated retail service area unless the electric cooperative offers customer choice inside its certificated retail service area.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.053. RETAIL CUSTOMER RIGHT OF CHOICE. (a) If an electric cooperative chooses to participate in customer choice, after that choice, all retail customers within the certificated service area of the electric cooperative shall have the right of customer choice, and the electric cooperative shall provide nondiscriminatory open access for retail service.

(b) Notwithstanding Section 39.107, the metering function may not be deemed a competitive service for customers of the electric cooperative within that service area and may, at the option of the electric cooperative, continue to be offered by the electric cooperative as sole provider.

(c) On its initiation of customer choice, an electric cooperative shall designate itself or another entity as the provider of last resort for retail customers within the electric cooperative's certificated service area and shall fulfill the role of default provider of last resort in the event no other entity is available to act in that capacity.

(d) If a retail electric provider fails to serve a customer described in Subsection (c), on request by the customer, the provider of last resort shall offer the customer the standard retail service package for the appropriate customer class, with no interruption of service, at a fixed, nondiscountable rate that is at least sufficient to cover the reasonable costs of providing that service, as approved by the board of directors.

(e) The board of directors may establish the procedures and criteria for designating the provider of last resort and may redesignate the provider of last resort according to a schedule it considers appropriate.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.054. SERVICE OUTSIDE CERTIFICATED AREA. (a) Notwithstanding any provisions of Chapter 161:

(1) an electric cooperative participating in customer choice shall have the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without regard to geographic location; and

(2) any person, without restriction, except as may be provided in the electric cooperative's articles of incorporation and bylaws, may be a member of an electric cooperative.

(b) In providing service under Subsection (a) to retail customers outside its certificated service area as that area exists on the date of adoption of customer choice, an electric cooperative becomes subject to commission jurisdiction as to the commission's rules establishing a code of conduct regulating anticompetitive practices under Section 39.157(e), except to the extent those rules conflict with this chapter.

(c) For electric cooperatives participating in customer choice, the commission shall have jurisdiction to establish terms and conditions, but not rates, for access by other electric providers to the electric cooperative's distribution facilities.

(d) Notwithstanding Subsections (b) and (c), the commission shall make accommodation in the code of conduct for specific legal requirements imposed by state or federal law applicable to electric cooperatives. The commission shall accommodate the organizational structures of electric cooperatives and may not prohibit an electric cooperative and any related entity from sharing officers, directors, or employees.

(e) The commission does not have jurisdiction to require the unbundling of services or functions of, or to regulate the recovery of stranded investment of, an electric cooperative or, except as provided by this section, jurisdiction with respect to the rates, terms, and conditions of service for retail customers of an electric cooperative within the electric cooperative's certificated service area.

(f) An electric cooperative shall maintain separate books and records of its operations and the operations of any subsidiary and shall ensure that the rates charged for provision of electric service

do not include any costs of its subsidiary or any other costs not related to the provision of electric service.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board of directors has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the electric cooperative, except as provided by Sections 41.054 and 41.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under Subchapter A, Chapter 35, provided that the rates for distribution established by the electric cooperative shall be comparable to the distribution rates that apply to the electric cooperative and its subsidiaries;

(2) determine whether to unbundle any energy-related activities and, if the board of directors chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the electric cooperative's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time;

(5) determine the extent to which the electric cooperative will provide various customer services, including nonelectric services, or accept the services from other providers;

(6) manage and operate the electric cooperative's utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers;

(8) determine whether a base rate reduction is appropriate for the electric cooperative;

(9) determine any other utility matters that the board of directors believes should be included;

(10) sell electric energy and capacity at wholesale, regardless of whether the electric cooperative participates in

customer choice;

(11) determine the extent to which the electric cooperative offers energy efficiency programs and how the programs are administered by the electric cooperative; and

(12) make any other decisions affecting the electric cooperative's method of conducting business that are not inconsistent with the provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 28, eff. September 1, 2007.

Sec. 41.056. ANTICOMPETITIVE ACTIONS. (a) If, after notice and hearing, the commission finds that an electric cooperative providing customer choice has engaged in anticompetitive behavior by not providing other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities or customers within the electric cooperative's certificated service area that are comparable to the electric cooperative's and its subsidiaries' terms and conditions of access to distribution facilities or customers, the commission shall notify the electric cooperative.

(b) The electric cooperative shall have three months to cure the anticompetitive or noncompliant behavior described in Subsection (a). If the behavior is not fully remedied within that time, the commission may prohibit the electric cooperative or its subsidiary from providing retail service outside its certificated retail service area until the behavior is remedied.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.057. BILLING. (a) An electric cooperative that opts for customer choice may continue to bill directly electric customers located in its certificated service area for all transmission and distribution services. The electric cooperative may also bill directly for generation and customer services provided by the electric cooperative or its subsidiaries to those customers.

(b) A customer served by an electric cooperative for

transmission and distribution services and by a retail electric provider for retail service has the option of being billed directly by each service provider or receiving a single bill for distribution, transmission, and generation services from the electric cooperative.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.058. TARIFFS FOR OPEN ACCESS. An electric cooperative that owns or operates transmission and distribution facilities shall file tariffs implementing the open access rules established by the commission under Section 39.203 with the appropriate regulatory authorities having jurisdiction over the transmission and distribution service of the electric cooperative before the 90th day preceding the date the electric cooperative offers customer choice.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.059. NO POWER TO AMEND CERTIFICATES. Nothing in this chapter empowers a board of directors to issue, amend, or rescind a certificate of public convenience and necessity granted by the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.060. CUSTOMER SERVICE INFORMATION. (a) The commission shall keep information submitted by customers and retail electric providers pertaining to the provision of electric service by electric cooperatives.

(b) The commission shall notify the appropriate electric cooperative of information submitted by a customer or retail electric provider, and the electric cooperative shall respond to the customer or retail electric provider. The electric cooperative shall notify the commission of its response.

(c) The commission shall prepare a report for the Sunset Advisory Commission that includes information submitted and responses by electric cooperatives in accordance with the Sunset Advisory Commission's schedule for reviewing the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.061. RETAIL RATE CHANGES BY ELECTRIC COOPERATIVES. (a) This section shall apply to retail rates of an electric cooperative that has not adopted customer choice and to the retail delivery rates of an electric cooperative that has adopted customer choice. This section may not apply to rates for:

(1) sales of electric energy by an electric cooperative that has adopted customer choice; or

(2) wholesale sales of electric energy.

(b) An electric cooperative may change its rates by:

(1) adopting a resolution approving the proposed change;

(2) mailing notice of the proposed change to each affected customer whose rate would be increased by the proposed change at least 30 days before implementation of the proposed change, which notice may be included in a monthly billing; and

(3) holding a meeting to discuss the proposed rate changes with affected customers, if any change is expected to increase total system annual revenues by more than $100,000 or one percent, whichever is greater.

(c) An electric cooperative may implement the proposed rates on completion of the requirements under Subsection (b), and those rates shall remain in effect until changed by the electric cooperative as provided by this section or, for rates other than retail delivery rates, until this section is no longer applicable because the electric cooperative adopts customer choice.

(d) The electric cooperative may reconsider a rate change at any time and adjust the rate by board resolution without additional notice or meeting of customers if the rate as adjusted is not expected to increase the revenues from a customer class. However, if notice is given to a customer class that would receive an increase as a result of the adjustment, then the rates for the customer class may be increased without additional meeting of the customers. A customer may petition to appeal within the time provided in Subsection (f).

(e) Retail rates set by an electric cooperative that has not adopted customer choice and retail delivery rates set by an electric cooperative that has adopted customer choice shall be just and reasonable, not unreasonably preferential, prejudicial, or discriminatory; provided, however, if the customer agrees, an

electric cooperative may charge a market-based rate to customers who have energy supply options if rates are not increased for other customers as a result.

(f) A customer of the electric cooperative who is adversely affected by a rate setting resolution of the electric cooperative is entitled to judicial review. A person initiates judicial review by filing a petition in the district court of Travis County not later than the 90th day after the resolution is implemented.

(g) The resolution of the electric cooperative setting rates, as it may have been amended as described in Subsection (d), shall be presumed valid, and the burden of showing that the resolution is invalid rests on the persons challenging the resolution. A court reviewing a change of a rate or rates by an electric cooperative may consider any relevant factor including the cost of providing service.

(h) If the court finds that the electric cooperative's resolution setting rates violates the standards contained in Subsection (e), or that the electric cooperative's rate violates Subsection (e), the court shall enter an order:

(1) stating the specific basis for its determination that the rates set in the electric cooperative's resolution violate Subsection (e); and

(2) directing the electric cooperative to:

(A) set, within 60 days, revised retail rates that do not violate the standards of Subsection (e); and

(B) refund or credit against future bills, at the electric cooperative's option, revenues collected under the rate found to violate the standards of Subsection (e) that exceed the revenues that would have been collected under the revised rates. The refund or credit shall be made over a period of not more than 12 months, as determined by the court.

(i) The court may not enter an order delaying or prohibiting implementation of a rate change or set revised rates either for the period the challenged resolution was in effect or prospectively.

(j) A person having obtained an order of the court requiring an electric cooperative to set revised retail rates pursuant to Subsection (h)(2)(A) may, once the order is no longer subject to appeal, initiate an original proceeding in the district court of Travis County either to:

(1) seek enforcement of the court's order by writ of mandamus if the electric cooperative has failed to adopt a resolution

approving revised rates within the time prescribed; or

(2) seek judicial review of the electric cooperative's most current resolution setting rates as provided in this section, if the electric cooperative has set revised rates pursuant to the order of the court within the time prescribed. In the event of such enforcement proceeding or judicial review the court may, in addition to the other remedies provided for in this section, award reasonable costs, including reasonable attorney's fees, to the party prevailing on the case as a whole. Additionally, if the court finds that either party has acted in bad faith solely for the purpose of perpetuating the rate dispute between the parties, the court may impose sanctions on the offending party in accordance with the provisions of Subsections (b), (c), and (e), Section 10.004, Civil Practice and Remedies Code.

(k) An electric cooperative that has not adopted customer choice and that has not changed each of its nonresidential rates since January 1, 1999, shall, on or before May 1, 2002, adopt a resolution setting rates. The resolution shall be subject to judicial review as provided in this section whether or not any rate is changed. In the event the electric cooperative fails to adopt a resolution setting rates pursuant to this subsection, a customer may petition for judicial review of the electric cooperative's rates. A person initiates judicial review by filing a petition in the district court of Travis County not later than November 1, 2002.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.062. ALLOCATION OF STRANDED INVESTMENT. Any competition transition charge shall be allocated among retail customer classes based on the relevant customer class characteristics as of the end of the electric cooperative's most recent fiscal year before implementation of customer choice, in accordance with the methodology used to allocate the costs of the underlying assets or expenses in the electric cooperative's most recent cost of service study certified by a professional engineer or certified public accountant or approved by the commission. In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric cooperative, an electric utility, or a municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

**SUBCHAPTER C. RIGHTS NOT AFFECTED**

Sec. 41.101. INTERFERENCE WITH CONTRACT. (a) This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with an electric cooperative or its subsidiary.

(b) No provision of this subtitle may interfere with or be deemed to abrogate the rights or obligations of a party under a contract or an agreement concerning certificated service areas.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.102. ACCESS TO WHOLESALE MARKET. Nothing in this subtitle shall limit the access of an electric cooperative or its subsidiary, either on its own behalf or on behalf of its customers, to the wholesale electric market.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.103. PROTECTION OF BONDHOLDERS. Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between an electric cooperative and its lenders and holders of bonds issued on behalf of or by the electric cooperative.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.104. TAX-EXEMPT STATUS. Nothing in this subtitle may impair the tax-exempt status of electric cooperatives, nor shall anything in this subtitle compel any electric cooperative to use its facilities in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to facilities financed by tax-exempt or federally insured or guaranteed debt.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

# CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR ACCESS TO BROADBAND AND OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) The legislature finds that access to quality, high speed broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services. The legislature further finds that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

(c) Consistent with the goal of increasing options for telecommunications in this state, the legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities, to own or operate all or a portion of such BPL systems. The purpose of this chapter is to provide the appropriate framework to support the deployment of BPL.

(d) The legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this chapter, but is not required to do so. The electric utility shall have the right to decide, in its sole discretion, whether to implement BPL and may not be penalized for deciding to implement or not to implement BPL.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.002. APPLICABILITY. (a) This chapter applies to an electric utility whether or not the electric utility is offering customer choice under Chapter 39.

(b) If there is a conflict between the specific provisions of this chapter and any other provisions of this title, the provisions of this chapter control.

(c) No provision of this title shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.003. DEFINITIONS. In this chapter:

(1) "BPL," "broadband over power lines," and "BPL services" mean the provision of broadband services over electric power lines and related facilities, whether above ground or in underground conduit.

(2) "BPL access" means the ability to access broadband services via a BPL operator or BPL Internet service provider.

(3) "BPL operator" means an entity that owns or operates a BPL system on the electric power lines and related facilities of an electric utility.

(4) "BPL Internet service provider" and "BPL ISP" mean an entity that provides Internet services to others on a wholesale basis or to end-use customers on a retail basis.

(5) "BPL system" means the materials, equipment, and other facilities installed on electric utility property to facilitate the provision of BPL services.

(6) "BPL electric utility applications" means services and technologies that are used and useful and designed to improve the operational performance and service reliability of an electric utility including, but not limited to, automated meter reading, real time system monitoring and meter control, remote service control, outage detection and restoration, predictive maintenance and diagnostics, and monitoring and enhancement of power quality.

(7) "Electric delivery system" means the power lines and related transmission and distribution facilities used by an electric utility to deliver electric energy.

(8) "Electric utility" shall include an electric utility and a transmission and distribution utility as defined in Section

31.002(6) or (19).

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

**SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS**

Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. An affiliate of an electric utility or a person unaffiliated with an electric utility may own, construct, maintain, and operate a BPL system and provide BPL services on an electric utility's electric delivery system consistent with the requirements of this chapter. Nothing in this chapter shall prohibit an entity defined in Section 11.003(9) from providing BPL service or owning and operating a BPL system. Nothing in this chapter shall prohibit an electric utility from providing construction or maintenance services to a BPL operator or BPL ISP provided that the costs of these services are properly accounted for between the electric utility and the BPL operator or BPL ISP.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM. (a) An electric utility may elect to:

(1) allow an affiliate to own or operate a BPL system on the utility's electric delivery system;

(2) allow an unaffiliated entity to own or operate a BPL system on the electric utility's electric delivery system; or

(3) allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

(b) The BPL operator and the electric utility shall determine what BPL Internet service providers may have access to broadband capacity on the BPL system.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.053. FEES AND CHARGES. (a) An electric utility that allows an affiliate or an unaffiliated entity to own a BPL system on

the electric utility's electric delivery system shall charge the owner of the BPL system for the use of the electric utility's electric delivery system.

(b) An electric utility may pay a BPL owner, a BPL operator, or a BPL ISP for the use of the BPL system required to operate BPL utility applications.

(c) If all or part of a BPL system is installed on poles or other structures of a telecommunications utility as that term is defined in Section 51.002, the owner of the BPL system shall be required to pay the telecommunications utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the BPL system so installed.

(d) Notwithstanding Subsections (a)-(c):

(1) an electric utility may not charge an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items;

(2) an electric utility may not pay an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items; and

(3) an electric utility or an affiliate of an electric utility may not discriminate against a retail electric provider that is not affiliated with the utility in the terms or availability of BPL services.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. Because BPL systems provide benefits to electric delivery systems, the installation of a BPL system on an electric delivery system shall not require the electric utility or the owner of the BPL system or an entity defined in Section 11.003(9) to obtain or expand easements or other rights-of-way for the BPL system or to give additional consideration as a result of the installation or the operation of a BPL system. For purposes of this section, installation of a BPL system shall be deemed to be consistent with installation of an electric delivery system.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. An electric utility that allows the installation and operation of a BPL system on its electric delivery system shall employ all reasonable measures to ensure that the operation of the BPL system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery services.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

## SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An electric utility, through an affiliate or through an unaffiliated entity, may elect to install and operate a BPL system on some or all of its electric delivery system in any part or all of its certificated service area.

(b) The installation, operation, and use of a BPL system and the provision of BPL services shall not be regulated by any state agency, a municipality, or local government other than as provided for in this chapter.

(c) The commission or a state or local government or a regulatory or quasi-governmental or a quasi-regulatory authority may not:

(1) require an electric utility, either through an affiliate or an unaffiliated entity, to install a BPL system on its power lines or offer BPL services in all or any part of the electric utility's certificated service area;

(2) require an electric utility to allow others to install a BPL system on the utility's electric delivery system in any part or all of the electric utility's certificated service area; or

(3) prohibit an electric utility from having an affiliate or unaffiliated entity install a BPL system or offering BPL services

in any part or all of the electric utility's certificated service area.

(d) If a municipality or local government is already collecting a charge or fee from the electric utility for the use of the public rights-of-way for the delivery of electricity to retail electric customers, the municipality or local government is prohibited from requiring a franchise or an amendment to a franchise or from requiring a charge, fee, or tax from any entity for use of the public rights-of-way for a BPL system.

(e) The state or a municipality may impose a charge on the provision of BPL services, but the charge may not be greater than the lowest charge that the state or municipality imposes on other providers of broadband services for use of the public rights-of-way in its respective jurisdiction.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a), the electric utility's investment in that BPL system to directly support the BPL electric utility applications and other BPL services consumed by the electric utility that are used and useful in providing electric utility service shall be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary shall be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. The invested capital and expenses described in this section must be allocated to the customer classes directly receiving the services.

(b) In any proceeding under Chapter 36, just and reasonable charges for the use of the electric utility's electric delivery system by a BPL owner or operator shall be limited to the usual and customary pole attachment charges paid to the electric utility for comparable space by cable television operators.

(c) The revenues of an affiliated BPL operator or an affiliated BPL ISP shall not be deemed the revenues of an electric utility for purposes of setting rates under Chapter 36.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

## SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. AFFILIATES OF ELECTRIC UTILITY. (a) Subject to the limitations of this chapter, an electric utility may have a full or partial ownership interest in a BPL operator or a BPL ISP. Whether a BPL operator or a BPL ISP is an affiliate of the electric utility shall be determined under Section 11.003(2) or Section 11.006.

(b) Neither a BPL operator nor a BPL ISP shall be considered a "competitive affiliate" of an electric utility as that term is defined in Section 39.157.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators shall comply with all applicable federal laws, including those protecting licensed spectrum users from interference by BPL systems. The operator of a radio frequency device shall be required to cease operating the device upon notification by a Federal Communications Commission or Public Utilities Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

# SUBTITLE C. TELECOMMUNICATIONS UTILITIES

## CHAPTER 51. GENERAL PROVISIONS

Sec. 51.001. POLICY. (a) Significant changes have occurred in telecommunications since the law from which this title is derived was originally adopted. Communications providers, including providers not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol providers, have made investments in this state and broadened the range of communications

choices available to consumers. To encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure, rules, policies, and principles must be reformulated to reduce regulation of incumbent local exchange companies, ensure fair business practices, and protect the public interest.

(b) It is the policy of this state to:

(1) promote diversity of telecommunications providers and interconnectivity;

(2) encourage a fully competitive telecommunications marketplace; and

(3) maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates.

(c) The policy goals described by Subsection (b) are best achieved by legislation that modernizes telecommunications regulation by:

(1) guaranteeing the affordability of basic telephone service in a competitively neutral manner; and

(2) fostering free market competition in the telecommunications industry.

(d) The technological advancements, advanced telecommunications infrastructure, and increased customer choices for telecommunications services generated by a truly competitive market play a critical role in Texas' economic future by raising living standards for Texans through:

(1) enhanced economic development; and

(2) improved delivery of education, health, and other public and private services.

(e) The strength of competitive forces varies widely between markets, products, and services. It is the policy of this state to require the commission to take action necessary to enhance competition by adjusting regulation to match the degree of competition in the marketplace to:

(1) reduce the cost and burden of regulation; and

(2) protect markets that are not competitive.

(f) It is the policy of this state to ensure that high quality telecommunications services are available, accessible, and usable by an individual with a disability, unless making the services available, accessible, or usable would:

(1) result in an undue burden, including unreasonable cost or technical infeasibility; or

(2) have an adverse competitive effect.

(g) It is the policy of this state to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services, including interexchange services, cable services, wireless services, and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at prices that are reasonably comparable to prices charged for similar services in urban areas.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 1, eff. September 1, 2011.

Sec. 51.002. DEFINITIONS. In this subtitle:

(1) "Basic local telecommunications service" means:

(A) flat rate residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service provided by a local authority or dual party relay service;

(F) the ability to report service problems seven days a week;

(G) lifeline and tel-assistance services; and

(H) any other service the commission determines after a hearing is a basic local telecommunications service.

(2) "Dominant carrier" means a provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within a

certificated exchange area on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition, with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

(3) "Incumbent local exchange company" means a local exchange company that has a certificate of convenience and necessity on September 1, 1995.

(3-a) "Internet Protocol enabled service" means a service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.

(4) "Local exchange company" means a telecommunications utility that has a certificate of convenience and necessity or a certificate of operating authority to provide in this state:

(A) local exchange telephone service;

(B) basic local telecommunications service; or

(C) switched access service.

(5) "Local exchange telephone service" means telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intraexchange or interexchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services; or

(J) any other service the commission determines is not a "local exchange telephone service."

(6) "Long run incremental cost" has the meaning assigned by 16 T.A.C. Section 23.91 or its successor.

(7) "Pricing flexibility" includes:

(A) customer specific contracts;

(B) packaging of services;

(C) volume, term, and discount pricing;

(D) zone density pricing, with a zone to be defined as an exchange; and

(E) other promotional pricing.

(8) "Public utility" or "utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(9) "Separation" means the division of plant, revenues,

expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(10) "Telecommunications provider":

(A) means:

(i) a certificated telecommunications utility;

(ii) a shared tenant service provider;

(iii) a nondominant carrier of telecommunications services;

(iv) a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), except that the term does not include these entities for the purposes of Chapter 17, 55, or 64;

(v) a telecommunications entity that provides central office based PBX-type sharing or resale arrangements;

(vi) an interexchange telecommunications carrier;

(vii) a specialized common carrier;

(viii) a reseller of communications;

(ix) a provider of operator services;

(x) a provider of customer-owned pay telephone service; or

(xi) a person or entity determined by the commission to provide telecommunications services to customers in this state; and

(B) does not mean:

(i) a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services; or

(ii) a state agency or state institution of higher education, or a service provided by a state agency or state institution of higher education.

(11) "Telecommunications utility" means:

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by Section 55.081, unless the provider is a subscriber to customer-owned pay telephone service; and

(G) a separated affiliate or an electronic publishing joint venture as defined in Chapter 63.

(12) "Tier 1 local exchange company" has the meaning assigned by the Federal Communications Commission.

(13) "Voice over Internet Protocol service" means a service that:

(A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;

(B) requires a broadband connection from the user's location; and

(C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 4, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 651, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 2, eff. September 1, 2011.

Sec. 51.003. APPLICABILITY. Except as otherwise expressly provided by this title, this title does not apply to:

(1) a company that as its only form of business:

(A) is a telecommunications manager; or

(B) administers central office based or customer based PBX-type sharing/resale arrangements;

(2) telegraph services;

(3) television or radio stations;

(4) community antenna television services; or

(5) a provider of commercial mobile service as defined by

Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), other than conventional rural radio-telephone services provided by a wire-line telephone company under the Public Mobile Service rules of the Federal Communications Commission (47 C.F.R. Part 22).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.004. PRICING FLEXIBILITY. (a) A discount or other form of pricing flexibility may not be:

(1) unreasonably preferential, prejudicial, or discriminatory; or

(2) predatory or anticompetitive.

(b) This title does not prohibit a volume discount or other discount based on a reasonable business purpose. A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(c) This title allows an offer based on a reasonable business purpose, including an offer made at any time to a selected customer or a group of customers in response to a competitor's offer or a former customer's acceptance of a competitor's offer if the price of the offer meets the requirements of Section 52.0584, 58.063, or 59.031.

(d) An offer made under Subsection (c) must be made in compliance with Chapter 304, Business & Commerce Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 32, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.39, eff. April 1, 2009.

Sec. 51.005. ASSISTANCE TO MUNICIPALITY. On request of a municipality, the commission may advise and assist the municipality with respect to a question or proceeding arising under this title. Assistance provided by the commission may include aid to a municipality on a matter pending before the commission or a court,

such as making a staff member available as a witness or otherwise providing evidence to the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.006. MUNICIPAL PARTICIPATION IN RATEMAKING PROCEEDINGS. (a) The governing body of a municipality participating in a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and

(2) assist the governing body with litigation before the commission or a court.

(b) The public utility in the ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (a) to the extent the commission determines is reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.007. MUNICIPAL STANDING IN CERTAIN CASES. (a) A municipality has standing in each case before the commission that relates to a utility providing service in the municipality.

(b) A municipality's standing is subject to the right of the commission to:

(1) determine standing in a case involving a retail service area dispute that involves two or more utilities; and

(2) consolidate municipalities on an issue of common interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.008. JUDICIAL REVIEW. A municipality is entitled to judicial review of a commission order relating to a utility providing services in the municipality as provided by Section 15.001.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title, including Section 53.201, may be construed as in any way limiting the right of a public utility to pass through a municipal fee, including an increase in a municipal fee.

(b) A public utility that traditionally passes through municipal fees shall promptly pass through any municipal fee reduction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 51.010. COMMISSION INVESTIGATION OF SALE, MERGER, OR CERTAIN OTHER ACTIONS. (a) The commission, not later than the 180th day after the date a public utility reports to the commission under Section 14.101, shall complete an investigation under that section and enter a final order.

(b) If a final order is not entered as required by Subsection (a), the commission is considered to have determined that the action taken by the public utility is consistent with the public interest.

(c) Section 14.101 does not apply to:

(1) a company that receives a certificate of operating authority or a service provider certificate of operating authority under Chapter 54; or

(2) a company electing under Chapter 58.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 52. COMMISSION JURISDICTION

### SUBCHAPTER A. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 52.001. POLICY. (a) It is the policy of this state to protect the public interest in having adequate and efficient telecommunications service available to each resident of this state at just, fair, and reasonable rates.

(b) The telecommunications industry, through technical advancements, federal legislative, judicial, and administrative actions, and the formulation of new telecommunications enterprises, has become and will continue to be in many and growing areas a competitive industry that does not lend itself to traditional public utility regulatory rules, policies, and principles. As a result, the public interest requires that rules, policies, and principles be

formulated and applied to:

(1) protect the public interest; and

(2) provide equal opportunity to each telecommunications utility in a competitive marketplace.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.002. AUTHORITY TO REGULATE. (a) To carry out the public policy stated by Section 52.001 and to regulate rates, operations, and services so that the rates are just, fair, and reasonable and the services are adequate and efficient, the commission has exclusive original jurisdiction over the business and property of a telecommunications utility in this state subject to the limitations imposed by this title.

(b) The commission's regulatory authority as to a telecommunications utility other than a public utility is only as prescribed by this title.

(c) The commission may not require a telecommunications utility that is not a public utility, including a deregulated or transitioning company, to comply with a requirement or standard that is more burdensome than a requirement or standard the commission imposes on a public utility.

(d) Notwithstanding any other law, a department, agency, or political subdivision of this state may not by rule, order, or other means directly or indirectly regulate rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice over Internet Protocol services or other Internet Protocol enabled services. This subsection does not:

(1) affect requirements pertaining to use of a right-of-way or payment of right-of-way fees applicable to Voice over Internet Protocol services under Chapter 283, Local Government Code;

(2) affect any person's obligation to provide video or cable service, as defined under applicable state or federal law, the applicability of Chapter 66, or a requirement to make a payment under Chapter 66;

(3) require or prohibit assessment of enhanced 9-1-1, relay access service, or universal service fund fees on Voice over Internet Protocol service;

(4) affect any entity's obligations under Sections 251 and

252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), or a right granted to an entity by those sections;

(5) affect any applicable wholesale tariff;

(6) grant, modify, or affect the authority of the commission to implement, carry out, or enforce the rights or obligations provided by Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), or of an applicable wholesale tariff through arbitration proceedings or other available mechanisms and procedures;

(7) require or prohibit payment of switched network access rates or other intercarrier compensation rates, as applicable;

(8) limit any commission authority over the subjects listed in Subdivisions (1)-(7) or grant the commission any authority over those subjects; or

(9) affect the assessment, administration, collection, or enforcement of any tax or fee over which the comptroller has authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 3, eff. September 1, 2011.

Sec. 52.003. COOPERATION WITH OTHER REGULATORY AUTHORITIES. In regulating the rates, operations, and services of a telecommunications utility providing service in a municipality located on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the utility regulatory commission of the adjoining state or of the federal government and may hold a joint hearing or make a joint investigation with that commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.004. COMMISSION MAY ESTABLISH SEPARATE MARKETS. (a) The commission may establish separate telecommunications markets in this state if the commission determines that the public interest will be served. The commission shall hold hearings and require evidence as necessary to:

(1) carry out the public purpose of this chapter; and

(2) determine the need and effect of establishing separate markets.

(b) A provider determined to be a dominant carrier as to a particular telecommunications service in a market may not be presumed to be a dominant carrier of a different telecommunications service in that market.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.005. MINIMUM REQUIREMENTS FOR DOMINANT CARRIERS. The commission shall impose as minimum requirements for a dominant carrier the same requirements imposed by Subchapter C, except Section 52.107.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.006. COMMISSION TO REPORT TO LEGISLATURE. (a) Before January 15 of each odd-numbered year, the commission shall report to the legislature on:

(1) the scope of competition in regulated telecommunications markets; and

(2) the effect of competition on customers in both competitive and noncompetitive markets, with a specific focus on rural markets.

(b) The report shall include:

(1) an assessment of the effect of competition on the rates and availability of telecommunications services for residential and business customers;

(2) a summary of commission action over the preceding two years that reflects changes in the scope of competition in regulated telecommunications markets; and

(3) recommendations for legislation the commission determines is appropriate to promote the public interest in the context of a partially competitive telecommunications market.

(c) The commission, in its assessment under Subsection (b)(1), shall specifically address any effects on universal service.

(d) A telecommunications utility shall cooperate with the commission as necessary for the commission to satisfy the

requirements of this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.007. TARIFF REQUIREMENTS RELATING TO PROVIDERS NOT SUBJECT TO RATE OF RETURN REGULATION. (a) This section applies only to a telecommunications provider that is not subject to rate of return regulation under Chapter 53.

(b) A telecommunications provider:

(1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and

(3) may cross-reference its federal tariff in its state tariff if the provider's intrastate switched access rates are the same as the provider's interstate switched access rates.

(c) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the telecommunications provider:

(1) files written notice of the withdrawal with the commission; and

(2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on the telecommunications provider's Internet website.

(d) The commission may not require a telecommunications provider to withdraw a tariff, price list, or customer service agreement.

(d-1) The commission may not require a nondominant carrier to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the service's rates, terms, or conditions.

(d-2) In this subsection, "deregulated company" and "transitioning company" have the meanings assigned by Section 65.002. The commission may not require a deregulated company or transitioning company to obtain advance approval for a filing with the commission

or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers:

(1) a nonbasic retail service or the service's rates, terms, or conditions; or

(2) for a market that has been deregulated, a basic network service or the service's rates, terms, or conditions.

(d-3) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(e) This section does not affect the authority of the commission to regulate wholesale services, or administer or enforce Chapter 56 or any other applicable regulation permitted or required under this title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 4, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 1, eff. September 1, 2013.

## SUBCHAPTER B. INCUMBENT LOCAL EXCHANGE COMPANIES

Sec. 52.051. POLICY. In adopting rules and establishing procedures under this subchapter, the commission shall:

(1) attempt to balance the public interest in a technologically advanced telecommunications system providing a wide range of new and innovative services with traditional regulatory concerns for:

(A) preserving universal service;

(B) prohibiting anticompetitive practices; and

(C) preventing the subsidization of competitive services with revenues from regulated monopoly services; and

(2) incorporate an appropriate mix of regulatory and market mechanisms reflecting the level and nature of competition in the marketplace.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.052. APPLICABILITY. This subchapter does not apply to basic local telecommunications service, including local measured service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.053. CERTAIN RATES PROHIBITED. A rate established under this subchapter may not be:

(1) unreasonably preferential, prejudicial, or discriminatory;

(2) subsidized either directly or indirectly by a regulated monopoly service; or

(3) predatory or anticompetitive.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.054. RULES AND PROCEDURES FOR INCUMBENT LOCAL EXCHANGE COMPANIES. (a) To carry out the public policy stated in Section 52.001, notwithstanding any other provision of this title, the commission may adopt rules and establish procedures applicable to incumbent local exchange companies to:

(1) determine the level of competition in a specific telecommunications market or submarket; and

(2) provide appropriate regulatory treatment to allow an incumbent local exchange company to respond to significant competitive challenges.

(b) This section does not change the burden of proof on an incumbent local exchange company under Sections 53.003, 53.006, 53.051, 53.052, 53.053, 53.054, 53.055, 53.057, 53.058, 53.060, and 53.062.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.055. HEARING TO DETERMINE LEVEL OF COMPETITION. In determining the level of competition in a specific market or submarket, the commission shall hold an evidentiary hearing to consider:

(1) the number and size of telecommunications utilities or

other persons providing the same, equivalent, or substitutable service;

(2) the extent to which the same, equivalent, or substitutable service is available;

(3) the ability of a customer to obtain the same, equivalent, or substitutable service at comparable rates and terms;

(4) the ability of a telecommunications utility or other person to make the same, equivalent, or substitutable service readily available at comparable rates and terms;

(5) the existence of a significant barrier to the entry or exit of a provider of the service; and

(6) other relevant information the commission determines is appropriate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.056. SPECIFICALLY AUTHORIZED REGULATORY TREATMENTS. The regulatory treatments the commission may implement under Section 52.054 include:

(1) approval of a range of rates for a specific service; and

(2) the detariffing of rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 21 (S.B. 983), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 5, eff. September 1, 2011.

Sec. 52.058. GENERAL PROVISIONS RELATING TO NEW OR EXPERIMENTAL SERVICES OR PROMOTIONAL RATES. (a) To encourage the rapid introduction of new or experimental services or promotional rates, the commission shall adopt rules and establish procedures that allow:

(1) the expedited introduction of new or experimental services or promotional rates;

(2) the establishment and adjustment of rates; and

(3) the withdrawal of those services or promotional rates.

(b) The rules and procedures described by Subsection (a) must

include rules and procedures to allow the governing body of a municipality served by an incumbent local exchange company having more than 500,000 access lines in this state to make requests to the commission for new or experimental services or promotional rates.

(c) A rate established or adjusted at the request of a municipality may not:

(1) result in higher rates for ratepayers outside the municipal boundaries; or

(2) include a rate for incumbent local exchange company interexchange service or interexchange carrier access service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 7, eff. Sept. 1, 1999.

Sec. 52.0583. NEW SERVICES. (a) An incumbent local exchange company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the incumbent local exchange company's certificated area or areas or who has an effective interconnection agreement with the incumbent local exchange company.

(b) An incumbent local exchange company shall price each new service at or above the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines in this state to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange company of a new service is in compliance with Subsection (b).

(d) If a complaint is filed under Subsection (c), the incumbent local exchange company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the

complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

(e) A company electing incentive regulation under Chapter 58 or 59 may introduce new services only in accordance with the applicable provisions of Chapter 58 or 59.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 8, eff. Sept. 1, 1999.

Sec. 52.0584. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this title, an incumbent local exchange company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. The company may exercise pricing flexibility 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the incumbent local exchange company's certificated area or areas or who has an effective interconnection agreement with the incumbent local exchange company. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packaging of any regulated service with any unregulated service or any service of an affiliate.

(b) An incumbent local exchange company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines in this state to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that an incumbent local exchange company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the

31st day after the date the company implements the rate.

(d) A company electing incentive regulation under Chapter 58 or 59 may use pricing and packaging flexibility and introduce customer promotional offerings only in accordance with the applicable provisions of Chapter 58 or 59.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 8, eff. Sept. 1, 1999.

Sec. 52.0585. CUSTOMER PROMOTIONAL OFFERINGS. (a) An incumbent local exchange company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The company shall file with the commission a promotional offering that consists of:

(1) waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) An incumbent local exchange company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) An incumbent local exchange company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 8, eff. Sept. 1, 1999.

Sec. 52.059. RATES TO COVER APPROPRIATE COSTS. (a) The commission by rule shall adopt standards necessary to ensure that a rate established under this subchapter covers appropriate costs as determined by the commission.

(b) Until standards are set under Subsection (a), the commission shall use a costing methodology that is in the public interest to determine whether a rate established under this subchapter covers appropriate costs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.060. ADMINISTRATIVE FEE OR ASSESSMENT. The commission may prescribe and collect a fee or assessment from local exchange companies necessary to recover the cost to the commission and to the office of activities carried out and services provided under this subchapter and Section 52.006.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. TELECOMMUNICATIONS UTILITIES THAT ARE NOT DOMINANT CARRIERS

Sec. 52.101. APPLICABILITY. This subchapter applies only to a telecommunications utility that is not:

(1) a dominant carrier; or

(2) the holder of a certificate of operating authority or a service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.102. LIMITED REGULATORY AUTHORITY. (a) Except as otherwise provided by this subchapter, Subchapters D and K, Chapter 55, and Section 55.011, the commission has only the following jurisdiction over a telecommunications utility subject to this subchapter:

(1) to require registration under Section 52.103;

(2) to conduct an investigation under Section 52.104;

(3) to require the filing of reports as the commission periodically directs;

(4) to require the maintenance of statewide average rates or prices of telecommunications service;

(5) to require a telecommunications utility that had more than six percent of the total intrastate access minutes of use as measured for the most recent 12-month period to pass switched access rate reductions under this title to customers as required by Section 52.112;

(6) to require access to telecommunications service under Section 52.105; and

(7) to require the quality of telecommunications service provided to be adequate under Section 52.106.

(b) The authority provided by Subsection (a)(5) expires on the

date on which Section 52.112 expires.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.04(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 9, eff. Sept. 1, 1999.

Sec. 52.103. REGISTRATION REQUIRED. (a) A telecommunications utility shall register with the commission not later than the 30th day after the date the utility commences service to the public.

(b) A telecommunications utility that registers under Subsection (a) shall file with the commission a description of:

(1) the location and type of service provided;

(2) the price to the public of that service; and

(3) other registration information the commission directs.

(c) An interexchange telecommunications utility doing business in this state shall maintain on file with the commission tariffs or lists governing the terms of providing its services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) The commission by rule shall require each holder of a certificate of operating authority and holder of a service provider certificate of operating authority to file with the commission on a one-time or regular basis:

(1) the certificate holder's name;

(2) the certificate holder's address; and

(3) the most recent version of each annual report the commission requires the certificate holder to file under this subtitle.

(b) The rules must:

(1) require the commission to automatically allow a certificate holder an extension of a filing deadline for the number of days prescribed by the rule, as applicable; and

(2) state that the certificate of a holder will not be valid after the last day of the automatic extension period described by Subdivision (1) if the certificate holder does not file information required by the commission under this section by the end of the automatic extension period.

(c) A certificate holder whose certificate is no longer valid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.11, eff. September 1, 2013.

Sec. 52.104. COMMISSION MAY INVESTIGATE. (a) The commission may investigate as necessary to determine the effect and scope of competition in the telecommunications industry. The investigation may include:

(1) identifying dominant carriers in the local telecommunications and intraLATA interexchange telecommunications industry; and

(2) defining the telecommunications market or markets.

(b) In conducting an investigation under this section, the commission may:

(1) hold a hearing;

(2) issue a subpoena to compel the attendance of a witness or the production of a document; and

(3) make findings of fact and decisions to administer this title or a rule, order, or other action of the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.105. ACCESS TO CERTAIN SERVICES REQUIRED. (a) The commission may require that each local exchange area have access to local and interexchange telecommunications service, except as otherwise provided by this section.

(b) The commission shall allow a telecommunications utility to discontinue service to a local exchange area if:

(1) comparable service is available in the area; and

(2) discontinuing the service is not contrary to the public interest.

(c) This section does not authorize the commission to require a telecommunications utility to initiate service to a local exchange area to which the telecommunications utility:

(1) did not provide service during the preceding 12-month period; and

(2) has not provided service previously for a cumulative period of at least one year.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.106. QUALITY OF SERVICE REQUIRED. The commission may require the quality of telecommunications service provided in a local exchange in which the commission determines that service has deteriorated and become unreliable to be adequate to protect the public interest and the interests of customers of that exchange.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.107. PREDATORY PRICING. (a) The commission may enter an order necessary to protect the public interest if the commission finds by a preponderance of the evidence after notice and hearing that an interexchange telecommunications utility has:

(1) engaged in predatory pricing; or

(2) attempted to engage in predatory pricing.

(b) A hearing held by the commission under Subsection (a) must be based on a complaint from another interexchange telecommunications utility.

(c) An order entered under Subsection (a) may include the imposition on a specific service of the commission's full regulatory authority under:

(1) this chapter;

(2) Chapters 14, 15, 51, 53, and 54; and

(3) Subchapters A, D, and H, Chapter 55.

(d) This section applies only to an interexchange telecommunications utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.108. OTHER PROHIBITED PRACTICES. The commission may enter any order necessary to protect the public interest if the commission finds after notice and hearing that a telecommunications utility has:

(1) failed to maintain statewide average rates;

(2) abandoned interexchange message telecommunications service to a local exchange area in a manner contrary to the public interest;

(3) engaged in a pattern of preferential or discriminatory activities prohibited by Section 53.003, 55.005, or 55.006; or

(4) failed to pass switched access rate reductions to customers under Chapter 56 or other law, as required by Section 52.112.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 10, eff. Sept. 1, 1999.

Sec. 52.109. AVAILABILITY OF SERVICE. (a) The commission may require a telecommunications utility that provides a service to make that service available in an exchange served by the telecommunications utility within a reasonable time after receipt of a bona fide request for the service in that exchange.

(b) A telecommunications utility may not be required to extend a service to an area if:

(1) the local exchange company is unable to provide the required access or other service; or

(2) extending the service would, after consideration of the public interest to be served, impose unreasonable costs on or require unreasonable investments by the telecommunications utility.

(c) The commission may require from a telecommunications utility or a local exchange company information necessary to enforce this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.110. BURDEN OF PROOF. (a) In a proceeding before the commission in which it is alleged that a telecommunications utility engaged in conduct in violation of Section 52.107, 52.108, 52.109, or 52.112, the burden of proof is on:

(1) a telecommunications utility complaining of conduct committed against it in violation of this subchapter; or

(2) except as provided by Subsection (b), the responding telecommunications utility if the proceedings are:

(A) brought by a customer or customer representative

who is not a telecommunications utility; or

(B) initiated by the commission.

(b) The commission may impose the burden of proof on the complaining party in a proceeding described by Subsection (a)(2) if the commission determines that placing the burden of proof on the complaining party is in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 11, eff. Sept. 1, 1999.

Sec. 52.111. COMMISSION MAY EXEMPT. The commission may exempt from a requirement of this subchapter a telecommunications utility that:

(1) does not have a significant effect on the public interest, as determined by the commission; or

(2) relies solely on the facilities of others to complete long distance calls, if the commission determines that the exemption is in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.112. REDUCTION PASS-THROUGH REQUIRED. (a) Each telecommunications utility that had more than six percent of the total intrastate access minutes of use as measured for the most recent 12-month period shall pass through to customers switched access rate reductions under this title. The residential customer class shall receive not less than a proportionate share of the reductions.

(b) Within six months following each reduction in intrastate switched access rates under this title, each telecommunications utility subject to this section shall file with the commission a sworn affidavit confirming that the utility has reduced the per minute rates it charges under its basic rate schedule to reflect the per minute reduction in intrastate switched access rates.

(c) This section expires on the second anniversary of the date incumbent local exchange companies doing business in the state are no longer prohibited by federal law from offering interLATA and interstate long distance service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 12, eff. Sept. 1, 1999.

## SUBCHAPTER D. CERTIFICATE HOLDERS

Sec. 52.151. APPLICABILITY. This subchapter applies only to a telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.152. LIMITED REGULATORY AUTHORITY. Except as otherwise specifically provided by this title, the commission has only the following authority over a telecommunications utility subject to this subchapter:

(1) to enforce this title under Subchapter B, Chapter 15;

(2) to assert jurisdiction over a specific service under Subchapter E;

(3) to require co-carriage reciprocity; and

(4) to regulate condemnation and building access.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.153. BOOKS AND RECORDS. The commission may prescribe forms of books, accounts, records, and memoranda to be kept by a telecommunications utility, but only as necessary to enforce the limited jurisdiction over those companies that this title provides to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.154. COMMISSION MAY NOT OVERBURDEN. The commission may not, by a rule or regulatory practice adopted under this chapter, impose on a nondominant telecommunications utility a greater regulatory burden than is imposed on:

(1) a holder of a certificate of convenience and necessity serving the same area; or

(2) a deregulated company, as defined by Section 65.002, that:

(A) has 500,000 or more access lines in service at the time it becomes a deregulated company; or

(B) serves an area also served by the nondominant telecommunications utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 2, eff. September 1, 2013.

Sec. 52.155. PROHIBITION OF EXCESSIVE ACCESS CHARGES. (a) A telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority may not charge a higher amount for originating or terminating intrastate switched access than the prevailing rates charged by the holder of the certificate of convenience and necessity or the holder of a certificate of operating authority issued under Chapter 65 in whose territory the call originated or terminated unless:

(1) the commission specifically approves the higher rate; or

(2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.

(b) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this section.

(c) Notwithstanding Subsection (a), Chapter 65 governs the switched access rates of a company that holds a certificate of operating authority issued under Chapter 65.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 13, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 3, eff. September 7, 2005.

Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS. A telecommunications utility may not:

(1) establish a retail rate, term, or condition that is

anticompetitive or unreasonably preferential, prejudicial, or discriminatory; or

(2) engage in predatory pricing or attempt to engage in predatory pricing.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 4, eff. September 7, 2005.

## SUBCHAPTER E. DEREGULATION OF SERVICE

Sec. 52.201. DEREGULATION OF SERVICE. Notwithstanding any other provision of this title, the commission may deregulate the price of a service in a geographic market if, after notice and hearing, the commission determines that:

(1) the incumbent local exchange company is not dominant for the service in that geographic market; or

(2) the holder of a certificate of operating authority who is a dominant carrier is no longer dominant for the service in that geographic market.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.202. DETERMINATION OF GEOGRAPHIC MARKET. In determining the geographic market under Section 52.201, the commission shall consider the economic and technical conditions of the market.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.203. MARKET POWER TEST. (a) To determine whether an incumbent local exchange company or holder of a certificate of operating authority who is a dominant carrier is no longer dominant for a service in a geographic market, the commission must find that:

(1) there is an effective competitive alternative; and

(2) the incumbent local exchange company or certificate holder does not have market power sufficient to control, in a manner that is adverse to the public interest, the price of the service in the geographic area.

(b) To determine whether the incumbent local exchange company

or certificate holder is dominant for a service in the geographic area, the commission shall consider:

(1) the number and size of telecommunications utilities or other persons who provide the same, equivalent, or substitutable service in the relevant market;

(2) the extent to which the service is available in the relevant market;

(3) the ability of customers in the relevant market to obtain the same, equivalent, or substitutable service at comparable rates and on comparable terms;

(4) the ability of a telecommunications utility or other person to make the same, equivalent, or substitutable service readily available in the relevant market at comparable rates and on comparable terms;

(5) the proportion of the relevant market that is being provided the service by a telecommunications utility other than the incumbent local exchange company or holder of a certificate of operating authority who is a dominant carrier; and

(6) other relevant information the commission considers necessary.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.204. RATE FOR DEREGULATED SERVICE. If the price of a service in a geographic market is deregulated under this subchapter, the incumbent local exchange company or holder of a certificate of operating authority may set the rate for the service at any level higher than the service's long run incremental cost.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.205. INVESTIGATION OF COMPETITION. (a) On request of an incumbent local exchange company or holder of a certificate of operating authority who is a dominant carrier made in conjunction with an application under this subchapter, the commission shall investigate to determine the effect and scope of competition in the geographic and service markets at issue.

(b) The commission has the power necessary and convenient to conduct the investigation. In conducting an investigation, the

commission may:

(1) hold a hearing;

(2) issue a subpoena to compel the attendance of a witness and the production of a document; and

(3) make findings of fact and decisions with respect to the markets.

(c) A party to a proceeding may use, in an application for pricing flexibility, the results of an investigation conducted under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.206. REREGULATION OF MARKET. The commission, on its own motion or on a complaint that the commission considers to have merit, may assert regulation over a service in a geographic market if:

(1) the incumbent local exchange company or holder of a certificate of operating authority who was previously a dominant carrier is found to again be dominant for the service in that geographic market; or

(2) the provider of services under a certificate of operating authority or service provider certificate of operating authority is found to be dominant for the service in that geographic market.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.207. REPORTS; CONFIDENTIAL INFORMATION. (a) In conjunction with the commission's authority to collect and compile information, the commission may collect a report from a holder of a:

(1) certificate of operating authority; or

(2) service provider certificate of operating authority.

(b) The commission shall maintain the confidentiality of information contained in a report collected under this section that is claimed to be confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(c) To protect the confidential information, the commission shall aggregate the information to the maximum extent possible

considering the purpose of the proceeding.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER F. REQUIRED REPORTS AND FILINGS; RECORDS**

Sec. 52.251. TARIFF FILINGS. (a) A public utility shall file with the commission a tariff showing each rate that is:

(1) subject to the commission's jurisdiction; and

(2) in effect for a utility service, product, or commodity offered by the utility.

(b) The public utility shall file as a part of the tariff required under Subsection (a) each rule that relates to or affects:

(1) a rate of the utility; or

(2) a utility service, product, or commodity furnished by the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.252. DEPRECIATION ACCOUNT. The commission shall require each public utility to carry a proper and adequate depreciation account in accordance with:

(1) the rates and methods prescribed by the commission under Section 53.056; and

(2) any other rule the commission adopts.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.253. ACCOUNTS OF PROFITS AND LOSSES. A public utility shall keep separate accounts showing profits or losses from the sale or lease of merchandise, including an appliance, a fixture, or equipment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.255. AVAILABILITY OF RECORDS. Notwithstanding Section 14.152, a book, account, record, or memorandum of a public utility may be removed from this state if the book, account, record, or

memorandum is returned to this state for any commission inspection authorized by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 52.256. PLAN AND REPORT OF WORKFORCE DIVERSITY AND OTHER BUSINESS PRACTICES. (a) In this section, "small business" and "historically underutilized business" have the meanings assigned by former Section 481.191, Government Code, as that section existed on January 1, 2015.

(b) Before January 1, 2000, each telecommunications utility shall develop and submit to the commission a comprehensive five-year plan to enhance diversity of its workforce in all occupational categories and for increasing opportunities for small and historically underutilized businesses. The plan must consist of:

(1) the telecommunications utility's performance with regard to workforce diversity and contracting with small and historically underutilized businesses;

(2) initiatives that the telecommunications utility will pursue in these areas over the period of the plan;

(3) a listing of programs and activities the telecommunications utility will undertake to achieve each of these initiatives; and

(4) a listing of the business partnership initiatives the telecommunications utility will undertake to facilitate small and historically underutilized business entry into the telecommunications market, taking into account opportunities for contracting and joint ventures.

(c) Each telecommunications utility shall submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses. The report must include:

(1) the diversity of the telecommunications utility's workforce as of the time of the report;

(2) the telecommunications utility's level of contracting with small and historically underutilized businesses;

(3) the specific progress made under the plan under Subsection (b);

(4) the specific initiatives, programs, and activities undertaken under the plan during the preceding year;

(5) an assessment of the success of each of those initiatives, programs, and activities;

(6) the extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses; and

(7) the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 14, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 364 (H.B. 2667), Sec. 5, eff. September 1, 2015.

## CHAPTER 53. RATES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES. (a) Except as otherwise provided by this title, the commission may establish and regulate rates of a public utility and may adopt rules for determining:

(1) the classification of customers and services; and

(2) the applicability of rates.

(b) A rule or order of the commission may not conflict with a ruling of a federal regulatory body.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.002. COMPLIANCE WITH TITLE. A utility may not charge or receive a rate for utility service except as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.003. JUST AND REASONABLE RATES. (a) The commission

shall ensure that each rate a public utility or two or more public utilities jointly make, demand, or receive is just and reasonable.

(b) A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer.

(c) A public utility may not:

(1) grant an unreasonable preference or advantage concerning rates to a person in a classification;

(2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates; or

(3) establish or maintain an unreasonable difference concerning rates between localities or between classes of service.

(d) In establishing a public utility's rates, the commission may treat as a single class two or more municipalities that a public utility serves if the commission considers that treatment to be appropriate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.004. EQUALITY OF RATES AND SERVICES. (a) A public utility may not directly or indirectly charge, demand, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable tariff filed under Section 52.251.

(b) A person may not knowingly receive or accept a service from a public utility for a compensation greater or less than the compensation prescribed by the tariff.

(c) This title does not prevent a cooperative corporation from returning to its members net earnings resulting from its operations in proportion to the members' purchases from or through the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.005. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the commission, a public utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.006. BURDEN OF PROOF. (a) In a proceeding involving a proposed rate change, the public utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility proposes the change; or

(2) an existing rate is just and reasonable, if the proposal is to reduce the rate.

(b) In a proceeding in which the rate of an incumbent local exchange company is in issue, the incumbent local exchange company has the burden of proving that the rate is just and reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.007. LIMIT ON RECONNECTION FEE. The commission shall establish a reasonable limit on the amount that a local exchange company may charge a customer for changing the location at which the customer receives service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. COMPUTATION OF RATES

Sec. 53.051. ESTABLISHING OVERALL REVENUES. In establishing a public utility's rates, the commission shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.052. ESTABLISHING REASONABLE RETURN. In establishing a reasonable return on invested capital, the commission shall consider applicable factors, including:

(1) the quality of the utility's services;

(2) the efficiency of the utility's operations; and
(3) the quality of the utility's management.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.053. COMPONENTS OF INVESTED CAPITAL. (a) Public utility rates shall be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.

(b) The original cost of property shall be determined at the time the property is dedicated to public use, whether by the utility that is the present owner or by a predecessor.

(c) In this section, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.054. CONSTRUCTION WORK IN PROGRESS. (a) Construction work in progress, at cost as recorded on the public utility's books, may be included in the utility's rate base. The inclusion of construction work in progress is an exceptional form of rate relief that the commission may grant only if the utility demonstrates that inclusion is necessary to the utility's financial integrity.

(b) Construction work in progress may not be included in the rate base for a major project under construction to the extent that the project has been inefficiently or imprudently planned or managed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.055. SEPARATIONS AND ALLOCATIONS. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.056. DEPRECIATION, AMORTIZATION, AND DEPLETION. (a) The commission shall establish proper and adequate rates and methods

of depreciation, amortization, or depletion for each class of property of a public utility.

(b) On application of a utility, the commission shall establish depreciation rates that promote the use of new technology and infrastructure. In establishing rates under this subsection, the commission shall consider depreciation practices of nonregulated telecommunications providers.

(c) The rates and methods established under this section and the depreciation account required by Section 52.252 shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

(d) Notwithstanding this section, a company electing under Chapter 58 may determine its own depreciation rates and amortizations. The company shall notify the commission of any change in those rates or amortizations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.057. NET INCOME; DETERMINATION OF REVENUES AND EXPENSES. (a) A public utility's net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the commission.

(b) The commission shall determine revenues and expenses in a manner consistent with this subchapter.

(c) The commission may adopt reasonable rules with respect to whether an expense is allowed for ratemaking purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.058. CONSIDERATION OF PAYMENT TO AFFILIATE. (a) Except as provided by Subsection (b), the commission may not allow as capital cost or as expense a payment to an affiliate for:

(1) cost of a service, property, right, or other item; or

(2) interest expense.

(b) The commission may allow a payment described by Subsection (a) only to the extent that the commission finds the payment is reasonable and necessary for each item or class of items as determined by the commission.

(c) A finding under Subsection (b) must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) except as provided by Subsection (d), a finding that the price to the utility is not higher than the prices charged by the supplying affiliate to:

(A) its other affiliates or divisions for the same item or class of items; or

(B) a nonaffiliated person within the same market area or having the same market conditions.

(d) A finding under this section is not required as to the prices charged by the supplying affiliate to its other affiliates or divisions if the supplying affiliate computed its charges to the utility in a manner consistent with Federal Communications Commission rules.

(e) If the commission finds that the affiliate expense for the test period is unreasonable, the commission shall:

(1) determine the reasonable level of the expense; and

(2) include that expense in determining the utility's cost of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.059. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the commission shall:

(1) balance equitably the interests of present and future customers; and

(2) apportion accordingly the benefits between consumers and the public utility.

(b) If a public utility retains a portion of the investment tax credit, that portion shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.060. COMPUTATION OF INCOME TAX; CONSOLIDATED RETURN. (a) Unless it is shown to the satisfaction of the commission that it

was reasonable to choose not to consolidate returns, a public utility's income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from that return, if:

(1) the utility is a member of an affiliated group eligible to file a consolidated income tax return; and

(2) it is advantageous to the utility to do so.

(b) The amount of income tax that a consolidated group of which a public utility is a member saves, because the consolidated return eliminates the intercompany profit on purchases by the utility from an affiliate, shall be applied to reduce the cost of the property or service purchased from the affiliate.

(c) The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate-based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.061. ALLOWANCE OF CERTAIN EXPENSES. (a) The commission may not allow as a cost or expense for ratemaking purposes:

(1) an expenditure for legislative advocacy; or

(2) an expenditure described by Section 52.254 that the commission determines to be not in the public interest.

(b) The commission may allow as a cost or expense reasonable charitable or civic contributions not to exceed the amount approved by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.062. CONSIDERATION OF CERTAIN EXPENSES. The commission may not consider for ratemaking purposes:

(1) an expenditure for legislative advocacy, made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) an expenditure for costs of processing a refund or credit under Section 53.110; or

(3) any other expenditure, including an executive salary, advertising expense, legal expense, or civil penalty or fine the commission finds to be unreasonable, unnecessary, or not in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.063. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing a public utility's rates, the commission may not consider a profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.064. SELF-INSURANCE. (a) A public utility may self-insure all or part of the utility's potential liability or catastrophic property loss, including windstorm, fire, and explosion losses, that could not have been reasonably anticipated and included under operating and maintenance expenses.

(b) The commission shall approve a self-insurance plan under this section if the commission finds that:

(1) the coverage is in the public interest;

(2) the plan, considering all costs, is a lower cost alternative to purchasing commercial insurance; and

(3) ratepayers will receive the benefits of the savings.

(c) In computing a utility's reasonable and necessary expenses under this subchapter, the commission, to the extent the commission finds is in the public interest, shall allow as a necessary expense money credited to a reserve account for self-insurance. The commission shall determine reasonableness under this subsection:

(1) from information provided at the time the self-insurance plan and reserve account are established; and

(2) on the filing of a rate case by a utility that has a reserve account.

(d) After a reserve account for self-insurance is established, the commission shall:

(1) determine whether the account has a surplus or shortage

under Subsection (e); and

(2) subtract any surplus from or add any shortage to the utility's rate base.

(e) A surplus in the reserve account exists if the charges against the account are less than the money credited to the account. A shortage in the reserve account exists if the charges against the account are greater than the money credited to the account.

(f) The commission shall adopt rules governing self-insurance under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.065. INTEREXCHANGE SERVICES; RATES OF INCUMBENT LOCAL EXCHANGE COMPANY. (a) An incumbent local exchange company's rates for interexchange telecommunications services must be statewide average rates except as ordered by the commission after application and hearing.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(2), eff. September 1, 2011.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 21 (S.B. 983), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 21(2), eff. September 1, 2011.

**SUBCHAPTER C. GENERAL PROCEDURES FOR RATE CHANGE PROPOSED BY UTILITY**

Sec. 53.101. DEFINITION. In this subchapter, "major change" means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2-1/2 percent. The term does not include an increase in rates that the commission allows to go into effect or the utility makes under an order of the commission after hearings held with public notice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.102. STATEMENT OF INTENT TO CHANGE RATES. (a) A

utility may not change its rates unless the utility files a statement of its intent with the commission at least 35 days before the effective date of the proposed change.

(b) The utility shall also mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality.

(c) The statement of intent must include:

(1) proposed revisions of tariffs; and

(2) a detailed statement of:

(A) each proposed change;

(B) the effect the proposed change is expected to have on the revenues of the utility;

(C) each class and number of utility consumers affected; and

(D) any other information required by the commission's rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.103. NOTICE OF INTENT TO CHANGE RATES. (a) The utility shall:

(1) publish, in conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(2) mail notice of the proposed change to any other affected person as required by the commission's rules.

(b) The commission may waive the publication of notice requirement prescribed by Subsection (a) in a proceeding that involves only a rate reduction for each affected ratepayer. The applicant shall give notice of the proposed rate change by mail to each affected utility customer.

(c) The commission by rule shall define other proceedings for which the publication of notice requirement prescribed by Subsection (a) may be waived on a showing of good cause. A waiver may not be granted in a proceeding involving a rate increase to any class or category of ratepayer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.104. EARLY EFFECTIVE DATE OF RATE CHANGE. (a) For good cause shown, the commission may allow a rate change, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 53.102; and

(2) under conditions the commission prescribes, subject to suspension as provided by this subchapter.

(b) The utility shall immediately revise its tariffs to include the change.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.105. DETERMINATION OF PROPRIETY OF CHANGE; HEARING. (a) If a tariff changing rates is filed with the commission, the commission shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the change, enter on a hearing to determine the propriety of the change.

(b) The commission shall hold a hearing in every case in which the change constitutes a major change. The commission may, however, use an informal proceeding if the commission does not receive a complaint before the 46th day after the date notice of the change is filed.

(c) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.106. REGIONAL HEARING. The commission shall hold a regional hearing at an appropriate location in a case in which the commission determines it is in the public interest to hear testimony at a regional hearing for inclusion in the record.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.107. PREFERENCE TO HEARING. The commission shall:

(1) give preference to a hearing under this subchapter and to deciding questions arising under this subchapter and Subchapter E over any other question pending before it; and

(2) decide the questions as quickly as possible.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.108. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision, the commission, after delivering to the utility a written statement of the commission's reasons, may suspend the rate change for not longer than 150 days after the date the rate change would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a) shall be extended two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the commission does not make a final determination concerning a rate change before expiration of the suspension period, the commission is considered to have approved the change. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.109. TEMPORARY RATES. (a) The commission may establish temporary rates to be in effect during the suspension period under Section 53.108.

(b) If the commission does not establish temporary rates, the rates in effect when the suspended tariff was filed continue in effect during the suspension period.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.110. BONDED RATES. (a) A utility may put a changed rate into effect by filing a bond with the commission if:

(1) the 150-day suspension period has been extended under

Section 53.108(b); and

(2) the commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(b) The bonded rate may not exceed the proposed rate.

(c) The bond must be:

(1) payable to the commission in an amount, in a form, and with a surety approved by the commission; and

(2) conditioned on refund.

(d) The utility shall refund or credit against future bills:

(1) money collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on that money, at the current interest rate as determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.111. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the commission finds the rates are unreasonable or in violation of law, the commission shall:

(1) enter an order establishing the rates the utility shall charge or apply for the service in question; and

(2) serve a copy of the order on the utility.

(b) The rates established in the order shall be observed thereafter until changed as provided by this title.

(c) This section does not apply to a company electing under Chapter 58 or 59 except as otherwise provided by those chapters or by Chapter 60.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.112. EXPIRATION OF SUSPENSION; EFFECT ON CERTAIN RATES. (a) Notwithstanding Section 53.111(a), if the commission does not make a final determination concerning an incumbent local exchange company's rate change before expiration of the 150-day suspension period, the rates finally approved by the commission take effect on and the incumbent local exchange company is entitled to collect those rates from the date the 150-day suspension period expired.

(b) A surcharge or other charge necessary to effectuate this section may not be recovered over a period of less than 90 days from the date of the commission's final order.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.113. FCC-APPROVED TARIFFS FOR SWITCHED-ACCESS SERVICE. (a) An incumbent local exchange company may file with the commission tariffs for switched-access service that have been approved by the Federal Communications Commission. The tariffs must include all rate elements in the company's interstate access tariff other than end-user charges.

(b) Not later than the 60th day after the date a company files tariffs under Subsection (a), the commission shall order the rates and terms to be the incumbent local exchange company's intrastate switched-access rates and terms if, on review, the tariffs contain the same rates and terms, excluding end-user charges, as approved by the Federal Communications Commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

Sec. 53.151. UNREASONABLE OR VIOLATIVE EXISTING RATES. (a) If the commission, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a public utility for a service are unreasonable or in violation of law, the commission shall:

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

(2) serve a copy of the order on the utility.

(b) The rates established under Subsection (a) constitute the legal rates of the public utility until changed as provided by this title.

(c) This section does not apply to a company electing under Chapter 58 or Chapter 59 except as otherwise provided by those chapters.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. If a public utility does not produce or generate the service that it distributes, transmits, or furnishes to the public for compensation but obtains the service from another source, the commission may investigate the cost of that production or generation in an investigation of the reasonableness of the utility's rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. COST RECOVERY AND RATE ADJUSTMENTS

Sec. 53.201. AUTOMATIC ADJUSTMENT FOR CHANGE IN COSTS PROHIBITED. The commission may not establish a rate or tariff that authorizes a utility to automatically adjust and pass through to the utility's customers a change in the utility's costs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. REGULATORY POLICY FOR SMALL INCUMBENT LOCAL EXCHANGE COMPANIES AND COOPERATIVES

Sec. 53.251. GENERAL POLICY. Regulatory policy should recognize that:

(1) there are differences between small and large incumbent local exchange companies;

(2) there are a large number of customer-owned telephone cooperatives and small, locally owned investor companies; and

(3) it is appropriate to provide incentives and flexibility to allow an incumbent local exchange company that serves a rural area to:

(A) provide existing services; and

(B) introduce new technology and new services in a prompt, efficient, and economical manner.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.252. ADOPTION OF CERTAIN POLICIES. Notwithstanding any other provision of this title, the commission shall consider and may

adopt policies to:

(1) provide for evaluation of the overall reasonableness of the rates of a rural or small incumbent local exchange company or cooperative not more frequently than once every three years;

(2) permit consideration of future construction plans and operational changes in evaluating the reasonableness of the rates of a rural or small incumbent local exchange company or cooperative; or

(3) allow a rural or small incumbent local exchange company or cooperative to:

(A) provide required information by report or by other means, as necessary, including a required rate filing package, in substantially less burdensome and complex form than is required of a larger incumbent local exchange company;

(B) change depreciation and amortization rates, if customer rates are not affected, after notice to the commission, subject to commission review in a proceeding under Subchapter C or Subchapter D;

(C) adopt for a new service the rates for the same or a substantially similar service offered by a larger incumbent local exchange company, without additional cost justification; and

(D) submit to the commission, instead of a management audit otherwise required by law, policy, or rule, financial audits regularly performed by an independent auditor or required and performed as a result of the company's or cooperative's participation in a federal or state financing or revenue-sharing program.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER G. SPECIAL PROCEDURES FOR SMALL LOCAL EXCHANGE COMPANIES AND COOPERATIVES

Sec. 53.301. DEFINITION. (a) In this subchapter, "minor change" means a change, including the restructuring of rates of existing services, that:

(1) decreases the rates or revenues of an incumbent local exchange company; or

(2) together with any other rate change or approved tariff changes in the 12 months preceding the effective date of the proposed change, increases the company's total regulated intrastate gross annual revenues by not more than five percent.

(b) With regard to a change to a basic local access line rate, a "minor change" does not include a change that, together with any other change to the basic local access line rate that took effect during the 12 months preceding the effective date of the proposed change, results in an increase of more than 50 percent.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 118 (H.B. 2680), Sec. 1, eff. September 1, 2011.

Sec. 53.302. APPLICABILITY. This subchapter does not apply to an incumbent local exchange company that is a cooperative corporation partially deregulated under Subchapter H.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.303. PROVISIONS NOT EXCLUSIVE. This subchapter does not prohibit:

(1) an incumbent local exchange company from filing for a new service or rate change under another section of this title; or

(2) the commission from conducting a review under Subchapter D.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.304. PROCEDURE TO OFFER CERTAIN SERVICES OR MAKE MINOR CHANGES. (a) An incumbent local exchange company may offer an extended local calling service, a packaged service, or a new or promotional service on an optional basis or make a minor change in its rates or tariffs if the company:

(1) is a cooperative corporation or has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in this state;

(2) files with the commission and the office notice, as prescribed by Subsection (b), not later than the 10th day before the effective date of the proposed change;

(3) provides notice as prescribed by Section 53.305; and

(4) files with the commission affidavits verifying that notice as prescribed by Section 53.305 was provided.

(b) The notice must include:

(1) a copy of a resolution adopted by the incumbent local exchange company's board of directors approving the proposed change;

(2) a description of the services affected by the proposed change;

(3) a copy of the proposed tariff for the affected service;

(4) a copy of the customer notice required by Subsection (a)(3);

(5) the number of access lines the company and each affiliate have in service in this state; and

(6) the amount by which the company's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 118 (H.B. 2680), Sec. 2, eff. September 1, 2011.

Sec. 53.305. NOTICE TO AFFECTED CUSTOMERS. (a) A company shall provide notice of a proposed change to affected customers in the manner prescribed by the commission.

(b) Notice must:

(1) be provided not later than the 10th day before the effective date of the proposed change; and

(2) include:

(A) a description of the services affected by the proposed change;

(B) the effective date of the proposed change;

(C) an explanation of the customer's right to petition the commission for a review under Section 53.306, including the number of persons required to petition before a commission review will occur;

(D) an explanation of the customer's right to information concerning how to obtain a copy of the proposed tariff from the company;

(E) the amount by which the company's total regulated

intrastate gross annual revenues will increase or decrease as a result of the proposed change; and

(F) a list of rates that are affected by the proposed rate change.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 118 (H.B. 2680), Sec. 3, eff. September 1, 2011.

Sec. 53.306. COMMISSION REVIEW OF PROPOSED CHANGE. (a) The commission shall review a proposed change filed under this subchapter if:

(1) the commission receives complaints relating to the proposed change signed by a number of affected local service customers equal at least to the lesser of 1,500 or five percent of those customers;

(2) the commission receives a complaint relating to the proposed change from an affected intrastate access customer, or a group of affected intrastate access customers, that in the preceding 12 months accounted for more than 10 percent of the company's total intrastate gross access revenues;

(3) the proposed change is not a minor change;

(4) the company does not comply with the procedural requirements of this subchapter; or

(5) the proposed change is inconsistent with the commission's substantive policies as expressed in its rules.

(b) The commission may suspend a tariff proposed under this subchapter during the review.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.307. COMPLIANCE WITH PRINCIPLES; REDUCED RATES. A rate established under this subchapter must be in accordance with the rate-setting principles of this chapter, except that a company may provide to its board members, officers, employees, or agents free or reduced rates for services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.308. FEES AND ASSESSMENTS. The commission may prescribe and collect a fee or assessment from incumbent local exchange companies necessary to recover the cost to the commission and to the office of activities carried out and services provided under:

(1) this subchapter;

(2) Section 53.112;

(3) Subchapter H; and

(4) Section 55.004.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER H. PARTIAL DEREGULATION AVAILABLE TO CERTAIN COOPERATIVE CORPORATIONS

Sec. 53.351. PROVISIONS NOT EXCLUSIVE. (a) This subchapter does not:

(1) prohibit a cooperative from filing for a new service or a rate change under another applicable provision of this title; or

(2) affect the application of a provision of this title not directly related to:

(A) establishing rates; or

(B) the authority of the commission to require a cooperative to file a report required under this title or the commission's rules.

(b) Notwithstanding any other provision of this subchapter, the commission may conduct a review under Subchapter D.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.352. PARTIAL DEREGULATION BY BALLOT. (a) An incumbent local exchange company that is a cooperative corporation may vote to partially deregulate the cooperative by sending a ballot to each cooperative member. The incumbent local exchange company may include the ballot in a bill or send the ballot separately. The ballot shall be printed to permit voting for or against the proposition: "Authorizing the partial deregulation of the (name of the cooperative)."

(b) The cooperative is partially deregulated if a majority of the ballots returned to the cooperative not later than the 45th day after the date the ballots are mailed favor deregulation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.353. VOTING PROCEDURES. The commission by rule shall prescribe the voting procedures a cooperative must use under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.354. PROCEDURE TO OFFER CERTAIN SERVICES OR MAKE CERTAIN CHANGES. After the initial balloting, a cooperative may offer extended local calling services, offer new services on an optional basis, or make changes in its rates or tariffs if the cooperative:

(1) files a statement of intent under Section 53.355;

(2) provides notice of the proposed action to each customer and municipality as prescribed by Section 53.356; and

(3) files with the commission affidavits verifying that notice was provided as prescribed by Section 53.357.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.355. STATEMENT OF INTENT. (a) A cooperative must file a statement of intent to use this subchapter with the commission and the office not later than the 61st day before the effective date of the proposed change.

(b) The statement must include:

(1) a copy of a resolution, signed by a majority of the members of the cooperative's board of directors, approving the proposed action and authorizing the filing of the statement of intent;

(2) a description of the services affected by the proposed action;

(3) a copy of the proposed tariff for the affected service; and

(4) a copy of the customer notice required by Section 53.356.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.356. NOTICE TO AFFECTED PERSONS. (a) The cooperative shall provide to each affected customer or party, including a municipality, at least two notices of the proposed action by bill insert or by individual notice.

(b) The cooperative shall provide:

(1) the first notice not later than the 61st day before the effective date of the proposed action; and

(2) the last notice not later than the 31st day before the effective date of the proposed action.

(c) A notice prescribed by this section must include:

(1) a description of the services affected by the proposed action;

(2) the effective date of the proposed action;

(3) an explanation of the customer's right to:

(A) obtain a copy of the proposed tariff from the cooperative; and

(B) petition the commission for a review under Section 53.358;

(4) a statement of the amount by which the cooperative's total gross annual revenues will increase or decrease and a statement explaining the effect on the cooperative revenues as a result of the proposed action; and

(5) a list of rates that are affected by the proposed rate action, showing the effect of the proposed action on each of those rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.357. FILING OF AFFIDAVITS VERIFYING NOTICE. Not later than the 15th day before the effective date of a proposed action, the cooperative shall file with the commission affidavits that verify that the cooperative provided each notice required by Section 53.356.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.358. COMMISSION REVIEW OF PROPOSED ACTION. (a) The commission shall review a proposed action filed under this subchapter if:

(1) the commission receives, not later than the 45th day after the date the first notice is provided under Section 53.356, complaints relating to the proposed action:

(A) signed by at least five percent of the affected local service customers; or

(B) from an affected intrastate access customer, or group of affected intrastate access customers, that in the preceding 12 months accounted for more than 10 percent of the cooperative's total intrastate access revenues;

(2) the cooperative does not comply with the procedural requirements of this subchapter; or

(3) the proposed action is inconsistent with the commission's substantive policies as expressed in its rules.

(b) If the commission conducts a review of the proposed action under this section before the action's effective date, the commission may suspend the proposed action during the review.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 53.359. REVERSAL OF DEREGULATION BY BALLOT. (a) A cooperative that is partially deregulated under this subchapter may vote to reverse the deregulation by sending a ballot to each cooperative member.

(b) The cooperative's board of directors may order reballoting on its own motion. If the board receives a written request for that action from at least 10 percent of its members, the board shall reballot not later than the 60th day after the date the board receives that request.

(c) The cooperative may include the ballot in a bill or send the ballot separately. The ballot shall be printed to permit voting for or against the proposition: "Reversing the partial deregulation of the (name of the cooperative)."

(d) The partial deregulation is reversed if a majority of the ballots returned to the cooperative not later than the 45th day after

the date the ballots are mailed favor reversal.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 54. CERTIFICATES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 54.001. CERTIFICATE REQUIRED. A person may not provide local exchange telephone service, basic local telecommunications service, or switched access service unless the person obtains a:

(1) certificate of convenience and necessity;

(2) certificate of operating authority; or

(3) service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.002. EXCEPTIONS TO CERTIFICATE REQUIREMENT FOR SERVICE EXTENSION. (a) A telecommunications utility is not required to obtain a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority for an:

(1) extension into territory that is:

(A) contiguous to the territory the telecommunications utility serves;

(B) not receiving similar service from another telecommunications utility; and

(C) not in another telecommunications utility's certificated area;

(2) extension in or to territory the telecommunications utility serves or is authorized to serve under a certificate of public convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; or

(3) operation, extension, or service in progress on September 1, 1975.

(b) An extension allowed by Subsection (a) is limited to a device used:

(1) to interconnect existing facilities; or

(2) solely to transmit telecommunications utility services from an existing facility to a customer of retail utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.003. EXCEPTIONS TO CERTIFICATE REQUIREMENT FOR CERTAIN SERVICES. A telecommunications utility is not required to obtain a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority for:

(1) an interexchange telecommunications service;

(2) a nonswitched private line service;

(3) a shared tenant service;

(4) a specialized communications common carrier service;

(5) a commercial mobile service; or

(6) an operator service as defined by Section 55.081.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.004. RELINQUISHMENT PLAN. A holder of a service provider certificate of operating authority who applies for a certificate of operating authority or a certificate of convenience and necessity for the same territory must include with the application a plan to relinquish the service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.005. NOTICE OF AND HEARING ON APPLICATION. (a) When an application for a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority is filed, the commission shall:

(1) give notice of the application to interested parties; and

(2) if requested:

(A) set a time and place for a hearing; and

(B) give notice of the hearing.

(b) A person interested in the application may intervene at the hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.006. REQUEST FOR PRELIMINARY ORDER. (a) A telecommunications utility that wants to exercise a right or privilege under a franchise or permit that the utility anticipates obtaining but has not been granted may apply to the commission for a preliminary order under this section.

(b) The commission may issue a preliminary order declaring that the commission, on application and under commission rules, will grant the requested certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority, on terms the commission designates, after the telecommunications utility obtains the franchise or permit.

(c) The commission shall grant the certificate on presentation of evidence satisfactory to the commission that the telecommunications utility has obtained the franchise or permit.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.007. FLEXIBILITY PLAN. (a) After the commission grants an application for a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority or determines that a certificate is not needed for the applicant to provide the relevant services, the commission shall conduct appropriate proceedings to establish a transitional flexibility plan for the incumbent local exchange company in the same area or areas as the new certificate holder.

(b) A basic local telecommunications service price of the incumbent local exchange company may not be increased before the fourth anniversary of the date the certificate is granted to the applicant except that the price may be increased as provided by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 15, eff. Sept. 1, 1999.

Sec. 54.008. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The commission may revoke or amend a certificate of convenience and necessity, a certificate of operating authority or a service provider

certificate of operating authority after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.

(b) The commission may require one or more public utilities to provide service in an area affected by the revocation or amendment of a certificate held by a public utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. CERTIFICATE OF CONVENIENCE AND NECESSITY

Sec. 54.051. DEFINITION. In this subchapter, "certificate" means a certificate of convenience and necessity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.052. CERTIFICATE REQUIRED FOR PUBLIC UTILITY. (a) A public utility may not directly or indirectly provide service to the public under a franchise or permit unless the utility first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.

(b) Except as otherwise provided by this chapter, a public utility may not furnish or make available retail public utility service to an area in which retail utility service is being lawfully furnished by another public utility unless the utility first obtains a certificate that includes the area in which the consuming facility is located.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.053. APPLICATION FOR CERTIFICATE. (a) A public utility that wants to obtain or amend a certificate must submit an application to the commission.

(b) The applicant shall file with the commission evidence the commission requires to show the applicant has received the consent, franchise, or permit required by the proper municipal or other public authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.054. GRANT OR DENIAL OF CERTIFICATE. (a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

(1) grant the certificate as requested;

(2) grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or

(3) refuse to grant the certificate.

(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 public utility of the same kind 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. CERTIFICATE OF OPERATING AUTHORITY

Sec. 54.101. DEFINITION. In this subchapter, "certificate" means a certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 16, eff. Sept. 1, 1999.

Sec. 54.102. APPLICATION FOR CERTIFICATE. (a) A person may apply for a certificate of operating authority.

(b) The applicant must file with the application a sworn statement that the applicant has applied for each municipal consent, franchise, or permit required for the type of services and facilities for which the applicant has applied.

(c) An affiliate of a person holding a certificate of convenience and necessity may hold a certificate of operating authority if the holder of the certificate of convenience and necessity is in compliance with federal law and Federal Communications Commission rules governing affiliates and structural separation. An affiliate of a person holding a certificate of convenience and necessity may not directly or indirectly sell to a non-affiliate any regulated product or service purchased from the person holding a certificate of convenience and necessity at any rate or price less than the price paid to the person holding a certificate of convenience and necessity.

(d) A person may hold a certificate for all or any portion of a service area for which one or more affiliates of the person holds a certificate of operating authority, a service provider certificate of operating authority, or a certificate of convenience and necessity.

(e) An affiliate of a company that holds a certificate of convenience and necessity and that serves more than five million access lines in this state may hold a certificate of operating authority or service provider certificate of operating authority to provide service in an area of this state in which its affiliated company is the incumbent local exchange company. However, the affiliate holding the certificate of operating authority or service provider certificate of operating authority may not provide in that area any service listed in Sections 58.051(a)(1)-(4) or Sections 58.151(1)-(4), or any subset of those services, in a manner that results in a customer-specific contract so long as the affiliated company that is the incumbent local exchange company may not provide those services or subsets of services in a manner that results in a customer-specific contract under Section 58.003 in that area. This subsection does not preclude an affiliate of a company holding a certificate of convenience and necessity from holding a certificate of operating authority in any area of this state to provide advanced services as defined by rules or orders of the Federal Communications Commission, or preclude such an advanced services affiliate from using any form of pricing flexibility, with regard to services other than those subject to the restrictions provided by this subsection.

This subsection does not preclude a long distance affiliate from using any form of pricing flexibility with regard to services other than those services subject to the restrictions provided by this subsection. In addition, the affiliate holding the certificate of operating authority or service provider certificate of operating authority may not offer, in an area for which the affiliated incumbent local exchange company holds a certificate of convenience and necessity, a service listed in Sections 58.151(1)-(4) as a component of a package of services, as a promotional offering, or with a volume or term discount until the affiliated incumbent local exchange company may offer those services in pricing flexibility offerings in accordance with Section 58.004, unless the customer of one of these pricing flexibility offerings is a federal, state, or local governmental entity.

(f) The commission has the authority to enforce this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 16, eff. Sept. 1, 1999.

Sec. 54.103. GRANT OR DENIAL OF CERTIFICATE. (a) The commission must grant or deny a certificate not later than the 60th day after the date the application for the certificate is filed. The commission may extend the deadline on good cause shown.

(b) The commission shall grant each certificate on a nondiscriminatory basis after considering factors such as:

(1) the technical and financial qualifications of the applicant; and

(2) the applicant's ability to meet the commission's quality of service requirements.

(c) In an exchange of an incumbent local exchange company that serves fewer than 31,000 access lines, in addition to the factors described by Subsection (b), the commission shall consider:

(1) the effect of granting the certificate on a public utility serving the area and on that utility's customers;

(2) the ability of that public utility to provide adequate service at reasonable rates;

(3) the effect of granting the certificate on the ability of that public utility to act as the provider of last resort; and

(4) the ability of the exchange, not the company, to

support more than one provider of service.

(d) Except as provided by Subsections (e) and (f), the commission may grant an application for a certificate only for an area or areas that are contiguous and reasonably compact and cover an area of at least 27 square miles.

(e) In an exchange in a county that has a population of less than 500,000 and that is served by an incumbent local exchange company that has more than 31,000 access lines, an area covering less than 27 square miles may be approved if the area is contiguous and reasonably compact and has at least 20,000 access lines.

(f) In an exchange of a company that serves fewer than 31,000 access lines in this state, the commission may grant an application only for an area that has boundaries similar to the boundaries of the serving central office that is served by the incumbent local exchange company that holds the certificate of convenience and necessity for the area.

(g) Expired.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 16, eff. Sept. 1, 1999.

Sec. 54.104. TIME OF SERVICE REQUIREMENTS. (a) The commission by rule may prescribe the period within which a certificate holder must be able to serve customers.

(b) Notwithstanding Subsection (a), a certificate holder must serve a customer not later than the 30th day after the date the customer requests service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, Sept. 1, 1997. Renumbered from Sec. 54.106 and amended by Acts 1999, 76th Leg., ch. 1212, Sec. 16, eff. Sept. 1, 1999.

Sec. 54.105. PENALTY FOR VIOLATION OF TITLE. If a certificate holder fails to comply with a requirement of this title, the commission may:

(1) revoke the holder's certificate;

(2) impose against the holder administrative penalties under Subchapter B, Chapter 15; or

(3) take another action under Subchapter B, Chapter 15.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 54.111 by Acts 1999, 76th Leg., ch. 1212, Sec. 16, eff. Sept. 1, 1999.

**SUBCHAPTER D. SERVICE PROVIDER CERTIFICATE OF OPERATING AUTHORITY**

Sec. 54.151. DEFINITION. In this subchapter, "certificate" means a service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.152. LIMITATION ON GRANT OF CERTIFICATE. The commission may not grant a certificate to a holder of a:

(1) certificate of convenience and necessity for the same territory; or

(2) certificate of operating authority for the same territory.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.153. ELIGIBILITY FOR CERTIFICATE. (a) A company is not eligible to obtain a certificate under this subchapter if the company, together with affiliates, had more than six percent of the total intrastate switched access minutes of use as measured for the most recent 12-month period:

(1) that precedes the date the application is filed; and

(2) for which the access information is available.

(b) The commission shall obtain information necessary to determine eligibility from the incumbent local exchange telephone companies and the applicant.

(c) The commission shall certify eligibility not later than the 10th day after the date the application is filed.

(d) In this section:

(1) "Affiliate" means an entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with a company that applies for a certificate under this subchapter.

(2) "Control" means to exercise substantial influence over the policies and actions of another.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.154. APPLICATION FOR CERTIFICATE. (a) The commission may grant a certificate to encourage an innovative, competitive, and entrepreneurial business to provide telecommunications services.

(b) An applicant for a certificate must:

(1) file with the application:

(A) a sworn statement that the applicant has applied for each municipal consent, franchise, or permit required for the type of services and facilities for which the applicant has applied; and

(B) a description of the services the applicant will provide;

(2) show the areas in which the applicant will provide the services;

(3) demonstrate that the applicant has the financial and technical ability to provide services; and

(4) demonstrate that the services will meet the requirements of this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.155. GRANT OR DENIAL OF CERTIFICATE. (a) The commission must grant or deny a certificate not later than the 60th day after the date the application for the certificate is filed. The commission may extend the deadline on good cause shown.

(b) The commission shall grant each certificate on a nondiscriminatory basis after considering factors such as:

(1) the technical and financial qualifications of the applicant; and

(2) the applicant's ability to meet the commission's quality of service requirements.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.156. RESALE OF SERVICES. (a) A certificate holder may obtain services under the resale tariffs approved by the commission under Subchapter C, Chapter 60, except in a certificated area of a

company that serves fewer than 31,000 access lines.

(b) A certificate holder may obtain for resale the monthly recurring flat rate local exchange telephone service and associated nonrecurring charges, including any mandatory extended area service, of an incumbent local exchange company at a five percent discount to the tariffed rate.

(c) The incumbent local exchange company shall sell a feature service that may be provided to a customer in conjunction with local exchange service at a five percent discount to the tariffed rate, including any associated nonrecurring charge for those services, provided that the incumbent local exchange company shall make available to a certificate holder, at an additional five percent discount, any discounts made available to customers of the incumbent local exchange company who are similarly situated to the customers of the certificate holder. In this subsection "feature service" includes:

(1) toll restriction;

(2) call control options;

(3) tone dialing;

(4) custom calling; and

(5) caller identification.

(d) A certificate holder and an incumbent local exchange company may agree to a rate lower than the tariffed rate or discounted rate.

(e) The five percent discounts provided by this section do not apply in an exchange of a company that has fewer than 31,000 access lines in this state.

(f) If the tariffed rate for a resold service changes, the five percent discount prescribed by this section applies to the changed rate. The commission may not, for certificate holders, create a special class for purposes of resold services.

(g) A certificate holder:

(1) may not use a resold flat rate local exchange telephone service to avoid the rates and terms of an incumbent local exchange company's tariffs;

(2) may not terminate both flat rate local exchange telephone service and services obtained under the resale tariff approved under Section 60.041 on the same end user customer's premises;

(3) may not use resold flat rate local exchange telephone

services to provide access services to another interexchange carrier, cellular carrier, competitive access provider, or retail telecommunications provider, but may permit customers to use resold local exchange telephone services to access such a carrier or provider;

(4) may sell the flat rate local exchange telephone service only to the same class of customers to which the incumbent local exchange company sells that service;

(5) may obtain services offered by or negotiated with a holder of a certificate of convenience and necessity or a certificate of operating authority; and

(6) may obtain for resale single or multiple line flat rate intraLATA calling service when provided by the local exchange company at the tariffed rate for online digital communications.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.157. OPTIONAL EXTENDED AREA SERVICE OR EXPANDED LOCAL CALLING SERVICE. (a) A certificate holder may purchase for resale:

(1) optional extended area service; and

(2) expanded local calling service.

(b) The purchase of optional extended area service and expanded local calling service may not be discounted.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.158. INTERFERENCE WITH RESOLD SERVICES PROHIBITED. An incumbent local exchange company may not:

(1) delay providing or maintaining a service provided under this subchapter;

(2) degrade the quality of access the company provides to another provider;

(3) impair the speed, quality, or efficiency of a line used by another provider;

(4) fail to fully disclose in a timely manner after a request all available information necessary for a certificate holder to provide resale services; or

(5) refuse to take a reasonable action to allow a certificate holder efficient access to the company's ordering,

billing, or repair management system.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.159. RETENTION OF ACCESS SERVICE AND INTRALATA TOLL SERVICE. An incumbent local exchange company that sells flat rate local exchange telephone service to a certificate holder may retain all access service and "1-plus" intraLATA toll service that originates over the resold flat rate local exchange telephone service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER E. MUNICIPALITIES**

Sec. 54.201. CERTIFICATION PROHIBITED. The commission may not grant to a municipality a:

(1) certificate of convenience and necessity;

(2) certificate of operating authority; or

(3) service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.202. PROHIBITED MUNICIPAL SERVICES. (a) A municipality or municipal electric system may not offer for sale to the public:

(1) a service for which a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority is required; or

(2) a nonswitched telecommunications service used to connect a customer's premises with:

(A) another customer's premises within the exchange; or

(B) a long distance provider that serves the exchange.

(b) Subsection (a) applies to a service offered either directly or indirectly through a telecommunications provider.

(c) This section may not be construed to prevent a municipally owned utility from providing to its energy customers, either directly or indirectly, any energy related service involving the transfer or

receipt of information or data concerning the use, measurement, monitoring, or management of energy utility services provided by the municipally owned utility, including services such as load management or automated meter reading.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 5, eff. September 7, 2005.

Sec. 54.2025. LEASE OF FIBER OPTIC CABLE FACILITIES. Nothing in this subchapter shall prevent a municipality, or a municipal electric system that is a member of a municipal power agency formed under Chapter 163 by adoption of a concurrent resolution by the participating municipalities on or before August 1, 1975, from leasing any of the excess capacity of its fiber optic cable facilities (dark fiber), so long as the rental of the fiber facilities is done on a nondiscriminatory, nonpreferential basis.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 17, eff. Sept. 1, 1999.

Sec. 54.203. SERVICE IN ANNEXED OR INCORPORATED AREA. (a) If an area is or will be included within a municipality as the result of annexation, incorporation, or another reason, each telecommunications utility that holds or is entitled to hold a certificate under this title to provide service or operate a facility in the area before the inclusion has the right to continue to provide the service or operate the facility and extend service in the utility's certificated area within the annexed or incorporated area under the rights granted by the certificate and this title.

(b) Notwithstanding any other law, a certificated telecommunications utility has the right to:

(1) continue and extend service within the utility's certificated area; and

(2) use roads, streets, highways, alleys, and public property to furnish retail utility service.

(c) The governing body of a municipality may require a certificated telecommunications utility to relocate the utility's facility at the utility's expense to permit the widening or

straightening of a street by:

(1) giving the utility 30 days' notice; and

(2) specifying the new location for the facility along the right-of-way of the street.

(d) This section does not limit the power of a city, town, or village to incorporate or of a municipality to extend its boundaries by annexation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.204. DISCRIMINATION BY MUNICIPALITY PROHIBITED. (a) Notwithstanding Section 14.008, a municipality or a municipally owned utility may not discriminate against a certificated telecommunications provider regarding:

(1) the authorization or placement of a facility in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment rate or term.

(b) In granting consent, a franchise, or a permit for the use of a public street, alley, or right-of-way within its municipal boundaries, a municipality or municipally owned utility may not discriminate in favor of or against a certificated telecommunications provider regarding:

(1) municipal utility pole attachment or underground conduit rates or terms; or

(2) the authorization, placement, replacement, or removal of a facility in a public right-of-way and the reasonable compensation for the authorization, placement, replacement, or removal regardless of whether the compensation is in the form of:

(A) money;

(B) services;

(C) use of facilities; or

(D) another kind of consideration.

(c) A municipality or a municipally owned utility may not charge any entity, regardless of the nature of the services provided by that entity, a pole attachment rate or underground conduit rate that exceeds the fee the municipality or municipally owned utility would be permitted to charge under rules adopted by the Federal Communications Commission under 47 U.S.C. Section 224(e) if the

municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission. In addition, not later than September 1, 2006, a municipality or municipally owned utility shall charge a single, uniform pole attachment or underground conduit rate to all entities that are not affiliated with the municipality or municipally owned utility regardless of the services carried over the networks attached to the poles or underground conduit.

(d) Notwithstanding any other law, the commission has the jurisdiction necessary to enforce this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 6, eff. September 7, 2005.

Sec. 54.205. MUNICIPALITY'S RIGHT TO CONTROL ACCESS. This title does not restrict a municipality's historical right to control and receive reasonable compensation for access to the municipality's public streets, alleys, or rights-of-way or to other public property.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.206. RECOVERY OF MUNICIPAL FEE. (a) A holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority has the right to collect a fee that a municipality imposes under Section 54.204 or 54.205 through a pro rata charge to the customers in the boundaries of the municipality.

(b) The charge may be shown on the customer's bill as a separate line item.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER F. REGULATION OF SERVICES, AREAS, AND FACILITIES**

Sec. 54.251. PROVISION OF SERVICE. (a) Except as provided by this section, Section 54.252, Section 54.253, and Section 54.254, a telecommunications utility that holds a certificate of convenience

and necessity or a certificate of operating authority shall:

(1) offer all basic local telecommunications services to each customer in the utility's certificated area; and

(2) provide continuous and adequate service in that area.

(b) Except as specifically determined otherwise by the commission under this subchapter or Subchapter G of this chapter, and except as provided by Subchapters C and D, Chapter 65, the holder of a certificate of convenience and necessity for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area.

(c) A certificate holder may meet the holder's provider of last resort obligations using any available technology. Notwithstanding any provision of Chapter 56, the commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations. As determined by the commission, the certificate holder shall meet minimum quality of service standards, including standards for 911 service, comparable to those established for traditional wireline or landline technologies and shall offer services at a price comparable to the monthly service charge for comparable services in that exchange or the provider's nearest exchange.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 76, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 7, eff. September 7, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 6, eff. September 1, 2011.

Sec. 54.252. GROUNDS FOR REDUCTION OF SERVICE BY HOLDER OF CERTIFICATE OF CONVENIENCE AND NECESSITY. (a) Except to the extent otherwise ordered by the commission in accordance with this subchapter, the holder of a certificate of convenience and necessity may not discontinue, reduce, or impair service to any part of the holder's certificated service area except for:

(1) nonpayment of charges;

(2) nonuse; or

(3) another similar reason that occurs in the usual course of business.

(b) A discontinuance, reduction, or impairment of service must be in compliance with and is subject to any condition or restriction the commission prescribes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 76, Sec. 2, eff. Sept. 1, 2003.

Sec. 54.253. DISCONTINUATION OF SERVICE BY CERTAIN CERTIFICATE HOLDERS. (a) A telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority may:

(1) cease operations in the utility's certificated area; or

(2) discontinue an optional service that is not essential to providing basic local telecommunications service.

(b) Before the telecommunications utility ceases operations or discontinues an optional service, the utility, in the manner required by the commission, must give notice of the intended action to:

(1) the commission;

(2) each affected customer;

(3) the Commission on State Emergency Communications;

(4) the office; and

(5) each wholesale provider of telecommunications facilities or services from which the utility has purchased facilities or services.

(c) The telecommunications utility is entitled to discontinue an optional service on or after the 61st day after the date the utility gives the notice.

(d) The telecommunications utility may not cease operations in its certificated area unless the commission authorizes the utility to cease operations and:

(1) another provider of basic local telecommunications services has adequate facilities and capacity to serve the customers in the certificated area; or

(2) the utility is an "exiting utility," as that term is defined by Section 54.301, no other telecommunications utility has

facilities sufficient to provide basic local telecommunications service in the defined geographic area, and the utility acts in good faith to provide for a transition of the utility's existing basic local telecommunications service customers to another holder of a certificate for that area.

(e) The commission may not authorize the telecommunications utility to cease operations under Subsection (d) before the 61st day after the date the utility gives the notice required by Subsection (b). Unless the commission receives a complaint from an affected person, the commission may enter an order under this subsection administratively.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 76, Sec. 3, eff. Sept. 1, 2003.

Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority shall refuse to serve a customer in the holder's certificated area if the holder is prohibited from providing the service under Section 212.012, 232.029, or 232.0291, Local Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 14, eff. September 1, 2005.

Sec. 54.255. TRANSFER OF CERTAIN CERTIFICATES. (a) A telecommunications utility may sell, assign, or lease a certificate of convenience and necessity or a certificate of operating authority or a right obtained under such a certificate if the commission determines that the purchaser, assignee, or lessee can provide adequate service.

(b) The sale, assignment, or lease of a certificate or a right is subject to conditions the commission prescribes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.256. APPLICATION OF CONTRACTS. A contract approved by the commission between telecommunications utilities that designates areas and customers to be served by the utilities:

(1) is valid and enforceable; and

(2) shall be incorporated into the appropriate areas of certification.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.257. INTERFERENCE WITH ANOTHER TELECOMMUNICATIONS UTILITY. If a telecommunications utility constructing or extending the utility's lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of another utility, the commission by order may:

(1) prohibit the construction or extension; or

(2) prescribe terms for locating the affected lines, plants, or systems.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.258. MAPS. A public utility shall file with the commission one or more maps that show each utility facility and that separately illustrate each utility facility for transmission or distribution of the utility's services on a date the commission orders.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.259. DISCRIMINATION BY PROPERTY OWNER PROHIBITED. (a) If a telecommunications utility holds a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality and holds a certificate if required by this title, a public or private property owner may not:

(1) prevent the utility from installing on the owner's property a telecommunications service facility a tenant requests;

(2) interfere with the utility's installation on the owner's property of a telecommunications service facility a tenant requests;

(3) discriminate against such a utility regarding installation, terms, or compensation of a telecommunications service facility to a tenant on the owner's property;

(4) demand or accept an unreasonable payment of any kind from a tenant or the utility for allowing the utility on or in the owner's property; or

(5) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, because of the utility from which the tenant receives a telecommunications service.

(b) Subsection (a) does not apply to an institution of higher education. In this subsection, "institution of higher education" means:

(1) an institution of higher education as defined by Section 61.003, Education Code; or

(2) a private or independent institution of higher education as defined by Section 61.003, Education Code.

(c) Notwithstanding any other law, the commission has the jurisdiction to enforce this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.260. PROPERTY OWNER'S CONDITIONS. (a) Notwithstanding Section 54.259, if a telecommunications utility holds a municipal consent, franchise, or permit as determined to be the appropriate grant of authority by the municipality and holds a certificate if required by this title, a public or private property owner may:

(1) impose a condition on the utility that is reasonably necessary to protect:

(A) the safety, security, appearance, and condition of the property; and

(B) the safety and convenience of other persons;

(2) impose a reasonable limitation on the time at which the utility may have access to the property to install a telecommunications service facility;

(3) impose a reasonable limitation on the number of such utilities that have access to the owner's property, if the owner can demonstrate a space constraint that requires the limitation;

(4) require the utility to agree to indemnify the owner for damage caused installing, operating, or removing a facility;

(5) require the tenant or the utility to bear the entire cost of installing, operating, or removing a facility; and

(6) require the utility to pay compensation that is reasonable and nondiscriminatory among such telecommunications utilities.

(b) Notwithstanding any other law, the commission has the jurisdiction to enforce this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 54.261. SHARED TENANT SERVICES CONTRACT. Sections 54.259 and 54.260 do not require a public or private property owner to enter into a contract with a telecommunications utility to provide shared tenant services on a property.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER G. PROVIDER OF LAST RESORT

Sec. 54.301. DEFINITIONS. In this subchapter:

(1) "Exiting utility" means a telecommunications utility that:

(A) holds a certificate of operating authority or a service provider certificate of operating authority;

(B) is the predominant provider of basic local telecommunications service in a defined geographic area and provides those services using the utility's own facilities; and

(C) ceases operations in all or part of the utility's certificated service area under Section 54.253 or 54.303.

(2) "Provider of last resort" means a certificated telecommunications utility that must offer basic local telecommunications service throughout a defined geographic area.

(3) "Successor utility" means a telecommunications utility that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority, and that is or is designated to become the provider of last resort for the defined geographic area previously served by an exiting utility.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 4, eff. Sept. 1, 2003.

Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a transitioning company under Chapter 65 in relation to its regulated exchanges in the same manner and to the same extent this subchapter applies to a holder of a certificate of convenience and necessity.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 8, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 7, eff. September 1, 2011.

Sec. 54.302. PROVIDER OF LAST RESORT; FACILITIES-BASED PROVIDERS. (a) Notwithstanding any other provision of this title, if a telecommunications utility installs facilities to serve customers located in a defined geographic area to provide telecommunications services, including basic local telecommunications service, before the holder of the certificate of convenience and necessity installs facilities to serve customers located in that defined geographic area, the holder of the certificate of convenience and necessity may petition the commission for an order relieving the utility of the utility's designation as the provider of last resort in that defined geographic area.

(b) The commission shall relieve the holder of the certificate of convenience and necessity of the obligations of service as the provider of last resort for the defined geographic area, and the commission shall designate the facilities-based telecommunications utility as the provider of last resort if the commission determines that:

(1) the holder of the certificate of convenience and necessity does not have facilities in place to provide basic local telecommunications service to all customers within that defined geographic area;

(2) another certificated telecommunications utility has installed facilities adequate to provide that service throughout that area; and

(3) the public interest would be served by transferring the

provider of last resort obligations for that area.

(c) The commission shall complete proceedings necessary to make the determinations prescribed by this section not later than the 91st day after the date the petition is filed under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 76, Sec. 4, eff. Sept. 1, 2003.

Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS UTILITY WHEN NO SUFFICIENT FACILITIES EXIST. (a) When the commission obtains notice as required under Section 54.253 or otherwise that a utility intends to become an exiting utility and no other telecommunications utility has facilities sufficient to provide basic local telecommunications service in that defined geographic area, the commission shall open a contested case proceeding to determine:

(1) the identity of the successor utility under this section; and

(2) the amount of universal service funding under Subchapter G, Chapter 56, to be made available to the successor utility.

(b) On designation as the successor utility under this section, the commission, if applicable, shall provide to the successor utility:

(1) a reasonable time, in accordance with industry practices and not subject to otherwise applicable commission service quality rules or standards, to modify, construct, or obtain facilities necessary to serve the customers of the exiting telecommunications utility; and

(2) an exemption on a transitional basis from any obligation to unbundle the utility's network elements or to provide service for resale within that defined geographic area for nine months or another reasonable period the commission may authorize as necessary to modify the utility's network to provide that unbundling or resale.

(c) A customer within the defined geographic area to be served by the successor utility is considered to have applied for service from the successor utility on the effective date of that designation by the commission. Each right, privilege, and obligation of being a customer of the successor utility applies to that customer and the customer is subject to the successor utility's applicable terms of

service as specified in an applicable tariff or contract.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 4, eff. Sept. 1, 2003.

Sec. 54.304. ABANDONMENT OR CESSATION BY FACILITIES-BASED PROVIDER; EMERGENCY RESTORATION. (a) The commission, on its own motion or on the petition of an interested party, may institute an expedited proceeding under this section if the commission finds that:

(1) a holder of a certificate of operating authority or service provider certificate of operating authority is the predominant provider of basic local telecommunications service in a defined geographic area and the utility provides that service using the utility's own facilities;

(2) no other telecommunications utility has facilities sufficient to provide basic local telecommunications service in that defined geographic area; and

(3) the holder of the certificate of operating authority or service provider certificate of operating authority has:

(A) ceased providing basic local telecommunications service to the utility's customers in that defined geographic area; or

(B) abandoned the operation of the utility's facilities in the defined geographic area that are used to provide basic local telecommunications service.

(b) In a proceeding under this section, the commission may declare that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers of the utility and to expedite the restoration and continuation of basic local telecommunications service to those customers. An order issued by the commission under this subsection may include an order to:

(1) provide for a temporary arrangement for operation of the utility's facilities by an uncertificated entity that agrees to provide service;

(2) authorize one or more third parties to enter the premises of the abandoned facilities; or

(3) grant temporary waivers from quality of service requirements.

(c) The commission may designate a successor utility in accordance with Section 54.303 during a proceeding under this

section.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 4, eff. Sept. 1, 2003.

Sec. 54.305. COMMISSION PARTICIPATION IN BANKRUPTCY PROCEEDINGS. (a) The commission, on written notice that a certificated telecommunications utility has filed a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy, may inform the appropriate court and parties of the commission's interest in obtaining notice of proceedings.

(b) Within the time prescribed by the applicable statutes, rules, and court orders, the commission may intervene and participate in any bankruptcy proceedings that affect customers or providers of telecommunications services in this state.

(c) The office may inform the appropriate court and parties of the office's interest in obtaining notice of the proceedings. Within the time prescribed by the applicable statutes, rules, and court orders, the office may intervene and participate in any bankruptcy proceeding on behalf of residential and small commercial customers.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 4, eff. Sept. 1, 2003.

## CHAPTER 55. REGULATION OF TELECOMMUNICATIONS SERVICES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.001. GENERAL STANDARD. A public utility shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.002. COMMISSION AUTHORITY CONCERNING STANDARDS. The commission, on its own motion or on complaint and after reasonable notice and hearing, may:

(1) adopt just and reasonable standards, classifications, rules, or practices a public utility must follow in furnishing a service;

(2) adopt adequate and reasonable standards for measuring a condition, including quantity and quality, relating to the furnishing

of a service;

(3) adopt reasonable rules for examining, testing, and measuring a service; and

(4) adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.003. RULE OR STANDARD. (a) A public utility may not impose a rule except as provided by this title.

(b) A public utility may file with the commission a standard, classification, rule, or practice the utility follows.

(c) The standard, classification, rule, or practice continues in force until:

(1) amended by the utility; or

(2) changed by the commission as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.004. LOCAL EXCHANGE COMPANY RULE OR PRACTICE CHANGE. (a) To make a change in an incumbent local exchange company's tariffed rules or practices that does not affect the company's charges or rates, the company must file the proposed change with the commission at least 35 days before the effective date of the change. The commission may require the incumbent local exchange company to provide to ratepayers appropriate notice as determined by the commission.

(b) The commission, on complaint by an affected person or on its own motion and after reasonable notice, may hold a hearing to determine the propriety of a change proposed under this section. Pending the hearing and decision, the commission may suspend the change for not longer than 120 days after the date the change would otherwise be effective. The commission shall approve, deny, or modify the change before the period of suspension expires.

(c) In a proceeding under this section, the incumbent local exchange company has the burden of proving the proposed change:

(1) is in the public interest; and

(2) complies with this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.005. UNREASONABLE PREFERENCE OR PREJUDICE CONCERNING SERVICE PROHIBITED. In providing a service to persons in a classification, a public utility may not:

(1) grant an unreasonable preference or advantage to a person in the classification; or

(2) subject a person in the classification to an unreasonable prejudice or disadvantage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.006. DISCRIMINATION AND RESTRICTION ON COMPETITION. A public utility may not:

(1) discriminate against a person who sells or leases equipment or performs services in competition with the public utility; or

(2) engage in a practice that tends to restrict or impair that competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.007. MINIMUM SERVICES. (a) The commission shall require a holder of a certificate of convenience and necessity or a certificate of operating authority to provide at the applicable tariff rate, if any, to each customer, regardless of race, national origin, income, or residence in an urban or rural area:

(1) single-party service;

(2) tone-dialing service;

(3) basic custom calling features;

(4) equal access for an interLATA interexchange carrier on a bona fide request; and

(5) digital switching capability in an exchange on customer request, provided by a digital switch in the exchange or by connection to a digital switch in another exchange.

(b) Notwithstanding Subsection (a), an electing incumbent local exchange company serving more than 175,000 but fewer than 1,500,000 access lines on January 1, 1995, shall install a digital switch in

each central office that serves an exchange of fewer than 20,000 access lines.

(c) The commission may temporarily waive a requirement imposed by Subsection (a) or (b) on a showing of good cause.

(d) The commission may not consider the cost of implementing this section in determining whether an electing company is entitled to:

(1) a rate increase under Chapter 58 or 59; or

(2) increased universal service funds under Subchapter B, Chapter 56.

(e) Expired.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.008. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. The commission, after notice and hearing, may:

(1) order a public utility to provide specified improvements in its service in a specified area if:

(A) service in the area is inadequate or substantially inferior to service in a comparable area; and

(B) requiring the company to provide the improved service is reasonable; or

(2) order two or more utilities to establish specified facilities for interconnecting service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.009. INTRALATA CALLS. (a) If federal law prohibits a local exchange company in this state from providing interLATA telecommunications services, the local exchange companies in this state designated or de facto authorized to receive a "0-plus" or "1-plus" dialed intraLATA call are exclusively designated or authorized to receive such a call.

(b) A telecommunications utility operating under a certificate of operating authority or a service provider certificate of operating authority is de facto authorized to receive a "0-plus" or "1-plus" dialed intraLATA call on the date the utility receives its certificate, to the extent the utility is not restricted by Section 54.159.

(c) If federal law allows all local exchange companies to provide interLATA telecommunications services, the commission shall ensure that:

(1) a customer may designate a provider of the customer's choice to carry the customer's "0-plus" and "1-plus" dialed intraLATA calls; and

(2) equal access in the public network is implemented to allow the provider to carry those calls.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.010. BILLING FOR SERVICE TO THE STATE. A telecommunications utility providing service to the state, including service to an agency in any branch of state government, may not impose a fee, a penalty, interest, or any other charge for delinquent payment of a bill for that service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.011. NOTICE OF IDENTITY OF INTEREXCHANGE CARRIER. (a) A local exchange company shall print on the first page of each bill sent to a customer of the local exchange company the name of the customer's primary interexchange carrier if the company provides billing services for that carrier.

(b) The bill must contain instructions on how the customer can contact the commission if the customer believes that the named carrier is not the customer's primary interexchange carrier.

(c) The commission may, for good cause, waive the billing requirement prescribed by this section in exchanges served by local exchange companies serving not more than 31,000 access lines.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.04(b), eff. Sept. 1, 1999.

Sec. 55.013. LIMITATIONS ON DISCONTINUANCE OF BASIC LOCAL TELECOMMUNICATIONS SERVICE. (a) A provider of basic local telecommunications service may not discontinue that service because of nonpayment by a residential customer of charges for long distance

service. Payment shall first be allocated to basic local telecommunications service.

(b) For purposes of allocating payment in this section, if the provider of basic local telecommunications service bundles its basic local telecommunications service with long distance service or any other service and provides a discount for the basic local telecommunications service because of that bundling, the rate of basic local telecommunications service shall be the rate the provider charges for stand-alone basic local telecommunications service.

(c) Notwithstanding Subsection (a), the commission shall adopt and implement rules, not later than January 1, 2000, to prevent customer abuse of the protections afforded by this section. The rules must include:

(1) provisions requiring a provider of basic local telecommunications service to offer and implement toll blocking capability to limit a customer's ability to incur additional charges for long distance services after nonpayment for long distance services; and

(2) provisions regarding fraudulent activity in response to which a provider may discontinue a residential customer's basic local telecommunications service.

(d) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to establish a maximum price that an incumbent local exchange company may charge a long distance service provider to initiate the toll blocking capability required to be offered under the rules adopted under Subsection (c). The maximum price established under this subsection shall be observed by all providers of basic local telecommunications service in the incumbent local exchange company's certificated service area. Notwithstanding Sections 52.102 and 52.152, the commission has all jurisdiction necessary to enforce this section.

(e) A provider of basic local exchange telecommunications service shall comply with the requirements of this section not later than March 1, 2000.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 19, eff. Sept. 1, 1999.

Sec. 55.014. PROVISION OF ADVANCED TELECOMMUNICATIONS SERVICES. (a) In this section, "advanced service" means any telecommunications

service other than residential or business basic local exchange telephone service, caller identification service, and customer calling features.

(b) This section applies to a company electing under Chapter 58 or a company that holds a certificate of operating authority or service provider certificate of operating authority.

(c) Notwithstanding any other provision of this title, beginning September 1, 2001, a company to which this section applies that provides advanced telecommunications services within the company's urban service areas, shall, on a bona fide retail request for those services, provide in rural areas of this state served by the company advanced telecommunications services that are reasonably comparable to the advanced services provided in urban areas. The company shall offer the advanced telecommunications services:

(1) at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced services provided by the company in urban areas; and

(2) within 15 months after the bona fide request for those advanced services.

(d) Notwithstanding any other provision of this title, a company to which this section applies shall, on a bona fide retail request for those services, offer caller identification service and custom calling features in rural areas served by the company. The company shall offer the services:

(1) at prices, terms, and conditions reasonably comparable to the company's prices, terms, and conditions for similar services in urban areas; and

(2) within 15 months after the bona fide request for those services.

(e) This section may not be construed to require a company to:

(1) begin providing services in a rural area in which the company does not provide local exchange telephone service; or

(2) provide a service in a rural area of this state unless the company provides the service in urban areas of this state.

(f) For purposes of this section, a company to which this section applies is considered to provide services in urban areas of this state if the company provides services in a municipality with a population of more than 190,000.

(g) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this section.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 20, eff. Sept. 1, 1999.

Sec. 55.015. LIFELINE SERVICE. (a) The commission shall adopt rules prohibiting a certificated provider of local exchange telephone service from discontinuing basic network services listed in Section 58.051 to a consumer who receives lifeline service because of nonpayment by the consumer of charges for other services billed by the provider, including interexchange telecommunications service.

(b) The commission shall adopt rules providing for automatic enrollment to receive lifeline service for eligible consumers. The Texas Department of Human Services, on request of the commission, shall assist in the adoption and implementation of those rules. The commission and the Texas Department of Human Services shall enter into a memorandum of understanding establishing the respective duties of the commission and department in relation to the automatic enrollment.

(b-1) The commission shall adopt rules requiring certificated providers of local exchange telephone service to implement procedures to ensure that all consumers are clearly informed both orally and in writing of the existence of the lifeline service program when they request or initiate service or change service locations or providers. On or before June 1, 2006, the commission shall enter into a memorandum of understanding with the Health and Human Services Commission, and, to the maximum extent feasible, housing authorities in the principal cities of each metropolitan statistical area, to improve enrollment rates in the lifeline service program.

(c) A certificated provider of local exchange telephone service may block a lifeline service participant's access to all interexchange telecommunications service except toll-free numbers when the participant owes an outstanding amount for that service. The provider shall remove the block without additional cost to the participant on payment of the outstanding amount.

(d) A certificated provider of local exchange telephone service shall offer a consumer who applies for or receives lifeline service the option of blocking all toll calls or, if technically capable, placing a limit on the amount of toll calls. The provider may not charge the consumer an administrative charge or other additional amount for the blocking service.

(d-1) A certificated provider of local exchange telephone

service shall provide access to lifeline service to a customer whose income is not more than 150 percent of the applicable income level established by the federal poverty guidelines or in whose household resides a person who receives or has a child who receives:

(1) Medicaid;

(2) food stamps;

(3) Supplemental Security Income;

(4) federal public housing assistance;

(5) Low Income Home Energy Assistance Program (LIHEAP) assistance; or

(6) health benefits coverage under the state child health plan under Chapter 62, Health and Safety Code.

(d-2) A certificated provider of local exchange telephone service shall provide consumers who apply for or receive lifeline service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network service.

(e) In this section, "lifeline service" means a retail local service offering described by 47 C.F.R. Section 54.401(a), as amended.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 21, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 9, eff. September 7, 2005.

Sec. 55.016. TELECOMMUNICATIONS BILLING. (a) The proliferation of charges for separate services, products, surcharges, fees, and taxes on a bill for telecommunications products or services has increased the complexity of those bills to such an extent that in some cases the bills have become difficult for customers to understand.

(b) A bill from a local exchange company for telecommunications products or services should be consistent with providing customers sufficient information about the charges included in the bill to understand the basis and source of the charges.

(c) To the extent permitted by law, a monthly bill from a local exchange company for local exchange telephone service shall clearly

identify all charges including basic local service charges, fees, carrier's charges, assessments, surcharges, optional services, and taxes.

(d) Local exchange carriers shall annually file a copy of that portion of their bill that has not been previously approved by the commission for compliance review with this section.

(e) The commission shall have all necessary authority to enforce this section.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 18, eff. Mar. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 963, Sec. 1, eff. June 14, 2001. Renumbered from Sec. 55.012 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(110), eff. Sept. 1, 2001.

Sec. 55.017. IDENTIFICATION REQUIRED. (a) A representative of a telecommunications provider or a video or cable service provider that has an easement in or a right-of-way over or through real property must show proof of identification to the owner of the real property when entering the property if requested by the owner.

(b) This section does not apply to regularly scheduled service readings or examinations.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 10, eff. September 7, 2005.

## SUBCHAPTER B. EXTENDED AREA SERVICE

Sec. 55.021. EXTENDED AREA SERVICE. After notice and a hearing, the commission may order one or more local exchange companies that are dominant carriers to provide:

(1) mandatory extended area service in accordance with Section 55.022; or

(2) optional extended area service in accordance with Section 55.023.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.022. MANDATORY SERVICE. The commission may order mandatory extended area service in a specified metropolitan area if:

(1) there is a sufficient community of interest in the area; and

(2) the company can reasonably provide the service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.023. OPTIONAL EXTENDED AREA SERVICE. (a) The commission may order optional extended area service in a specified calling area if:

(1) each affected company and the representatives of at least one political subdivision in the proposed calling area agree to the service; and

(2) the proposed common calling area has a single, continuous boundary.

(b) The commission may not adopt rules that diminish in any manner the ability of an affected company or a political subdivision to enter into joint agreements for optional extended area service under this section.

(c) In this section, "political subdivision" means:

(1) a county;

(2) a municipality; or

(3) an unincorporated town or village that has 275 or more access lines.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.024. CHARGE FOR EXTENDED AREA SERVICE. (a) An incumbent local exchange company that provides mandatory two-way extended area service to customers shall impose for that service a separately stated monthly charge of $3.50 a line for a residential customer and $7 a line for a business customer if, on September 1, 1995, the company:

(1) served more than 1,000,000 access lines in this state; and

(2) imposed a separately stated monthly charge for mandatory two-way extended area service of more than $3.50 a line for a residential customer and more than $7 a line for a business customer.

(b) The company shall recover all costs incurred and all loss

of revenue that results from imposition of the rates prescribed by Subsection (a) in the manner prescribed by Section 55.048(c).

(c) The rate limitation prescribed by Subsection (a) does not apply to a separately stated monthly charge for:

(1) extended area service in or into a metropolitan exchange; or

(2) extended metropolitan service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.025. HUNTING SERVICE. (a) A local exchange company shall make available, at a reasonable tariffed rate, hunting service from local exchange lines to extended metropolitan service lines.

(b) The company may not require a customer to purchase additional extended metropolitan service to obtain the hunting service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.026. NEW ORDERS PROHIBITED AFTER CERTAIN DATE. On or after September 1, 2011, the commission may not require a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 8, eff. September 1, 2011.

**SUBCHAPTER C. EXPANDED TOLL-FREE LOCAL CALLING AREAS**

Sec. 55.041. DEFINITIONS. In this subchapter, "metropolitan exchange," "local calling area of a metropolitan exchange," and "exchange" have the meanings and boundaries assigned by the commission on September 1, 1993.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.042. CONTIGUOUS EXCHANGE. The commission may expand a toll-free local calling area into an exchange that is not in a

metropolitan exchange but is in a local calling area that is contiguous to a metropolitan exchange that the commission determines has a community of interest with the exchange for which a petition is filed under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.043. SPLITTING EXCHANGES PROHIBITED. Notwithstanding any other provision of this subchapter, the commission may not split a petitioning or requested exchange in establishing a toll-free local calling area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.044. EXEMPTION. (a) The commission may not require an incumbent local exchange company serving the petitioning or requested exchange to expand the company's toll-free local calling area under this subchapter if:

(1) the incumbent local exchange company has fewer than 10,000 access lines;

(2) the petitioning or requested exchange is served by a telephone cooperative corporation;

(3) extended area service or extended metropolitan service is available between the exchanges;

(4) the petitioning or requested exchange is a metropolitan exchange; or

(5) the commission determines that the company has shown that to serve the area is not geographically or technologically feasible.

(b) To promote the wide dispersion of pay telephones, the commission may:

(1) exempt pay telephones from this subchapter; or

(2) change the rates charged for calls from pay telephones.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.045. ELIGIBILITY TO PETITION. The telephone subscribers of an incumbent local exchange company exchange that

serves not more than 10,000 access lines may petition the commission for expansion of the company's toll-free local calling area if:

(1) the petitioning exchange's central switching office is located within 22 miles, using vertical and horizontal geographic coordinates, of the central switching office of the exchange requested for expanded local calling service; or

(2) the petitioning exchange's central office is not more than 50 miles from the central office of the exchange requested for expanded local calling service and the exchanges share a community of interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.046. PETITION REQUIREMENTS. (a) A petition under this subchapter must be signed by a number of the exchange's subscribers equal at least to the lesser of 100 of the exchange's subscribers or five percent of the exchange's subscribers.

(b) An exchange that petitions under Section 55.045(2) must demonstrate in the petition that the exchange shares a community of interest with the requested exchange.

(c) For purposes of this section, the relationships between exchanges that create a community of interest include:

(1) a relationship because of schools, hospitals, local governments, or business centers; or

(2) other relationships that would make the unavailability of expanded local calling service a hardship for the residents of the area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.047. BALLOTING AND CONSIDERATION. (a) If the commission receives a petition that complies with this subchapter, the commission shall order the incumbent local exchange company to provide ballots to the subscribers in the petitioning exchange.

(b) The commission shall consider the request for expansion of the toll-free local calling area if at least 70 percent of the subscribers who vote do so in favor of the expansion.

(c) The commission by rule shall provide for an expedited hearing on the issue of expansion.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.048. CHARGES. (a) The incumbent local exchange company shall recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area under this subchapter through a request other than a revenue requirement showing by imposing a monthly fee under Subsection (b) or (c), or both.

(b) The company may impose a monthly fee against each residential and business customer in the petitioning exchange. The fee may not exceed $3.50 a line for a residential customer and $7 a line for a business customer unless the customer's toll-free local calling area includes more than five exchanges. The company may impose an additional monthly fee of $1.50 for each exchange in excess of five. This subsection applies regardless of the number of petitions required to obtain access to the exchanges. A company may impose a fee under this subsection only until the company's next general rate case.

(c) The company may impose a monthly fee against each of the company's local exchange service customers in this state. This fee is in addition to the company's local exchange rates.

(d) The company may not recover regulatory case expenses under this subchapter by imposing a surcharge on the subscribers of the petitioning exchange.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.049. EXPANSION PROHIBITED AFTER CERTAIN DATE. On or after September 1, 2011, the commission may not order an expansion of a toll-free local calling area.

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 9, eff. September 1, 2011.

## SUBCHAPTER D. OPERATOR SERVICE PROVIDERS

Sec. 55.081. DEFINITION. In this subchapter, "operator service" means a service using live operator or automated operator functions to handle telephone service such as toll calling using collect, third-number billing, and calling card services. The term

does not include a call for which the called party has arranged to be billed (800 service).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.082. APPLICABILITY. Except as provided by Section 55.088, this subchapter applies only to a telecommunications utility that is not a dominant carrier.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.083. RULES AND PROCEDURES. (a) The commission may adopt rules and establish procedures to enforce and implement this subchapter.

(b) A rule adopted under this subchapter must be nondiscriminatory and designed to promote competition that facilitates consumer choice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.084. INFORMATION DISPLAYED ON PUBLIC USE TELEPHONE. (a) An operator service provider shall furnish each entity with which it contracts to provide operator service a sticker, card, or other form of information approved by the commission for each telephone that:

(1) has access to the service; and

(2) is intended for use by the public.

(b) The commission may grant the owner of a telephone approval for an alternative form of information.

(c) The information must state:

(1) the provider's name;

(2) that the operator service provider will provide rate information on a caller's request;

(3) that a caller, on the caller's request, will be informed of the method of access to the local exchange carrier operator; and

(4) that a complaint about the service may be made to the provider or to the commission at the designated telephone number.

(d) The operator service provider shall by contract require an entity receiving information to display the information on or near each telephone for which the operator service provider is required to furnish the information.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.085. CONNECTION ANNOUNCEMENT. Before connecting a call, the operator service provider shall:

(1) announce the provider's name; and

(2) at the caller's request, quote the rate and any other fee or surcharge that applies to the call and is charged by the provider.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.086. INFORMATION REQUIRED ON ACCESS TO LOCAL EXCHANGE COMPANY OPERATOR. (a) An operator service provider, on a caller's request, shall inform the caller of the method of access to the local exchange carrier operator serving the exchange from which the call is made.

(b) A charge may not be made for information provided under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.087. ACCESS TO LOCAL EXCHANGE COMPANY AND OTHER UTILITIES REQUIRED. (a) The commission by rule shall require an operator service provider to include in its contract with each entity through which it provides operator service a provision that requires each telephone subscribed to its service to allow access to:

(1) the local exchange carrier operator serving the exchange from which the call is made; and

(2) other telecommunications utilities.

(b) To prevent fraudulent use of its service, an operator service provider or an entity through which it provides operator service may block the access described by Subsection (a) by obtaining a waiver for this purpose from the commission or the Federal

Communications Commission. The commission by rule shall establish the procedure and criteria for obtaining a waiver from the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.088. ACCESS TO LIVE OPERATOR REQUIRED. (a) A dominant or nondominant telecommunications utility that provides operator service shall ensure that a caller has access to a live operator at the beginning of a live or mechanized operator-assisted call through a method designed to be easily and clearly understandable and accessible to the caller.

(b) A telecommunications utility described by Subsection (a) shall submit to the commission for review the method by which the utility will provide access to a live operator.

(c) This section applies regardless of the method by which the telecommunications utility provides operator service.

(d) This section does not apply to a telephone located in a prison or jail facility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.089. COMMISSION MAY INVESTIGATE AND ACT ON VIOLATION. (a) If the commission determines that an operator service provider has violated or is about to violate this subchapter, the commission, after notice and evidentiary hearing, may take action to stop, correct, or prevent the violation.

(b) The commission may investigate a complaint that it receives concerning an operator service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. CALLER IDENTIFICATION SERVICE

Sec. 55.101. DEFINITIONS. In this subchapter:

(1) "Caller identification information" means any information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone, including the telephone listing number or

the name of the customer from whose telephone a telephone number is dialed.

(2) "Caller identification service" means a service that provides caller identification information to a device that can display the information.

(3) "Per-call blocking" means a telecommunications service that prevents caller identification information from being transmitted to a called party on an individual call when the calling party affirmatively acts to prevent the transmission.

(4) "Per-line blocking" means a telecommunications service that prevents caller identification information from being transmitted to a called party on each call unless the calling party affirmatively acts to permit the transmission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.102. APPLICABILITY. (a) This subchapter applies only to the provision of caller identification service.

(b) This subchapter does not apply to:

(1) an identification service that is used in a limited system, including a central office based PBX-type system;

(2) information that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911);

(3) information exchanged between telecommunications utilities, enhanced service providers, or other entities that is necessary for the setting up, processing, transmission, or billing of telecommunications or related services;

(4) information provided in compliance with applicable law or legal process; or

(5) an identification service provided in connection with a 700, 800, or 900 access code telecommunications service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.103. PROVISION OF SERVICE. (a) A telecommunications utility may offer caller identification services under this subchapter only if the utility obtains written authorization from the commission.

(b) A commercial mobile service provider may offer caller identification services in accordance with Sections 55.104, 55.105, 55.106, 55.1065, and 55.107.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.05(a), eff. Sept. 1, 1999.

Sec. 55.104. USE OF INFORMATION. (a) A person may not use a caller identification service to compile and sell specific local call information without the affirmative approval of the originating telephone customer.

(b) This section does not prohibit a provider of caller identification service from:

(1) verifying network performance or testing the caller identification service;

(2) compiling, using, and disclosing aggregate caller identification information; or

(3) complying with applicable law or legal process.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.105. PER-CALL BLOCKING. Except as provided by Section 55.1065, the commission shall require that a provider of caller identification service offer free per-call blocking to each telephone subscriber in the specific area in which the service is offered.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.05(b), eff. Sept. 1, 1999.

Sec. 55.106. PER-LINE BLOCKING. (a) Except as provided by Section 55.1065, the commission shall require that a provider of caller identification service offer free per-line blocking to a particular customer if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking.

(b) A provider who is ordered to offer per-line blocking under this section shall notify the customer by mail of the date the blocking will begin.

(c) If a customer removes and later reinstates the per-line block, the provider may assess a service order charge in an amount approved by the commission for the provider's administrative expenses relating to the reinstatement.

(d) The commission may impose a fee or assessment on a provider in an amount sufficient to cover the additional expenses the commission incurs in implementing the customer certification provisions of this section.

(e) Information received under this section by the commission or by a provider is confidential and may be used only to administer this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.05(c), eff. Sept. 1, 1999.

Sec. 55.107. LIMITATION ON COMMISSION AUTHORITY. The commission may prescribe in relation to blocking only a requirement authorized by Sections 55.105, 55.106, and 55.1065.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.05(e), eff. Sept. 1, 1999.

Sec. 55.109. IMPLEMENTATION OF PANEL RECOMMENDATIONS. The commission may implement the recommendations of the Caller ID Consumer Education Panel and interested parties to the extent consistent with the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.110. REPORT OF BLOCKING FAILURE. (a) A provider of caller ID services who becomes aware of the failure of per-call or per-line blocking to block identification of a customer shall report that failure to the commission, the Caller ID Consumer Education Panel, and the customer whose identification was not blocked.

(b) The provider shall make a reasonable effort to notify the customer within 24 hours after the provider becomes aware of the failure. The provider is not required to notify the customer if the customer reported the failure.

(c) In this section, "caller ID service" means a service that permits the called party to determine the identity, telephone number, or address of the calling party. The term does not include 911 services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER F. AUTOMATIC DIAL ANNOUNCING DEVICES**

Sec. 55.121. DEFINITIONS. In this subchapter:

(1) "Automated dial announcing device" means automated equipment used for telephone solicitation or collection that can:

(A) store telephone numbers to be called or produce numbers to be called through use of a random or sequential number generator; and

(B) convey, alone or in conjunction with other equipment, a prerecorded or synthesized voice message to the number called without the use of a live operator.

(2) "Telephone solicitation" means an unsolicited call.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 600 (S.B. 1040), Sec. 1, eff. September 1, 2013.

Sec. 55.122. EXEMPTIONS. This subchapter does not apply to the use of an automated dial announcing device:

(1) to make a call relating to an emergency or a public service under a program developed or approved by the emergency management coordinator of the county in which the call is received;

(2) by a public or private primary or secondary school system to locate or account for a truant student;

(3) by a municipality or a person calling on behalf of a municipality to deliver information to citizens of the municipality regarding a public health, safety, or welfare issue; or

(4) by an organization to a member of the organization.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 600 (S.B. 1040), Sec. 2, eff.

September 1, 2013.

Sec. 55.1225. APPLICABILITY. This subchapter applies to an automated dial announcing device used to make a telephone call that originates or terminates in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 600 (S.B. 1040), Sec. 3, eff. September 1, 2013.

Sec. 55.123. NOTICE OF USE OF DEVICE TO TELECOMMUNICATIONS UTILITY. A person may not use an automated dial announcing device to make a telephone call in which the device plays a recorded message when the connection is completed unless the person gives to each telecommunications utility over whose system the device is to be used written notice specifying the type of device to be used.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.124. RANDOM OR SEQUENTIAL NUMBER CALLING. A person may not use an automated dial announcing device for random number dialing or to dial numbers determined by successively increasing or decreasing integers if the person uses the device to make a telephone call in which the device plays a recorded message when the connection is completed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.125. HOURS WHEN USE PROHIBITED. (a) A person may not use an automated dial announcing device to make a telephone solicitation call terminating in this state in which the device plays a recorded message when the connection is completed if the call is made:

(1) before noon or after 9 p.m. on a Sunday; or

(2) before 9 a.m. or after 9 p.m. on a weekday or a Saturday.

(b) A person may not use an automated dial announcing device to make a telephone collection call terminating in this state in which

the device plays a recorded message when the connection is completed if the call is made at an hour at which collection calls are prohibited under the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.126. DEVICE DISCONNECTION. A person may not use an automated dial announcing device to make a telephone call in which the device plays a recorded message when the connection is completed unless the device disconnects from the called person's line not later than five seconds after the call is terminated by either party. If the device cannot disconnect during that period, a live operator must introduce the call and receive the called person's oral consent before beginning a prerecorded or synthesized voice message.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 667, Sec. 2, eff. Sept. 1, 1999.

Sec. 55.127. CONTENTS OF RECORDED MESSAGE. (a) A person may not use an automated dial announcing device to make a telephone call in which the device plays a recorded message when the connection is completed unless the recorded message states during the first 30 seconds of the call:

(1) the nature of the call;

(2) the identity of the person, company, or organization making the call; and

(3) the telephone number from which the call is made.

(b) In addition to the requirements prescribed by Subsection (a), a call during which a cross-promotion or reference to a pay-per-call information service is made must include a statement of:

(1) the fact that a caller who makes a call to a pay-per-call information service's telephone number will be charged for that call;

(2) the amount of the flat-rate or cost-per-minute charge the caller will incur or the amount of both if both charges will be incurred; and

(3) the estimated amount of time required to receive all the information offered by the service during a call.

(c) Subsection (a) does not apply to the use of a device if the device is used:

(1) for debt collection purposes in compliance with applicable federal law and regulations; and

(2) by a live operator for automated dialing or hold announcement purposes.

(d) In this section, "pay-per-call information service" means a service that routinely delivers, for a predetermined and sometimes time-sensitive fee, a prerecorded or live message or interactive program after the caller dials a specified 900 or 976 number.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.128. DURATION OF RECORDED MESSAGE. A person may not use an automated dial announcing device to make for solicitation purposes a telephone call in which the device plays a recorded message when the connection is completed unless:

(1) the recorded message is shorter than 30 seconds; or

(2) the device has the technical capacity to:

(A) recognize a telephone answering device on the called person's line; and

(B) terminate the call within 30 seconds.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.05(f), eff. Sept. 1, 1999.

Sec. 55.129. PERMIT REQUIRED. A person may not use an automated dial announcing device to make a telephone call in which the device plays a recorded message when the connection is completed unless the person has a permit under Section 55.130.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.130. PERMIT. (a) A person may not use an automated dial announcing device without a permit issued by the commission.

(b) An applicant for an original permit must submit to the commission an application on a form that:

(1) is prescribed by the commission; and

(2) contains:

(A) the telephone number of each automated dial announcing device that the person will use; and

(B) the physical address from which each automated dial announcing device will operate.

(c) An original permit is valid for one year and may be renewed annually by filing with the commission the information required by Subsection (b)(2).

(d) An application for an original permit or a filing required for the renewal of the permit must be accompanied by the appropriate fee prescribed by Section 55.131.

(e) In determining whether to deny an application for an original permit or renewal of the permit, the commission shall consider the compliance record of the owner or operator of the automated dial announcing device and may deny the application based on that record.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.131. PERMIT FEE. (a) The commission shall prescribe a fee for an original permit or renewal of a permit.

(b) The amount of the original permit fee must be reasonable and cover the enforcement cost to the commission but may not exceed $500.

(c) The fee for renewal of a permit may not exceed $100.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.132. NOTIFICATION OF CHANGE. (a) The owner or operator of an automated dial announcing device shall notify the commission if the telephone number of the device or the physical address from which the device operates changes.

(b) The owner or operator shall give the notice by certified mail not later than the 48th hour before the hour the device begins operating with the new telephone number or at the new address.

(c) If the owner or operator of a device fails to give notice as required by Subsection (b), the person's permit is invalid.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.133. NOTIFICATION OF LOCAL EXCHANGE COMPANY. The commission shall provide to a local exchange company on request a copy of a permit issued under this subchapter and of any change relating to the permit.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.134. COMPLAINTS AND ENFORCEMENT. (a) The commission shall:

(1) investigate complaints relating to the use of an automated dial announcing device; and

(2) enforce this subchapter.

(b) A local exchange company that receives a complaint relating to the use of an automated dial announcing device shall send the complaint to the commission. The commission by rule shall prescribe the procedures and requirements for sending a complaint to the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.135. REVOCATION OF PERMIT. The commission may revoke a person's permit if the person fails to comply with this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.136. DISCONNECTION OF SERVICE. (a) If the commission or a court determines that a person has violated this subchapter, the commission or court shall require a telecommunications utility to disconnect service to the person.

(b) The telecommunications utility may reconnect service to the person only on a determination by the commission that the person will comply with this subchapter.

(c) Not later than the third day before the date of the disconnection, the telecommunications utility shall give notice to the person using the device of its intent to disconnect service. However, if the device is causing network congestion or blockage, the

notice may be given on the day before the date of disconnection.

(d) A telecommunications utility, without an order by the commission or a court, may disconnect or refuse to connect service to a person using or intending to use an automated dial announcing device if the utility determines that the device would cause or is causing network harm.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.137. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person who owns or operates an automated dial announcing device in violation of this subchapter or a commission rule or order.

(b) The penalty for a violation may be in an amount not to exceed $1,000 for each day or portion of a day during which the device operates in violation of this subchapter or a commission rule or order.

(c) The administrative penalty is civil in nature and is in addition to any other penalty provided by law.

(d) The commission by rule shall prescribe the procedures for assessing an administrative penalty under this section. The procedures must require proper notice and hearing in accordance with Chapter 2001, Government Code.

(e) A person may appeal the final order of the commission under Chapter 2001, Government Code. The substantial evidence rule applies on appeal.

(f) The proceeds of administrative penalties collected under this section shall be deposited to the credit of the commission. The commission shall use the proceeds to enforce this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.05(g), eff. Sept. 1, 1999.

Sec. 55.138. CRIMINAL PENALTY. (a) A person commits an offense if the person owns or operates an automated dial announcing device that the person knows is operating in violation of this subchapter.

(b) An offense under this section is a Class A misdemeanor.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER H. PAY TELEPHONES

Sec. 55.171. DEFINITION. In this subchapter, "provider" means an entity that provides pay telephone service, including:

(1) an incumbent local exchange company; and

(2) a subscriber to a customer-owned pay telephone service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.172. LIMITATION. This subchapter prescribes the limits of:

(1) the right of a provider to set the provider's rates and charges for pay telephone services; and

(2) the commission's authority over the pay telephone service rates of an incumbent local exchange company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.173. REGISTRATION. (a) A person may not provide pay telephone service in this state unless the person is registered with the commission.

(b) This section does not apply to a provider who holds a certificate of convenience and necessity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. The charge or surcharge a local exchange company imposes for an access line used to provide pay telephone service in an exchange may not exceed the amount of the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 11, eff. September 7, 2005.

Sec. 55.174. PROHIBITION ON CHARGE FOR CERTAIN CALLS. A provider may not charge a person making a call on a pay telephone for:

(1) local directory assistance; or

(2) a call made under Chapter 771 or 772, Health and Safety Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.175. CHARGE FOR LOCAL CALLS. (a) The commission shall establish the limit on the amount a provider may charge for a pay telephone coin sent-paid call in the local exchange company's toll-free calling area.

(b) The commission may establish a statewide ceiling on the amount a provider may charge for a local pay telephone call that is:

(1) collect;

(2) operator assisted; or

(3) paid by credit card or calling card.

(c) The commission may not establish the ceiling under Subsection (b) at an amount that is less than the applicable local rates for such a call imposed by any of the four largest interexchange telecommunications carriers operating in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.176. CHARGE FOR 800-TYPE CALLS. (a) A provider may charge at a pay telephone a fee of not more than 25 cents for initiating an 800-type call.

(b) A provider may impose the fee only if:

(1) the pay telephone is registered with the commission; and

(2) the provider certifies that the pay telephone complies with commission rules regarding the provision of pay telephone service.

(c) Subsection (b) does not apply to a local exchange company pay telephone.

(d) A provider may not impose the fee if imposition is inconsistent with federal law.

(e) A provider may not impose the fee for a:

(1) local call;
(2) 911 call;
(3) local directory assistance call; or
(4) call that is covered by the Telephone Operator Consumer Services Improvement Act of 1990 (47 U.S.C. Section 226).

(f) A provider who imposes the fee must post on each pay telephone notice that the fee will be charged. The provider must post the notice:
(1) in plain sight of the user; and
(2) in a manner consistent with existing commission requirements for posting information.

(g) The commission may not impose on a local exchange company the duty or obligation to:
(1) record the use of pay telephone service;
(2) bill or collect for the use of the pay telephone; or
(3) remit to the provider the fee authorized by this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.177. CHARGE FOR CREDIT CARD, CALLING CARD, OR OPERATOR-ASSISTED CALLS. (a) A provider may not impose for a credit card, calling card, or live or automated operator-assisted call a rate or charge that is greater than the authorized rates and charges published on March 18, 1995, in the eight newspapers having the largest circulation in this state.

(b) The published rates may not be changed.

(c) This section does not apply to a local exchange company. Chapter 58 governs the pay telephone rates of an incumbent local exchange company that elects incentive regulation under that chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.178. NOTICE OF INABILITY TO RECEIVE CALLS. (a) A provider may not display the telephone number of a pay telephone that cannot receive telephone calls.

(b) A provider shall place in a conspicuous location on each pay telephone that cannot receive telephone calls a notice stating in letters one-fourth inch high: "THIS TELEPHONE CANNOT RECEIVE

TELEPHONE CALLS."

(c) A provider that violates this section or a rule or order adopted by the commission under this section is subject to a civil penalty as provided by Section 15.028 unless the provider takes corrective action to comply with this section or the rule or order not later than the 14th day after the date the provider receives written notice of the violation.

(d) The commission has jurisdiction over a provider to the extent necessary to enforce this section regardless of whether a provider is a telecommunications utility regulated under this title.

(e) The commission may establish procedures to enforce this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.179. INFORMATION REQUIREMENTS. (a) The commission by rule may prescribe the information that must be posted on a pay telephone.

(b) A commission rule may not require a provider or an affiliate of a provider to police compliance by another provider with the commission's rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.180. VIOLATIONS. The commission may order the disconnection of pay telephone service for not more than one year for repeat violations of commission rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER I. DIRECTORY LISTINGS AND ASSISTANCE

Sec. 55.201. TERMS OF DIRECTORY LISTINGS AND ASSISTANCE. (a) Each company that provides local exchange telephone service in overlapping certificated areas shall negotiate the terms of printed directory listings and directory assistance in those areas.

(b) On complaint by the incumbent local exchange company or the holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of

operating authority, the commission may:

(1) resolve a dispute between the parties; and

(2) issue an order setting the terms of the directory listings or directory assistance, if necessary.

(c) This section does not affect the authority of an incumbent local exchange company to voluntarily conduct negotiations with an applicant for a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.202. DIRECTORY PUBLISHED BY TELECOMMUNICATIONS UTILITY. A telecommunications utility or an affiliate of that utility that publishes a residential or business telephone directory that is distributed to the public shall publish in the directory the name of each state senator or representative who represents all or part of the geographical area for which the directory contains listings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.203. DIRECTORY PUBLISHED BY PRIVATE PUBLISHER. (a) A private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost shall include in the directory:

(1) a listing of any toll-free and local telephone numbers of:

(A) state agencies;

(B) state public services; and

(C) each state elected official who represents all or part of the geographical area for which the directory contains listings; and

(2) the Internet address of the state electronic Internet portal and a statement that Internet sites for state agencies may be accessed through the state electronic Internet portal.

(b) The listing required by this section must be:

(1) clearly identified; and

(2) located or clearly referenced at the front of the directory before the main listing of residential and business

telephone numbers.

(c) The commission by rule may specify:

(1) the format of the listing; and

(2) criteria for inclusion of agencies, services, and officials.

(d) The commission's rules must require a publisher to list:

(1) the telephone number for state government information; and

(2) telephone numbers alphabetically by:

(A) the subject matter of agency programs; and

(B) agency name.

(e) The commission, with the cooperation of other state agencies, shall:

(1) compile relevant information to ensure accuracy of information in the listing; and

(2) provide the information to a telecommunications utility or telephone directory publisher within a reasonable time after a request by the utility or publisher.

(f) The Department of Information Resources shall cooperate with the commission and with publishers to ensure that the subject matter listing of programs and telephone numbers in the telephone directories are consistent with the categorization developed by the Records Management Interagency Coordinating Council under Section 441.203(j), Government Code.

(g) The rules adopted under Subsection (d) must provide that a telecommunications utility that publishes and distributes to the public a residential or business telephone directory shall list prominently in the directory the contact information for the specialized telecommunications assistance program established under Subchapter E, Chapter 56.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.06(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 424, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 20.002, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 165, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.08, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 32, eff.

June 17, 2011.

Sec. 55.204. ELECTRONIC TELEPHONE DIRECTORY. (a) Notwithstanding any other law, a telecommunications provider or telecommunications utility, to further the recycling goals, may publish on the provider's or the utility's Internet website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings.

(b) A provider or utility that publishes a telephone directory or directory listing as described by Subsection (a) shall provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility exercises this option, it shall notify its customers that the provider or utility shall provide the first print or digital copy requested by a customer in each calendar year at no charge to the customer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1180 (H.B. 3395), Sec. 4, eff. June 17, 2011.

**SUBCHAPTER J. TELECOMMUNICATIONS SERVICE BY CERTAIN PROVIDERS**

Sec. 55.251. CHARGE FOR HOTEL OR MOTEL CALL. A hotel or motel may not charge more than 50 cents for:

(1) a local telephone call;

(2) a credit card telephone call;

(3) a collect telephone call; or

(4) any other local telephone call for which assistance from the hotel or motel operator is not required.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 55.252. 900 SERVICE USED BY PROBATIONERS OR PAROLEES. (a) This section applies only to a telecommunications utility that transports or provides an intrastate 900 service that is:

(1) covered by a contract authorized by Chapter 76 or 508, Government Code; and

(2) used by a defendant under the supervision of a community supervision and corrections department or the parole

division of the Texas Department of Criminal Justice to:

(A) pay a fee or cost; or

(B) comply with telephone reporting requirements.

(b) A telecommunications utility may adjust or authorize the adjustment of an end-user's bill for 900 service described by Subsection (a) only with the consent of the contracting community supervision and corrections department or the contracting parole division of the Texas Department of Criminal Justice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.07(a), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.155, eff. September 1, 2009.

Sec. 55.253. TELEPHONE PREPAID CALLING SERVICES. (a) In this section:

(1) "Prepaid calling card company" means a company that provides a prepaid calling service to the public using its own network or resold services.

(2) "Prepaid calling service" means a prepaid telecommunications service that allows an end user to originate a call using an access number and authorization code.

(b) The commission by rule may prescribe standards regarding the information a prepaid calling card company shall disclose to customers in relation to the rates and terms of service for prepaid calling services offered in this state.

(c) The commission is granted all necessary jurisdiction to adopt rules under this section and to enforce those rules and this section.

(d) A violation of a rule adopted under this section is subject to enforcement under Subchapter B, Chapter 15.

Added by Acts 1999, 76th Leg., ch. 411, Sec. 1, eff. June 18, 1999.

## SUBCHAPTER K. SELECTION OF TELECOMMUNICATIONS UTILITIES

Sec. 55.301. STATE POLICY. It is the policy of this state to ensure that all customers are protected from the unauthorized switching of a telecommunications utility selected by the customer to

provide telecommunications service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.302. COMMISSION RULES. (a) The commission shall adopt nondiscriminatory and competitively neutral rules to implement this subchapter, including rules that:

(1) ensure that customers are protected from deceptive practices in the obtaining of authorizations and verifications required by this subchapter;

(2) are applicable to all local exchange telephone services, interexchange telecommunications service, and other telecommunications service provided by telecommunications utilities in this state;

(3) are consistent with the rules and regulations prescribed by the Federal Communications Commission for the selection of telecommunications utilities;

(4) permit telecommunications utilities to select any method of verification of a change order authorized by Section 55.303;

(5) require the reversal of certain changes in the selection of a customer's telecommunications utility in accordance with Section 55.304(a);

(6) prescribe, in accordance with Section 55.304(b), the duties of a telecommunications utility that initiates an unauthorized customer change; and

(7) provide for corrective action and the imposition of penalties in accordance with Sections 55.305 and 55.306.

(b) The commission is granted all necessary jurisdiction to adopt rules required by this subchapter and to enforce those rules and this subchapter.

(c) The commission may notify customers of their rights under the rules.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.303. VERIFICATION OF CHANGE. A telecommunications

utility may verify a change order by:

(1) obtaining written authorization from the customer;

(2) obtaining a toll-free electronic authorization placed from the telephone number that is the subject of the change order; or

(3) an oral authorization obtained by an independent third party.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.304. UNAUTHORIZED CHANGE. (a) If a change in the selection of a customer's telecommunications utility is not made or verified in accordance with this subchapter, the change, on request by the customer, shall be reversed within a period established by commission ruling.

(b) A telecommunications utility that initiates an unauthorized customer change shall:

(1) pay all usual and customary charges associated with returning the customer to its original telecommunications utility;

(2) pay the telecommunications utility from which the customer was changed any amount paid by the customer that would have been paid to that telecommunications utility if the unauthorized change had not been made;

(3) return to the customer any amount paid by the customer that exceeds the charges that would have been imposed for identical services by the telecommunications utility from which the customer was changed if the unauthorized change had not been made; and

(4) provide to the original telecommunications utility from which the customer was changed all billing records to enable that telecommunications utility to comply with this subchapter.

(c) The telecommunications utility from which the customer was changed shall provide to the customer all benefits associated with the service on receipt of payment for service provided during the unauthorized change.

(d) A customer is not liable for charges incurred during the first 30 days after the date of an unauthorized carrier change.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.305. CORRECTIVE ACTION AND PENALTIES. (a) If the commission finds that a telecommunications utility has repeatedly violated the commission's telecommunications utility selection rules, the commission shall order the utility to take corrective action as necessary. In addition, the utility may be subject to administrative penalties under Sections 15.023-15.027.

(b) An administrative penalty collected under this section shall be used to enforce this subchapter.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.306. REPEATED AND RECKLESS VIOLATION. If the commission finds that a telecommunications utility has repeatedly and recklessly violated the commission's telecommunications utility selection rules, the commission may, if consistent with the public interest, suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility and, by taking that action, deny the telecommunications utility the right to provide service in this state.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.307. DECEPTIVE OR FRAUDULENT PRACTICE. The commission may prohibit a utility from engaging in a deceptive or fraudulent practice, including a marketing practice, involving the selection of a customer's telecommunications utility. The commission may define deceptive and fraudulent practices to which this section applies.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1579, Sec. 6, eff. Aug. 30, 1999.

Sec. 55.308. CONSISTENCY WITH FEDERAL LAW. Notwithstanding any other provision of this subchapter, rules adopted by the commission

under this subchapter shall be consistent with applicable federal laws and rules.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 22, eff. Sept. 1, 1999.

## CHAPTER 56. TELECOMMUNICATIONS ASSISTANCE AND UNIVERSAL SERVICE FUND

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 56.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Assistive and Rehabilitative Services.

(2) "Designated provider" means a telecommunications provider designated by the commission to provide services to an uncertificated area under Subchapter F.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 651, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 1, eff. September 1, 2013.

Sec. 56.002. CONFLICT OF PROVISIONS. If this chapter conflicts with another provision of this title, this chapter prevails.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. UNIVERSAL SERVICE FUND

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to:

(1) assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas under two plans:

(A) the Texas High Cost Universal Service Plan (16 T.A.C. Section 26.403); and

(B) the Small and Rural Incumbent Local Exchange Company Universal Service Plan (16 T.A.C. Section 26.404);

(2) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(3) finance the specialized telecommunications assistance program established under Subchapter E;

(4) reimburse the department and the commission for costs incurred in implementing this chapter and Chapter 57;

(5) reimburse a telecommunications carrier providing lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as amended;

(6) finance the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to telecommunications services, including outreach expenses the commission determines are reasonable and necessary;

(7) reimburse a designated provider under Subchapter F;

(8) reimburse a successor utility under Subchapter G; and

(9) finance the program established under Subchapter H.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 23, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1553, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 651, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1451, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 76, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 17.001, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 12, eff. September 7, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 314 (H.B. 2295), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 2, eff. September 1, 2013.

Sec. 56.022. UNIFORM CHARGE. (a) The universal service fund is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base.

(b) A telecommunications provider shall pay the charge in accordance with procedures approved by the commission.

(c) The uniform charge is on services and at rates the commission determines. In establishing the charge and the services to which the charge will apply, the commission may not:

(1) grant an unreasonable preference or advantage to a telecommunications provider;

(2) assess the charge on pay telephone service; or

(3) subject a telecommunications provider to unreasonable prejudice or disadvantage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 404, Sec. 1, eff. Sept. 1, 2001.

Sec. 56.023. COMMISSION POWERS AND DUTIES. (a) The commission shall:

(1) in a manner that assures reasonable rates for basic local telecommunications service, adopt eligibility criteria and review procedures, including a method for administrative review, the commission finds necessary to fund the universal service fund and make distributions from that fund;

(2) determine which telecommunications providers meet the eligibility criteria;

(3) determine the amount of and approve a procedure for reimbursement to telecommunications providers of revenue lost in providing tel-assistance service under Subchapter C;

(4) establish and collect fees from the universal service fund necessary to recover the costs the department and the commission incur in administering this chapter and Chapter 57;

(5) approve procedures for the collection and disbursal of the revenue of the universal service fund; and

(6) audit voucher payments and other expenditures made under the specialized telecommunications assistance program established under Subchapter E.

(b) The eligibility criteria must require that a telecommunications provider, in compliance with the commission's quality of service requirements:

(1) offer service to each consumer within an exchange in the company's certificated area for which the incumbent local

exchange company receives support under a plan established under Section 56.021(1) and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F; and

(2) render continuous and adequate service within an exchange in the company's certificated area for which the incumbent local exchange company receives support under a plan established under Section 56.021(1) and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F.

(c) A company designated under Subchapter F to provide services to permanent residential or business premises within an uncertificated area and that complies with Subsection (b) shall receive universal service fund distributions to assist the provider in providing those services. In addition, the commission shall designate the provider as an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, for those permanent residential or business premises.

(d) The commission shall adopt rules for the administration of the universal service fund and this chapter and may act as necessary and convenient to administer the fund and this chapter. The rules must include procedures to ensure reasonable transparency and accountability in the administration of the universal service fund.

(e) A successor utility, as that term is defined by Section 54.301, that is or becomes an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, is entitled to receive universal service fund distributions for costs in accordance with Subchapter G.

(f) Except as provided by Subsection (g), for an incumbent local exchange company or cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such a company or cooperative, the support that the company or cooperative is eligible to receive on December 31, 2016, under a plan established under Section 56.021(1)(A) is reduced:

(1) on January 1, 2017, to 75 percent of the level of support the company or cooperative is eligible to receive on December 31, 2016;

(2) on January 1, 2018, to 50 percent of the level of support the company or cooperative is eligible to receive on December

31, 2016; and

(3) on January 1, 2019, to 25 percent of the level of support the company or cooperative is eligible to receive on December 31, 2016.

(g) After the commission has adopted rules under Subsection (j), an incumbent local exchange company or cooperative that is subject to Subsection (f) may petition the commission to initiate a contested case proceeding as necessary to determine the eligibility of the company or cooperative to receive support under a plan established under Section 56.021(1)(A). A company or cooperative may not file more than one petition under this subsection. On receipt of a petition under this subsection, the commission shall initiate a contested case proceeding to determine the eligibility of the company or cooperative to receive continued support under a plan established under Section 56.021(1)(A) for service in the exchanges that are the subject of the petition. To be eligible to receive support for service in an exchange under this subsection, the company or cooperative must demonstrate that it has a financial need for continued support. The commission must issue a final order on the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the company or cooperative is entitled to receive the total amount of support the company or cooperative was eligible to receive on the date the company or cooperative filed the petition. A company or cooperative that files a petition under this subsection is not subject to Subsection (f) after the commission issues a final order on the proceeding. If the commission determines that a company or cooperative has demonstrated financial need for continued support under this subsection, it shall set the amount of support in the same proceeding. The amount of support set by the commission for an exchange under this subsection may not exceed:

(1) 100 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2016, if the petition is filed before January 1, 2016;

(2) 75 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2016, if the petition is filed on or after January 1, 2016, and before January 1, 2017;

(3) 50 percent of the amount of support the company or cooperative is eligible to receive on December 31, 2016, if the

petition is filed on or after January 1, 2017, and before January 1, 2018; or

(4) 25 percent of the amount of support that the company or cooperative is eligible to receive on December 31, 2016, if the petition is filed on or after January 1, 2018, and before January 1, 2019.

(h) Except as provided by Subsection (i), for an incumbent local exchange company that is an electing company under Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such a company or cooperative, the support that the company or cooperative is eligible to receive on December 31, 2017, under a plan established under Section 56.021(1)(B) is reduced:

(1) on January 1, 2018, to 75 percent of the level of support the company or cooperative is eligible to receive on December 31, 2017;

(2) on January 1, 2019, to 50 percent of the level of support the company or cooperative is eligible to receive on December 31, 2017; and

(3) on January 1, 2020, to 25 percent of the level of support the company or cooperative is eligible to receive on December 31, 2017.

(i) After the commission has adopted rules under Subsection (j), an incumbent local exchange company or cooperative that is subject to Subsection (h) may petition the commission to initiate a contested case proceeding as necessary to determine the eligibility of the company or cooperative to receive support under a plan established under Section 56.021(1)(B). A company or cooperative may not file more than one petition under this subsection. On receipt of a petition under this subsection, the commission shall initiate a contested case proceeding to determine the eligibility of the company or cooperative to receive continued support under a plan established under Section 56.021(1)(B) for service in the exchanges that are the subject of the petition. To be eligible to receive support for service in an exchange under this subsection, the company or cooperative must demonstrate that it has a financial need for continued support. The commission must issue a final order on the proceeding no later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the company or cooperative shall continue to

receive the total amount of support it was eligible to receive on the date the company or cooperative filed a petition under this subsection. A company or cooperative that files a petition under this subsection is not subject to Subsection (h) after the commission issues a final order on the proceeding. If the commission determines that a company or cooperative has demonstrated financial need for continued support under this subsection, it shall set the amount of support in the same proceeding. The amount of support set by the commission for an exchange under this subsection may not exceed:

(1) 100 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2017, if the petition is filed before January 1, 2017;

(2) 75 percent of the amount of support that the company or cooperative will be eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2017, and before January 1, 2018;

(3) 50 percent of the amount of support that the company or cooperative is eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2018, and before January 1, 2019; or

(4) 25 percent of the amount of support that the company or cooperative is eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2019, and before January 1, 2020.

(j) The commission by rule shall establish the standards and criteria for an incumbent local exchange company or cooperative to demonstrate under Subsection (g) or (i) that the company or cooperative has a financial need for continued support for residential and business lines under a plan established under Section 56.021(1).

(k) Subsections (g) and (i) do not authorize the commission to initiate a contested case hearing concerning a local exchange company that has elected to participate in a total support reduction plan under 16 T.A.C. Section 26.403 that requires the company to forego funding under a plan established under Section 56.021(1) after January 1, 2017. This section does not affect any obligation of a local exchange company subject to such a total support reduction plan.

(l) Subsections (f), (g), (h), and (i) do not apply to an incumbent local exchange company that elects, not later than March 1,

2014, to eliminate, not later than September 1, 2018, the support it receives under a plan established under Section 56.021(1).

(m) Nothing in this chapter relieves any party of an obligation entered into in the commission's Docket No. 40521.

(n) Nothing in this section is intended to affect the rate rebalancing proceeding in the commission's Docket No. 41097.

(o) Notwithstanding the provisions of this chapter, the commission has no authority, except as provided by Subsections (f), (g), (h), (i), (j), (k), (m), and (n) to reduce support provided to an incumbent local exchange company that is an electing company under Chapter 58 or 59 or is a cooperative that served greater than 31,000 access lines in this state on September 1, 2013:

(1) under a plan established under Section 56.021(1)(A) before January 1, 2019; or

(2) under a plan established under Section 56.021(1)(B) before January 1, 2020. This subsection expires on January 2, 2020.

(p) If an incumbent local exchange company or cooperative is ineligible for support under a plan established under Section 56.021(1) for services in an exchange, a plan established under Section 56.021(1) may not provide support to any other telecommunications providers for services in that exchange, except that an eligible telecommunications provider that is receiving support under Section 56.021(1)(A) in that exchange shall continue to receive such support until the later of December 31, 2017, or the second anniversary of the date the incumbent local exchange provider or cooperative ceases receiving support in that exchange. The support received by the eligible telecommunications provider during that period shall be at the same monthly per line support level in effect for that exchange as of the date the incumbent local exchange provider or cooperative ceases receiving funding in that exchange.

(q) Notwithstanding the period for continued support specified by Subsection (p), if the eligible telecommunications provider receiving continued support under that subsection is a cooperative or an affiliate of a cooperative, the telecommunications provider is entitled to continued support through December 31, 2017, at the same monthly per-line support amount as the provider is receiving as of the date the support ceases for that exchange for the incumbent local exchange company or cooperative. Support authorized under this subsection ceases December 31, 2017.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 651, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 76, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 10, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 751 (S.B. 583), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 22 (S.B. 804), Sec. 1, eff. September 1, 2015.

Sec. 56.024. REPORTS; CONFIDENTIALITY. (a) The commission may require a telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund.

(b) A report or information the commission requires a telecommunications provider to provide under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) A telecommunications provider shall file with the commission the provider's annual earnings report if the provider:

(1) is not a local exchange company subject to a total support reduction plan under 16 T.A.C. Section 26.403 or that has made an election under Section 56.023(l);

(2) serves greater than 31,000 access lines; and

(3) receives support under a plan established under Section 56.021(1).

(d) A report filed under Subsection (c) is confidential and not subject to disclosure under Chapter 552, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 24, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 751 (S.B. 583), Sec. 2, eff. June 14, 2013.

Sec. 56.025. MAINTENANCE OF RATES AND EXPANSION OF FUND FOR CERTAIN COMPANIES. (a) In addition to the authority provided by Section 56.021:

(1) for each local exchange company that serves fewer than 31,000 access lines and each cooperative, the commission may adopt a mechanism necessary to maintain reasonable rates for local exchange telephone service; and

(2) for each local exchange company and each cooperative that serves 31,000 or fewer access lines and that on June 1, 2013, is not an electing company under Chapter 58 or 59, the commission shall adopt rules to expand the universal service fund in the circumstances prescribed by this section.

(b) The commission shall implement a mechanism through the universal service fund to replace the reasonably projected reduction in high cost assistance revenue caused by a commission order, rule, or policy. This subsection does not apply to an order entered in a proceeding related to an individual company's revenue requirements.

(c) The commission shall implement a mechanism to replace the reasonably projected change in revenue caused by a Federal Communications Commission order, rule, or policy that changes:

(1) the federal universal service fund revenue of a local exchange company; or

(2) costs or revenue assigned to the intrastate jurisdiction.

(d) The commission shall implement a mechanism to replace the reasonably projected reduction in contribution caused by a change of commission policy regarding intraLATA "1-plus" dialing access. In this subsection, "contribution" means the average intraLATA long distance message telecommunications service revenue per minute, including intraLATA toll pooling and associated impacts, less the average message telecommunications service cost per minute less the average contribution from switched access multiplied by the projected change in intraLATA "1-plus" minutes of use.

(e) The commission shall implement a mechanism to replace the reasonably projected increase in costs or decrease in revenue of the intrastate jurisdiction caused by another governmental agency's order, rule, or policy.

(f) A mechanism implemented under Subsection (c), (d), or (e) must be through:

(1) an increase in rates, if the increase would not

adversely affect universal service; or

(2) the universal service fund.

(g) Notwithstanding any other provision of this section, after December 31, 2013, the commission may not distribute support granted under this section, including any support granted before that date, to a local exchange company or cooperative that serves greater than 31,000 access lines or that is an electing company under Chapter 58 or 59 on June 1, 2013.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 13, eff. September 7, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 751 (S.B. 583), Sec. 3, eff. June 14, 2013.

Sec. 56.026. PROMPT AND EFFICIENT DISBURSEMENTS. The commission shall make each disbursement from the universal service fund promptly and efficiently so that a telecommunications provider does not experience an unnecessary cash-flow change as a result of a change in governmental policy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 25, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 14, eff. September 7, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 751 (S.B. 583), Sec. 4, eff. June 14, 2013.

Sec. 56.028. UNIVERSAL SERVICE FUND REIMBURSEMENT FOR CERTAIN INTRALATA SERVICE. On request of an incumbent local exchange company that is not an electing company under Chapters 58 and 59, the commission shall provide reimbursement through the universal service fund for reduced rates for intraLATA interexchange high capacity (1.544 Mbps) service for entities described in Section 58.253(a). The amount of reimbursement shall be the difference between the company's tariffed rate for that service as of January 1, 1998, and the lowest rate offered for that service by any local exchange

company electing incentive regulation under Chapter 58.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 26, eff. Sept. 1, 1999.

Sec. 56.030. AFFIDAVITS OF COMPLIANCE. On or before September 1 of each year, a telecommunications provider that receives disbursements from the universal service fund shall file with the commission an affidavit certifying that the telecommunications provider is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each universal service fund program for which the telecommunications provider receives disbursements.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 15, eff. September 7, 2005.

Sec. 56.031. ADJUSTMENTS: TEXAS HIGH COST UNIVERSAL SERVICE PLAN. The commission may revise the monthly per line support amounts to be made available from the Texas High Cost Universal Service Plan after notice and an opportunity for hearing. In determining appropriate monthly per line support amounts, the commission shall consider the adequacy of basic rates to support universal service.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 15, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 535 (H.B. 2603), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 751 (S.B. 583), Sec. 6, eff. June 14, 2013.

For expiration of Subsections (a), (c), (d), (e), and (f), see Subsection (h).

Sec. 56.032. ADJUSTMENTS: SMALL AND RURAL INCUMBENT LOCAL EXCHANGE COMPANY UNIVERSAL SERVICE PLAN. (a) For purposes of this section, "consumer price index" means the Consumer Price Index for All Urban Consumers, as published by the federal Bureau of Labor Statistics of the United States Department of Labor.

(b) Except as provided by Subsections (d) and (e), the commission may revise the monthly support amounts to be made available from the Small and Rural Incumbent Local Exchange Company Universal Service Plan by any mechanism, including support reductions resulting from rate rebalancing approved by the commission, after notice and an opportunity for hearing. In determining appropriate monthly support amounts, the commission shall consider the adequacy of basic rates to support universal service.

(c) A company that receives frozen monthly support amounts as prescribed by a final order issued by the commission in the commission's Docket No. 39643 is entitled to continue to receive that monthly support until the support is revised under Subsection (b).

(d) For each small or rural incumbent local exchange company that is not receiving frozen support amounts as described by Subsection (c) and is not an electing company under Chapter 58 or 59, the commission annually shall set the company's monthly support amounts for the following 12 months by dividing by 12 the annualized support amount calculated under this subsection. The commission shall calculate the annualized amount:

(1) for the initial 12-month period for which a company makes an election under this subsection, by determining the annualized support amount received by the company as of January 1, 2013; and

(2) for subsequent 12-month periods, by adjusting the most recent annualized support amount calculated by the commission by a factor equal to the percentage change in the consumer price index for the most recent 12-month period.

(e) The commission, on its own motion or on the written request of the company, may initiate a proceeding to recalculate the most recent annualized support amount to be used as the basis for adjustment for a subsequent 12-month period under Subsection (d)(2). If, based on the recalculation, the commission by order adjusts a company's most recent annualized support amount, the adjusted support amount supersedes the annualized support amount calculated in accordance with Subsection (d).

(f) Except for good cause, the commission shall establish monthly support amounts under Subsection (d) not later than the 60th day after the date the commission determines the company is eligible.

(g) This section does not affect the commission's authority under Chapter 53 or this chapter.

(h) Subsections (a), (c), (d), (e), and (f) and any monthly support amount approved under those subsections expire September 1, 2017.

Added by Acts 2011, 82nd Leg., R.S., Ch. 535 (H.B. 2603), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 751 (S.B. 583), Sec. 5, eff. June 14, 2013.

Sec. 56.033. SUPPORT AVAILABLE TO DEREGULATED MARKETS. (a) An incumbent local exchange company may not receive support from the universal service fund for a deregulated market that has a population of at least 30,000.

(b) An incumbent local exchange company may receive support from the universal service fund for a deregulated market that has a population of less than 30,000 only if the company demonstrates to the commission that the company needs the support to provide basic local telecommunications service at reasonable rates in the affected market. A company may use evidence from outside the affected market to make the demonstration.

(c) An incumbent local exchange company may make the demonstration described by Subsection (b) in relation to a market before submitting a petition to deregulate the market.

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 11, eff. January 2, 2012.
Redesignated from Utilities Code, Section 56.032 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(54), eff. September 1, 2013.

## SUBCHAPTER D. STATEWIDE TELECOMMUNICATIONS RELAY ACCESS SERVICE

Sec. 56.101. PURPOSE. The purpose of this subchapter is to provide for the uniform and coordinated provision by one telecommunications carrier of a statewide telecommunications relay access service for persons with an impairment of hearing or speech.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.102. TELECOMMUNICATIONS RELAY ACCESS SERVICE. (a) The commission shall adopt and enforce rules establishing a statewide telecommunications relay access service for the use of a person with an impairment of hearing or speech.

(b) The commission rules shall provide that the service must:

(1) use specialized communications equipment, such as a telecommunications device for the deaf, and operator translations; and

(2) meet the criteria provided by Sections 56.103, 56.104, and 56.105.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.103. TELECOMMUNICATIONS RELAY ACCESS SERVICE REQUIREMENTS. (a) The telecommunications relay access service shall provide a person with an impairment of hearing or speech with access to the telecommunications network in this state equivalent to the access provided other customers.

(b) The service consists of:

(1) switching and transmission of the call;

(2) live or automated verbal and print translations of communications between a person with an impairment of hearing or speech who uses a telecommunications device for the deaf or a similar automated device and a person who does not have such equipment; and

(3) other service enhancements proposed by the carrier and approved by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.104. TELECOMMUNICATIONS RELAY ACCESS SERVICE CHARGES. (a) For a call made using the telecommunications relay access service, the person calling or called:

(1) may not be charged for a call that originates and terminates in the same local calling area; and

(2) shall pay one-half of the total charges established by contract with the commission for intrastate interexchange calls.

(b) Charges related to providing the service that, under Subsection (a), are not charged to a person calling or called shall be funded from the universal service fund, as specified by the

service provider's contract with the commission.

(c) A local exchange company may not impose an interexchange carrier access charge on a call using the service that originates and terminates in the same local calling area.

(d) A local exchange company shall provide billing and collection services for the service at just and reasonable rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.105. TRIAL SERVICE COSTS AND DESIGN INFORMATION. If the commission orders a local exchange company to provide for a trial telecommunications relay access service for persons with an impairment of hearing or speech, all pertinent costs and design information from the trial must be made available to the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.106. TELECOMMUNICATIONS RELAY ACCESS SERVICE ASSESSMENTS. (a) The commission shall set appropriate assessments for all telecommunications utilities to fund the telecommunications relay access service.

(b) In setting an assessment, the commission shall consider:

(1) the aggregate calling pattern of service users; and

(2) any other factor the commission finds appropriate and in the public interest.

(c) The commission shall:

(1) review the assessments annually; and

(2) adjust the assessments as appropriate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.107. UNIVERSAL SERVICE FUND SURCHARGE. (a) A telecommunications utility may recover the utility's universal service fund assessment for the telecommunications relay access service through a surcharge added to the utility customers' bills.

(b) The commission shall specify how each telecommunications utility is to determine the amount of the surcharge.

(c) If a telecommunications utility imposes the surcharge, the

bill shall list the surcharge as the "universal service fund surcharge."

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.108. SELECTION OF TELECOMMUNICATIONS RELAY ACCESS SERVICE CARRIER. (a) The commission shall select one telecommunications carrier to provide the statewide telecommunications relay access service.

(b) The commission shall make a written award of the contract to the telecommunications carrier whose proposal is the most advantageous to this state, considering:

(1) price;

(2) the interests of the community of persons with an impairment of hearing or speech in having access to a high quality and technologically advanced telecommunications system; and

(3) any other factor listed in the commission's request for proposals.

(c) The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(d) The commission's evaluation of a telecommunications carrier's proposal shall include the:

(1) charges for the service;

(2) service enhancements proposed by the carrier;

(3) technological sophistication of the network proposed by the carrier; and

(4) date proposed for beginning the service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 56.1085. SPECIAL FEATURES FOR RELAY ACCESS SERVICE. (a) The commission may contract for a special feature for the state's telecommunications relay access service if the commission determines:

(1) the feature will benefit the communication of persons with an impairment of hearing or speech;

(2) installation of the feature will be of benefit to the state; and

(3) the feature will make the relay access service

available to a greater number of users.

(b) If the carrier selected to provide the telecommunications relay access service under Section 56.108 is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a carrier to provide the special feature to the telecommunications carrier whose proposal is most advantageous to the state, considering:

(1) the factors provided by Section 56.108(b); and

(2) the past performance, demonstrated capability, and experience of the carrier.

(c) The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(d) The commission's evaluation of a telecommunications carrier's proposal shall include the considerations provided by Section 56.108(d).

Added by Acts 1999, 76th Leg., ch. 1553, Sec. 2, eff. Sept. 1, 1999.

Sec. 56.109. COMPENSATION OF CARRIER. (a) The telecommunications carrier selected to provide the telecommunications relay access service under Section 56.108 or the carrier selected to provide a special feature for the telecommunications relay access service under Section 56.1085 shall be compensated at rates and on terms provided by the carrier's contract with the commission.

(b) The compensation may include:

(1) a return on the investment required to provide the service; and

(2) compensation for unbillable or uncollectible calls placed through the service.

(c) Compensation for unbillable or uncollectible calls is subject to a reasonable limitation determined by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1553, Sec. 3, eff. Sept. 1, 1999.

Sec. 56.110. ADVISORY COMMITTEE. (a) An advisory committee to assist the commission in administering this subchapter is composed of the following persons appointed by the commission:

(1) two persons with disabilities that impair the ability to effectively access the telephone network other than disabilities described by Subdivisions (2)-(7);

(2) one deaf person recommended by the Texas Deaf Caucus;

(3) one deaf person recommended by the Texas Association of the Deaf;

(4) one person with a hearing impairment recommended by Self-Help for the Hard of Hearing;

(5) one person with a hearing impairment recommended by the American Association of Retired Persons;

(6) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(7) one person with a speech impairment and one person with a speech and hearing impairment recommended by the Coalition of Texans with Disabilities;

(8) two representatives of telecommunications utilities, one representing a nonlocal exchange utility and one representing a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(9) two persons, at least one of whom is deaf, with experience in providing relay services recommended by the department; and

(10) two public members recommended by organizations representing consumers of telecommunications services.

(b) Members of the advisory committee serve two-year terms. A member whose term has expired shall continue to serve until a qualified replacement is appointed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(b), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1553, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 4, eff. September 1, 2013.

Sec. 56.111. ADVISORY COMMITTEE DUTIES. The advisory committee shall:

(1) monitor the establishment, administration, and promotion of the statewide telecommunications relay access service;

(2) advise the commission in pursuing a service that meets the needs of persons with an impairment of hearing or speech in communicating with other telecommunications services users; and

(3) advise the department, at that department's request, regarding any issue related to the specialized telecommunications assistance program established under Subchapter E, including:

(A) devices or services suitable to meet the needs of persons with disabilities in communicating with other users of telecommunications services; and

(B) oversight and administration of the program.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1553, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 5, eff. September 1, 2013.

Sec. 56.112. ADVISORY COMMITTEE SUPPORT AND COSTS. (a) The commission shall provide to the advisory committee:

(1) clerical and staff support; and

(2) a secretary to record committee meetings.

(b) The costs associated with the advisory committee shall be reimbursed from the universal service fund.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(d), eff. Sept. 1, 1999.

Sec. 56.113. ADVISORY COMMITTEE COMPENSATION AND EXPENSES. A member of the advisory committee serves without compensation but is entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of the member's official duties.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 93, eff. Sept. 1, 2001.

**SUBCHAPTER E. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM**

Sec. 56.151. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM.

(a) The executive commissioner, after consulting with the department, by rule shall establish a specialized telecommunications assistance program to provide financial assistance to individuals with disabilities that impair the individuals' ability to effectively access the telephone network to assist the individuals with the purchase of basic specialized equipment or services to provide the individuals with telephone network access that is functionally equivalent to that enjoyed by individuals without disabilities. The executive commissioner may adopt rules that identify devices and services eligible for vouchers under the program.

(b) The department may contract, as necessary, to implement and administer the specialized telecommunications assistance program.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(e), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1553, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 424, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 6, eff. September 1, 2013.

Sec. 56.152. ELIGIBILITY. The executive commissioner, after consulting with the department, by rule shall prescribe eligibility standards for individuals, including deaf individuals and individuals who have an impairment of hearing or speech, to receive an assistance voucher under the program. To be eligible, an individual must be a resident of this state with a disability that impairs the individual's ability to effectively access the telephone network.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(e), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1553, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 424, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 7, eff. September 1, 2013.

Sec. 56.153. VOUCHERS. (a) The department shall determine a reasonable price for a basic specialized telecommunications device that permits, or basic specialized services that permit, telephone network access and distribute to each eligible applicant a voucher

that guarantees payment of that amount to a distributor of new specialized telecommunications devices described by Section 56.151 or to a provider of services described by that section. The department may issue a voucher for a service only if the service is less expensive than a device eligible for a voucher under the program to meet the same need.

(b) A voucher must have the value printed on its face. The individual exchanging a voucher for the purchase of a specialized telecommunications device or service is responsible for payment of the difference between the voucher's value and the price of the device or service.

(c) The executive commissioner, after consulting with the department, by rule shall provide that a distributor of devices or a provider of services will receive not more than the full price of the device or service if the recipient of a voucher exchanges the voucher for a device or service that the distributor or provider sells for less than the voucher's value.

(d) An individual who has exchanged a voucher for a specialized telecommunications device is not eligible to receive another voucher before the fifth anniversary of the date the individual exchanged the previously issued voucher unless, before that date, the recipient develops a need for a different type of telecommunications device or service under the program because the recipient's disability changes or the recipient acquires another disability.

(e) Except as provided by rules adopted under this subsection, an individual is not eligible for a voucher if the department has issued a voucher for a device or service to another individual with the same type of disability in the individual's household. The executive commissioner, after consulting with the department, by rule may provide for financially independent individuals who reside in a congregate setting to be eligible for a voucher regardless of whether another individual living in that setting has received a voucher.

(f) The department shall determine eligibility of each person who files an application for a voucher and issue each eligible applicant an appropriate voucher.

(g) The department shall maintain a record regarding each individual who receives a voucher under the program.

(h) The department shall deposit money collected under the program to the credit of the universal service fund.

Acts 1999, 76th Leg., ch. 62, Sec. 18.08(e), eff. Sept. 1, 1999.
Amended by Acts 1999, 76th Leg., ch. 1553, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 424, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 8, eff. September 1, 2013.

Sec. 56.154. DEPARTMENT DUTIES. (a) Not later than the 45th day after the date the department receives a voucher a telecommunications device distributor presents for payment or a voucher a telecommunications service provider presents for payment, the department shall pay to the distributor or service provider the lesser of the value of a voucher properly exchanged for a specialized telecommunications device or service or the full price of the device or service for which a voucher recipient exchanges the voucher. The payments must be made from the universal service fund.

(b) The department may investigate whether the presentation of a voucher for payment represents a valid transaction for a telecommunications device or service under the program.

(c) Notwithstanding Section 56.153(a), the department may:

(1) delay payment of a voucher to a distributor of devices or a service provider if there is a dispute regarding the amount or propriety of the payment or whether the device or service is appropriate or adequate to meet the needs of the person to whom the department issued the voucher until the dispute is resolved;

(2) provide that payment of the voucher is conditioned on the return of the payment if the device is returned to the distributor or if the service is not used by the person to whom the voucher was issued; and

(3) provide an alternative dispute resolution process for resolving a dispute regarding a subject described by Subdivision (1) or (2).

(d) The executive commissioner, after consulting with the department, may adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(e), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1553, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 9, eff. September 1, 2013.

Sec. 56.155. RECOVERY OF SPECIALIZED TELECOMMUNICATIONS DEVICE ASSISTANCE PROGRAM SURCHARGE. (a) The commission shall allow a telecommunications utility to recover the universal service fund assessment related to the specialized telecommunications assistance program through a surcharge added to the utility's customers' bills.

(b) The commission shall specify how each utility must determine the amount of the surcharge and by rule shall prohibit a utility from recovering an aggregation of more than 12 months of assessments in a single surcharge. The rules must require a utility to apply for approval of a surcharge before the 91st day after the date the period during which the aggregated surcharges were assessed closes.

(c) If a utility chooses to impose the surcharge, the utility shall include the surcharge in the "universal service fund surcharge" listing as provided by Section 56.107.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.08(e), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1553, Sec. 8, eff. Sept. 1, 1999.

Sec. 56.156. PROMOTION OF PROGRAM. The department may promote the program established under this subchapter by means of participation in events, advertisements, pamphlets, brochures, forms, pins, or other promotional items or efforts that provide contact information for persons interested in applying for a voucher under the program.

Added by Acts 2001, 77th Leg., ch. 424, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 532 (S.B. 512), Sec. 10, eff. September 1, 2013.

## SUBCHAPTER F. SERVICE TO UNCERTIFICATED AREA

Sec. 56.201. DEFINITION. In this subchapter, "permanent residential or business premises" means a premises that has permanent

facilities for water, wastewater, and electricity.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.202. DESIGNATION OF PROVIDER. (a) Notwithstanding Section 54.001, the commission may designate a telecommunications provider under this section to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity.

(b) The commission may designate a provider only if the provider is otherwise eligible to receive universal service funds under Section 56.023(b).

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.203. PETITION FOR SERVICE. Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity may petition the commission to designate a telecommunications provider to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.204. CONTENTS OF PETITION. (a) A petition for designation of a service provider must:

(1) state with reasonable particularity the locations of the permanent residential or business premises for which the petitioners are requesting service;

(2) establish that those locations are within reasonable proximity to one another so that the petitioners possess a sufficient community of interest to warrant the designation of a provider and the expenditure of universal service funds necessary to establish service;

(3) except as provided by Subsection (b), be signed by at least five persons who:

(A) are not members of the same household;

(B) reside in the permanent residential premises or are the owners of the permanent residential or business premises for which service is sought and that are not located within a certificated area;

(C) want service to those premises; and

(D) commit to pay the aid to construction charges for service to those premises as determined by the commission;

(4) nominate as potential providers of service not more than five telecommunications providers serving territory that is contiguous to the location of the permanent residential or business premises using wireless or wireline facilities, resale, or unbundled network elements; and

(5) include as an attachment or an appendix documentation indicating the required residence or ownership, including a state-issued license or identification, tax records, deeds, or voter registration materials.

(b) The commission may accept a petition that is signed by fewer than five persons if a petitioner provides an affidavit stating that the petitioners have taken all reasonable steps to secure the signatures of the residents of permanent residential premises or the owners of permanent residential or business premises within reasonably close proximity to the petitioning premises who are not receiving telephone service when the petition is filed and who want telephone service initiated.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.205. HEARING. If the commission finds that the petition complies with Section 56.204, the commission shall hold an evidentiary hearing to determine if a telecommunications provider is willing to be designated to provide service to those premises or, if a provider is not willing to be designated, to determine the telecommunications provider that is best able to serve those premises under the criteria prescribed by this subchapter.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.206. DENIAL OF PETITION. The commission shall deny a

petition if the commission determines that services cannot be extended to the petitioning premises at a reasonable cost. In making that determination, the commission shall consider all relevant factors, including:

(1) the original cost to be incurred by a designated provider to deploy service to the petitioning premises, and the effect of reimbursement of those costs on the state universal service fund;

(2) the number of access lines requested by the petitioners for the petitioning premises;

(3) the size of the geographic territory in which the petitioning premises are included;

(4) the proximity of existing facilities and the existence of a preferred designated provider under Section 56.213; and

(5) any technical barriers to the provision of service.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.207. ORDER. In any order granting a petition, the commission shall:

(1) approve the facilities to be deployed based on the estimated costs of deployment submitted in accordance with Section 56.208(a);

(2) approve the amount of original cost of deployment to be recovered from the state universal service fund and the terms of original cost recovery under Section 56.209; and

(3) approve the recurring cost recovery under Section 56.209, including the monthly rate for services and the monthly per line fee to be recovered from the state universal service fund under that section.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.208. DESIGNATION OF PROVIDER. (a) In determining which nominated telecommunications provider the commission will designate to provide service to the petitioning premises, the commission shall consider the relative estimated cost to be incurred by contiguous providers to serve the petitioning premises and give preference to the provider having the least cost technology that

meets the quality of service standards prescribed by the commission applicable to that provider.

(b) The commission may not designate a telecommunications provider to serve the petitioning premises unless the premises are located in an area that is contiguous to an area in which the telecommunications provider has previously been designated eligible to receive universal service funding under Section 56.023(b). This subsection does not apply if the commission designates the provider after the provider voluntarily agrees to provide service to the petitioning premises.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.209. RECOVERY OF COSTS. (a) If, after a hearing, the commission designates a telecommunications provider to serve the petitioning premises, the commission shall permit the designated provider to recover from the state universal service fund the provider's actual costs of providing service to the premises, including the provider's original cost of deployment and actual recurring costs.

(b) The reimbursable original cost of deploying facilities to the petitioning premises is the original cost of the telecommunications provider's facilities installed in, or upgraded to permit the provision of service to, the petitioning premises as determined by the financial accounting standards applicable to the provider, including an amount for the recovery of all costs that are typically included as capital costs for accounting purposes, that are not recovered through an aid to construction charge assessed to the petitioners. The final order permitting or requiring the designated provider to provide service to the petitioning premises shall ensure that all the original cost of the provider shall be amortized and recovered from the state universal service fund, together with interest at the prevailing commercial lending rate:

(1) not later than the third anniversary of the date of the order, for a deployment with an original cost of $1 million or less;

(2) not later than the fifth anniversary of the date of the order, for a deployment with an original cost of more than $1 million, but not more than $2 million; and

(3) not later than the seventh anniversary of the date of

the order, for a deployment with an original cost of more than $2 million.

(c) The designated provider shall recover the provider's actual recurring costs of service, including maintenance and the ongoing operational costs of providing service after deployment of the facilities to the petitioning premises and a reasonable operating margin, from:

(1) the monthly rate charged the customer; and

(2) a monthly per line state universal service fund payment in an amount equal to the unrecovered recurring costs incurred in providing service divided by the access lines served in the petitioning premises.

(d) The monthly per line fee established under Subsection (c) is in addition to the universal service funds associated with the recovery of the original cost of deployment and interest authorized by Subsection (b) and in addition to the universal service funds the designated provider receives to provide service in other areas of this state.

(e) The commission may not authorize or require any services to be provided to petitioning premises under this subchapter during a fiscal year if the total amount of required reimbursements of actual original cost of deployment to all approved petitioning premises under this section, together with interest, including obligations for reimbursements from preceding years, would equal an amount that exceeds 0.02 percent of the annual gross revenues reported to the state universal service fund during the preceding fiscal year.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.210. AID TO CONSTRUCTION CHARGE; CONTRACT FOR SERVICES. The commission shall establish a reasonable aid to construction charge, not to exceed $3,000, to be assessed each petitioner. The commission may not require a designated provider to begin construction until:

(1) each petitioner has paid or executed an agreement acceptable to the provider to pay the aid to construction charge; and

(2) each petitioner has executed an assignable agreement for subscription to basic local service to the petitioning premises

from the designated provider for a period at least equal to the period during which the provider will receive reimbursement for the original cost of deployment under Section 56.209(b).

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.211. PERMANENT PREMISES REQUIRED. A telecommunications provider may not under any circumstances be required to extend service to a location that is not a permanent residential or business premises or be required to provide service to the petitioning premises before the 180th day after the date the provider was designated to provide service to the petitioning premises.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.212. SUBSEQUENT RELATED PETITIONS. (a) If the commission approves a petition requesting service, residents of permanent residential premises or owners of permanent residential or business premises in reasonable proximity to the premises that were the subject of an approved petition who did not sign the prior petition requesting service are not entitled to receive service under this subchapter until the fifth anniversary of the date the prior petition was filed unless the residents or owners file a new petition under this subchapter and agree to pay aid to construction charges on the same terms as applicable to the prior petitioners.

(b) The designated provider shall receive reimbursement for the original cost of deployment and actual recurring costs of providing service to those additional residents in the same manner as the provider received reimbursement of those costs in relation to the prior petitioners. The provider may not receive reimbursement for the original cost of deployment under a subsequent petition if the provider previously received complete reimbursement for those costs from the state universal service fund. If the state universal service fund has completely reimbursed the original cost of deployment as provided by this subchapter, each subsequent petitioner must pay into the state universal service fund an amount equal to the aid to construction charge paid by each prior petitioner.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.213. PREFERRED PROVIDER. (a) A provider who is designated to serve petitioning premises located within an uncertificated area under this subchapter is the preferred provider for any permanent residential or business premises in reasonable proximity to those petitioning premises for later petitions filed under Section 56.212.

(b) A preferred designated provider is entitled to an opportunity for a hearing under Section 56.205 on a petition filed under Section 56.203.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

Sec. 56.214. CERTIFICATE NOT AMENDED. The designation of a provider to serve permanent residential or business premises within an uncertificated area under this subchapter does not have the effect of:

(1) amending the boundaries of the provider's certificate to provide local exchange service; or

(2) imposing carrier of last resort responsibilities on the provider.

Added by Acts 2001, 77th Leg., ch. 651, Sec. 4, eff. Sept. 1, 2001.

**SUBCHAPTER G. FUNDING FOR CERTAIN TELECOMMUNICATIONS UTILITIES**

Sec. 56.251. DEFINITION. In this subchapter, "successor utility" has the meaning assigned by Section 54.301.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 7, eff. Sept. 1, 2003.

Sec. 56.252. TELECOMMUNICATIONS UTILITIES ELIGIBLE TO RECEIVE FUNDING UNDER THIS SUBCHAPTER. A telecommunications utility may receive funding under this subchapter only if:

(1) the telecommunications utility is eligible to receive universal service funding under Section 56.023(b); and

(2) the telecommunications utility is designated as a successor utility under Section 54.303.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 7, eff. Sept. 1, 2003.

Sec. 56.253. DETERMINATION OF SUCCESSOR UTILITY'S COSTS TO BE RECOVERED. (a) At the time the commission designates the successor utility under Section 54.303, the commission shall determine the extent to which the utility should recover the costs the utility will incur in accepting and establishing service to the affected service area.

(b) In making the determination under Subsection (a), the commission shall consider relevant information, including the costs of acquiring and restoring or upgrading the utility's facilities in the geographic area as necessary to make those facilities compatible with the facilities in the utility's other certificated service areas and to comply with commission quality of service standards.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 7, eff. Sept. 1, 2003.

Sec. 56.254. RECOVERY OF COSTS. The commission order designating the successor utility under Section 54.303 shall authorize the utility to recover the costs determined under Section 56.253. The costs may be amortized and recovered from the state universal service fund, together with interest at the prevailing commercial lending rate:

(1) not later than the first anniversary of the date of the order if the costs are not more than $1 million;

(2) not later than the second anniversary of the date of the order if the costs are more than $1 million but no more than $2 million; and

(3) not later than the third anniversary of the date of the order if the costs are more than $2 million.

Added by Acts 2003, 78th Leg., ch. 76, Sec. 7, eff. Sept. 1, 2003.

## SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The commission by rule shall establish a program to provide from the universal service fund financial assistance for a free telephone service for blind and visually impaired persons that offers the text

of newspapers using synthetic speech. The commission may adopt rules to implement the program.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 17, eff. September 7, 2005.

## CHAPTER 57. DISTANCE LEARNING AND OTHER ADVANCED SERVICES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. CONFLICT OF PROVISIONS. If this chapter conflicts with another provision of this title, this chapter prevails.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. DISTANCE LEARNING AND INFORMATION SHARING

Sec. 57.021. DEFINITIONS. In this subchapter:

(1) "Distance learning" means an instruction, learning, or training resource, including video, data, voice, or electronic information, that is:

(A) used by an educational institution predominantly for instruction, learning, or training; and

(B) transmitted from a site to one or more other sites by a telecommunications service.

(2) "Educational institution" includes:

(A) an accredited primary or secondary school;

(B) an institution of higher education as defined by Section 61.003, Education Code;

(C) a private institution of higher education accredited by a recognized accrediting agency as defined by Section 61.003, Education Code;

(D) the Texas Education Agency and its successors and assigns;

(E) a regional education service center established and operated in accordance with Chapter 8, Education Code; or

(F) the Texas Higher Education Coordinating Board and its successors and assigns.

(3) "Library" means:

(A) a public library or regional library system as defined by Section 441.122, Government Code; or

(B) a library operated by an institution of higher

education or a school district.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 57.022. REDUCED RATES FOR DISTANCE LEARNING OR INFORMATION SHARING SERVICES. (a) The commission by rule shall require a dominant carrier to file a tariff that includes a reduced rate for a telecommunications service the commission finds is directly related to:

(1) a distance learning activity that is or could be conducted by an educational institution in this state; or

(2) an information sharing program that is or could be conducted by a library in this state.

(b) The commission rules shall specify:

(1) each telecommunications service to which Subsection (a) applies;

(2) the process for an educational institution or library to qualify for a reduced rate;

(3) the date by which a dominant carrier is required to file a tariff;

(4) guidelines and criteria that require the services and reduced rates to further the goals prescribed by Section 57.023; and

(5) any other requirement or term that the commission determines to be in the public interest.

(c) The commission is not required to determine the long run incremental cost of providing a service before approving a reduced rate for the service.

(d) Until cost determination rules are developed and the rates established under this section are changed as necessary to ensure proper cost recovery, the reduced rates established by the commission shall be equal to 75 percent of the otherwise applicable rate.

(e) After the commission develops cost determination rules for telecommunications services generally, the commission shall ensure that a reduced rate approved under this section:

(1) recovers service-specific long run incremental costs; and

(2) avoids subsidizing an educational institution or a library.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 57.023. SERVICE AND RATE REQUIREMENTS. The services and reduced rates must be designed to:

(1) encourage the development and offering of:

(A) distance learning activities by educational institutions; and

(B) information sharing programs of libraries;

(2) meet the:

(A) distance learning needs identified by the educational community; and

(B) information sharing needs identified by libraries; and

(3) recover the long run incremental costs of providing the services, to the extent those costs can be identified, to avoid subsidizing an educational institution or a library.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 57.024. TARIFF FILINGS. A tariff filed by a dominant carrier under Section 57.022:

(1) may concern the implementation of this subchapter only;

(2) is not a rate change under Subchapter C, Chapter 53; and

(3) does not affect the carrier's other rates or services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 57.025. CHANGES IN RATE PROGRAM. (a) An educational institution, library, or dominant carrier may request the commission to:

(1) provide for a reduced rate for a service that:

(A) is directly related to a distance learning activity or an information sharing program; and

(B) is not covered by commission rules;

(2) change a rate;

(3) amend a tariff; or

(4) amend a commission rule.

(b) The commission shall take the action requested under

Subsection (a) if the commission determines the action is appropriate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. INTERACTIVE MULTIMEDIA COMMUNICATIONS

Sec. 57.071. DEFINITION. In this subchapter, "interactive multimedia communications" means real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 57.072. RATES FOR INTERACTIVE MULTIMEDIA COMMUNICATIONS. (a) The commission shall permit a local exchange company that provides an interactive multimedia communications service to establish, using sound ratemaking principles, rates necessary to recover costs associated with providing the service.

(b) A local exchange company may not establish a rate under Subsection (a) that is less than the local exchange company's long run incremental costs of providing the interactive multimedia communications service, unless the commission determines it to be in the public interest to do so.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

# CHAPTER 58. INCENTIVE REGULATION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. POLICY. Considering the status of competition in the telecommunications industry, it is the policy of this state to:

(1) provide a framework for an orderly transition from the traditional regulation of return on invested capital to a fully competitive telecommunications marketplace in which all telecommunications providers compete on fair terms;

(2) preserve and enhance universal telecommunications service at affordable rates;

(3) upgrade the telecommunications infrastructure of this state;

(4) promote network interconnectivity; and

(5) promote diversity in the supply of telecommunications services and innovative products and services throughout the entire state, including urban and rural areas.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.002. DEFINITION. In this chapter, "electing company" means an incumbent local exchange company that elects to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.003. CUSTOMER-SPECIFIC CONTRACTS. (a) Notwithstanding any other provision of this chapter, but subject to Subsection (b), an electing company may not offer in an exchange a service, or an appropriate subset of a service, listed in Sections 58.051(a)(1)-(4) or Sections 58.151(1)-(4) in a manner that results in a customer-specific contract, unless the other party to the contract is a federal, state, or local governmental entity, until the earlier of September 1, 2003, or the date on which the commission finds that at least 40 percent of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

(b) The requirements prescribed by Subsection (a) do not apply to an electing company serving fewer than five million access lines after the date on which it completes the infrastructure improvements described in this subsection. The electing company must also notify the commission of the company's binding commitment to make the following infrastructure improvements not later than September 1, 2000:

(1) install Common Channel Signaling 7 capability in each central office; and

(2) connect all of the company's serving central offices to their respective LATA tandem central offices with optical fiber or equivalent facilities.

(c) The commission by rule shall prescribe appropriate subsets

of services.

(d) An electing company may file with the commission a request for a finding under this section. The filing must include information sufficient for the commission to perform a review and evaluation in relation to the particular exchange and the particular service or appropriate subset of a service for which the electing company wants to offer customer-specific contracts. The commission must grant or deny the request not later than the 60th day after the date the electing company files the request.

(e) The commitments described by Subsection (b) do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.

(f) This section does not preclude an electing company from offering a customer-specific contract to the extent allowed by this title as of August 31, 1999.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 33, eff. Sept. 1, 1999.

Sec. 58.004. PACKAGING, TERM AND VOLUME DISCOUNTS, AND PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer in an exchange a service listed in Sections 58.151(1)-(4) as a component of a package of services or as a promotional offering until the company makes the reduction in switched access service rates required by Section 58.301(2) unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(b) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may not offer a volume or term discount on any service listed in Sections 58.151(1)-(4) until September 1, 2000, unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity.

(c) Notwithstanding any other provision of this chapter, an electing company that has more than five million access lines in this state may offer in an exchange a service listed in Sections 58.051(a)(1)-(4) as a component of a package of services, as a promotional offering, or with a volume or term discount on and after September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 34, eff. Sept. 1, 1999.

## SUBCHAPTER B. ELECTION OF INCENTIVE REGULATION

Sec. 58.021. ELECTION. (a) An incumbent local exchange company may elect to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter by notifying the commission in writing of its election.

(b) The notice must include a statement that the company agrees to:

(1) limit until September 1, 2005, any increase in a rate the company charges for basic network services as prescribed by Subchapter C; and

(2) fulfill the infrastructure commitment prescribed by Subchapters F and G.

(c) Except as provided in Subsection (d), an election under this chapter remains in effect until the legislature eliminates the incentive regulation authorized by this chapter and Chapter 59.

(d) The commission may allow an electing company serving fewer than five million access lines to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause.

(e) In this section, "good cause" includes only matters beyond the control of the company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 35, eff. Sept. 1, 1999.

Sec. 58.022. CHAPTER CONTROLS. This chapter governs the regulation of an electing company's telecommunications services regardless of whether the company is a dominant carrier.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.023. SERVICE CLASSIFICATION. On election, the services provided by an electing company are classified into two categories:

(1) basic network services governed by Subchapter C; and

(2) nonbasic services governed by Subchapter E.

(3) Renumbered (2) by Acts 1999, 76th Leg., ch. 1212, Sec. 36, eff. Sept. 1, 1999

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 36, eff. Sept. 1, 1999.

Sec. 58.024. SERVICE RECLASSIFICATION. (a) The commission may reclassify a basic network service as a nonbasic service.

(b) The commission shall establish criteria for determining whether a service should be reclassified. The criteria must include consideration of the:

(1) availability of the service from other providers;

(2) effect of the reclassification on service subscribers; and

(3) nature of the service.

(c) The commission may not reclassify a service until:

(1) each competitive safeguard prescribed by Subchapters B-H, Chapter 60, is fully implemented; or

(2) for a company that serves more than five million access lines in this state, the date on which the Federal Communications Commission determines in accordance with 47 U.S.C. Section 271 that the company or any of its affiliates may enter the interLATA telecommunications market in this state.

(d) The commission may reclassify a service subject to the following conditions:

(1) the electing company must file a request for a service reclassification including information sufficient for the commission to perform a review and evaluation under Subsection (b);

(2) the commission must grant or deny the request not later than the 60th day after the date the electing company files the request for service reclassification; and

(3) there is a rebuttable presumption that the request for

service reclassification by the electing company should be granted if the commission finds that there is a competitive alternative provider serving customers through means other than total service resale.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 37, eff. Sept. 1, 1999.

Sec. 58.025. COMPLAINT OR HEARING. (a) An electing company is not, under any circumstances, subject to a complaint, hearing, or determination regarding the reasonableness of the company's:

(1) rates;

(2) overall revenues;

(3) return on invested capital; or

(4) net income.

(b) This section does not prohibit a complaint, hearing, or determination on an electing company's implementation and enforcement of a competitive safeguard required by Chapter 60.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.026. CONSUMER COMPLAINTS REGARDING TARIFFS. (a) This chapter does not restrict:

(1) a consumer's right to complain to the commission about the application of an ambiguous tariff; or

(2) the commission's right to determine:

(A) the proper application of that tariff; or

(B) the proper rate if that tariff does not apply.

(b) This section does not permit the commission to:

(1) lower a tariff rate except as specifically provided by this title;

(2) change the commission's interpretation of a tariff; or

(3) extend the application of a tariff to a new class of customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.027. CONSUMER COMPLAINTS REGARDING SERVICES;

ENFORCEMENT OF STANDARDS. This chapter does not restrict:

(1) a consumer's right to complain to the commission about quality of service; or

(2) the commission's right to enforce a quality of service standard.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. BASIC NETWORK SERVICES

Sec. 58.051. SERVICES INCLUDED. (a) Unless reclassified under Section 58.024, the following services are basic network services:

(1) flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(2) residential tone dialing service;

(3) lifeline and tel-assistance service;

(4) service connection for basic residential services;

(5) direct inward dialing service for basic residential services;

(6) private pay telephone access service;

(7) call trap and trace service;

(8) access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service;

(9) mandatory residential extended area service arrangements; and

(10) mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements.

(a-1) Notwithstanding Subsection (a) and Section 58.151, basic network services include residential caller identification services if the customer to whom the service is billed is at least 65 years of age.

(b) Electing companies shall offer each basic network service as a separately tariffed service in addition to any packages or other pricing flexibility offerings that include those basic network services.

(c) At the election of the affected incumbent local exchange company, the price for basic network service shall also include the fees and charges for any mandatory extended area service

arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

(d) A nonpermanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service:

(1) is considered a part of basic network service;

(2) may not be aggregated under Subsection (c); and

(3) continues to be transitioned in accordance with commission orders and substantive rules.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 39, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 18, eff. September 7, 2005.

Sec. 58.052. REGULATION OF SERVICES. (a) Except as provided by Subchapter E, Chapter 52, basic network services of an electing company are regulated:

(1) in accordance with this chapter; and

(2) to the extent not inconsistent with this chapter, in accordance with:

(A) Subtitle A;

(B) Chapters 51, 54, 60, 62, and 63;

(C) Chapter 52, except for Subchapter F;

(D) Subchapters C, D, and E, Chapter 53;

(E) Chapter 55, except for:

(i) Subchapters F and G; and

(ii) Sections 55.001, 55.002, 55.003, and 55.004;

(F) Sections 53.001, 53.003, 53.004, 53.006, 53.065, 55.005, 55.006, 55.009, and 55.010; and

(G) commission rules and procedures.

(b) The commission must approve a change in the terms of the tariff offering of a basic network service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.053. INVESTMENT LIMITATION ON SERVICE STANDARDS. (a) The commission may not raise a service standard applicable to the

provision of local exchange telephone service by an electing company if the increased investment required to comply with the raised standard in any year exceeds 10 percent of the company's average annual intrastate additions in capital investment for the most recent five-year period.

(b) In computing the average under Subsection (a), the company shall exclude:

(1) extraordinary investments made during the five-year period; and

(2) investments required by Section 58.203.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.054. RATES CAPPED. (a) As a condition of election under this chapter, an electing company shall commit to not increasing a rate for a basic network service on or before the fourth anniversary of its election date.

(b) The rates an electing company may charge on or before that fourth anniversary are the rates charged by the company on June 1, 1995, or, for a company that elects under this chapter after September 1, 1999, the rates charged on the date of its election, without regard to a proceeding pending under:

(1) Section 15.001;

(2) Subchapter D, Chapter 53; or

(3) Subchapter G, Chapter 2001, Government Code.

(c) Notwithstanding Subsections (a) and (b), the cap on the rates for basic network services for a company electing under this chapter may not expire before September 1, 2005.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 40, eff. Sept. 1, 1999.

Sec. 58.055. RATE ADJUSTMENT BY COMPANY. (a) An electing company may increase a rate for a basic network service during the election period prescribed by Section 58.054 only:

(1) with commission approval that the proposed change is included in Section 58.056, 58.057, or 58.058; and

(2) as provided by Sections 58.056, 58.057, 58.058, and 58.059.

(b) Notwithstanding Subchapter F, Chapter 60, an electing company may, on its own initiative, decrease a rate for a basic network service during the electing period.

(c) The company may decrease the rate for a basic local telecommunications service to an amount above the service's appropriate cost. If the company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 40, eff. Sept. 1, 1999.

Sec. 58.056. RATE ADJUSTMENT FOR CHANGES IN FCC SEPARATIONS. The commission, on motion of the electing company or on its own motion, shall proportionally adjust rates for services to reflect changes in Federal Communications Commission separations that affect intrastate net income by at least 10 percent.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.057. RATE ADJUSTMENT FOR CERTAIN COMPANIES. (a) An electing company, after the 42nd month after the date the company elects incentive regulation under this chapter, may file an application for a commission review of the company's need for changes in the rates of its services if the company:

(1) has fewer than five million access lines in this state; and

(2) is complying with:

(A) the company's infrastructure commitment;

(B) each requirement relating to quality of service; and

(C) each commission rule adopted under Chapter 60.

(b) The company's application may request that the commission adjust rates, implement new pricing plans, restructure rates, or rebalance revenues between services to recognize changed market conditions and the effects of competitive entry.

(c) The commission may use an index and a productivity offset in determining the requested changes.

(d) The commission may not:

(1) order an increase in the rate for residential local exchange telephone service that would cause the rate to increase by more than the United States Consumer Price Index in any 12-month period; or

(2) set the monthly rate for residential local exchange telephone service in an amount that exceeds the nationwide average rates for similar local exchange telephone services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.058. RATE GROUP RECLASSIFICATION. Notwithstanding Subchapter B, the commission, on request of the electing company, shall allow a rate group reclassification that results from access line growth.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.059. COMMISSION RATE ADJUSTMENT PROCEDURE. (a) In accordance with this section, an electing company may request and the commission may authorize a rate adjustment under Section 58.056, 58.057, or 58.058.

(b) The electing company must provide to the commission notice of its intent to adjust rates. The notice must be accompanied by sufficient documentary evidence to demonstrate that the rate adjustment is authorized under Section 58.056, 58.057, or 58.058. The commission by rule or order shall prescribe the documentation required under this subsection.

(c) The electing company must also provide notice to its customers after providing notice to the commission. The notice to the customers must:

(1) within a reasonable period after notice to the commission, be published once in a newspaper of general circulation in the affected service area;

(2) be included in or printed on each affected consumer's bill in the first billing that occurs after notice is filed with the commission;

(3) have a title that includes the name of the company and the words "NOTICE OF POSSIBLE RATE CHANGE"; and

(4) include:

(A) a statement that the consumer's rate may change;

(B) an estimate of the amount of the annual change for the typical residential, business, or access consumer if the commission approves the rate change;

(C) a statement that a consumer who wants to comment on the rate change or who wants additional information regarding the rate change may call or write the commission and that the information will be provided without cost to the consumer and at the expense of the electing company; and

(D) the commission's telephone number and address.

(d) The estimate of the amount of the annual change required by Subsection (c)(4)(B) must be printed in a type style and size that is distinct from and larger than the type style and size of the body of the notice.

(e) The commission shall review the proposed rates to determine if the rate adjustment is authorized under Section 58.056, 58.057, or 58.058.

(f) The rate adjustment takes effect on the 90th day after the date the electing company completes the notice required by this section unless the commission suspends the effective date under Subsection (g).

(g) At any time before a rate adjustment is scheduled to take effect, the commission, on its own motion or on complaint by an affected party, may suspend the effective date of the rate adjustment and conduct a hearing to review the proposed adjustment. After the hearing, the commission may issue an order approving the adjustment, or if it finds that the adjustment is not authorized under Section 58.056, 58.057, or 58.058, issue an order modifying or rejecting the adjustment. An order modifying or rejecting a rate adjustment must specify:

(1) each reason why the proposed adjustment was not authorized by Section 58.056, 58.057, or 58.058; and

(2) how the proposed adjustment may be changed so that it is authorized.

(h) Except as provided by this section, a request for a rate restructure must comply with the notice and hearing requirements prescribed by Sections 53.101-53.106.

(i) An electing company that has not more than five percent of the total access lines in this state may adopt as the cost for a service the cost for the same or substantially similar service

offered by a larger incumbent local exchange company. The electing company may adopt the larger company's cost only if the cost was determined based on a long run incremental cost study. An electing company that adopts a cost under this subsection is not required to present its own long run incremental cost study to support the adopted cost.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.060. RATE ADJUSTMENT AFTER CAP EXPIRATION. After the expiration of the period during which the rates for basic network services are capped as prescribed by Section 58.054, an electing company may increase a rate for a basic network service only:

(1) with commission approval subject to this title; and

(2) to the extent consistent with achieving universal affordable service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 41, eff. Sept. 1, 1999.

Sec. 58.061. EFFECT ON CERTAIN CHARGES. This subchapter does not affect a charge permitted under:

(1) Section 55.024;

(2) Subchapter C, Chapter 55; or

(3) Subchapter B, Chapter 56.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding Section 58.052(b) or Subchapter F, Chapter 60, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate. The company may exercise pricing flexibility in accordance with this section 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection

agreement with the electing company.

(b) An electing company shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:

(1) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or

(2) the sum of the tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.

(c) Except as provided by Section 58.003, an electing company may flexibly price a package that includes a basic network service in any manner provided by Section 51.002(7).

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 42, eff. Sept. 1, 1999.

## SUBCHAPTER E. NONBASIC SERVICES

Sec. 58.151. SERVICES INCLUDED. The following services are classified as nonbasic services:

(1) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone charges, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(2) business tone dialing service, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(3) service connection for all business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(4) direct inward dialing for basic business services, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(5) "1-plus" intraLATA message toll services;

(6) 0+ and 0- operator services;

(7) call waiting, call forwarding, and custom calling, except that:

(A) residential call waiting service shall be classified as a basic network service until July 1, 2006; and

(B) for an electing company subject to Section 58.301,

prices for residential call forwarding and other custom calling services shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(8) call return, caller identification, and call control options, except that, for an electing company subject to Section 58.301, prices for residential call return, caller identification, and call control options shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2);

(9) central office based PBX-type services;

(10) billing and collection services, including installment billing and late payment charges for customers of the electing company;

(11) integrated services digital network (ISDN) services, except that prices for Basic Rate Interface (BRI) ISDN services, which comprise up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;

(12) new services;

(13) directory assistance services, except that an electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at no charge until July 1, 2006;

(14) services described in the WATS tariff as the tariff existed on January 1, 1995;

(15) 800 and foreign exchange services;

(16) private line service;

(17) special access service;

(18) services from public pay telephones;

(19) paging services and mobile services (IMTS);

(20) 911 services provided to a local authority that are available from another provider;

(21) speed dialing;

(22) three-way calling; and

(23) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in Section 58.051, except that nothing in this section shall preclude a customer from subscribing to a local flat rate residential or business line for a computer modem or a facsimile machine.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 43, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 19, eff. September 7, 2005.

Sec. 58.152. PRICES. (a) An electing company may set the price for any nonbasic service at any level above the lesser of the:

(1) service's long run incremental cost in accordance with the imputation rules prescribed by or under Subchapter D, Chapter 60; or

(2) price for the service in effect on September 1, 1999.

(b) Subject to Section 51.004, an electing company may use pricing flexibility for a nonbasic service. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packages that include basic network services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 43, eff. Sept. 1, 1999.

Sec. 58.153. NEW SERVICES. (a) Subject to the pricing conditions prescribed by Section 58.152(a), an electing company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company serving more than five million access lines in this state shall provide notice to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company of any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers. Changes requiring notice under this subsection include the introduction of any new nonbasic services, any

new features or functions of basic or nonbasic services, promotional offerings of basic or nonbasic services, or the discontinuation of then-current features or services. The electing company shall provide the notice:

(1) if the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(2) if the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange company of a new service is in compliance with Section 58.152(a). The commission shall allow the company to continue to provide the service while the complaint is pending.

(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with Section 58.152(a). If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

(e) The notice requirement prescribed by Subsection (b) expires September 1, 2003.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 43, eff. Sept. 1, 1999.

Sec. 58.155. INTERCONNECTION. Because interconnection to competitive providers and interconnection for commercial mobile service providers are subject to the requirements of Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), as amended, and Federal Communications Commission rules, including the commission's authority to arbitrate issues, interconnection is not addressed in this subchapter or Subchapter B.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 44, eff. Sept. 1, 1999.

Sec. 58.156. REGULATION OF SERVICES. Sections 55.001, 55.002, 55.003, and 55.004 do not apply to retail nonbasic services offered by an electing company or by a transitioning company, as defined by Section 65.002.

Added by Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 3, eff. September 1, 2013.

**SUBCHAPTER F. GENERAL INFRASTRUCTURE COMMITMENT**

Sec. 58.201. STATEMENT OF STATE GOAL. (a) It is the goal of this state to facilitate and promote the deployment of an advanced telecommunications infrastructure to spur economic development throughout this state. This state should be among the leaders in achieving this objective.

(b) The primary means of achieving this goal is through encouraging private investment in this state's telecommunications infrastructure by creating incentives for that investment and promoting the development of competition.

(c) The best way to bring the benefits of an advanced telecommunications network infrastructure to communities in this state is through innovation and competition among all the state's communications providers. Competition will provide residents of this state with a choice of telecommunications providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms try to satisfy customer needs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.202. POLICY GOALS FOR IMPLEMENTATION. In implementing this subchapter, the commission shall consider this state's policy goals to:

(1) ensure the availability of the widest possible range of competitive choices in the provision of telecommunications services and facilities;

(2) foster competition and rely on market forces where competition exists to determine the price, terms, and availability of

service;

(3) ensure the universal availability of basic local telecommunications services at reasonable rates;

(4) encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

(5) ensure interconnection and interoperability, based on uniform technical standards, among telecommunications carriers;

(6) eliminate unnecessary administrative procedures that impose regulatory barriers to competition and ensure that competitive entry is fostered on an economically rational basis;

(7) ensure consumer protection and protection against anticompetitive conduct;

(8) regulate a provider of services only to the extent the provider has market power to control the price of services to customers;

(9) encourage cost-based pricing of telecommunications services so that consumers pay a fair price for services they use; and

(10) subject to Subchapter C, develop appropriate quality of service standards for local exchange companies so as to place this state among the leaders in deployment of an advanced telecommunications infrastructure.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.203. INFRASTRUCTURE GOALS OF ALL ELECTING COMPANIES. (a) Recognizing that it will take time for competition to develop in the local exchange market, the commission shall, in the absence of competition, ensure that each electing company achieves the infrastructure goals described by this section.

(b) Not later than December 31, 1996, an electing company shall make available to each customer in the company's territory access to end-to-end digital connectivity.

(c) Each new central office switch installed for an electing company after September 1, 1995, must be digital or technically equal to or superior to digital. In addition, a switch installed after September 1, 1997, must, at a minimum, be capable of providing integrated services digital network (ISDN) services in a manner

consistent with generally accepted national standards.

(d) Not later than January 1, 2000, 50 percent of the local exchange access lines in each electing company's territory must be served by a digital central office switch.

(e) Not later than January 1, 2000, an electing company's public switched network backbone interoffice facilities must employ broadband facilities capable of 45 or more megabits a second. The company may employ facilities at a lower bandwidth if technology permits the delivery of video signal at the lower bandwidth at a quality level comparable to a television broadcast signal. The requirements of this subsection do not apply to local loop facilities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.204. ADDITIONAL INFRASTRUCTURE COMMITMENT OF CERTAIN COMPANIES. (a) Not later than December 31, 1998, an electing company serving more than one million but fewer than five million access lines shall provide digital switching central offices in all exchanges.

(b) Not later than January 1, 2000, an electing company serving more than five million access lines shall:

(1) install Common Channel Signaling 7 capability in each central office; and

(2) connect all of the company's serving central offices to their respective LATA tandem central offices with optical fiber or equivalent facilities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.205. EXTENSION OR WAIVER OF INFRASTRUCTURE REQUIREMENTS. (a) For an electing company that serves more than one million but fewer than two million access lines, the commission may temporarily extend a deadline prescribed by Section 58.203 if the company demonstrates that the extension is in the public interest.

(b) For an electing company that serves fewer than one million access lines, the commission may waive a requirement prescribed by Section 58.203 if the company demonstrates that the investment is not viable economically.

(c) Before granting a waiver under Subsection (b), the commission must consider the public benefits that would result from compliance with the requirement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.206. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing Section 58.203 or 58.204 in determining whether an electing company is entitled to:

(1) a rate increase under this chapter; or

(2) increased universal service funds under Subchapter B, Chapter 56.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER G. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES**

Sec. 58.251. INTENT AND GOAL OF SUBCHAPTER. (a) It is the intent of this subchapter to establish a telecommunications infrastructure that interconnects the public entities described in this subchapter. The interconnection of these entities requires ubiquitous, broadband, digital services for voice, video, and data in the local serving area. The ubiquitous nature of these connections must allow individual networks of these entities to interconnect and interoperate across the broadband digital service infrastructure. The delivery of these advanced telecommunications services requires collaborations and partnerships of public, private, and commercial telecommunications service network providers.

(b) The goal of this subchapter is to interconnect and aggregate the connections to every entity described in this subchapter, in the local serving area. It is further intended that the infrastructure implemented under this subchapter connect each entity that requests a service offered under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.252. DEFINITIONS. In this subchapter:

(1) "Educational institution" has the meaning assigned by

Section 57.021.

(1-a) "Health center" means a federally qualified health center service delivery site.

(2) "Library" means:

(A) a public library or regional library system as those terms are defined by Section 441.122, Government Code;

(B) a library operated by an institution of higher education or a school district; or

(C) a library operated by a nonprofit corporation as defined by Section 441.221(3), Government Code.

(3) "Private network services" means:

(A) broadband digital service that is capable of providing transmission speeds of 45 megabits a second or greater for customer applications; and

(B) other customized or packaged network services.

(4) "Telemedicine center" means a facility that is equipped to transmit, by video, data, or voice service, medical information for the diagnosis or treatment of illness or disease and that is:

(A) owned or operated by a public or not-for-profit hospital, including an academic health center; or

(B) owned by one or more state-licensed health care practitioners and operated on a nonprofit basis.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 831 (H.B. 735), Sec. 11, eff. September 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 1, eff. September 1, 2011.

Sec. 58.253. PRIVATE NETWORK SERVICES FOR CERTAIN ENTITIES. (a) On customer request, an electing company shall provide private network services to:

(1) an educational institution;

(2) a library as defined in Section 57.021;

(3) a nonprofit telemedicine center;

(4) a public or not-for-profit hospital;

(5) a legally constituted consortium or group of entities listed in this subsection; or

(6) a health center.

(b) Except as provided by Section 58.266, the electing company shall provide the private network services for the private and sole use of the receiving entity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 959, Sec. 9, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1220, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1255, Sec. 16, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1350, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 831 (H.B. 735), Sec. 12, eff. September 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 2, eff. September 1, 2011.

Sec. 58.254. PRIORITIES. An electing company shall give priority to serving:

(1) rural areas;

(2) areas designated as critically underserved either medically or educationally; and

(3) educational institutions with high percentages of economically disadvantaged students.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.255. CONTRACTS FOR PRIVATE NETWORK SERVICES. (a) An electing company shall provide a private network service under a customer specific contract.

(b) An electing company shall offer private network service contracts under this subchapter at 110 percent of the long run incremental cost of providing the private network service, including installation.

(c) Commission approval of a contract is not required.

(d) Subtitle D, Title 10, Government Code, does not apply to a contract entered into under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 21 (S.B. 983), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 3, eff. September 1, 2011.

Sec. 58.256. PREFERRED RATE TREATMENT WARRANTED. An entity described by Section 58.253(a) warrants preferred rate treatment. However, a rate charged for a service must cover the service's long run incremental cost.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.257. ELECTION OF RATE TREATMENT. An educational institution or a library may elect the rate treatment provided by this subchapter or the discount provided by Subchapter B, Chapter 57.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.258. PRIVATE NETWORK SERVICES RATES AND TARIFFS. (a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016. However, an electing company may increase a rate in accordance with the provisions of a customer specific contract.

(b) An electing company may not charge an entity described by Section 58.253(a) a special construction or installation charge.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 20, eff. September 7, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 4, eff. September 1, 2011.

Sec. 58.259. TARIFF RATE FOR CERTAIN INTRALATA SERVICE. (a)

An electing company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits a second service for the entities described by Section 58.253(a).

(b) The tariff rate may not be:

(1) distance sensitive; or

(2) higher than 110 percent of the service's statewide average long run incremental cost, including installation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 5, eff. September 1, 2011.

Sec. 58.260. POINT-TO-POINT 45 MEGABITS A SECOND INTRALATA SERVICE. (a) On request of an entity described by Section 58.253(a), an electing company shall provide to the entity point-to-point 45 megabits a second intraLATA services.

(b) The service must be provided under a customer specific contract except that any interoffice portion of the service must be recovered on a statewide average basis that is not distance sensitive.

(c) The rate for the service may not be higher than 110 percent of the service's long run incremental cost, including installation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 6, eff. September 1, 2011.

Sec. 58.261. BROADBAND DIGITAL SPECIAL ACCESS SERVICE. (a) An electing company shall provide to an entity described by Section 58.253(a) broadband digital special access service to interexchange carriers.

(b) The rate for the service may not be higher than 110 percent of the service's long run incremental cost, including installation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 7, eff.

September 1, 2011.

Sec. 58.262. EXPANDED INTERCONNECTION. (a) On request of an entity described by Section 58.253(a), an electing company shall provide to the entity expanded interconnection (virtual colocation).

(b) The company shall provide expanded interconnection:

(1) in accordance with commission rules adopted under Subchapter H, Chapter 60; and

(2) at 105 percent of long run incremental cost, including installation.

(c) An entity described by Section 58.253(a) is not required to qualify for expanded interconnection if expanded interconnection is ordered by the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.263. INTERNET ACCESS. (a) This section applies only to an educational institution or library in an exchange of an electing company serving more than five million access lines in which toll-free access to the Internet is not available.

(b) On request of the educational institution or library, the electing company shall make available a toll-free connection or toll-free dialing arrangement that the institution or library may use to obtain access to the Internet in an exchange in which toll-free access to the Internet is available.

(c) The electing company shall provide the connection or dialing arrangement at no charge to the educational institution or library until Internet access becomes available in the exchange of the requesting educational institution or library.

(d) The electing company is not required to arrange for Internet access or to pay Internet charges for the requesting educational institution or library.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.264. COMPLAINTS LIMITED. (a) Notwithstanding any other provision of this title, an electing company is subject to a complaint under this subchapter only by an entity described by

Section 58.253(a).

(b) An entity may only complain that the company provided a private network service under this subchapter preferentially to a similarly situated customer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.265. INTERCONNECTION OF NETWORK SERVICES. The private network services provided under this subchapter may be interconnected with other similar networks for distance learning, telemedicine, and information-sharing purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.266. SHARING OR RESALE OF NETWORK SERVICES. (a) A private network service may be used by and shared among the entities described by Section 58.253(a) but may not be otherwise shared or resold to other customers.

(b) A service provided under this subchapter may not be required to be resold to another customer at a rate provided by this subchapter.

(c) This section does not prohibit an otherwise permitted resale of another service that an electing company may offer through the use of the same facilities used to provide a private network service offered under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.267. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing this subchapter in determining whether an electing company is entitled to:

(1) a rate increase under this chapter; or

(2) increased universal service funds under Subchapter B, Chapter 56.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016, regardless of:

(1) the date the company elected under this chapter; or

(2) any action taken in relation to that company under Chapter 65.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 21, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 8, eff. September 1, 2011.

## SUBCHAPTER H. SWITCHED ACCESS SERVICES

Sec. 58.301. SWITCHED ACCESS RATE REDUCTION. An electing company with greater than five million access lines in this state shall reduce its switched access rates on a combined originating and terminating basis as follows:

(1) the electing company shall reduce switched access rates on a combined originating and terminating basis in effect on September 1, 1999, by one cent a minute; and

(2) the electing company shall reduce switched access rates on a combined originating and terminating basis by an additional two cents a minute on the earlier of:

(A) July 1, 2000; or

(B) the date the electing company, or its affiliate formed in compliance with 47 U.S.C. Section 272, as amended, actually begins providing interLATA services in this state in accordance with the authorization required by 47 U.S.C. Section 271, as amended.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 45, eff. Sept. 1, 1999.

Sec. 58.302. SWITCHED ACCESS RATE CAP. (a) An electing company may not increase the per minute rates for switched access services on a combined originating and terminating basis above the lesser of:

(1) the rates for switched access services charged by that electing company on September 1, 1999, as may be further reduced on implementation of the universal service fund under Chapter 56; or

(2) the applicable rate described by Section 58.301 as may be further reduced on implementation of the universal service fund under Chapter 56.

(b) Notwithstanding Subchapter F, Chapter 60, but subject to Section 60.001, an electing company may, on its own initiative, decrease a rate charged for switched access service to any amount above the long run incremental cost of the service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 45, eff. Sept. 1, 1999.

## CHAPTER 59. INFRASTRUCTURE PLAN

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. POLICY. It is the policy of this state that an incumbent local exchange company that does not elect to be regulated under Chapter 58 should have incentives to deploy infrastructure that will benefit the residents of this state while maintaining reasonable local rates and universal service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.002. DEFINITIONS. In this chapter:

(1) "Electing company" means an incumbent local exchange company that elects for an infrastructure commitment and corresponding regulation under this chapter.

(2) "Election date" means the date on which the commission receives notice of election under Subchapter B.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. INFRASTRUCTURE INCENTIVES

Sec. 59.021. ELECTION. (a) An incumbent local exchange company may elect to make an infrastructure commitment and to be subject to corresponding regulation under this chapter if the company:

(1) serves less than five percent of the access lines in this state; and

(2) has not elected incentive regulation under Chapter 58.

(b) A company makes the election by notifying the commission in

writing of the company's election.

(c) A company electing under this chapter may renew the election for successive two-year periods. An election that is renewed under this subsection remains in effect until the earlier of the date that:

(1) the election expires because it was not renewed;

(2) the commission allows the company to withdraw its election under Section 59.022; or

(3) the legislature eliminates the incentive regulation authorized by this chapter and Chapter 58.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 46, eff. Sept. 1, 1999.

Sec. 59.022. WITHDRAWAL OF ELECTION. (a) The commission may allow an electing company to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause.

(b) In this section, "good cause" includes only matters beyond the control of the company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.023. ELECTION UNDER CHAPTER 58. (a) This chapter does not prohibit a company electing under this chapter from electing incentive regulation under Chapter 58.

(b) If a company makes an election under Chapter 58, the infrastructure commitment made under this chapter offsets the infrastructure commitment required in connection with the Chapter 58 election.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.024. RATE CHANGES. (a) Except for the charges permitted under Subchapter C, Chapter 55, Subchapter B, Chapter 56, and Section 55.024, an electing company may not, before the end of the company's election period under this chapter, increase a rate

previously established for that company under this title unless the commission approves the proposed change as authorized under Subsection (c) or (d).

(b) For purposes of Subsection (a), the company's previously established rates are the rates charged by the company on its election date without regard to a proceeding pending under:

(1) Section 15.001;

(2) Subchapter D, Chapter 53; or

(3) Subchapter G, Chapter 2001, Government Code.

(c) The commission, on motion of the electing company or on its own motion, shall adjust prices for services to reflect changes in Federal Communications Commission separations that affect intrastate net income by at least 10 percent.

(d) Notwithstanding Subsection (a), the commission, on request of the electing company, shall allow a rate group reclassification that results from access line growth.

(e) Section 58.059 applies to a rate change under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 47, eff. Sept. 1, 1999.

Sec. 59.025. SWITCHED ACCESS RATES. Notwithstanding any other provision of this title, the commission may not, on the commission's own motion, reduce an electing company's rates for switched access services before the expiration of the election period prescribed by Section 59.024, but may approve a reduction proposed by the electing company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 48, eff. Sept. 1, 1999.

Sec. 59.026. COMPLAINT OR HEARING. (a) On or before the end of the company's election period, an electing company is not, under any circumstances, subject to:

(1) a complaint or hearing regarding the reasonableness of the company's:

(A) rates;

(B) overall revenues;

(C) return on invested capital; or

(D) net income; or

(2) a complaint that a rate is excessive.

(b) Subsection (a) applies only to a company that is in compliance with the company's infrastructure commitment under this chapter.

(c) This section does not prohibit a complaint, hearing, or determination on an electing company's implementation of a competitive safeguard required by Chapter 60.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 49, eff. Sept. 1, 1999.

Sec. 59.027. CONSUMER COMPLAINTS REGARDING TARIFFS. (a) This chapter does not restrict:

(1) a consumer's right to complain to the commission about the application of an ambiguous tariff; or

(2) the commission's right to determine:

(A) the proper application of that tariff; or

(B) the proper tariff rate if that tariff does not apply.

(b) This section does not permit the commission to:

(1) lower a tariff rate except as specifically provided by this title;

(2) change the commission's interpretation of a tariff; or

(3) extend the application of a tariff to a new class of customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.028. CONSUMER COMPLAINTS REGARDING SERVICES; ENFORCEMENT OF STANDARDS. This chapter does not restrict:

(1) a consumer's right to complain to the commission about quality of service; or

(2) the commission's right to enforce a quality of service standard.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.029. INVESTMENT LIMITATION ON SERVICE STANDARDS. (a) The commission may not raise a service standard applicable to the provision of local exchange telephone service by an electing company if the increased investment required to comply with the raised standard in any year exceeds 10 percent of the company's average annual intrastate additions in capital investment for the most recent five-year period.

(b) In computing the average under Subsection (a), the electing company shall exclude:

(1) extraordinary investments made during the five-year period; and

(2) investments required by Section 59.052.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.030. NEW SERVICES. (a) An electing company may introduce a new service 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.

(b) An electing company shall price each new service at or above the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that has been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an electing company of a new service is in compliance with Subsection (b).

(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the electing company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 50, eff. Sept. 1, 1999.

Sec. 59.031. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding Section 59.027(b) or Subchapter F, Chapter 60, an electing company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. The electing company may exercise pricing flexibility 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002(7) and includes packaging of regulated services with unregulated services or any service of an affiliate.

(b) An electing company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow a company serving fewer than one million access lines to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that an electing company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the 31st day after the company implements the rate.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 50, eff. Sept. 1, 1999.

Sec. 59.032. CUSTOMER PROMOTIONAL OFFERINGS. (a) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The electing company shall file with the commission a promotional offering that consists of:

(1) waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) An electing company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) An electing company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 50, eff. Sept. 1, 1999.

## SUBCHAPTER C. INFRASTRUCTURE COMMITMENT AND GOALS

Sec. 59.051. INFRASTRUCTURE COMMITMENT. (a) An electing company shall commit to make in this state, during the six years after the election date, the telecommunications infrastructure investment prescribed by this chapter.

(b) The company shall make the commitment to the governor and the commission in writing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.052. INFRASTRUCTURE GOALS. (a) The commission shall ensure that each electing company achieves the infrastructure goals described by this section.

(b) Each new central office switch installed for an electing company in this state after September 1, 1995, must be digital.

(c) An electing company shall make available to each customer in the company's territory access to end-to-end digital connectivity. In this subsection, "make available" has the meaning assigned by 16 T.A.C. Section 23.69.

(d) In each electing company's territory, 50 percent of the local exchange access lines must be served by a digital central office switch.

(e) An electing company's public switched network backbone interoffice facilities must employ broadband facilities that serve at

least 50 percent of the local exchange access lines and are capable of 45 or more megabits a second. The company may employ facilities at a lower bandwidth if technology permits the delivery of video signal at the lower bandwidth at a quality level comparable to a television broadcast signal. The requirements of this subsection do not apply to local loop facilities.

(f) An electing company shall install Common Channel Signaling 7 capability in each access tandem office.

(g) The infrastructure goals specified by Subsections (c)-(f) must be achieved not later than January 1, 2000.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.053. WAIVER OF INFRASTRUCTURE REQUIREMENTS. (a) For an electing company that serves fewer than one million lines, the commission may waive a requirement prescribed by Section 59.052 if the company demonstrates that the investment is not viable economically.

(b) Before granting a waiver under Subsection (a), the commission must consider the public benefits that would result from compliance with the requirement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.054. PROGRESS REPORT. (a) On each anniversary of the company's election date, an electing company shall file with the commission a report on the company's progress on its infrastructure commitment.

(b) The report must include a statement of:

(1) the institutions requesting service under Subchapter D;

(2) the institutions served under Subchapter D;

(3) the investments and expenses for the previous period and the total investments and expenses for all periods; and

(4) other information the commission considers necessary.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND

UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing Section 59.052 in determining whether an electing company is entitled to:

(1) a rate increase under this chapter; or

(2) increased universal service funds under Subchapter B, Chapter 56.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES**

Sec. 59.071. DEFINITIONS. In this subchapter:

(1) "Educational institution" has the meaning assigned by Section 57.021.

(2) "Library" means:

(A) a public library or regional library system as those terms are defined by Section 441.122, Government Code;

(B) a library operated by an institution of higher education or a school district; or

(C) a library operated by a nonprofit corporation as defined by Section 441.221(3), Government Code.

(3) "Private network services" means telecommunications services provided to an entity described by Section 59.072(a), including broadband services, customized services, and packaged network services.

(4) "Telemedicine center" means a facility that is equipped to transmit, by video or data service, medical information for the diagnosis or treatment of illness or disease and that is:

(A) owned or operated by a public or not-for-profit hospital; or

(B) owned by a state-licensed health care practitioner and operated on a nonprofit basis.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 831 (H.B. 735), Sec. 13, eff. September 1, 2008.

Sec. 59.072. PRIVATE NETWORK SERVICES FOR CERTAIN ENTITIES. (a) On customer request, an electing company shall provide private

network services to:

(1) an educational institution;

(2) a library;

(3) a telemedicine center; or

(4) a legally constituted consortium or group of entities listed in this subsection.

(b) Except as provided by Section 59.081, the electing company shall provide the private network services for the private and sole use of the receiving entity. However, the company may provide the services with a facility that is used to provide another service to another customer.

(c) The customers listed in Subsection (a) are a special class of customers for purposes of the private network for distance learning, telemedicine, and information-sharing purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.073. INVESTMENT PRIORITIES. An electing company shall give investment priority to serving:

(1) rural areas;

(2) areas designated as critically underserved medically or educationally; and

(3) educational institutions with high percentages of economically disadvantaged students.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.074. CONTRACTS FOR PRIVATE NETWORK SERVICES. (a) An electing company shall provide a private network service under a customer-specific contract.

(b) An electing company shall offer private network service contracts under this subchapter at 110 percent of the long run incremental cost of providing the private network service, including installation costs.

(c) Commission approval of a contract is not required.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 21 (S.B. 983), Sec. 3, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 13, eff. September 1, 2011.

Sec. 59.075. PREFERRED RATE TREATMENT WARRANTED. The classes of customers described by Section 59.072(a) warrant preferred rate treatment. However, a rate charged for a service must cover the service's long run incremental cost.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.076. ELECTION OF RATE TREATMENT. An educational institution or a library may elect the rate treatment provided by this subchapter or the discount provided by Subchapter B, Chapter 57.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.077. PRIVATE NETWORK SERVICES RATES AND TARIFFS. (a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016.

(b) An electing company may not assess an entity described by Section 59.072(a) a tariffed special construction or installation charge unless the company and the entity agree on the assessment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 22, eff. September 7, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 9, eff. September 1, 2011.

Sec. 59.078. PRIVATE LINE OR SPECIAL ACCESS RATES. (a) On request by an educational institution or a library, an electing company shall provide 1.544 megabits a second private line or special access service at 110 percent of the service's long run incremental cost, including installation costs.

(b) The rate provided by Subsection (a) is in lieu of the discount provided by Subchapter B, Chapter 57.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.079. COMPLAINTS LIMITED. Notwithstanding any other provision of this title, an electing company is subject to a complaint under Subchapter C or this subchapter only by an entity described by Section 59.072(a).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.080. INTERCONNECTION OF NETWORK SERVICES. The private network services provided under this subchapter may be interconnected with other similar networks for distance learning, telemedicine, and information-sharing purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.081. SHARING OR RESALE OF NETWORK SERVICES. (a) A private network service may be used and shared among the entities described by Section 59.072(a) but may not be otherwise shared or resold to other customers.

(b) A service provided under this subchapter may not be required to be resold to other customers at a rate provided by this subchapter.

(c) This section does not prohibit an otherwise permitted resale of another service that an electing company may offer through the use of the same facilities used to provide a private network service offered under this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.082. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing this subchapter in determining whether an electing company is entitled to:

(1) a rate increase under this chapter; or

(2) increased universal service funds under Subchapter B, Chapter 56.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016, regardless of:

(1) the date the company elected under this chapter; or

(2) any action taken in relation to that company under Chapter 65.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 23, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 903 (S.B. 773), Sec. 10, eff. September 1, 2011.

## CHAPTER 60. COMPETITIVE SAFEGUARDS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 60.001. FAIR COMPETITION. To the extent necessary to ensure that competition in telecommunications is fair to each participant and to accelerate the improvement of telecommunications in this state, the commission shall ensure that the rates and rules of an incumbent local exchange company:

(1) are not unreasonably preferential, prejudicial, or discriminatory; and

(2) are applied equitably and consistently.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.002. EXCLUSIVE JURISDICTION; ENFORCEMENT. (a) The commission has exclusive jurisdiction to implement competitive safeguards.

(b) Section 58.025 does not prevent the commission from enforcing this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.003. COMMISSION AUTHORITY. (a) The commission may:

(1) establish procedures with respect to a policy stated in this subchapter or Subchapters B-H; and

(2) resolve a dispute that arises under a policy described by Subdivision (1).

(b) The commission shall adopt procedures for a proceeding under Subchapters B and C. A procedure may:

(1) limit discovery; and

(2) for purposes of cross-examination align any party, other than the office, with another party that has a similar position.

(c) In adopting a procedure under this section and in resolving a dispute, the commission shall consider the action's effect on:

(1) consumers;

(2) competitors; and

(3) the incumbent local exchange company.

(d) The commission, by order or rule, may not implement a requirement that is contrary to a federal law or rule.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.004. APPLICABILITY TO CERTAIN SMALLER INCUMBENT LOCAL EXCHANGE COMPANIES; RULES. (a) Subchapters B, C, and H may be applied to an incumbent local exchange company that serves fewer than 31,000 access lines only on a bona fide request from a certificated telecommunications utility.

(b) In applying the rules adopted under Subchapters B, C, and H to a company described by Subsection (a), the commission may modify the rules in the public interest.

(c) This section takes effect September 1, 1998.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.005. APPLICABILITY TO CERTAIN LARGER INCUMBENT LOCAL EXCHANGE COMPANIES; RULES. (a) Subchapters B, D, and F may be applied to an incumbent local exchange company that, as of September

1, 1995, has 31,000 or more access lines in this state but fewer than one million access lines in this state only on a bona fide request from a holder of a certificate of operating authority or a service provider certificate of operating authority.

(b) In applying the rules adopted under Subchapters B, D, and F to a company described by Subsection (a), the commission may modify the rules in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.006. BULLETIN BOARD SYSTEMS UNAFFECTED. This subtitle does not:

(1) require the commission to change the rate treatment established by the commission in Docket No. 8387 for a bulletin board system in a residence;

(2) regulate or tax a bulletin board system or Internet service provider that provides only enhanced or information services and that does not provide a telecommunications service; or

(3) require a change in a rate charged to an entity described by Subdivision (2) under a tariff in effect on September 1, 1995.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. UNBUNDLING

Sec. 60.021. MINIMUM UNBUNDLING REQUIREMENT. At a minimum, an incumbent local exchange company shall unbundle its network to the extent the Federal Communications Commission orders.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.022. COMMISSION UNBUNDLING ORDERS. (a) The commission may adopt an order relating to the issue of unbundling of local exchange company services in addition to the unbundling required by Section 60.021.

(b) Before ordering further unbundling, the commission must consider the public interest and competitive merits of further unbundling.

(c) On the request of a party, the commission shall proceed by evidentiary hearing. If a request for a hearing is not made, the commission may proceed by rulemaking.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.023. ASSIGNMENT OF UNBUNDLED COMPONENT TO CATEGORY OF SERVICE. The commission may assign an unbundled component to the appropriate category of services under Chapter 58 according to the purposes and intents of the categories.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. RESALE

Sec. 60.041. LOOP RESALE TARIFF. (a) An incumbent local exchange company that on September 1, 1995, serves one million or more access lines or that on or before September 1, 1995, elects regulation under Chapter 58 shall file a usage sensitive loop resale tariff.

(b) An incumbent local exchange company shall file a usage sensitive loop resale tariff not later than the 60th day after the date a certificate of operating authority or a service provider certificate of operating authority is granted under Chapter 54 if the company:

(1) serves fewer than one million access lines; and

(2) is not an electing company under Chapter 58.

(c) The commission shall conduct an appropriate proceeding to determine the rates and terms of the resale tariff not later than the 180th day after the date the tariff is filed.

(d) The commission may not approve a usage sensitive rate unless the rate recovers:

(1) the total long run incremental cost of the loop on an unseparated basis; and

(2) an appropriate contribution to joint and common costs.

(e) Except as provided by Section 60.044, a person may not purchase from the resale tariff unless the person is the holder of:

(1) a certificate of convenience and necessity;

(2) a certificate of operating authority; or

(3) a service provider certificate of operating authority.

(f) In this section, "loop resale" means the purchase of the local distribution channel or loop facility from the incumbent local exchange company to resell to end user customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.042. PROHIBITED RESALE OR SHARING. (a) A provider of telecommunications service may not impose a restriction on the resale or sharing of a service:

(1) for which the provider is not a dominant provider; or

(2) entitled to regulatory treatment as a nonbasic service under Subchapter E, Chapter 58, if the provider is a company electing regulation under Chapter 58.

(b) An incumbent local exchange company must comply with the resale provisions of 47 U.S.C. Section 251(c)(4), as amended, unless exempted under 47 U.S.C. Section 251(f), as amended.

(c) If a company electing under Chapter 58 offers basic or nonbasic services regulated by the commission to its retail customers as a promotional offering, the electing company shall make those services available for resale by a certificated telecommunications utility on terms that are no less favorable than the terms on which the services are made available to retail customers in accordance with this section. For a promotion with a duration of 90 days or less, the electing company's basic or nonbasic services shall be made available to the certificated telecommunications utility at the electing company's promotional rate, without an avoided-cost discount. For a promotion with a duration of more than 90 days, the electing company's basic or nonbasic services shall be made available to the certificated telecommunications utility at a rate reflecting the avoided-cost discount, if any, from the promotional rate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1212, Sec. 51, eff. Sept. 1, 1999.

Sec. 60.043. RESALE OBLIGATION. A holder of a certificate of operating authority or a service provider certificate of operating authority shall permit a local exchange company to resell the holder's loop facilities at the holder's regularly published rates if the local exchange company:

(1) does not have loop facilities; and
(2) has a request for service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.044. ELIMINATION OF RESALE PROHIBITIONS. (a) Except as provided by Subsections (c) and (d), the commission shall eliminate all resale prohibitions in the tariffs of an electing company on the:

(1) completion of the commission's costing and pricing rulemaking;
(2) completion of rate rebalancing of the incumbent local exchange company rates under Subchapter F; and
(3) removal of all prohibitions on an incumbent local exchange company's provision of interLATA services.

(b) Except as provided by Subsections (c) and (d), the commission shall eliminate all resale prohibitions in the tariffs of an electing company that has one million access lines or more on removal of all prohibitions on the company's provision of interLATA service.

(c) After the resale prohibitions are eliminated under this section:

(1) the commission shall continue to prohibit the resale of local exchange or directory assistance flat rate services as a substitute for usage sensitive services; and
(2) residence service may not be resold to a business customer.

(d) A service or function may be offered for resale only to the same class of customer to which the incumbent local exchange company sells the service if the commission finds that:

(1) as a result of the costing and pricing proceeding the rate for the service or function will be less than the cost of providing the service or function; and
(2) the difference in rate and cost will not be recovered from the universal service fund.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.045. RESALE OR SHARING ARRANGEMENTS UNAFFECTED. This

subchapter does not change a resale or sharing arrangement permitted in an incumbent local exchange company tariff that:

(1) existed on September 1, 1995; or

(2) was filed on or before May 1, 1995, by an incumbent local exchange company that serves more than five million access lines in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. IMPUTATION

Sec. 60.061. RULES. (a) The commission shall adopt rules governing imputation of the price of a service.

(b) Imputation is a regulatory policy the commission shall apply to prevent an incumbent local exchange company from selling a service or function to another telecommunications utility at a price that is higher than the rate the incumbent local exchange company implicitly includes in services it provides to the company's retail customers.

(c) The commission may require imputation only of the price of a service that is:

(1) not generally available from a source other than the incumbent local exchange company; and

(2) necessary for the competitor to provide a competing service.

(d) The commission may require imputation only on a service-by-service basis and may not require imputation on a rate-element-by-element basis.

(e) For a service for which the commission may require imputation under Subsection (c) and that is provided under a customer specific contract, the commission:

(1) may require imputation only on a service-by-service basis within the contract; and

(2) may not require imputation on a rate-element-by-element basis.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.062. EXCEPTION FOR CAPPED PRICE. The commission may not require imputation of the price to a local exchange telephone

service while the price is capped under Chapter 58 or 59.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.063. IMPUTATION FOR SWITCHED ACCESS. The commission shall impute the price of switched access service to the price of each service for which switched access service is a component until switched access service is competitively available.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.064. RECOVERY OF COST OF PROVIDING SERVICE. (a) An incumbent local exchange company shall demonstrate that the price it charges for retail service recovers the cost of providing the service.

(b) For purposes of this section, the cost of providing the service is the sum of:

(1) each specifically tariffed premium rate for each noncompetitive service or service function, or each element of a noncompetitive service or service function, or the functional equivalent, that is used to provide the service;

(2) the total service long run incremental cost of the competitive services or service functions that are used;

(3) each cost, not reflected in Subdivision (1) or (2), that is specifically associated with providing the service or group of services; and

(4) each cost or surcharge associated with an explicit subsidy applied to all providers of the service to promote universal service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.065. WAIVERS. If the commission determines that a waiver is in the public interest, the commission may waive an imputation requirement for a public interest service such as:

(1) 9-1-1 service; or

(2) dual party relay service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER E. TELECOMMUNICATIONS NUMBER PORTABILITY**

Sec. 60.081. DEFINITION. In this subchapter, "telecommunications number portability" means the ability of a telecommunications services user who is changing from one telecommunications service provider to another provider to retain a telephone number, to the extent technically feasible, without impairing the quality, reliability, or convenience of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.082. PORTABILITY GUIDELINES. (a) Because a uniform national number plan is valuable and necessary to this state, the commission by rule shall adopt guidelines governing telecommunications number portability and the assignment of telephone numbers in a competitively neutral manner.

(b) The rules may not be inconsistent with the rules and regulations of the Federal Communications Commission regarding telecommunications number portability.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.083. INTERIM RETENTION OF CONSUMER NUMBERS. As an interim measure, the commission shall adopt reasonable mechanisms, including, at minimum, the use of call forwarding and direct inward dialing, to allow consumers to retain their telephone numbers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.084. RATES FOR INTERIM PORTABILITY MEASURES. (a) An incumbent local exchange company with one million or more access lines shall file tariffs, and the commission shall determine reasonable rates to be charged by the company for:

(1) call forwarding;

(2) direct inward dialing; and

(3) any other mechanism the commission determines should be

used as an interim telecommunications number portability measure by a new entrant.

(b) An incumbent local exchange company with fewer than one million access lines that serves an area in which a certificate of operating authority or a service provider certificate of operating authority has been granted shall, not later than the 60th day after the date of a bona fide request, file tariffs in accordance with Subsection (a).

(c) Not later than the 60th day after the date a company files tariffs under Subsection (b), the commission shall determine reasonable rates in accordance with Subsection (a).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. PRICING

Sec. 60.101. PRICING RULE. (a) The commission shall adopt a pricing rule.

(b) In adopting the pricing rule, the commission shall:

(1) ensure that each price for a monopoly service remains affordable;

(2) ensure that each price for competitive service is not:

(A) unreasonably preferential, prejudicial, or discriminatory;

(B) directly or indirectly subsidized by a noncompetitive service; or

(C) predatory or anticompetitive; and

(3) require that each service recover the appropriate costs, including joint and common costs, of each facility and function used to provide the service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.102. ADOPTION OF COST STUDIES BY CERTAIN COMPANIES. The commission shall allow an incumbent local exchange company that is not a Tier 1 local exchange company on September 1, 1995, to adopt, at that company's option, the cost studies approved by the commission for a Tier 1 local exchange company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER G. INTERCONNECTION

Sec. 60.121. DEFINITION. In this subchapter, "interconnection" means, for calls that originate and terminate in this state, the termination of local intraexchange traffic of another local exchange company or holder of a service provider certificate of operating authority within the local calling area of the terminating local exchange company or certificate holder.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.122. EXCLUSIVE JURISDICTION. The commission has exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a rate for the existing termination of cellular or interexchange traffic.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.124. INTEROPERABLE NETWORKS REQUIRED. (a) The commission shall require each telecommunications provider to maintain interoperable networks.

(b) The commission may:

(1) adopt rules, including generic rules that are responsive to changes in federal law or a development in the local exchange market; and

(2) set policies governing interconnection arrangements.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.125. DETERMINATION OF INTERCONNECTION RATES. (a) Telecommunications providers shall negotiate network interconnectivity, charges, and terms.

(b) If interconnectivity, charges, and terms are successfully negotiated, the commission shall approve the interconnection rates.

(c) If telecommunications providers do not enter into a mutually agreed compensation rate under this section, each provider shall reciprocally terminate the other provider's traffic at no charge for the first nine months after the date the first call is terminated between the providers.

(d) During the nine-month period prescribed by Subsection (c), the commission shall complete a proceeding to establish reciprocal interconnection rates and terms. The commission shall establish reciprocal interconnection rates and terms based solely on the commission proceeding.

(e) In establishing the initial interconnection rate, the commission may not require cost studies from the new entrant.

(f) On or after the third anniversary of the date the first call is terminated between the providers, the commission, on receipt of a complaint, may require cost studies by a new entrant to establish interconnection rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE RESOLUTION. The commission may resolve a dispute filed by a party to a negotiation under Section 60.125(a).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES. (a) An incumbent local exchange company may adopt the interconnection rates the commission approves for a larger incumbent local exchange company without additional cost justification.

(b) If an incumbent local exchange company does not adopt the interconnection rates of a larger company or negotiates under Section 60.125(a), the company is governed by Sections 60.125(c)-(f).

(c) If the incumbent local exchange company adopts the interconnection rates of another incumbent local exchange company,

the new entrant may adopt those rates as the new entrant's interconnection rates.

(d) If the incumbent local exchange company elects to file its own tariff, the new entrant must also file its own interconnection tariff.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.128. USE OF RATES RESTRICTED. The commission may not use interconnection rates under this subchapter as a basis to alter interconnection rates for other services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER H. EXPANDED INTERCONNECTION

Sec. 60.141. EXPANDED INTERCONNECTION RULES. The commission shall adopt rules for expanded interconnection that:

(1) are consistent with the rules and regulations of the Federal Communications Commission relating to expanded interconnection;

(2) treat intrastate private line services as special access service; and

(3) provide that if an incumbent local exchange company is required to provide expanded interconnection to another local exchange company, the second local exchange company shall in a similar manner provide expanded interconnection to the first company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER I. LOCAL EXCHANGE COMPANY REQUIREMENTS

Sec. 60.161. INCUMBENT LOCAL EXCHANGE COMPANY REQUIREMENTS. An incumbent local exchange company may not unreasonably:

(1) discriminate against another provider by refusing access to the local exchange;

(2) refuse or delay an interconnection to another provider;

(3) degrade the quality of access the company provides to another provider;

(4) impair the speed, quality, or efficiency of a line used

by another provider;

(5) fail to fully disclose in a timely manner on request all available information necessary to design equipment that will meet the specifications of the local exchange network; or

(6) refuse or delay access by a person to another provider.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.162. EXPANDED INTERCONNECTION. This subchapter does not require an incumbent local exchange company to provide expanded interconnection as that term is defined by the Federal Communications Commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.163. INFRASTRUCTURE SHARING. (a) The commission shall adopt rules that require a local exchange company to share public switched network infrastructure and technology with a requesting local exchange company that lacks economies of scale or scope, to enable the requesting company to provide telecommunications services in each geographic area for which the requesting company is designated as the sole carrier of last resort.

(b) The rules governing the sharing:

(1) may not require a local exchange company to make a decision that is uneconomic or adverse to the public;

(2) shall permit, but may not require, joint ownership and operation of public switched network infrastructure and services by or among the local exchange companies that share infrastructure; and

(3) shall establish conditions that promote cooperation between local exchange companies.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 60.164. PERMISSIBLE JOINT MARKETING. Except as prescribed in Chapters 61, 62, and 63, the commission may not adopt any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal

law or applicable rules or orders of the Federal Communications Commission.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 52, eff. Sept. 1, 1999.

Sec. 60.165. AFFILIATE RULE. Except as prescribed in Chapters 61, 62, and 63, the commission may not adopt any rule or order that would prescribe for any local exchange company any affiliate rule, including any accounting rule, any cost allocation rule, or any structural separation rule, that is more burdensome than federal law or applicable rules or orders of the Federal Communications Commission. Notwithstanding any other provision in this title, the commission may not attribute or impute to a local exchange company a price discount offered by an affiliate of the local exchange company to the affiliate's customers. This section does not limit the authority of the commission to consider a complaint brought under Subchapter A, Chapter 52, Section 53.003, or this chapter.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 52, eff. Sept. 1, 1999.

## SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

Sec. 60.201. STATEMENT OF POLICY. It is the policy of this state that providers of telecommunications services operate in a manner that is consistent with minimum standards to provide customers with continued competitive choices.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.202. APPLICABILITY OF SUBCHAPTER. A provision of this subchapter applies only to the extent the provision has not been preempted by federal law or a rule, regulation, or order of the Federal Communications Commission.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.203. MINIMUM SERVICE REQUIREMENTS. A telecommunications provider may not unreasonably:

(1) discriminate against another provider by refusing access to an exchange;

(2) refuse or delay an interconnection to another provider;

(3) degrade the quality of access the telecommunications provider provides to another provider;

(4) impair the speed, quality, or efficiency of a line used by another provider;

(5) fail to fully disclose in a timely manner on request all available information necessary to design equipment that will meet the specifications of the network; or

(6) refuse or delay access by a person to another provider.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.204. INTERCONNECTION. A telecommunications provider shall provide interconnection with other telecommunications providers' networks for the transmission and routing of telephone exchange service and exchange access.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.205. NUMBER PORTABILITY. A telecommunications provider shall provide number portability in accordance with federal requirements.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.206. DUTY TO NEGOTIATE. A telecommunications provider shall negotiate in good faith the terms and conditions of any agreement.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.207. DIALING PARITY. (a) A telecommunications provider shall provide dialing parity to competing telecommunications providers of telephone exchange service and telephone toll service.

(b) A telecommunications provider shall provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings and may not delay that access unreasonably.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. A telecommunications provider shall provide access to poles, ducts, conduits, and rights-of-way to competing providers of telecommunications service on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.209. RECIPROCAL COMPENSATION. A telecommunications provider shall establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff. September 7, 2005.

Sec. 60.210. ACCESS TO SERVICES. A telecommunications provider shall provide access to:

(1) 911 and E-911 service;

(2) directory assistance service to allow other telecommunications providers' customers to obtain telephone numbers; and

(3) operator call completion service.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 24, eff.

September 7, 2005.

## CHAPTER 62. BROADCASTER SAFEGUARDS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. APPLICABILITY OF CHAPTER. This chapter does not apply to a cable company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 62.002. DEFINITIONS. In this chapter:

(1) "Audio programming":

(A) means programming:

(i) provided by an amplitude modulation or frequency modulation broadcast radio station; or

(ii) generally considered comparable to programming described by Subparagraph (i); and

(B) does not include an audio-related service offered by an incumbent local exchange company on September 1, 1995.

(2) "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station as defined by Section 602, Communications Act of 1934 (47 U.S.C. Section 522).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO PROGRAMMING. (a) This section applies only to a provider of advanced services or local exchange telephone service that has more than 500,000 access lines in service in this state and that delivers audio programming with localized content or video programming to its subscribers in those service areas where such provider is not regulated as a cable system under federal law.

(b) Notwithstanding any other provision of this title, a provider of advanced services or local exchange telephone service shall provide subscribers access to the signals of the local broadcast television and radio stations licensed by the Federal Communications Commission to serve those subscribers over the air; provided with respect to low power television stations, this section

shall only apply to those low power television stations that are "qualified low power stations" as defined in 47 U.S.C. Section 534(h)(2).

(c) To facilitate access by subscribers of a provider of advanced services or local exchange telephone service to the signals of local broadcast stations, a station either shall be granted mandatory carriage or may request retransmission consent with the provider.

(d) This title does not require a provider of advanced services or local exchange telephone service to provide a television or radio station valuable consideration in exchange for carriage.

(e) A provider of advanced services or local exchange telephone service shall transmit without degradation the signals a local broadcast station delivers to the provider. The transmission quality offered a broadcast station may not be lower than the quality made available to another broadcast station or video or audio programming source.

(f) A provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers may not:

(1) discriminate among broadcast stations or between broadcast stations on the one hand and programming providers on the other with respect to transmission of their signals, taking into account any consideration afforded a provider of advanced services or local exchange telephone service by any such programming provider or broadcast station; or

(2) delete, change, or alter a copyright identification transmitted as part of a broadcast station's signal.

(g) A provider of advanced services or local exchange telephone service that delivers audio or video programming shall be subject to any applicable network nonduplication or syndicated exclusivity rules promulgated by the Federal Communications Commission to the extent applicable to cable systems as defined by the commission.

(h) A provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers shall include all programming providers in a subscriber programming guide, if any, that lists program schedules.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 25, eff. September 7, 2005.

## CHAPTER 64. CUSTOMER PROTECTION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. CUSTOMER PROTECTION POLICY. (a) The legislature finds that new developments in telecommunications services, as well as changes in market structure, marketing techniques, and technology, make it essential that customers have safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive business practices and against businesses that do not have the technical and financial resources to provide adequate service.

(b) The purpose of this chapter is to establish customer protection standards and confer on the commission authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.

(c) Nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.

(d) This chapter does not limit the constitutional, statutory, and common law authority of the office of the attorney general.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.002. DEFINITIONS. In this chapter:

(1) "Billing agent" means any entity that submits charges to the billing utility on behalf of itself or any provider of a product or service.

(2) "Billing utility" means any telecommunications provider, as defined by Section 51.002, that issues a bill directly to a customer for any telecommunications product or service.

(3) "Certificated telecommunications utility" means a telecommunications utility that has been granted either a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority.

(4) "Customer" means any person in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone service.

(5) "Service provider" means any entity that offers a

product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing utility.

(6) "Telecommunications utility" has the meaning assigned by Section 51.002.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.004. CUSTOMER PROTECTION STANDARDS. (a) All buyers of telecommunications services are entitled to:

(1) protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including protection from being billed for services that were not authorized or provided;

(2) choice of a telecommunications service provider and to have that choice honored;

(3) information in English and Spanish and any other language as the commission deems necessary concerning rates, key terms, and conditions;

(4) protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location;

(5) impartial and prompt resolution of disputes with a certificated telecommunications utility and disputes with a telecommunications service provider related to unauthorized charges and switching of service;

(6) privacy of customer consumption and credit information;

(7) accuracy of billing;

(8) bills presented in a clear, readable format and easy-to-understand language;

(9) information in English and Spanish and any other language as the commission deems necessary concerning low-income assistance programs and deferred payment plans;

(10) all consumer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and

(11) programs that offer eligible low-income customers an affordable rate package and bill payment assistance programs designed

to reduce uncollectible accounts.

(b) The commission may adopt and enforce rules as necessary or appropriate to carry out this section, including rules for minimum service standards for a certificated telecommunications utility relating to customer deposits and the extension of credit, switching fees, termination of service, an affordable rate package, and bill payment assistance programs for low-income customers. The commission may waive language requirements for good cause.

(c) The commission shall request the comments of the office of the attorney general in developing the rules that may be necessary or appropriate to carry out this section.

(d) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(e) Nothing in this section shall be construed to abridge customer rights set forth in commission rules in effect at the time of the enactment of this chapter.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

**SUBCHAPTER B. CERTIFICATION, REGISTRATION, AND REPORTING REQUIREMENTS**

Sec. 64.051. ADOPTION OF RULES. (a) The commission shall adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers.

(b) The rules adopted under Subsection (a) shall be consistent with and no less effective than federal law and may not require the disclosure of highly sensitive competitive or trade secret information.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.052. SCOPE OF RULES. The commission may adopt and enforce rules to:

(1) require certification or registration with the commission as a condition of doing business in this state;

(2) amend certificates or registrations to reflect changed ownership and control;

(3) establish rules for customer service and protection;

(4) suspend or revoke certificates or registrations for repeated violations of this chapter or commission rules, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008; and

(5) order disconnection of a pay telephone service provider's pay telephones or revocation of certification or registration for repeated violations of this chapter or commission rules.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.053. REPORTS. The commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under this chapter.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

## SUBCHAPTER C. CUSTOMER'S RIGHT TO CHOICE

Sec. 64.101. POLICY. It is the policy of this state that all customers be protected from the unauthorized switching of a telecommunications service provider selected by the customer to provide service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.102. RULES RELATING TO CHOICE. The commission shall adopt and enforce rules that:

(1) ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders, including negative option marketing, sweepstakes, and contests that cause customers to unknowingly change their telecommunications service provider;

(2) provide for clear, easily understandable

identification, in each bill sent to a customer, of all telecommunications service providers submitting charges on the bill;

(3) ensure that every service provider submitting charges on the bill is clearly and easily identified on the bill along with its services, products, and charges;

(4) provide that unauthorized changes in service be remedied at no cost to the customer within a period established by the commission;

(5) require refunds or credits to the customer in the event of an unauthorized change; and

(6) provide for penalties for violations of commission rules adopted under this section, including fines and revocation of certificates or registrations, by this action denying the certificated telecommunications utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

## SUBCHAPTER D. PROTECTION AGAINST UNAUTHORIZED CHARGES

Sec. 64.151. REQUIREMENTS FOR SUBMITTING CHARGES. (a) A service provider or billing agent may submit charges for a new product or service to be billed on a customer's telephone bill on or after the effective date of this section only if:

(1) the service provider offering the product or service has thoroughly informed the customer of the product or service being offered, including all associated charges, and has explicitly informed the customer that the associated charges for the product or service will appear on the customer's telephone bill;

(2) the customer has clearly and explicitly consented to obtain the product or service offered and to have the associated charges appear on the customer's telephone bill and the consent has been verified as provided by Subsection (b); and

(3) the service provider offering the product or service and any billing agent for the service provider:

(A) has provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer

questions; and

(B) has contracted with the billing utility to bill for products and services on the billing utility's bill as provided by Subsection (c).

(b) The customer consent required by Subsection (a)(2) must be verified by the service provider offering the product or service by authorization from the customer. A record of the customer consent, including verification, must be maintained by the service provider offering the product or service for a period of at least 24 months immediately after the consent and verification have been obtained. The method of obtaining customer consent and verification must include one or more of the following:

(1) written authorization from the customer;

(2) toll-free electronic authorization placed from the telephone number that is the subject of the product or service;

(3) oral authorization obtained by an independent third party; or

(4) any other method of authorization approved by the commission or the Federal Communications Commission.

(c) The contract required by Subsection (a)(3)(B) must include the service provider's name, business address, and business telephone number and shall be maintained by the billing utility for as long as the billing for the products and services continues and for the 24 months immediately following the permanent discontinuation of the billing.

(d) A service provider offering a product or service to be charged on a customer's telephone bill and any billing agent for the service provider may not use any fraudulent, unfair, misleading, deceptive, or anticompetitive marketing practice to obtain customers, including the use of negative option marketing, sweepstakes, and contests.

(e) Unless verification is required by federal law or rules implementing federal law, Subsection (b) does not apply to customer-initiated transactions with a certificated telecommunications provider for which the service provider has the appropriate documentation.

(f) If a service provider is notified by a billing utility that a customer has reported to the billing utility that a charge made by the service provider is unauthorized, the service provider shall cease to charge the customer for the unauthorized product or service.

(g) This section does not apply to message telecommunications services charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services if the service provider has the necessary call detail record to establish the billing for the call or service.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.152. RESPONSIBILITIES OF BILLING UTILITY. (a) If a customer's telephone bill is charged for any product or service without proper customer consent or verification, the billing utility, on its knowledge or notification of any unauthorized charge, shall promptly, not later than 45 days after the date of knowledge or notification of the charge:

(1) notify the service provider to cease charging the customer for the unauthorized product or service;

(2) remove any unauthorized charge from the customer's bill;

(3) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if the unauthorized charge is not adjusted within three billing cycles, shall pay interest on the amount of the unauthorized charge;

(4) on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the unauthorized charge from the customer's bill; and

(5) maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and who has notified the billing utility of the unauthorized charge.

(b) A record required by Subsection (a)(5) shall contain for each unauthorized charge:

(1) the name of the service provider that offered the product or service;

(2) any affected telephone numbers or addresses;

(3) the date the customer requested that the billing utility remove the unauthorized charge;

(4) the date the unauthorized charge was removed from the customer's telephone bill; and

(5) the date any money that the customer paid for the unauthorized charges was refunded or credited to the customer.

(c) A billing utility may not:

(1) disconnect or terminate telecommunications service to any customer for nonpayment of an unauthorized charge; or

(2) file an unfavorable credit report against a customer who has not paid charges the customer has alleged were unauthorized unless the dispute regarding the unauthorized charge is ultimately resolved against the customer, except that the customer shall remain obligated to pay any charges that are not in dispute, and this subsection does not apply to those undisputed charges.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.153. RECORDS OF DISPUTED CHARGES. (a) Every service provider shall maintain a record of every disputed charge for a product or service placed on a customer's bill.

(b) The record required under Subsection (a) shall contain for every disputed charge:

(1) any affected telephone numbers or addresses;

(2) the date the customer requested that the billing utility remove the unauthorized charge;

(3) the date the unauthorized charge was removed from the customer's telephone bill; and

(4) the date action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges.

(c) The record required by Subsection (a) shall be maintained for at least 24 months following the completion of all steps required by Section 64.152(a).

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.154. NOTICE. (a) A billing utility shall provide notice of a customer's rights under this section in the manner prescribed by the commission.

(b) Notice of a customer's rights must be provided by mail to each residential and retail business customer within 60 days of the effective date of this section or by inclusion in the publication of

the telephone directory next following the effective date of this section. In addition, each billing utility shall send the notice to new customers at the time service is initiated or to any customer at that customer's request.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.155. PROVIDING COPY OF RECORDS. A billing utility shall provide a copy of records maintained under Sections 64.151(c), 64.152, and 64.154 to the commission staff on request. A service provider shall provide a copy of records maintained under Sections 64.151(b) and 64.153 to the commission on request.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.156. VIOLATIONS. (a) If the commission finds that a billing utility violated this subchapter, the commission may implement penalties and other enforcement actions under Chapter 15.

(b) If the commission finds that any other service provider or billing agent subject to this subchapter has violated this subchapter or has knowingly provided false information to the commission on matters subject to this subchapter, the commission may enforce the provisions of Chapter 15 against the service provider or billing agent as if it were regulated by the commission.

(c) Neither the authority granted under this section nor any other provision of this subchapter shall be construed to grant the commission jurisdiction to regulate service providers or billing agents who are not otherwise subject to commission regulation, other than as specifically provided by this chapter.

(d) If the commission finds that a billing utility or service provider repeatedly violates this subchapter, the commission may, if the action is consistent with the public interest, suspend, restrict, or revoke the registration or certificate of the telecommunications service provider, by this action denying the telecommunications service provider the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008.

(e) If the commission finds that a service provider or billing

agent has repeatedly violated any provision of this subchapter, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent.

(f) Nothing in this subchapter shall be construed to preclude a billing utility from taking action on its own to terminate or restrict its billing and collection services.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.157. DISPUTES. (a) The commission may resolve disputes between a retail customer and a billing utility, service provider, or telecommunications utility.

(b) In exercising its authority under Subsection (a), the commission may:

(1) order a billing utility or service provider to produce information or records;

(2) require that all contracts, bills, and other communications from a billing utility or service provider display a working toll-free telephone number that customers may call with complaints and inquiries;

(3) require a billing utility or service provider to refund or credit overcharges or unauthorized charges with interest if the billing utility or service provider has failed to comply with commission rules or a contract with the customer;

(4) order appropriate relief to ensure that a customer's choice of a telecommunications service provider is honored;

(5) require the continuation of service to a residential or small commercial customer while a dispute is pending regarding charges the customer has alleged were unauthorized; and

(6) investigate an alleged violation.

(c) The commission shall adopt procedures for the resolution of disputes in a timely manner, which in no event shall exceed 60 days.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

Sec. 64.158. CONSISTENCY WITH FEDERAL LAW. Rules adopted by the commission under this subchapter shall be consistent with and not more burdensome than applicable federal laws and rules.

Added by Acts 1999, 76th Leg., ch. 1212, Sec. 55, eff. Sept. 1, 1999.

## SUBCHAPTER E. PUBLICATION OF MOBILE SERVICE CUSTOMER TELEPHONE NUMBERS

Sec. 64.201. DEFINITION. In this subchapter, "commercial mobile service provider" means a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66).

Added by Acts 2005, 79th Leg., Ch. 226 (H.B. 2553), Sec. 1, eff. September 1, 2005.

Sec. 64.202. CONSENT REQUIRED. (a) A commercial mobile service provider doing business in this state may not publish in a directory or provide for publication in a directory the name and telephone number of a mobile service customer in this state without the express consent of the customer. The consent of a customer must be given:

(1) in writing on a separate document that includes the customer's signature and the date;

(2) verbally; or

(3) on a website maintained by the commercial mobile service provider.

(b) Before a customer consents under Subsection (a), a commercial mobile service provider must disclose to the customer in writing or verbally, as appropriate, that:

(1) by consenting the customer agrees to have the customer's telephone number sold or licensed as part of a list of customers and the customer's telephone number may be included in a publicly available directory; and

(2) if the customer's calling plan bills the customer for unsolicited calls or text messages from a telemarketer, by consenting to have the customer's telephone number sold or licensed as part of a list of customers or be included in a publicly available directory, the customer may incur additional charges for receiving unsolicited calls or text messages.

(c) A customer who consents under Subsection (a) may revoke that consent at any time. A commercial mobile service provider shall comply with the customer's request not later than the 60th day after the date the request is made.

(d) A commercial mobile service provider may not bill a mobile services customer for not consenting under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 226 (H.B. 2553), Sec. 1, eff. September 1, 2005.

Sec. 64.203. VIOLATIONS. (a) The attorney general may investigate violations of this subchapter and file civil enforcement actions seeking injunctive relief, attorney's fees, and civil penalties in an amount not to exceed $1,000 for each violation. If the court finds the defendant wilfully or knowingly violated this subchapter, the court may increase the amount of the civil penalties to an amount not to exceed $3,000 for each violation.

(b) Chapter 15 does not apply to a violation of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 226 (H.B. 2553), Sec. 1, eff. September 1, 2005.

## CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE COMPANY MARKETS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. STATEMENT OF POLICY. It is the policy of this state to provide for full rate and service competition in the telecommunications market of this state so that customers may benefit from innovations in service quality and market-based pricing.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.002. DEFINITIONS. In this chapter:

(1) "Deregulated company" means an incumbent local exchange company for which all of the company's markets have been deregulated.

(2) "Market" means an exchange in which an incumbent local

exchange company provides residential local exchange telephone service.

(3) "Regulated company" means an incumbent local exchange company for which none of the company's markets have been deregulated.

(4) "Stand-alone residential local exchange voice service" means:

(A) residential tone dialing service;

(B) services and functionalities supported under the lifeline program;

(C) access for all residential end users to 911 service provided by a local authority and access to dual party relay service;

(D) at the election of the incumbent local exchange company, mandatory residential extended area service arrangements, mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements, mandatory expanded local calling service arrangements, or another service that a company is required under a tariff to provide to a customer who subscribes or may subscribe to basic network services;

(E) flat rate residential local exchange telephone service delivered by landline, but only if the service is ordered and received independent of:

(i) a service classified as a nonbasic service under Section 58.151 or residential call waiting service;

(ii) a package of services that includes a service classified as a nonbasic service under Section 58.151; or

(iii) another flat rate residential local exchange service delivered by landline; and

(F) residential caller identification services if the customer to whom the service is billed is at least 65 years of age.

(5) "Transitioning company" means an incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.003. COMMISSION AUTHORITY. (a) Notwithstanding any other provisions of this title, the commission has authority to

implement and enforce this chapter.

(b) The commission may adopt rules and conduct proceedings necessary to administer and enforce this chapter, including rules to determine whether a market should remain regulated, should be deregulated, or should be reregulated.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.004. INFORMATION. (a) The commission may collect and compile information from all telecommunications providers as necessary to implement and enforce this chapter.

(b) The commission shall maintain the confidentiality of information collected under this chapter that is claimed to be confidential for competitive purposes. Information that is claimed to be confidential is exempt from disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.005. CUSTOMER PROTECTION. This chapter does not affect a customer's right to complain to the commission regarding a telecommunications provider.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

**SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED**

Sec. 65.051. MARKETS DEREGULATED. A market that is deregulated as of September 1, 2011, shall remain deregulated. Notwithstanding any other provision of this title, the commission may not reregulate a market or company that has been deregulated.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 14, eff.

September 1, 2011.

Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD REMAIN REGULATED. (a) An incumbent local exchange company may petition the commission to deregulate a market of the company that the commission previously determined should remain regulated. Notwithstanding any other provision of this title, only the incumbent local exchange company may initiate a proceeding to deregulate one of the company's markets. Not later than the 90th day after the date the commission receives the petition, the commission shall:

(1) determine whether the regulated market should remain regulated; and

(2) issue a final order classifying the market in accordance with this section.

(b) In making a determination under Subsection (a), the commission may not determine that a market should remain regulated if:

(1) the population in the area included in the market is at least 100,000; or

(2) the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company, there are at least two competitors operating in all or part of the market that:

(A) are unaffiliated with the incumbent local exchange company; and

(B) provide voice communications service without regard to the delivery technology, including through:

(i) Internet Protocol or a successor protocol;

(ii) satellite; or

(iii) a technology used by a wireless provider or a commercial mobile service provider, as that term is defined by Section 64.201.

(c) If the commission deregulates a market under this section and the deregulation results in a regulated or transitioning company no longer meeting the definition of a regulated or transitioning company, the commission shall issue an order reclassifying the company as a transitioning company or deregulated company, as those terms are defined by Section 65.002.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(3),

eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(3), eff. September 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 98, Sec. 21(3), eff. September 1, 2011.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 21(3), eff. September 1, 2011.

Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS. (a) Notwithstanding Section 65.052, an incumbent local exchange company may elect to have all of the company's markets remain regulated on and after January 1, 2006.

(b) To make an election under Subsection (a), an incumbent local exchange company must file an affidavit with the commission making that election not later than December 1, 2005.

(c) If an incumbent local exchange company makes an election under this section, the commission shall issue an order classifying the company as a regulated company that is subject to the provisions of this title that applied to the company on September 1, 2005. This subsection does not affect the authority of a regulated company to elect under Chapter 58 or 59 after January 1, 2005, and to be regulated under the chapter under which the company elected.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

## SUBCHAPTER C. DEREGULATED COMPANY

Sec. 65.101. ISSUANCE OF CERTIFICATE OF OPERATING AUTHORITY. (a) A deregulated company may petition the commission to relinquish the company's certificate of convenience and necessity and receive a certificate of operating authority.

(b) The commission shall issue the deregulated company a certificate of operating authority and rescind the deregulated

company's certificate of convenience and necessity if the commission finds that all of the company's markets have been deregulated under Subchapter B.

(c) A deregulated company that holds a certificate of operating authority is a nondominant carrier.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 4, eff. September 1, 2013.

Sec. 65.102. REQUIREMENTS. (a) A deregulated company that holds a certificate of operating authority issued under this subchapter is not required to:

(1) fulfill the obligations of a provider of last resort;

(2) comply with retail quality of service standards or reporting requirements;

(3) file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan; or

(4) comply with a pricing requirement other than a requirement prescribed by this subchapter.

(b) Notwithstanding any other provision of this title, the commission has only the authority provided by this section over a deregulated company that holds a certificate of operating authority issued under this subchapter. Subject to Subsection (c), the following provisions apply to a deregulated company and may be enforced by the commission using the remedies provided by Subchapter B, Chapter 15, and Subsection (d):

(1) Subchapter A, Chapter 15;

(2) Subchapters A, C, and D, Chapter 17, as applicable to carriers holding a certificate of operating authority;

(3) Sections 52.007, 52.060, and 52.156;

(4) Sections 54.001, 54.002, 54.003, 54.004, 54.005, 54.006, 54.008(a), 54.101, 54.102, 54.103, 54.105, 54.151, 54.156, 54.158, 54.159, 54.255, 54.256, 54.257, 54.259, 54.260, and 54.261;

(5) Sections 55.010, 55.015, 55.123, 55.133, 55.134, 55.136, and 55.137;

(6) Chapter 56, except Subchapters F and G;
(7) Chapter 60;
(8) Chapter 62;
(9) Subchapter E, Chapter 64;
(10) Sections 65.001, 65.002, 65.003, and 65.004, this subchapter, and Subchapter E of this chapter; and
(11) Chapter 66.

(c) Nothing in this subchapter affects the continuing applicability of the following provisions of this title:
(1) Sections 51.003 and 51.010(c);
(2) Section 52.002(d);
(3) Sections 54.204, 54.205, and 54.206; and
(4) Section 65.051.

(d) The commission may hear complaints of retail and wholesale customers against deregulated companies that are in the scope of the commission's authority provided by this section.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 16, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 210 (S.B. 259), Sec. 5, eff. September 1, 2013.

## SUBCHAPTER D. TRANSITIONING COMPANY

Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING COMPANY. (a) Except as provided by Subsection (b), a transitioning company is governed by this subchapter and the provisions of this title that applied to the company immediately before the date the company was classified as a transitioning company. If there is a conflict between this subchapter and the other applicable provisions of this title, this subchapter controls.

(b) A transitioning company is not required to fulfill the obligations of a provider of last resort in a deregulated market.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 17, eff.

September 1, 2011.

Sec. 65.152. GENERAL REQUIREMENTS. (a) A transitioning company may:

(1) exercise pricing flexibility in a market subject only to the price and rate standards prescribed by Sections 65.153 and 65.154; and

(2) introduce a new service in a market subject only to the price and rate standards prescribed by Sections 65.153 and 65.154.

(b) A transitioning company may not be required to:

(1) comply with retail quality of service standards or reporting requirements in a market that is deregulated; or

(2) file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 18, eff. September 1, 2011.

Sec. 65.153. RATE REQUIREMENTS. (a) In a market that remains regulated, a transitioning company shall price the company's retail services in accordance with the provisions that applied to that company immediately before the date the company was classified as a transitioning company.

(b) In a market that is deregulated, a transitioning company shall price the company's retail services as follows:

(1) for all services, other than basic local telecommunications service, at any price higher than the service's long run incremental cost; and

(2) for basic local telecommunications service, at any price higher than the lesser of the service's long run incremental cost or the tariffed price on the date that market was deregulated, provided that the company may not increase the company's rates for stand-alone residential local exchange voice service before the date that the commission has the opportunity to revise the monthly per

line support under the Texas High Cost Universal Service Plan pursuant to Section 56.031, regardless of whether the company is an electing company under Chapter 58.

(c) Except as provided by Subsection (c-1), in each deregulated market, a transitioning company shall make available to all residential customers uniformly throughout that market the same price, terms, and conditions for all basic and non-basic services, consistent with any pricing flexibility available to such company.

(c-1) A transitioning company may offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.

(d) In any market, regardless of whether regulated or deregulated, the transitioning company may not:

(1) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(2) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or

(3) engage in predatory pricing or attempt to engage in predatory pricing.

(e) A rate that meets the pricing requirements in Subsection (b) shall be deemed compliant with Subsection (d)(2).

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 19, eff. September 1, 2011.

Sec. 65.154. RATE AND PRICE REQUIREMENTS NOT APPLICABLE. (a) A transitioning company is not required to comply with the following requirements prescribed by this title on submission of a written notice to the commission:

(1) a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of

the service or to otherwise use long-run incremental cost in establishing prices for residential services; or

(2) a requirement to file with the commission a long-run incremental cost study for residential or business services.

(b) Notwithstanding Subsection (a), a transitioning company may not:

(1) establish a retail rate, price, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(2) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or

(3) engage in predatory pricing or attempt to engage in predatory pricing.

(c) A rate or price for a basic local telecommunications service is not anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff for that service in effect on the date the transitioning company submits notice to the commission under Subsection (a).

(d) This section, including Subsection (a)(1), does not affect:

(1) other law or legal standards governing predatory pricing or anticompetitive conduct; or

(2) an infrastructure commitment under Chapter 58 or 59.

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 20, eff. January 2, 2012.

Sec. 65.155. COMPLAINT BY AFFECTED PERSON. (a) An affected person may file a complaint at the commission challenging whether a transitioning company is complying with Section 65.154(b).

(b) Notwithstanding Section 65.154(a)(2), the commission may require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 98 (S.B. 980), Sec. 20, eff. January 2, 2012.

## SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY DEREGULATED COMPANY. (a) On the date the last market of an incumbent local exchange company is deregulated, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) After reducing the rates under Subsection (a), a deregulated company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES. (a) Notwithstanding any other provision of this title, a transitioning company that has more than three million access lines in service in this state on January 1, 2006, shall:

(1) on July 1, 2006, reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to 33 percent of the difference in the rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates;

(2) on July 1, 2007, reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to 33 percent of the difference in the rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates; and

(3) on July 1, 2008, reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates.

(b) After reducing the rates under Subsection (a), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN TRANSITIONING COMPANIES WITH NOT MORE THAN THREE MILLION ACCESS LINES. (a) Notwithstanding any other provision of this title, a company that is classified as a transitioning company effective January 1, 2006, and that has not more than three million access lines in service in this state on that date shall reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) On July 1, 2006, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that are not regulated on July 1, 2006, by the total number of the company's markets on December 30, 2005.

(c) On July 1, 2007, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser

of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(d) On July 1, 2008, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(e) On July 1, 2009, and each succeeding year thereafter on July 1, the transitioning company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount derived by multiplying the difference in the company's rates in effect on June 30, 2006, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005, except that a transitioning company shall be required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges if more than 75 percent of the transitioning company's markets are not regulated on July 1 of 2009 or any succeeding year.

(f) After reducing the rates under Subsection (e), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access

rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY DESIGNATED TRANSITIONING COMPANY. (a) Notwithstanding any other provision of this title, a company that is classified as a transitioning company after January 1, 2006, shall reduce both the company's originating and terminating per minute of use switched access rates in each market in accordance with this section.

(b) On the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that are not regulated on the date the company is classified as a transitioning company by the total number of the company's markets on December 30, 2005.

(c) On the first anniversary of the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of

the company's markets on December 30, 2005.

(d) On the second anniversary of the date the company is classified as a transitioning company, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount equal to the lesser of:

(1) 25 percent of the difference in the company's rates in effect on the day before the date the company was classified, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date; or

(2) an amount derived by multiplying that difference by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005.

(e) On the third anniversary of the date the company is classified as a transitioning company and each anniversary thereafter, the company shall reduce both the company's originating and terminating per minute of use switched access rates in each market by an amount derived by multiplying the difference in the company's rates in effect on the day before the date the company was classified as a transitioning company, and the company's respective federal originating and terminating per minute of use switched access rates in effect on that date by a percentage derived by dividing the number of the company's markets that were deregulated in the prior 12 months by the total number of the company's markets on December 30, 2005, except that a transitioning company shall be required to reduce both the company's originating and terminating per minute of use switched access charges to parity with the company's respective federal originating and terminating per minute of use switched access charges if more than 75 percent of the transitioning company's markets are not regulated on July 1 of 2009 or any succeeding year.

(f) After reducing the rates under Subsection (e), a transitioning company shall maintain parity with the company's federal originating and terminating per minute of use switched access rates. If the company's federal originating and terminating per minute of use switched access rates are changed, the company shall change the company's per minute of use switched access rates in each market as necessary to re-achieve parity with the company's federal originating and terminating per minute of use switched access rates.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff.

September 7, 2005.

Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY. (a) After a deregulated or transitioning company reduces the company's rates under this subchapter, the company may not increase those rates above the applicable rates prescribed by this subchapter.

(b) If a transitioning company's federal per minute of use switched access rates are reduced, the company shall reduce the company's per minute of use switched access rates to not more than the applicable rates prescribed by this subchapter.

(c) Notwithstanding Subsections (a) and (b), a deregulated or transitioning company may decrease the company's per minute of use switched access rates to amounts that are less than the applicable rates prescribed by this subchapter.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 26, eff. September 7, 2005.

## CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

Sec. 66.001. FRANCHISING AUTHORITY. The commission shall be designated as the franchising authority for a state-issued franchise for the provision of cable service or video service.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.002. DEFINITIONS. In this chapter:

(1) "Actual incremental cost" means only current out-of-pocket expenses for labor, equipment repair, equipment replacement, and tax expenses directly associated with the labor or the equipment of a service provider that is necessarily and directly used to provide what were, under a superseded franchise, in-kind services, exclusive of any profit or overhead such as depreciation, amortization, or administrative expense.

(2) "Cable service" is defined as set forth in 47 U.S.C. Section 522(6).

(3) "Cable service provider" means a person who provides cable service.

(4) "Communications network" means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

(5) "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable or video services network in the public rights-of-way.

(6)(A) "Gross revenues" means all consideration of any kind or nature including without limitation cash, credits, property, and in-kind contributions (services or goods) derived by the holder of a state-issued certificate of franchise authority from the operation of the cable service provider's or the video service provider's network to provide cable service or video service within the municipality. Gross revenue shall include all consideration paid to the holder of a state-issued certificate of franchise authority and its affiliates (to the extent either is acting as a provider of a cable service or video service as authorized by this chapter), which shall include but not be limited to the following: (i) all fees charged to subscribers for any and all cable service or video service provided by the holder of a state-issued certificate of franchise authority; (ii) any fee imposed on the holder of a state-issued certificate of franchise authority by this chapter that is passed through and paid by subscribers (including without limitation the franchise fee set forth in this chapter); and (iii) compensation received by the holder of a state-issued certificate of franchise authority or its affiliates that is derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or video service with respect to commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel, subject to Paragraph (B)(v). Gross revenue includes a pro rata portion of all revenue derived by the holder of a state-issued certificate of franchise authority or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder of a state-issued certificate of franchise authority's network to

provide cable service or the video service within a municipality, subject to Paragraph (B)(iii). The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue. Revenue of an affiliate derived from the affiliate's provision of cable service or the video service shall be gross revenue to the extent the treatment of such revenue as revenue of the affiliate and not of the holder of a state-issued certificate of franchise authority has the effect (whether intentional or unintentional) of evading the payment of fees which would otherwise be paid to the municipality. In no event shall revenue of an affiliate be gross revenue to the holder of a state-issued certificate of franchise authority if such revenue is otherwise subject to fees to be paid to the municipality.

(B) For purposes of this section, "gross revenues" does not include:

(i) any revenue not actually received, even if billed, such as bad debt;

(ii) non-cable services or non-video services revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state-issued certificate of franchise authority to provide cable service or video service;

(iii) refunds, rebates, or discounts made to subscribers, leased access providers, advertisers, or a municipality;

(iv) any revenues from services classified as non-cable service or non-video service under federal law including without limitation revenue received from telecommunications services; revenue received from information services (but not excluding cable services or video services); and any other revenues attributed by the holder of a state-issued certificate of franchise authority to non-cable service or non-video service in accordance with Federal Communications Commission or commission rules, regulations, standards, or orders;

(v) any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services, but not excluding any commissions that are paid to

the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel;

(vi) the sale of cable services or video services for resale in which the purchaser is required to collect this chapter's fees from the purchaser's customer. Nothing under this chapter is intended to limit state's rights pursuant to 47 U.S.C. Section 542(h);

(vii) the provision of cable services or video services to customers at no charge, as required or allowed by this chapter, including without limitation the provision of cable services or video services to public institutions, as required or permitted in this chapter, including without limitation public schools or governmental entities, as required or permitted in this chapter;

(viii) any tax of general applicability imposed upon the holder of a state-issued certificate of franchise authority or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the holder of a state-issued certificate of franchise authority and remitted to the taxing entity (including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and fees not imposed by this chapter);

(ix) any forgone revenue from the holder of a state-issued certificate of franchise authority's provision of free or reduced cost cable services or video services to any person including without limitation employees of the holder of a state-issued certificate of franchise authority, to the municipality and other public institutions or other institutions as allowed in this chapter; provided, however, that any forgone revenue which the holder of a state-issued certificate of franchise authority chooses not to receive in exchange for trades, barters, services, or other items of value shall be included in gross revenue;

(x) sales of capital assets or sales of surplus equipment that is not used by the purchaser to receive cable services or video services from the holder of a state-issued certificate of franchise authority;

(xi) directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing; and

(xii) reimbursement by programmers of marketing costs incurred by the holder of a state-issued franchise for the introduction of new programming that exceed the actual costs.

(C) For purposes of this definition, a provider's network consists solely of the optical spectrum wavelengths, bandwidth, or other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the municipality as designated by the provider in its franchise.

(7) "Incumbent cable service provider" means the cable service provider serving the largest number of cable subscribers in a particular municipal franchise area on September 1, 2005.

(8) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

(9) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(10) "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d).

(11) "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public right-of-way without regard to delivery technology. This term does not include a cable service provider.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE. (a) An entity or person seeking to provide cable service or video service in this state shall file an application for a state-issued certificate of franchise authority with the commission

as required by this section. An entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement is terminated under Section 66.004 or until the franchise agreement expires.

(a-1) The commission shall notify an applicant for a state-issued certificate of franchise authority whether the applicant's affidavit described by Subsection (b) is complete before the 15th business day after the applicant submits the affidavit.

(b) The commission shall issue a certificate of franchise authority to offer cable service or video service before the 17th business day after receipt of a completed affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming:

(1) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service or video service in this state;

(2) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(3) that the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

(4) a description of the service area footprint to be served within the municipality, if applicable, otherwise the municipality to be served by the applicant, which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area and, upon such expansion, notice to the commission of the service area to be served by the applicant; and

(5) the location of the applicant's principal place of business and the names of the applicant's principal executive officers.

(c) The certificate of franchise authority issued by the commission shall contain:

(1) a grant of authority to provide cable service or video service as requested in the application;

(2) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered; and

(3) a statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

(d) The certificate of franchise authority issued by the commission is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be filed with the commission and the relevant municipality within 14 business days of the completion of such transfer.

(e) The certificate of franchise authority issued by the commission may be terminated by the cable service provider or video service provider by submitting notice to the commission.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 1, eff. September 1, 2011.

Sec. 66.004. ELIGIBILITY FOR COMMISSION-ISSUED FRANCHISE. (a) A cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter as to those municipalities until the expiration date of the existing franchise agreement, except as provided by Subsections (b), (b-1), (b-2), (b-3), and (c).

(b) Beginning September 1, 2005, a cable service provider or video service provider that is not the incumbent cable service provider and serves fewer than 40 percent of the total cable customers in a particular municipal franchise area may elect to terminate that municipal franchise and seek a state-issued certificate of franchise authority by providing written notice to the commission and the affected municipality before January 1, 2006. The municipal franchise is terminated on the date the commission issues the state-issued certificate of franchise authority.

(b-1) Beginning September 1, 2011, a cable service provider or video service provider in a municipality with a population of less than 215,000 that was not allowed to or did not terminate a municipal franchise under Subsection (b) may elect to terminate not less than all unexpired franchises in municipalities with a population of less than 215,000 and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to the commission and each affected municipality before January 1, 2012. A municipal franchise is terminated on the date the commission issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

(b-2) A cable service provider or video service provider in a municipality with a population of at least 215,000 may terminate a municipal franchise in that municipality in the manner described by Subsection (b-1) if:

(1) the cable service provider or video service provider is not the incumbent cable service provider in that municipality; and

(2) the incumbent cable service provider received a state-issued certificate of franchise authority from the commission before September 1, 2011.

(b-3) A municipality with a population of at least 215,000 may enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. To the extent that the mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this chapter, the agreed on terms and conditions control.

(c) A cable service provider that elects under Subsection (b), (b-1), or (b-2) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise. If the cable service provider has credit remaining from prepaid franchise fees, the provider may deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

(d) For purposes of this section, a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality

if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality.

(e) The terms "affiliates or successor entity" in this section shall include but not be limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

(f) Except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under Subsection (b-1) or (b-2), as applicable, and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and interests in effect on September 1, 2005, or the date a franchise is terminated under Subsection (b-1) or (b-2) shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 2, eff. September 1, 2011.

Sec. 66.005. FRANCHISE FEE. (a) The holder of a state-issued certificate of franchise authority shall pay each municipality in which it provides cable service or video service a franchise fee of five percent based upon the definition of gross revenues as set forth in this chapter. That same franchise fee structure shall apply to any unincorporated areas that are annexed by a municipality after the effective date of the state-issued certificate of franchise authority.

(b) The franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a), provided that the municipality may only review records that relate to the 48-month period preceding the date of the last franchise fee payment. Each party shall bear the party's own costs of the examination. A municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(c) The holder of a state-issued certificate of franchise authority may recover from the provider's customers any fee imposed by this chapter.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 3, eff. September 1, 2011.

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Until

the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. All cable service providers and all video service providers shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly to the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

(b) On the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service one percent of the provider's gross revenues, as defined by this chapter, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired or terminated incumbent cable service provider's agreement, in lieu of in-kind compensation and grants. Payments under this subsection shall be paid in the same manner as outlined in Section 66.005(b).

(c) All fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and may be used by the municipality as allowed by federal law; further, these payments are not chargeable as a credit against the franchise fee payments authorized under this chapter.

(c-1) The holder of a state-issued certificate of franchise authority shall include with a fee paid to a municipality under this section a statement identifying the fee.

(c-2) A municipality that receives fees under this section:

(1) shall maintain revenue from the fees in a separate account established for that purpose;

(2) may not commingle revenue from the fees with any other money;

(3) shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and

(4) may not spend revenue from the fees except directly from the separate account.

(d) The following services shall continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until the expiration or termination of the franchise and thereafter as provided in Subdivisions (1) and (2) below:

(1) institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of expiration or termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and

(2) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. On the expiration or termination of the franchise agreement, a provider that provides the services may deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the services if the municipality requires the services after that date. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the expiration or termination.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 4, eff. September 1, 2011.

Sec. 66.007. BUILD-OUT. The holder of a state-issued certificate of franchise authority shall not be required to comply with mandatory build-out provisions.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff.

September 7, 2005.

Sec. 66.008. CUSTOMER SERVICE STANDARDS. The holder of a state-issued certificate of franchise authority shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) until there are two or more providers offering service, excluding direct-to-home satellite service, in the relevant municipality.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.009. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CHANNELS. (a) Not later than 120 days after a request by a municipality, the holder of a state-issued certificate of franchise authority shall provide the municipality with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming.

(b) The holder of a state-issued certificate of franchise authority shall provide no fewer than the number of PEG access channels a municipality has activated under the incumbent cable service provider's franchise agreement as of September 1, 2005.

(c) If a municipality did not have the maximum number of PEG access channels as of September 1, 2005, as provided by Subdivisions (1) and (2) based on the municipality's population on that date, the cable service provider or video service provider shall furnish at the request of the municipality:

(1) up to three PEG channels for a municipality with a population of at least 50,000; and

(2) up to two PEG channels for a municipality with a population of less than 50,000.

(d) Any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day shall no longer be made available to the municipality, but may be programmed at the cable service provider's or video service provider's discretion. At such time as the municipality can certify to the cable service provider or video service provider a schedule for at least eight hours of daily programming, the cable service

provider or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(e) In the event a municipality has not utilized the minimum number of access channels as permitted by Subsection (c), access to the additional channel capacity allowed in Subsection (c) shall be provided upon 90 days' written notice if the municipality meets the following standard: if a municipality has one active PEG channel and wishes to activate an additional PEG channel, the initial channel shall be considered to be substantially utilized when 12 hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three video-castings of a program. If a municipality is entitled to three PEG channels under Subsection (c) and has in service two active PEG channels, each of the two active channels shall be considered to be substantially utilized when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters.

(f) The operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of such channel. The holder of a state-issued certificate of franchise authority shall be responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

(g) The municipality must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued certificate of franchise authority are provided or submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the cable service provider or video service provider, which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver services.

(h) Where technically feasible, the holder of a state-issued certificate of franchise authority that is not an incumbent cable service provider and an incumbent cable service provider, including an incumbent cable service provider that holds a state-issued certificate of franchise authority issued under Section 66.004(b-1), shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The holder of a state-issued certificate of franchise authority and the incumbent cable service provider shall negotiate in good faith, and the incumbent cable service provider may not withhold interconnection of PEG channels.

(i) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1077 (S.B. 1087), Sec. 5, eff. September 1, 2011.

Sec. 66.010. NONDISCRIMINATION BY MUNICIPALITY. (a) A municipality shall allow the holder of a state-issued certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a state-issued certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. All use of a public right-of-way by the holder of a state-issued certificate of franchise authority is nonexclusive and subject to Section 66.011.

(b) A municipality may not discriminate against the holder of a state-issued certificate of franchise authority regarding:

(1) the authorization or placement of a communications network in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment term.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY. (a) A municipality may enforce police power-based regulations in the management of a public right-of-way that apply to the holder of a state-issued certificate of franchise authority within the municipality. A municipality may enforce police power-based regulations in the management of the activities of the holder of a state-issued certificate of franchise authority to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of the holder of a state-issued certificate of franchise authority's use of the public right-of-way must be competitively neutral and may not be unreasonable or discriminatory. A municipality may not impose on activities of the holder of a state-issued certificate of franchise authority a requirement:

(1) that particular business offices be located in the municipality;

(2) regarding the filing of reports and documents with the municipality that are not required by state or federal law and that are not related to the use of the public right-of-way except that a municipality may request maps and records maintained in the ordinary course of business for purposes of locating the portions of a communications network that occupy public rights-of-way. Any maps or records of the location of a communications network received by a municipality shall be confidential and exempt from disclosure under Chapter 552, Government Code, and may be used by a municipality only for the purpose of planning and managing construction activity in the public right-of-way. A municipality may not request information concerning the capacity or technical configuration of the holder of a state-issued certificate of franchise authority's facilities;

(3) for the inspection of the holder of a state-issued certificate of franchise authority's business records except to extent permitted under Section 66.005(b);

(4) for the approval of transfers of ownership or control of the holder of a state-issued certificate of franchise authority's business, except that a municipality may require that the holder of a state-issued certificate of franchise authority maintain a current point of contact and provide notice of a transfer within a reasonable time; or

(5) that the holder of a state-issued certificate of franchise authority that is self-insured under the provisions of state law obtain insurance or bonding for any activities within the municipality, except that a self-insured provider shall provide substantially the same defense and claims processing as an insured provider. A bond may not be required from a provider for any work consisting of aerial construction except that a reasonable bond may be required of a provider that cannot demonstrate a record of at least four years' performance of work in any municipal public right-of-way free of currently unsatisfied claims by a municipality for damage to the right-of-way.

(b) Notwithstanding any other law, a municipality may require the issuance of a construction permit, without cost, to the holder of a state-issued certificate of franchise authority that is locating facilities in or on a public right-of-way in the municipality. The terms of the permit shall be consistent with construction permits issued to other persons excavating in a public right-of-way.

(c) In the exercise of its lawful regulatory authority, a municipality shall promptly process all valid and administratively complete applications of the holder of a state-issued certificate of franchise authority for a permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or obtain zoning or subdivision regulation approvals or other similar approvals. A municipality shall make every reasonable effort not to delay or unduly burden the provider in the timely conduct of the provider's business.

(d) If there is an emergency necessitating response work or repair, the holder of a state-issued certificate of franchise authority may begin the repair or emergency response work or take any action required under the circumstances without prior approval from the affected municipality, if the holder of a state-issued certificate of franchise authority notifies the municipality as promptly as possible after beginning the work and later obtains any approval required by a municipal ordinance applicable to emergency response work.

(e) The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff.

September 7, 2005.

Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY; NOTICE OF LIABILITY. (a) The holder of a state-issued certificate of franchise authority shall indemnify and hold a municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought, that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the holder of a state-issued certificate of franchise authority or any agent, officer, director, representative, employee, affiliate, or subcontractor of the holder of a state-issued certificate of franchise authority or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality or its officers, employees, contractors, or subcontractors. If the holder of a state-issued certificate of franchise authority and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This subsection is solely for the benefit of the municipality and the holder of a state-issued certificate of franchise authority and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

(b) The holder of a state-issued certificate of franchise authority and a municipality shall promptly advise the other in writing of any known claim or demand against the holder of a state-issued certificate of franchise authority or the municipality related to or arising out of the holder of a state-issued certificate of franchise authority's activities in a public right-of-way.

(c) The commission shall have no jurisdiction to review such

police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.013. MUNICIPAL AUTHORITY. In addition to a municipality's authority to exercise its nondiscriminatory police power with respect to public rights-of-way under current law, a municipality's authority to regulate the holder of state-issued certificate of franchise authority is limited to:

(1) a requirement that the holder of a state-issued certificate of franchise authority who is providing cable service or video service within the municipality register with the municipality and maintain a point of contact;

(2) the establishment of reasonable guidelines regarding the use of public, educational, and governmental access channels; and

(3) submitting reports within 30 days on the customer service standards referenced in Section 66.008 if the provider is subject to those standards and has continued and unresolved customer service complaints indicating a clear failure on the part of the holder of a state-issued certificate of franchise authority to comply with the standards.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose of this section is to prevent discrimination among potential residential subscribers.

(b) A cable service provider or video service provider that has been granted a state-issued certificate of franchise authority may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(c) An affected person may seek enforcement of the requirements described by Subsection (b) by initiating a proceeding with the commission. A municipality within which the potential residential cable service or video service subscribers referenced in Subsection

(b) may be considered an affected person for purposes of this section.

(d) The holder of a state-issued certificate of franchise authority shall have a reasonable period of time to become capable of providing cable service or video service to all households within the designated franchise area as defined in Section 66.003(b)(4) and may satisfy the requirements of this section through the use of an alternative technology that provides comparable content, service, and functionality.

(e) Notwithstanding any provision of this chapter, the commission has the authority to make the determination regarding the comparability of the technology and the service provided. Notwithstanding any provision of this chapter, the commission has the authority to monitor the deployment of cable services, video services, or alternate technology.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.015. COMPLIANCE. (a) Should the holder of a state-issued certificate of franchise authority be found by a court of competent jurisdiction to be in noncompliance with the requirements of this chapter, the court shall order the holder a state-issued certificate of franchise authority, within a specified reasonable period of time, to cure such noncompliance. Failure to comply shall subject the holder of the state-issued franchise of franchise authority to penalties as the court shall reasonably impose, up to and including revocation of the state-issued certificate of franchise authority granted under this chapter.

(b) A municipality within which the provider offers cable service or video service shall be an appropriate party in any such litigation.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

Sec. 66.016. APPLICABILITY OF OTHER LAWS. (a) Nothing in this chapter shall be interpreted to prevent a voice provider, cable service provider or video service provider, or municipality from

seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

(b) Nothing in this chapter shall limit the ability of a municipality under existing law to receive compensation for use of the public rights-of-way from entities determined not to be subject to all or part of this chapter, including but not limited to provider of Internet protocol cable or video services, unless such payments are expressly prohibited by federal law.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 27, eff. September 7, 2005.

## TITLE 3. GAS REGULATION
## SUBTITLE A. GAS UTILITY REGULATORY ACT
## CHAPTER 101. GENERAL PROVISIONS AND OFFICE OF PUBLIC UTILITY COUNSEL
### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. SHORT TITLE. This subtitle may be cited as the Gas Utility Regulatory Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.002. PURPOSE AND FINDINGS. (a) This subtitle is enacted to protect the public interest inherent in the rates and services of gas utilities. The purpose of this subtitle is to establish a comprehensive and adequate regulatory system for gas utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

(b) Gas utilities are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.003. DEFINITIONS. In this subtitle:

(1) "Affected person" means:

(A) a gas utility affected by an action of a regulatory

authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a gas utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a gas utility.

(2) "Affiliate" means:

(A) a person who directly or indirectly owns or holds at least five percent of the voting securities of a gas utility;

(B) a person in a chain of successive ownership of at least five percent of the voting securities of a gas utility;

(C) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by a gas utility;

(D) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least five percent of the voting securities of a gas utility; or

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a gas utility;

(E) a person who is an officer or director of a gas utility or of a corporation in a chain of successive ownership of at least five percent of the voting securities of a gas utility; or

(F) a person determined to be an affiliate under Section 101.004.

(3) "Allocation" means the division among municipalities or among municipalities and unincorporated areas of the plant, revenues, expenses, taxes, and reserves of a gas utility used to provide gas utility service in a municipality or for a municipality and unincorporated areas.

(4) "Corporation" means a domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by this subtitle.

(5) "Counsellor" means the chief executive of the Office of Public Utility Counsel.

(6) "Facilities" means all of the plant and equipment of a gas utility and includes the tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the gas utility.

(7) "Gas utility" includes a person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute combustible hydrocarbon natural gas or synthetic natural gas for sale or resale in a manner not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. Section 717 et seq.). The term includes a lessee, trustee, or receiver of a gas utility. The term does not include:

(A) a municipal corporation;

(B) a person or river authority to the extent the person or river authority:

(i) produces, gathers, transports, or sells natural gas or synthetic natural gas under Section 121.004 or 121.005;

(ii) distributes or sells liquefied petroleum gas; or

(iii) transports, delivers, or sells natural gas for fuel for irrigation wells or any other direct agricultural use;

(C) a person to the extent the person:

(i) sells natural gas for use as vehicle fuel;

(ii) sells natural gas to a person who later sells the natural gas for use as vehicle fuel; or

(iii) owns or operates equipment or facilities to sell or transport natural gas for ultimate use as vehicle fuel;

(D) a person not otherwise a gas utility who furnishes gas or gas service only to itself, its employees, or its tenants as an incident of employment or tenancy, if the gas or gas service is not resold to or used by others;

(E) a person excluded from being considered a gas utility under Section 121.007; or

(F) an electric cooperative, as that term is defined by Section 11.003, or its subsidiary, that is excluded from regulation as a gas utility by Section 121.008.

(8) "Municipally owned utility" means a utility owned,

operated, and controlled by a municipality or by a nonprofit corporation the directors of which are appointed by one or more municipalities.

(9) "Order" means all or a part of a final disposition by a regulatory authority in a matter other than rulemaking, without regard to whether the disposition is affirmative or negative or injunctive or declaratory. The term includes the setting of a rate.

(10) "Person" includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, a limited liability company, and a corporation.

(11) "Proceeding" means a hearing, investigation, inquiry, or other procedure for finding facts or making a decision under this subtitle. The term includes a denial of relief or dismissal of a complaint.

(12) "Rate" means:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a gas utility for a service, product, or commodity described in the definition of gas utility in this section; and

(B) a rule, regulation, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(13) "Regulatory authority" means either the railroad commission or the governing body of a municipality, in accordance with the context.

(14) "Service" has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a gas utility in the performance of the utility's duties under this subtitle to its patrons, employees, other gas utilities, and the public. The term also includes the interchange of facilities between two or more gas utilities.

(15) "State agency" has the meaning assigned by Section 572.002, Government Code, to the extent the state agency must obtain the approval described by Section 31.401(a), Natural Resources Code.

(16) "Test year" means the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a gas utility are available.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 11, Sec. 1, eff. May 3, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 709 (H.B. 2174), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 1, eff. April 21, 2011.

Sec. 101.004. PERSON DETERMINED TO BE AFFILIATE. (a) The railroad commission may determine that a person is an affiliate for purposes of this subtitle if the railroad commission after notice and hearing finds that the person:

(1) actually exercises substantial influence or control over the policies and actions of a gas utility;

(2) is a person over which a gas utility exercises the control described by Subdivision (1);

(3) is under common control with a gas utility; or

(4) actually exercises substantial influence over the policies and actions of a gas utility in conjunction with one or more persons with whom the person is related by ownership or blood relationship, or by action in concert, that together they are affiliated with the gas utility within the meaning of this section even though neither person may qualify as an affiliate individually.

(b) For purposes of Subsection (a)(3), "common control with a gas utility" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of another, without regard to whether that power is established through ownership or voting of securities or by any other direct or indirect means.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.005. ADMINISTRATIVE PROCEDURE. Chapter 2001, Government Code, applies to a proceeding under this subtitle except to the extent inconsistent with this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.006. CUMULATIVE EFFECT; APPLICATION TO GAS UTILITIES. (a) This subtitle is cumulative of laws existing on September 1, 1983, relating to the jurisdiction, power, or authority of the railroad commission over a gas utility, and, except as specifically in conflict with this subtitle, that jurisdiction, power, and authority are not limited by this subtitle.

(b) This subtitle applies to all gas utilities, including a gas utility that is under the jurisdiction, power, or authority of the railroad commission in accordance with a law other than this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.007. LIBERAL CONSTRUCTION. This subtitle shall be construed liberally to promote the effectiveness and efficiency of regulation of gas utilities to the extent that this construction preserves the validity of this subtitle and its provisions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.008. CONSTRUCTION WITH FEDERAL AUTHORITY. This subtitle shall be construed to apply so as not to conflict with any authority of the United States.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. OFFICE OF PUBLIC UTILITY COUNSEL

Sec. 101.051. OFFICE OF PUBLIC UTILITY COUNSEL. The independent office of public utility counsel represents the interests of residential consumers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.052. OFFICE POWERS AND DUTIES. (a) The office:

(1) may appear or intervene as a party or otherwise represent residential consumers, as a class, in appeals to the railroad commission only at the written request of an affected

municipality's governing body;

(2) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding that involves an action taken by the railroad commission in a proceeding in which the office was a party;

(3) is entitled to the same access as a party, other than railroad commission staff, to records gathered by the railroad commission under Section 102.203;

(4) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the railroad commission;

(5) may represent an individual residential consumer with respect to the consumer's disputed complaint concerning utility services that is unresolved before the railroad commission; and

(6) may recommend legislation to the legislature that the office determines would positively affect the interests of residential consumers.

(b) The office may represent only as a class the residential consumers of a municipality that makes a request under Subsection (a)(1).

(c) This section does not limit the authority of the railroad commission to represent residential consumers.

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential consumers. The counsellor may not be grouped with any other party.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.053. PROHIBITED ACTS. (a) The counsellor may not:

(1) have a direct or indirect interest in a gas utility company regulated under this subtitle; or

(2) provide legal services directly or indirectly to or be employed in any capacity by a gas utility company regulated under this subtitle, its parent, or its subsidiary companies, corporations, or cooperatives.

(b) The prohibition under Subsection (a) applies during the period of the counsellor's service and until the first anniversary of the date the counsellor ceases to serve as counsellor.

(c) This section does not prohibit a person from otherwise

engaging in the private practice of law after the person ceases to serve as counsellor.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.054. PERSONNEL. (a) The counsellor may employ lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as the counsellor determines necessary to carry out this subchapter.

(b) An employee receives compensation as prescribed by the legislature from the assessment imposed by Subchapter A, Chapter 16.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 102. JURISDICTION AND POWERS OF RAILROAD COMMISSION AND OTHER REGULATORY AUTHORITIES

### SUBCHAPTER A. GENERAL POWERS OF RAILROAD COMMISSION

Sec. 102.001. RAILROAD COMMISSION JURISDICTION. (a) The railroad commission has exclusive original jurisdiction over the rates and services of a gas utility:

(1) that distributes natural gas or synthetic natural gas in:

(A) areas outside a municipality; and

(B) areas inside a municipality that surrenders its jurisdiction to the railroad commission under Section 103.003; and

(2) that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public.

(b) The railroad commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 63, eff. Sept. 1, 2001.

Sec. 102.002. LIMITATION ON RAILROAD COMMISSION JURISDICTION. Except as otherwise provided by this subtitle, this subtitle does not

authorize the railroad commission to:

(1) regulate or supervise a rate or service of a municipally owned utility; or

(2) affect the jurisdiction, power, or duty of a municipality that has elected to regulate and supervise a gas utility in the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.003. RAILROAD COMMISSION POWERS RELATING TO REPORTS. The railroad commission may:

(1) require a gas utility to report to the railroad commission information relating to the gas utility and an affiliate inside or outside this state as useful in administering this subtitle;

(2) establish the form for a report;

(3) determine the time for a report and the frequency with which the report is to be made;

(4) require that a report be made under oath;

(5) require the filing with the railroad commission of a copy of:

(A) a contract or arrangement between a gas utility and an affiliate;

(B) a report filed with a federal agency or a governmental agency or body of another state; and

(C) an annual report that shows each payment of compensation, other than salary or wages subject to federal income tax withholding:

(i) to residents of this state;

(ii) with respect to legal, administrative, or legislative matters in this state; or

(iii) for representation before the legislature of this state or any governmental agency or body; and

(6) require that a contract or arrangement described by Subdivision (5)(A) that is not in writing be reduced to writing and filed with the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.004. REPORT OF SUBSTANTIAL INTEREST. The railroad commission may require disclosure of the identity and respective interests of each owner of at least one percent of the voting securities of a gas utility or its affiliate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.005. ASSISTANCE TO MUNICIPALITY. On request of a municipality, the railroad commission may advise and assist the municipality with respect to a question or proceeding arising under this subtitle. Assistance provided by the railroad commission may include aid to a municipality on a matter pending before the railroad commission, a court, or the municipality's governing body, such as making a staff member available as a witness or otherwise providing evidence.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.006. ADMINISTRATIVE HEARINGS IN CONTESTED CASES. (a) The railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the State Office of Administrative Hearings to conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to a railroad commission hearings examiner or to the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) to a railroad commission hearings examiner or to the State Office of Administrative Hearings.

(d) For purposes of judicial review, the final decision of a railroad commission hearings examiner or an administrative law judge

of the State Office of Administrative Hearings in a matter delegated under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the commission requests formal review of the decision.

(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate set by the office under Section 2003.024(a), Government Code, for hearings conducted by the office under this section.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 64, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 228 (H.B. 2154), Sec. 25, eff. September 1, 2015.

## SUBCHAPTER B. RESTRICTIONS ON CERTAIN TRANSACTIONS

Sec. 102.051. REPORT OF CERTAIN TRANSACTIONS; RAILROAD COMMISSION CONSIDERATION. (a) Not later than the 60th day after the date the transaction takes effect, a gas utility shall report to the railroad commission:

(1) a sale, acquisition, or lease of a plant as an operating unit or system in this state for a total consideration of more than $1 million; or

(2) a merger or consolidation with another gas utility operating in this state.

(b) On the filing of a report with the railroad commission, the railroad commission shall investigate the transaction described by Subsection (a), with or without a public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the railroad commission shall consider the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or consolidated.

(c) If the railroad commission finds that a transaction is not in the public interest, the railroad commission shall take the effect

of the transaction into consideration in ratemaking proceedings and disallow the effect of the transaction if the transaction will unreasonably affect rates or service.

(d) This section does not apply to:

(1) the purchase of a unit of property for replacement; or

(2) an addition to the facilities of a gas utility by construction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 32, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1000 (H.B. 474), Sec. 1, eff. September 1, 2005.

Sec. 102.052. REPORT OF PURCHASE OF VOTING STOCK IN GAS UTILITY. A gas utility may not purchase voting stock in another gas utility doing business in this state unless the utility reports the purchase to the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.053. REPORT OF LOAN TO STOCKHOLDERS. A gas utility may not loan money, stocks, bonds, notes, or other evidence of indebtedness to a person who directly or indirectly owns or holds any stock of the gas utility unless the gas utility reports the transaction to the railroad commission within a reasonable time.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. RECORDS

Sec. 102.101. RECORDS OF GAS UTILITY. (a) Each gas utility shall keep and provide to the regulatory authority, in the manner and form prescribed by the railroad commission, uniform accounts of all business transacted by the gas utility.

(b) The railroad commission may prescribe the form of books, accounts, records, and memoranda to be kept by a gas utility, including:

(1) the books, accounts, records, and memoranda of:

(A) the provision of and capacity for service; and

(B) the receipt and expenditure of money; and

(2) any other form, record, and memorandum that the railroad commission considers necessary to carry out this subtitle.

(c) For a gas utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by the federal agency may be considered sufficient compliance with the system prescribed by the railroad commission. The railroad commission may prescribe the form of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the form of books, accounts, records, and memoranda prescribed by the railroad commission for a gas utility or class of utilities may not be inconsistent with the systems and forms established by a federal agency for that gas utility or class of utilities.

(d) Each gas utility shall:

(1) keep and provide its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the railroad commission; and

(2) comply with the directions of the regulatory authority relating to the books, accounts, records, and memoranda.

(e) In this section, "gas utility" includes a municipally owned utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.102. MAINTENANCE OF OFFICE AND RECORDS IN THIS STATE. (a) Each gas utility shall maintain an office in this state in a county in which some part of the utility's property is located. The gas utility shall keep in this office all books, accounts, records, and memoranda required by the railroad commission to be kept in this state.

(b) A book, account, record, or memorandum required by the regulatory authority to be kept in this state may not be removed from this state except as prescribed by the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.103. COMMUNICATIONS WITH REGULATORY AUTHORITY. (a) The regulatory authority shall adopt rules governing communications with the regulatory authority or a member or employee of the regulatory authority by:

(1) a gas utility;

(2) an affiliate; or

(3) a representative of a gas utility or affiliate.

(b) A record of a communication must contain:

(1) the name of the person contacting the regulatory authority or member or employee of the regulatory authority;

(2) the name of the business entity represented;

(3) a brief description of the subject matter of the communication; and

(4) the action, if any, requested by the gas utility, affiliate, or representative.

(c) Records compiled under Subsection (b) shall be available to the public monthly.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.104. JURISDICTION OVER AFFILIATE. The railroad commission has jurisdiction over an affiliate that has a transaction with a gas utility under the railroad commission's jurisdiction to the extent of access to an account or a record of the affiliate relating to the transaction, including an account or a record of joint or general expenses, any portion of which may be applicable to the transaction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. REQUIRED REPORTS AND FILINGS

Sec. 102.151. SCHEDULE FILINGS. (a) A gas utility shall file with each regulatory authority schedules showing all rates that are:

(1) subject to the regulatory authority's original or appellate jurisdiction; and

(2) in effect for a gas utility service, product, or commodity offered by the gas utility.

(b) The gas utility shall file as a part of the schedules required under Subsection (a) each rule or regulation that relates to

or affects:

(1) a rate of the gas utility; or

(2) a gas utility service, product, or commodity furnished by the gas utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.152. DEPRECIATION ACCOUNT. The railroad commission shall require each gas utility or municipally owned utility to carry a proper and adequate depreciation account in accordance with:

(1) the rates and methods prescribed by the railroad commission under Section 104.054; and

(2) any other rule the railroad commission adopts.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.153. ACCOUNTS OF PROFITS AND LOSSES. A gas utility or municipally owned utility shall keep separate accounts showing profits or losses from the sale or lease of merchandise, including an appliance, a fixture, or equipment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.154. REPORT OF CERTAIN EXPENSES. A regulatory authority may require a gas utility to annually report the utility's expenditures for:

(1) business gifts and entertainment; and

(2) advertising or public relations, including expenditures for institutional and consumption-inducing purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. AUDITS AND INSPECTIONS

Sec. 102.201. INQUIRY INTO MANAGEMENT AND AFFAIRS. A regulatory authority may inquire into the management and affairs of each gas utility and shall keep itself informed as to the manner and method in which each gas utility is managed and its affairs are

conducted.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.202. AUDIT OF ACCOUNTS. A regulatory authority may require the examination and audit of the accounts of a gas or municipally owned utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.203. INSPECTION. At a reasonable time for a reasonable purpose, a regulatory authority and, to the extent authorized by the regulatory authority, its counsel, agent, or employee may:

(1) inspect and obtain copies of the papers, books, accounts, documents, and other business records of a gas utility within its jurisdiction; and

(2) inspect the plant, equipment, and other property of a gas utility within its jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.204. EXAMINATIONS UNDER OATH. In connection with an investigation taken under Section 102.203, the regulatory authority may:

(1) examine under oath an officer, agent, or employee of a gas utility; or

(2) authorize the person conducting the action to make the examination under oath.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.205. ENTERING PREMISES OF GAS UTILITY. (a) A member, agent, or employee of a regulatory authority may enter the premises occupied by a gas utility to conduct an inspection, examination, or test or to exercise any other authority provided by this subtitle.

(b) A member, agent, or employee of the regulatory authority

may act under this section only during reasonable hours and after reasonable notice to the gas utility.

(c) A gas utility is entitled to be represented when an inspection, examination, or test is conducted on its premises. The gas utility is entitled to a reasonable time to secure a representative before the inspection, examination, or test begins.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.206. PRODUCTION OF OUT-OF-STATE RECORDS. (a) A regulatory authority may require, by order or subpoena served on a gas utility, the production, at the time and place in this state that the regulatory authority designates, of any books, accounts, papers, or records kept by that gas utility outside this state or, if ordered by the railroad commission, verified copies of the books, accounts, papers, or records.

(b) A gas utility that fails or refuses to comply with an order or subpoena under this section violates this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. GENERAL PROVISIONS RELATING TO PROCEEDINGS BEFORE REGULATORY AUTHORITY

Sec. 102.251. RECORD OF PROCEEDING. The regulatory authority shall keep a record of each proceeding before the authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.252. RIGHT TO BE HEARD. Each party to a proceeding before a regulatory authority is entitled to be heard by attorney or in person.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

# CHAPTER 103. JURISDICTION AND POWERS OF MUNICIPALITY

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 103.001. MUNICIPAL JURISDICTION. To provide fair, just,

and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of a gas utility within the municipality, subject to the limitations imposed by this subtitle, unless the municipality surrenders its jurisdiction to the railroad commission under Section 103.003.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 65, eff. Sept. 1, 2001.

Sec. 103.002. FRANCHISES. (a) This subtitle does not restrict the rights and powers of a municipality to grant or refuse a franchise to use the streets and alleys in the municipality or to make a statutory charge for that use.

(b) A municipality that performs a regulatory function under this subtitle may make each charge that is authorized by:

(1) this subtitle; or

(2) the applicable franchise agreement.

(c) A franchise agreement may not limit or interfere with a power conferred on the railroad commission by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.003. SURRENDER OF MUNICIPAL JURISDICTION TO RAILROAD COMMISSION; REINSTATEMENT OF JURISDICTION. (a) A municipality may elect to have the railroad commission exercise exclusive original jurisdiction over gas utility rates, operations, and services in the municipality by ordinance or by submitting the question of the surrender of its jurisdiction to the voters at a municipal election.

(b) The governing body of a municipality shall submit at a municipal election the question of surrendering its jurisdiction to the railroad commission if the governing body receives a petition signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the number of voters voting in the last preceding general election in the municipality.

(c) A municipality may not elect to surrender its jurisdiction while a case involving the municipality is pending.

(d) A municipality that surrenders its jurisdiction to the railroad commission may reinstate its jurisdiction. The provisions

of this section governing the surrender of jurisdiction apply to the reinstatement of jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 66, eff. Sept. 1, 2001.

## SUBCHAPTER B. RATE DETERMINATION

Sec. 103.021. MUNICIPAL PROCEEDINGS. (a) A municipality regulating a gas utility under this subtitle shall require the utility to submit information as necessary to make a reasonable determination of rate base, expenses, investment, and rate of return in the municipality.

(b) A municipality shall make a determination under Subsection (a) using the procedures and requirements prescribed by this subtitle.

(c) A municipality shall retain personnel necessary to make the determination of reasonable rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.022. RATE ASSISTANCE AND COST REIMBURSEMENT. (a) The governing body of a municipality participating in or conducting a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and

(2) assist the governing body with litigation or a gas utility ratemaking proceeding before a regulatory authority or court.

(b) The gas utility in the ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (a) to the extent the applicable regulatory authority determines reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.023. MUNICIPAL STANDING. (a) A municipality has standing in each case before the railroad commission that relates to a gas utility's rates and services in the municipality.

(b) A municipality's standing is subject to the right of the

railroad commission to consolidate that municipality with another party on an issue of common interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.024. JUDICIAL REVIEW. A municipality is entitled to judicial review of a railroad commission order relating to a gas utility's rates and services in a municipality as provided by Section 105.001.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER C. APPEAL OF MUNICIPAL ORDER**

Sec. 103.051. APPEAL BY PARTY. A party to a rate proceeding before a municipality's governing body may appeal the governing body's decision to the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.052. APPEAL BY RESIDENTS. The residents of a municipality may appeal to the railroad commission the decision of the municipality's governing body in a rate proceeding by filing with the railroad commission a petition for review signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the qualified voters of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.053. APPEAL BY RATEPAYERS OUTSIDE MUNICIPALITY. (a) The ratepayers of a municipally owned utility who are outside the municipality may appeal to the railroad commission an action of the municipality's governing body affecting the municipally owned utility's rates by filing with the railroad commission a petition for review signed by a number of ratepayers served by the utility outside the municipality equal to at least the lesser of 10,000 or five percent of those ratepayers.

(b) A petition for review is properly signed if signed by a

person or the spouse of a person in whose name residential utility service is carried.

(c) For purposes of this section, each person who receives a separate bill is a ratepayer. A person who receives more than one bill may not be counted as more than one ratepayer.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.054. FILING OF APPEAL. (a) An appeal under this subchapter is initiated by filing a petition for review with the railroad commission and serving a copy of the petition on each party to the original rate proceeding.

(b) The appeal must be initiated not later than the 30th day after the date of the final decision by the governing body of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.055. HEARING AND ORDER. (a) An appeal under this subchapter is de novo and based on the test year presented to the municipality adjusted for known changes and conditions that are measurable with reasonable accuracy.

(b) The railroad commission shall enter a final order establishing the rates the railroad commission determines the municipality should have set in the ordinance to which the appeal applies.

(c) If the railroad commission fails to enter a final order within 185 days after the date the appeal is perfected, the rates proposed by the gas utility are considered to be approved by the railroad commission and take effect on the expiration of the 185-day period.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 103.056. APPLICABILITY OF RATES. Temporary or permanent rates set by the railroad commission are prospective and observed from the date of the applicable railroad commission order, except an interim rate order necessary to provide a gas utility the opportunity

to avoid confiscation during the period beginning on the date a petition for review is filed with the railroad commission and ending on the date of a final order establishing rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 104. RATES AND SERVICES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 104.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES. (a) The railroad commission is vested with all the authority and power of this state to ensure compliance with the obligations of gas utilities in this subtitle.

(b) The regulatory authority may establish and regulate rates of a gas utility and may adopt rules for determining:

(1) the classification of customers and services; and

(2) the applicability of rates.

(c) A rule or order of the regulatory authority may not conflict with a ruling of a federal regulatory body.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.002. COMPLIANCE WITH SUBTITLE. A gas utility may not:

(1) charge, collect, or receive a rate for utility service except as provided by this subtitle; or

(2) impose a rule or regulation except as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.003. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that each rate a gas utility or two or more gas utilities jointly make, demand, or receive is just and reasonable. A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer. In establishing a gas utility's rates, the railroad commission may treat as a single class two or more municipalities that a gas utility serves if the commission considers that treatment to be appropriate.

(b) A rate for a pipeline-to-pipeline transaction or to a transportation, industrial, or similar large volume contract customer is considered to be just and reasonable and otherwise to comply with this section and shall be approved by the regulatory authority if:

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations;

(2) the rate is substantially the same as the rate between the gas utility and at least two of those customers under the same or similar conditions of service; or

(3) competition does or did exist with another gas utility, another supplier of natural gas, or a supplier of an alternative form of energy.

(c) Subsection (b) does not apply:

(1) if a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under the pipeline-to-pipeline or transportation rate; or

(2) to a direct sale for resale to a gas distribution utility at a city gate.

(d) The reasonableness of gas purchase costs included in a city gate rate proposed to be charged for a sale for resale to a gas distribution utility at a city gate may be reviewed at a city gate rate proceeding even though the costs have been previously approved as a rate for other parties under Subsection (b).

(e) Subsection (b)(1) does not apply to a rate charged or offered to be charged to an affiliated pipeline utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.004. UNREASONABLE PREFERENCE OR PREJUDICE PROHIBITED. A gas utility may not:

(1) grant an unreasonable preference or advantage concerning rates or services to a person in a classification;

(2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates or services; or

(3) establish or maintain an unreasonable difference concerning rates of services between localities or between classes of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.005. EQUALITY OF RATES AND SERVICES. (a) A gas utility may not directly or indirectly charge, demand, collect, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates filed under Section 102.151.

(b) A person may not knowingly receive or accept a service from a gas utility for a compensation greater or less than the compensation prescribed by the schedules. A rate charged and collected by a gas utility on September 1, 1983, may be continued until schedules are filed.

(c) After notice and hearing, the railroad commission may, in the public interest, order a gas utility to refund with interest compensation received in violation of this section.

(d) This subtitle does not prevent a cooperative corporation from returning to its members net earnings resulting from its operations in proportion to the members' purchases from or through the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.006. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the railroad commission, a gas utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.007. DISCRIMINATION AND RESTRICTION ON COMPETITION. A gas utility may not:

(1) discriminate against a person who sells or leases equipment or performs services in competition with the gas utility; or

(2) engage in a practice that tends to restrict or impair that competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.008. BURDEN OF PROOF. In a proceeding involving a proposed rate change, the gas utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility proposes the change; or

(2) an existing rate is just and reasonable, if the proposal is to reduce the rate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. COMPUTATION OF RATES

Sec. 104.051. ESTABLISHING OVERALL REVENUES. In establishing a gas utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.052. ESTABLISHING FAIR RATE OF RETURN. The regulatory authority may not establish a rate that yields more than a fair return on the adjusted value of the invested capital used and useful in providing service to the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.053. COMPONENTS OF ADJUSTED VALUE OF INVESTED CAPITAL. (a) Gas utility rates shall be based on the adjusted value of invested capital used and useful to the utility in providing service and that adjusted value shall be computed on the basis of a reasonable balance between:

(1) original cost, less depreciation; and

(2) current cost, less an adjustment for present age and condition.

(b) The regulatory authority may determine a reasonable balance that reflects:

(1) not less than 60 percent nor more than 75 percent of the original cost of the property at the time the property was

dedicated to public use, whether by the gas utility that is the present owner or by a predecessor, less depreciation; and

(2) not less than 25 percent nor more than 40 percent of the current cost less an adjustment for present age and condition.

(c) In determining a reasonable balance, the regulatory authority may consider inflation, deflation, quality of service being provided, growth rate of the service area, and need for the gas utility to attract new capital.

(d) Construction work in progress, at cost as recorded on the gas utility's books, may be included as part of the adjusted value of invested capital used by and useful to the utility in providing service, as necessary to the financial integrity of the utility.

(e) Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(f) In this section, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.054. DEPRECIATION, AMORTIZATION, AND DEPLETION. (a) The railroad commission shall establish proper and adequate rates and methods of depreciation, amortization, or depletion for each class of property of a gas utility or municipally owned utility.

(b) The rates and methods established under this section and the depreciation account required under Section 102.152 shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.055. NET INCOME; ALLOWABLE EXPENSES. (a) Net income shall be used to establish just and reasonable rates. For that purpose, "net income" means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service. The regulatory authority shall determine those revenues and expenses in a manner consistent with this subchapter.

(b) In establishing a gas utility's rates, the regulatory authority may not allow a gas utility's payment to an affiliate for the cost of a service, property, right, or other item or for an interest expense to be included as capital cost or as expense related to gas utility service except to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the regulatory authority. That finding must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price to the gas utility is not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

(c) If an expense is allowed to be included in utility rates, or an investment is included in the utility rate base, the related income tax deduction or benefit shall be included in the computation of income tax expense to reduce the rates. If an expense is disallowed or not included in utility rates, or an investment is not included in the utility rate base, the related income tax deduction or benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates.

(d) The regulatory authority may adopt reasonable rules complying with this section with respect to including and excluding certain expenses in computing the rates to be established.

(e) This section is not intended to increase gas utility rates to the customer not caused by utility service. Utility rates may include only expenses caused by utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.056. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the regulatory authority shall:

(1) balance equitably the interests of present and future customers; and

(2) apportion accordingly the benefits between consumers

and the gas utility or municipally owned utility.

(b) If a gas utility or municipally owned utility retains a portion of the investment tax credit, that portion shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.057. CONSIDERATION OF CERTAIN EXPENSES. (a) In establishing a gas utility's rates, the regulatory authority may not allow as a cost or expense an expenditure:

(1) described by Section 102.154 that the regulatory authority determines to be not in the public interest; or

(2) for legislative advocacy.

(b) The regulatory authority may allow as a cost or expense reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.058. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing a gas utility's or municipally owned utility's rates, the regulatory authority may not consider a profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.059. PENSION AND OTHER POSTEMPLOYMENT BENEFITS. (a) In establishing a gas utility's rates, the regulatory authority shall allow recovery of the gas utility's costs of pensions and other postemployment benefits, as determined by actuarial or other similar studies in accordance with generally accepted accounting principles, in amounts the regulatory authority finds reasonable and necessary.

(b) If a gas utility establishes one or more reserve accounts for the purpose of tracking changes in the costs of pensions and

other postemployment benefits, the gas utility shall periodically record in a reserve account any difference between:

(1) the annual amount of pension and other postemployment benefits approved and included in the gas utility's then current rates or, if that annual amount cannot be determined from the regulatory authority's order, the amount recorded for pension and other postemployment benefits under generally accepted accounting principles during the first year that rates from the gas utility's last general rate proceeding were in effect; and

(2) the annual amount of costs of pensions and other postemployment benefits as determined by actuarial or other similar studies that would otherwise be recorded by the gas utility were this provision not applicable.

(c) The gas utility must:

(1) establish separate reserve accounts for pensions and for other postemployment benefits; and

(2) apply the same methodology to allocate pension and other postemployment benefits between capital and expense as in the gas utility's last rate case.

(d) A surplus in a reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is greater than the amount determined under Subsection (b)(2). A shortage in a reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is less than the amount determined under Subsection (b)(2).

(e) If the gas utility establishes reserve accounts for the costs of pensions and other postemployment benefits, the regulatory authority at a subsequent general rate proceeding shall:

(1) review the amounts recorded to each reserve account to determine whether the amounts are reasonable and necessary;

(2) determine in accordance with Subsection (d) whether each reserve account has a surplus or shortage; and

(3) subtract any surplus from or add any shortage to the gas utility's rate base, with the surplus or shortage amortized over a reasonable time.

Added by Acts 2011, 82nd Leg., R.S., Ch. 172 (S.B. 403), Sec. 1, eff. May 28, 2011.

## SUBCHAPTER C. RATE CHANGES PROPOSED BY UTILITY

Sec. 104.101. DEFINITION. In this subchapter, "major change" means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2-1/2 percent. The term does not include an increase in rates that the regulatory authority allows to go into effect or the gas utility makes under an order of the regulatory authority after hearings held with public notice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.102. STATEMENT OF INTENT TO INCREASE RATES. (a) A gas utility may not increase its rates unless the utility files a statement of its intent with the regulatory authority that has original jurisdiction over those rates at least 35 days before the effective date of the proposed increase.

(b) The gas utility shall also mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality.

(c) The statement of intent must include:

(1) proposed revisions of tariffs and schedules; and

(2) a detailed statement of:

(A) each proposed increase;

(B) the effect the proposed increase is expected to have on the revenues of the utility;

(C) each class and number of utility consumers affected; and

(D) any other information required by the regulatory authority's rules and regulations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.103. NOTICE OF INTENT TO INCREASE RATES. (a) The gas utility shall:

(1) publish, in conspicuous form, notice to the public of the proposed increase once each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed increase; and

(2) provide notice of the proposed increase to any other

affected person as required by the regulatory authority's rules.

(b) Instead of publishing newspaper notice, a gas utility may provide notice by:

(1) mailing the notice by United States mail, postage prepaid, to the billing address of each directly affected customer;

(2) including the notice, in conspicuous form, in the bill of each directly affected customer; or

(3) sending the notice by e-mail to each directly affected customer if that address is available to the utility.

(c) A gas utility may provide a customer with notice of the utility's intent to increase rates by e-mail as described by Subsection (b)(3) only if the customer has consented in writing to the use of the customer's e-mail address for that purpose.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 103 (S.B. 885), Sec. 1, eff. September 1, 2013.

Sec. 104.104. EARLY EFFECTIVE DATE OF RATE INCREASE. (a) For good cause shown, the regulatory authority may allow a rate increase, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 104.102; and

(2) under conditions the regulatory authority prescribes, subject to suspension as provided by this subchapter.

(b) The gas utility shall immediately revise its schedules to include the increase.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.105. DETERMINATION OF PROPRIETY OF RATE CHANGE; HEARING. (a) If a schedule modifying or increasing rates is filed with a regulatory authority, the regulatory authority shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the increase, enter on a hearing to determine the propriety of the increase.

(b) The regulatory authority shall hold a hearing in every case in which the increase constitutes a major change. The regulatory

authority may, however, use an informal proceeding if the regulatory authority does not receive a complaint before the expiration of 45 days after the date notice of the increase is filed.

(c) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The gas utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.106. PREFERENCE TO HEARING. The regulatory authority shall:

(1) give preference to the hearing under this subchapter and to deciding questions arising under this subchapter over any other question pending before it; and

(2) decide the questions as quickly as possible.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.107. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision:

(1) the local regulatory authority, after delivering to the gas utility a written statement of the regulatory authority's reasons, may suspend the operation of the schedule for not longer than 90 days after the date the schedule would otherwise be effective; and

(2) the railroad commission may suspend the operation of the schedule for not longer than 150 days after the date the schedule would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended for two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a schedule of rates before expiration of the applicable suspension period, the regulatory authority is considered to have approved the schedule. This approval is subject to the authority of the regulatory authority thereafter to continue a

hearing in progress.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 67, eff. Sept. 1, 2001.

Sec. 104.108. TEMPORARY RATES. (a) The regulatory authority may establish temporary rates to be in effect during the applicable suspension period under Section 104.107.

(b) If the regulatory authority does not establish temporary rates, the rates in effect when the suspended schedule was filed continue in effect during the suspension period.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.109. BONDED RATES. (a) A gas utility may put a changed rate into effect by filing a bond with the regulatory authority if the regulatory authority fails to make a final determination within 90 days from the date the proposed increase would otherwise be effective.

(b) The bonded rate may not exceed the proposed rate.

(c) The bond must be:

(1) payable to the regulatory authority in an amount, in a form, and with a surety approved by the regulatory authority; and

(2) conditioned on refund.

(d) The gas utility shall refund or credit against future bills:

(1) money collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on that money, at the current interest rate as determined by the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.110. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the regulatory authority finds the rates are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the rates the gas utility shall charge or apply for the service in question; and

(2) serve a copy of the order on the gas utility.

(b) The rates established in the order shall be observed thereafter until changed as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.111. APPROVAL OF DECREASE IN RATES. Notwithstanding any other provision in this subtitle, the regulatory authority may, without reference to the cost of service standard prescribed by Section 104.051, administratively approve a decrease in rates proposed by the applicant and agreed on by each party directly affected unless the regulatory authority determines that the proposed decrease is not in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.112. SURCHARGE TO RECOVER RELOCATION COSTS. (a) This section applies to a gas utility's costs of relocating a facility to accommodate construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain that are not reimbursed by a source other than as provided by this section.

(b) A gas utility may recover its relocation costs to which this section applies through a surcharge on gas volumes sold and transported to customers in the service area where the relocation occurred by applying to each appropriate regulatory authority for a new rate schedule or tariff. The gas utility is not required to file a statement of intent to increase rates to institute the surcharge, and the other provisions of this subchapter, other than appeal rights, do not apply to institution of the surcharge.

(c) An application under Subsection (b) must include sufficient documentation to demonstrate:

(1) the requirement for each relocation;

(2) the entity requiring the relocation;

(3) costs incurred for relocation of comparable facilities;

(4) surcharge computations; and

(5) that reasonable efforts have been made to receive reimbursement from the entity requiring the relocation, if

applicable.

(d) Not later than the 35th day after the date an application under Subsection (b) is received, the regulatory authority shall administratively grant or deny the application. Denial of the application must be based on a finding that:

(1) the relocation was not necessary or required;

(2) the costs of the relocation were excessive or not supported;

(3) the utility did not pursue reimbursement from the entity requiring the relocation, if applicable;

(4) the surcharge is unduly discriminatory among customers or classes of customers located in the service area; or

(5) the period over which the relocation costs are designed to be recovered is less than one or more than three years.

(e) If the regulating authority does not make a decision before the deadline prescribed by Subsection (d), the application is approved.

Added by Acts 1999, 76th Leg., ch. 219, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 662, Sec. 1, eff. Sept. 1, 2001.

## SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

Sec. 104.151. UNREASONABLE OR VIOLATIVE EXISTING RATES. (a) If the regulatory authority, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a gas utility for a service are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

(2) serve a copy of the order on the gas utility.

(b) The rates set under Subsection (a) constitute the legal rates of the gas utility until changed as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. If a gas utility does not produce the service that it distributes, transmits, or furnishes to the public for

compensation but obtains the service from another source, the regulatory authority may investigate the cost of that production in an investigation of the reasonableness of the gas utility's rates.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. RATES FOR GOVERNMENTAL ENTITIES

Sec. 104.201. TRANSPORTATION RATES BETWEEN GAS UTILITY OR MUNICIPALLY OWNED UTILITY AND STATE AGENCY. (a) Notwithstanding Section 104.003(b), absent a contract for transportation service between a state agency and a gas utility or municipally owned utility, the railroad commission, not later than the 210th day after the date either party files a request to set a transportation rate, shall establish the transportation rate for the state agency. The commission has exclusive original jurisdiction to establish a transportation rate for a state agency under this section.

(b) The railroad commission shall base its determination of the transportation rate under Subsection (a) on the cost of providing the transportation service for both the distribution system and the transmission system, as applicable, of the gas utility or municipally owned utility.

(c) The railroad commission may order temporary rates under Subsection (a) as provided for under the commission's appellate jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.202. EXCLUDED EXPENSES. (a) The rates that a gas utility or municipally owned utility charges a state agency may not include an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility.

(b) An expense under Subsection (a) that is reasonable and is not recovered from a state agency under this section may be recovered from other customers of the gas utility or municipally owned utility.

(c) A gross receipts assessment, regulatory assessment, or similar expense of the utility does not include a payment to a municipality under a contract, franchise, or other agreement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 1326, Sec. 1, eff. June 18, 1999.

Sec. 104.203. PAYMENT IN LIEU OF TAX. (a) A payment made in lieu of a tax by a municipally owned utility to the municipality by which the utility is owned may not be considered an expense of operation in establishing the utility's rate for providing utility service to a school district or hospital district.

(b) A rate a municipally owned utility receives from a school district or hospital district may not be used to make or to cover the cost of making payments in lieu of taxes to the municipality that owns the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. SERVICES

Sec. 104.251. GENERAL STANDARD. A gas utility shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.252. AUTHORITY OF REGULATORY AUTHORITY CONCERNING STANDARDS. A regulatory authority, on its own motion or on complaint and after reasonable notice and hearing, may:

(1) adopt just and reasonable standards, classifications, regulations, or practices a gas utility must follow in furnishing a service;

(2) adopt adequate and reasonable standards for measuring a condition, including quantity, quality, and pressure relating to the furnishing of a service;

(3) adopt reasonable regulations for examining, testing, and measuring a service; and

(4) adopt or approve reasonable rules, regulations, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.253. RULE OR STANDARD. (a) A gas utility may file with the regulatory authority a standard, classification, regulation, or practice the utility follows.

(b) The standard, classification, regulation, or practice continues in force until:

(1) amended by the utility; or

(2) changed by the regulatory authority as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.254. SERVICE. A gas utility or municipally owned utility may not refuse to provide service to a state agency if pipeline capacity is available on an existing facility of the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.2545. REQUIRED SERVICE TO PUBLIC RETAIL CUSTOMER. (a) In this section, "service site" means facilities or buildings operated by a public retail customer or a group of adjacent facilities or buildings operated by a public retail customer within one contiguous geographical area.

(b) Unless the utility is prohibited by other law from providing the service and if sufficient pipeline capacity is available on an existing facility of the utility to provide the service, a gas utility or municipally owned utility may not refuse to provide service to a public retail customer at a service site, at rates established as provided by Subsection (c), the following services:

(1) the sale of gas;

(2) the transportation of an annual average of 25 million British thermal units or more each day of gas that is:

(A) taken as a royalty in kind; and

(B) owned by the state or managed by a marketing program operated by the state or by a state agency; or

(3) a combination of the services described by Subdivisions (1) and (2).

(c) A utility shall provide a service described by Subsection

(b) at rates provided by a written contract negotiated between the utility and the state or a state agency. If the utility and the state or state agency are not able to agree to a contract rate, a fair and reasonable rate may be determined for the public retail customer, as a rate for a separate class of service, by the railroad commission or, for municipally owned gas utilities, by the relevant regulatory body under this chapter.

(d) In this section, "public retail customer" has the meaning assigned by Section 35.101.

Added by Acts 1999, 76th Leg., ch. 300, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 563, Sec. 1, eff. June 20, 2003.

Sec. 104.255. BILLING. (a) A gas utility or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is provided.

(b) The railroad commission shall adopt rules concerning payment of bills by the state or a state agency to a gas utility or municipally owned utility. The rules must be consistent with Chapter 2251, Government Code.

(c) This subtitle does not prohibit a gas utility or municipally owned utility from entering into an agreement with the state or a state agency to establish a level or average monthly service billing plan. An agreement under this subsection must require reconciliation of the leveled or equalized bills quarterly.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.2551. ELECTRONIC BILLING. A gas utility or municipally owned utility may transmit the utility's bill for services through the Internet or by other electronic means instead of through the United States mail on the request of a customer of the gas utility or municipally owned utility.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 68, eff. Sept. 1, 2001.

Sec. 104.256. EXAMINATION AND TEST OF INSTRUMENT OR EQUIPMENT; INSPECTION. (a) A regulatory authority may:

(1) examine and test equipment, including meters and instruments, used to measure service of a gas utility; and

(2) set up and use on the premises occupied by a gas utility an apparatus or appliance necessary for the examination or test.

(b) The gas utility is entitled to be represented at an examination, test, or inspection made under this section.

(c) The gas utility and its officers and employees shall facilitate the examination, test, or inspection by giving reasonable aid to the regulatory authority and to any person designated by the regulatory authority for the performance of those duties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.257. INSPECTION FOR CONSUMER. (a) A consumer may have a meter or other measuring device tested by a gas utility:

(1) once without charge, after a reasonable period of presumed accuracy that the regulatory authority establishes by rule; and

(2) at a shorter interval on payment of a reasonable fee established by the regulatory authority.

(b) The regulatory authority shall establish reasonable fees to be paid for other examining or testing of a measuring device on the request of a consumer.

(c) If the consumer requests the test under Subsection (a)(2) and the measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer, the fee the consumer paid at the time of the request shall be refunded.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.258. DISCONNECTION OF GAS SERVICE. (a) In this section:

(1) "Extreme weather emergency" means a period during which the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

(2) "Provider" means:

(A) a gas utility, as defined by Sections 101.003 and 121.001; and

(B) an owner, operator, or manager of a mobile home park or apartment who purchases natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house under Chapter 124.

(b) A provider may not disconnect natural gas service to a residential customer on a weekend day unless personnel of the provider are available on that day to take payments and reconnect service.

(c) A provider may not disconnect natural gas service to a residential customer during an extreme weather emergency. The provider shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills.

Added by Acts 2001, 77th Leg., ch. 1149, Sec. 1, eff. Sept. 1, 2001.

## SUBCHAPTER G. INTERIM COST RECOVERY AND RATE ADJUSTMENT

Sec. 104.301. INTERIM ADJUSTMENT FOR CHANGES IN INVESTMENT. (a) A gas utility that has filed a rate case under Subchapter C within the preceding two years may file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in service for gas utility services. The adjustment shall be allocated among the gas utility's classes of customers in the same manner as the cost of service was allocated among classes of customers in the utility's latest effective rates for the area in which the tariff or rate schedule is implemented. The gas utility shall file the tariff or rate schedule, or the annual adjustment under Subsection (c), with the regulatory authority at least 60 days before the proposed implementation date of the tariff, rate schedule, or annual adjustment. The gas utility shall provide notice of the tariff, rate schedule, or annual adjustment to affected customers by bill insert or direct mail not later than the 45th day after the date the utility files the tariff, rate schedule, or annual adjustment with the regulatory authority. During the 60-day period, the regulatory

authority may act to suspend the implementation of the tariff, rate schedule, or annual adjustment for up to 45 days. After the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an interim adjustment in accordance with the tariff or rate schedule under this section shall no longer be subject to subsequent review for reasonableness or prudence. Until the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, all amounts collected under the tariff or rate schedule before the filing of the rate case are subject to refund.

(b) The amount the gas utility shall adjust the utility's rates upward or downward under the tariff or rate schedule each calendar year is based on the difference between the value of the invested capital for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year. The value of the invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment.

(c) The interim adjustment shall be recalculated on an annual basis in accordance with the requirements of Subsection (b). The gas utility may file a request with the regulatory authority to suspend the operation of the tariff or rate schedule for any year. The request must be in writing and state the reasons why the suspension is justified. The regulatory authority may grant the suspension on a showing by the utility of reasonable justification.

(d) A gas utility may only adjust the utility's rates under the tariff or rate schedule for the return on investment, depreciation expense, ad valorem taxes, revenue related taxes, and incremental federal income taxes related to the difference in the value of the invested capital as determined under Subsection (b). The return on investment, depreciation, and incremental federal income tax factors used in the computation must be the same as the factors reflected in the final order issued by or settlement agreement approved by the regulatory authority establishing the gas utility's latest effective rates for the area in which the tariff or rate schedule is implemented.

(e) A gas utility that implements a tariff or rate schedule under this section shall file with the regulatory authority an annual

report describing the investment projects completed and placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year. The annual report shall also state the cost, need, and customers benefited by the change in investment.

(f) In addition to the report required under Subsection (e), the gas utility shall file with the regulatory authority an annual earnings monitoring report demonstrating the utility's earnings during the preceding calendar year.

(g) If the gas utility is earning a return on invested capital, as demonstrated by the report filed under Subsection (f), of more than 75 basis points above the return established in the latest effective rates approved by a regulatory authority for the area in which the tariff or rate schedule is implemented under this section, the gas utility shall file a statement with that report stating the reasons why the rates are not unreasonable or in violation of law.

(h) If a gas utility that implements a tariff or rate schedule under this section does not file a rate case under Subchapter C before the fifth anniversary of the date on which the tariff or rate schedule takes effect, the gas utility shall file a rate case under that subchapter not later than the 180th day after that anniversary in relation to any rates subject to the tariff or rate schedule.

(i) This section does not limit the power of a regulatory authority under Section 104.151.

(j) A gas utility implementing a tariff or rate schedule under this section shall reimburse the railroad commission the utility's proportionate share of the railroad commission's costs related to the administration of the interim rate adjustment mechanism provided by this section.

Added by Acts 2003, 78th Leg., ch. 938, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 948 (H.B. 872), Sec. 1, eff. September 1, 2005.

## SUBCHAPTER H. PROTECTION AGAINST UTILITY SERVICE DISCONNECTION

Sec. 104.351. DEFINITIONS. In this subchapter:

(1) "Customer" means any person in whose name gas utility service is billed, including individuals, governmental units at all

levels of government, corporate entities, and any other entity with legal capacity to be billed for gas service.

(2) "Gas utility" has the meaning assigned by Section 181.021 but does not include a municipally owned utility or gas utility owned by an electric cooperative.

(3) "Nonsubmetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive gas utility service that is master metered but not submetered.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

Sec. 104.352. NOTICE OF DISCONNECTION TO MUNICIPALITIES FOR NONSUBMETERED MASTER METERED MULTIFAMILY PROPERTIES. (a) A gas utility shall send a written notice of service disconnection to a municipality before the gas utility disconnects service to a nonsubmetered master metered multifamily property for nonpayment if:

(1) the property is located in the municipality; and

(2) the municipality establishes an authorized representative to receive the notice as described by Section 104.353(c).

(b) The gas utility shall send the notice required by this section not later than the 10th day before the date gas utility service is scheduled for disconnection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

Sec. 104.353. ADDITIONAL SAFEGUARDS. (a) The customer safeguards provided by this subchapter are in addition to safeguards provided by other law or agency rules.

(b) This subchapter does not prohibit a municipality or the regulatory authority from adopting customer safeguards that exceed the safeguards provided by this chapter.

(c) The regulatory authority by rule shall develop a mechanism by which a municipality may provide the regulatory authority with the contact information of the municipality's authorized representative to whom the notice required by Section 104.352 must be sent. The

regulatory authority shall make the contact information available to the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

## CHAPTER 105. JUDICIAL REVIEW; ENFORCEMENT AND PENALTIES

### SUBCHAPTER A. JUDICIAL REVIEW

Sec. 105.001. RIGHT TO JUDICIAL REVIEW. (a) Any party to a proceeding before the railroad commission is entitled to judicial review under the substantial evidence rule.

(b) The issue of confiscation is determined by a preponderance of the evidence.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.002. JUDICIAL STAY OR SUSPENSION. While an appeal of an order, ruling, or decision of a regulatory authority is pending, the district court, court of appeals, or supreme court, as appropriate, may stay or suspend all or part of the operation of the order, ruling, or decision. In granting or refusing a stay or suspension, the court shall act in accordance with the practice of a court exercising equity jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. ENFORCEMENT AND PENALTIES

Sec. 105.021. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) The attorney general, on the request of the railroad commission, shall apply in the name of the commission for an order under Subsection (b) if the commission determines that a gas utility or other person is:

(1) engaging in or about to engage in an act that violates this subtitle or an order or rule of the commission entered or adopted under this subtitle; or

(2) failing to comply with the requirements of this subtitle or a rule or order of the commission.

(b) A court, in an action under this section, may:

(1) prohibit the commencement or continuation of an act

that violates this subtitle or an order or rule of the commission entered or adopted under this subtitle; or

(2) require compliance with a provision of this subtitle or an order or rule of the commission.

(c) The remedy under this section is in addition to any other remedy provided under this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.022. CONTEMPT. The railroad commission may file an action for contempt against a person who:

(1) fails to comply with a lawful order of the commission;

(2) fails to comply with a subpoena or subpoena duces tecum; or

(3) refuses to testify about a matter on which the person may be lawfully interrogated.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.023. CIVIL PENALTY AGAINST GAS UTILITY OR AFFILIATE. (a) A gas utility or affiliate is subject to a civil penalty if the gas utility or affiliate knowingly violates this subtitle, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the railroad commission or a decree or judgment of a court.

(b) A civil penalty under this section shall be in an amount of not less than $1,000 and not more than $5,000 for each violation.

(c) A gas utility or affiliate commits a separate violation each day it continues to violate Subsection (a).

(d) The attorney general shall file in the name of the railroad commission a suit on the attorney general's own initiative or at the request of the commission to recover the civil penalty under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.024. OFFENSE. (a) A person commits an offense if the person knowingly violates this subtitle.

(b) An offense under this section is a felony of the third degree.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.025. PLACE FOR SUIT. A suit for an injunction or a penalty under this subtitle may be brought in:

(1) Travis County;

(2) a county in which the violation is alleged to have occurred; or

(3) a county in which a defendant resides.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.026. PENALTIES CUMULATIVE. (a) A penalty that accrues under this subtitle is cumulative of any other penalty.

(b) A suit for the recovery of a penalty does not bar or affect the recovery of any other penalty or bar a criminal prosecution against any person, including a gas utility or officer, director, agent, or employee of a gas utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 105.027. DISPOSITION OF FINES AND PENALTIES. A fine or penalty collected under this subtitle, other than a fine or penalty collected in a criminal proceeding, shall be paid to the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. COMPLAINTS

Sec. 105.051. COMPLAINT BY AFFECTED PERSON. An affected person may complain to the regulatory authority in writing setting forth an act or omission by a gas utility in violation or claimed violation of a law that the regulatory authority has jurisdiction to administer or of an order, ordinance, or rule of the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBTITLE B. REGULATION OF TRANSPORTATION AND USE
## CHAPTER 121. GAS PIPELINES
## SUBCHAPTER A. GAS UTILITY DEFINED

Sec. 121.001. DEFINITION OF GAS UTILITY. (a) In this chapter, "gas utility" means a person who owns, manages, operates, leases, or controls in this state property or equipment or a pipeline, plant, facility, franchise, license, or permit for a business that:

(1) transports, conveys, distributes, or delivers natural gas:

(A) for public use or service for compensation;

(B) for sale to municipalities or persons engaged in distributing or selling natural gas to the public, in a situation described by Subdivision (3);

(C) for sale or delivery to a person operating under a franchise or contract with a political subdivision of this state; or

(D) for sale or delivery to the public for domestic or other use;

(2) owns, operates, or manages a pipeline:

(A) that is for transporting or carrying natural gas, whether for public hire or not; and

(B) for which the right-of-way has been or is hereafter acquired by exercising the right of eminent domain; or

(3) produces or purchases natural gas and transports or causes the transportation of natural gas by a pipeline to or near the limits of a municipality in which the gas is received and distributed or sold to the public by another gas utility or by the municipality in a situation in which the business is the only or practically the only agency of supply of natural gas to the gas utility or municipality.

(b) In this subchapter, "person" means an individual, company, limited liability company, or private corporation and includes a lessee, trustee, or receiver of an individual, company, limited liability company, or private corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 11, Sec. 2, eff. May 3, 1999.

Sec. 121.002. AFFILIATE OF GAS UTILITY EXCLUDED. A person is not a gas utility solely because the person is an affiliate of a gas utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.003. AGRICULTURAL SERVICE EXCLUDED. (a) The act or acts of transporting, delivering, selling, or otherwise making available natural gas for fuel, either directly or indirectly, to an owner of an irrigation well, or the sale, transportation, or delivery of natural gas for any other direct use in an agricultural activity, does not make a person a gas utility or make the person subject to the jurisdiction, control, and regulation of the railroad commission as a gas utility.

(b) In order for a person furnishing natural gas to qualify for the exemption under Subsection (a), the person to whom the gas was furnished under Subsection (a) shall use the gas exclusively to pump water for farm and other agricultural purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.004. TRANSPORTATION OF GAS SOLELY FOR INTERSTATE COMMERCE EXCLUDED. Except as provided by Section 121.001(a)(2), a person is not a gas utility if the person certifies to the railroad commission that the person transports natural or synthetic gas, for sale, for hire, or otherwise, solely in, or in the vicinity of, the field or fields where the gas is produced, to another person for transportation or sale in interstate commerce.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.005. TRANSPORTATION OF GAS IN VICINITY OF PLACE OF PRODUCTION EXCLUDED. (a) Except as provided by Section 121.001(a)(2), a person is not a gas utility if the person certifies to the railroad commission that the person transports natural or synthetic gas, for sale, for hire, or otherwise, solely:

(1) in, or in the vicinity of, the field or fields where the gas is produced to a gas processing plant or treating facility;

(2) from the outlet of a gas processing plant or treating facility described by Subdivision (1) to a person:

(A) at, or in the vicinity of, the plant or treating facility; or

(B) described by Subdivision (3) or Section 121.004; or

(3) to another person in, or in the vicinity of, the field or fields where the gas is produced for transportation or sale in intrastate commerce.

(b) A person is not a gas utility because the person delivers or sells gas:

(1) for lease use, compressor fuel, processing plant fuel, or a similar use;

(2) under a lease or right-of-way agreement;

(3) in, or in the vicinity of, the field where the gas is produced; or

(4) at a processing plant outlet.

(c) Subsection (b) does not exclude as a gas utility a pipeline that:

(1) transmits or distributes to end users of gas, other than:

(A) those described by Subsection (b); or

(B) a person who qualifies for the exemption provided by Section 121.003; or

(2) makes city-gate deliveries for local distribution.

(d) The railroad commission may review a certification made by a person under Subsection (a). The railroad commission shall invite a person whose certification is being reviewed to an informal meeting to resolve the person's status under this subsection. If the person's status remains unresolved after the informal meeting and there is sufficient reason to move forward, the railroad commission shall provide notice and an opportunity for a hearing. After notice and an opportunity for a hearing, the railroad commission may determine whether the person is eligible for an exemption under this subsection.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 406 (H.B. 1883), Sec. 1, eff. September 1, 2009.

Sec. 121.006. VEHICLE FUEL EXCLUDED. A person is not a gas utility to the extent that the person:

(1) sells natural gas for use as vehicle fuel;

(2) sells natural gas to a person who later sells the natural gas for use as vehicle fuel; or

(3) owns or operates equipment or facilities to sell or transport the natural gas for ultimate use as vehicle fuel.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.007. TRANSPORTATION OF GAS TO AND FROM LIQUEFIED NATURAL GAS MARINE TERMINAL EXCLUDED. (a) A person who owns or operates a natural gas pipeline, a liquefied natural gas pipeline, or an underground storage facility is not a gas utility if the person certifies to the railroad commission that the person uses the pipeline or underground storage facility solely to deliver natural gas or liquefied natural gas or the constituents of natural gas or liquefied natural gas:

(1) to a liquefied natural gas marine terminal;

(2) from a liquefied natural gas marine terminal to the owner of the gas or another person on behalf of the owner of the gas;

(3) that is acquired, liquefied, or sold by the person as necessary for the operation or maintenance of its facility that is excluded as a gas utility under this section; or

(4) that has been stored for export.

(b) This section does not confer the power of eminent domain to a pipeline or underground storage facility excluded as a gas utility under this section.

(c) This section does not create an exception to the applicability of a pipeline safety requirement provided under this chapter or a penalty for a violation of such a requirement.

Added by Acts 2007, 80th Leg., R.S., Ch. 709 (H.B. 2174), Sec. 2, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 406 (H.B. 1883), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 556 (S.B. 1826), Sec. 1, eff.

September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 5, eff. September 1, 2013.

Sec. 121.008. CERTAIN STORAGE FACILITIES OWNED BY ELECTRIC COOPERATIVES EXCLUDED. An electric cooperative, as that term is defined by Section 11.003, or its subsidiary, that sells electricity at wholesale is not a gas utility or subject to regulation as a gas utility solely because it provides gas storage services for hire if the gas storage facility is predominantly operated to support the integration of renewable resources. Such a gas storage facility may not have a working gas capacity of greater than five billion cubic feet.

Added by Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 2, eff. April 21, 2011.

## SUBCHAPTER B. PUBLIC POLICY

Sec. 121.051. GAS UTILITY: PUBLIC INTEREST AND JURISDICTION OF RAILROAD COMMISSION. (a) A gas utility, including a business described by Section 121.001(a)(3), is affected with a public interest.

(b) A business described by Section 121.001(a)(3) is a virtual monopoly.

(c) A business described by Section 121.001(a)(3) and the property of the business used in this state is subject to the jurisdiction, control, and regulation of the railroad commission as provided by this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.052. PIPELINES: MONOPOLIES SUBJECT TO RAILROAD COMMISSION. (a) The operation of a pipeline for buying, selling, transporting, producing, or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly.

(b) A business described by this section may not be conducted unless the gas pipeline used in connection with the business is

subject to the jurisdiction conferred by this chapter on the railroad commission.

(c) The attorney general shall enforce this section by injunction or other remedy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. DUTIES OF GAS UTILITIES AND PIPELINES

Sec. 121.101. MAINTENANCE OF OFFICE AND RECORDS IN THIS STATE. (a) A gas utility shall maintain an office in this state in a county in which some part of the gas utility's property is located. The gas utility shall keep in this office all books, accounts, papers, records, vouchers, and receipts that the railroad commission requires.

(b) A book, account, paper, record, receipt, voucher, or other item of information required by the railroad commission to be kept in this state may not be removed from this state except as prescribed by the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.102. OPERATOR'S REPORT. The railroad commission may require a person or corporation that owns, controls, or operates a pipeline subject to this chapter to make to the commission a sworn report of any matter relating to the business of the person or corporation that the commission determines to be pertinent, including:

(1) the total quantity of gas distributed by the pipelines;

(2) the total quantity of gas held in storage;

(3) the source of supply of gas;

(4) the number of wells from which the person or corporation draws its supply;

(5) the amount of pipeline pressure maintained; and

(6) the amount and character and description of the equipment used.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.103. DUTY TO SERVE CERTAIN USERS EXTINGUISHED. (a) A gas utility that provides gas to a customer does not have an obligation to serve the customer or to maintain the gas supply or physical capacity to serve the customer if the customer:

(1) is a transportation, industrial, commercial, or other similar large-volume contract customer;

(2) is an end-use customer of the gas utility;

(3) reduces or ceases the purchase of natural gas or natural gas service from the gas utility; and

(4) purchases natural gas or natural gas service from another supplier or purchases an alternate form of energy.

(b) Subsection (a) does not apply to the extent that:

(1) the customer continues to purchase natural gas or natural gas service of any class from the gas utility; or

(2) the gas utility has a written contract to provide natural gas or natural gas service of any class to the customer.

(c) This section does not prevent the railroad commission from requiring a gas utility to comply with an order of the railroad commission in apportioning gas under a curtailment plan and order.

(d) Notwithstanding Subsection (a), a gas utility that has provided gas to a commercial customer is obligated to serve that customer if the gas utility has a sufficient gas supply and physical capacity to do so without reducing service to its other customers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 69, eff. Sept. 1, 2001.

Sec. 121.104. DISCRIMINATION IN SERVICE AND CHARGES PROHIBITED. (a) A pipeline gas utility may not:

(1) discriminate in favor of or against any person or place in:

(A) apportioning the supply of natural gas; or

(B) charging for natural gas; or

(2) directly or indirectly charge, demand, collect, or receive from anyone a greater or lesser compensation for a service provided than the compensation charged, demanded, or received from another for a similar and contemporaneous service.

(b) This section does not limit the right of the railroad commission to prescribe:

(1) different rates and rules for the use of natural gas for manufacturing and similar purposes; or

(2) rates and rules for service from or to other or different places.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. REGULATION BY RAILROAD COMMISSION

Sec. 121.151. RAILROAD COMMISSION REGULATION OF GAS PIPELINES. The railroad commission shall:

(1) establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and rules for transporting, producing, distributing, buying, selling, and delivering gas by pipelines subject to this chapter in this state;

(2) establish fair and equitable rules for the full control and supervision of the pipelines subject to this chapter and all their holdings pertaining to the gas business in all their relations to the public, as the railroad commission determines to be proper;

(3) establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it;

(4) prescribe and enforce rules for the government and control of pipelines subject to this chapter in respect to their pipelines and producing, receiving, transporting, and distributing facilities;

(5) regulate and apportion the supply of gas between municipalities and between municipalities and corporations; and

(6) prescribe fair and reasonable rules requiring pipelines subject to this chapter to augment their supply of gas, when:

(A) the supply of gas controlled by any gas pipeline is inadequate; and

(B) the railroad commission determines that augmentation is practicable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.152. INITIATION OF REGULATORY PROCEEDING. The railroad commission shall exercise power under Section 121.151:

(1) on:

(A) its own motion;

(B) the petition of a person or county commissioner's precinct showing a substantial interest in the subject;

(C) the petition of the attorney general; or

(D) the petition of a district or county attorney of a county in which any portion of a business subject to this chapter is conducted; and

(2) after notice has been given.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.153. RAILROAD COMMISSION REVIEW OF GAS PIPELINE ORDERS AND AGREEMENTS. The railroad commission, after notice to a person or corporation owning, controlling, or operating a pipeline subject to this chapter and after a hearing, may review, revise, and regulate an order or agreement that is made by the person or corporation and establishes a price, rate, rule, regulation, or condition of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.154. REFUND OF EXCESS CHARGES. (a) On a complaint against a person or corporation owning or operating a pipeline business subject to this chapter filed by any person authorized by Section 121.152 to file a petition and complaint and sustained in whole or in part by the railroad commission, each customer of the pipeline is entitled to reparation for or reimbursement of a rate or charge made or adopted by the pipeline for a purpose relating to the operation of that business, including a rate or charge for gas, service, or meter rental, or in the event of an inadequate supply of gas or inadequate service in any respect.

(b) The amount recoverable under Subsection (a) is the amount paid after the filing of the complaint in excess of the proper rate or charge of the pipeline as finally determined by the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.155. RATE REDUCTION OR DETERMINATION BY MUNICIPALITY

AND APPEAL. A gas utility the rates of which have been reduced by a municipality may appeal the municipal order, decision, regulation, or ordinance to the railroad commission. The appeal is initiated by filing with the railroad commission in the manner and on the conditions that the railroad commission may direct a petition for review and a bond. The appeal is de novo. The railroad commission shall set a hearing and may make any order or decision in relation to the matter appealed that the commission considers just and reasonable. To change a rate, rental, or charge, a gas utility that is a local distributing company or concern and the rates of which have been established by a municipality must submit an application to the municipality in which the utility is located. The municipality shall make a determination on an application not later than the 60th day after the date the application is filed. If the municipality rejects the application or fails or refuses to act on the application on or before the deadline prescribed by this section, the gas utility may appeal to the railroad commission as provided by this section. The railroad commission shall make a determination on the appeal not later than the 60th day after the date the appeal is filed unless the gas utility agrees in writing to a longer period. The rates established by the municipality remain in effect until changed by the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.157. RAILROAD COMMISSION EMPLOYEES. (a) The railroad commission may employ or appoint persons as necessary to:

(1) inspect and audit records or receipts, disbursements, vouchers, prices, payrolls, time cards, and books;

(2) inspect the property and records of a gas utility subject to this chapter; and

(3) perform other services as directed by, or under the authority of, the railroad commission.

(b) The railroad commission shall set the amount of compensation for persons employed by the railroad commission.

(c) The chief supervisor of the oil and gas division of the railroad commission shall assist the railroad commission in the performance of the railroad commission's duties under this chapter, as directed by, and under the rules of, the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.158. PAYMENT FROM THE GENERAL REVENUE FUND. All expenses, including witness fees and mileage, employee wages and fees, and the salary and expenses of the chief supervisor of the oil and gas division of the railroad commission incurred by or under authority of the railroad commission or a railroad commissioner in administering and enforcing, or exercising a power under, this chapter shall be paid from the general revenue fund.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. PIPELINE SAFETY

Sec. 121.201. SAFETY RULES; RAILROAD COMMISSION POWER UNDER DELEGATED FEDERAL AUTHORITY. (a) The railroad commission may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state;

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law; and

(8) by rule establish safety standards and practices for gathering facilities and transportation activities in Class 1 locations, as defined by 49 C.F.R. Section 192.5:

(A) based only on the risks the facilities and activities present to the public safety, to the extent consistent with federal law; or

(B) as necessary to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts safety standards and practices for gathering facilities and transportation activities in Class 1 locations, as defined by 49 C.F.R. Section 192.5.

(b) The power granted by Subsection (a):

(1) does not apply to the transportation of gas or to gas facilities subject to the exclusive control of the United States but applies to the transportation of gas and gas pipeline facilities in this state to the maximum degree permissible under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law; and

(2) is granted to provide exclusive state control over safety standards and practices applicable to the transportation of gas and gas pipeline facilities within the borders of this state to the maximum degree permissible under that law.

(c) A term that is used in this section and defined by 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law has the meaning assigned by that law.

(d) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the railroad commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter H, Chapter 756, Health and Safety Code.

(e) The power granted by Subsection (a) does not apply to:

(1) surface mining operations; or

(2) other entities or occupations if the railroad commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

(A) is in the public interest; or

(B) is not likely to cause harm to the safety and welfare of the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 62, Sec. 18.12(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1272, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 13, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 25.002, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 11, eff. September 1, 2013.

Sec. 121.2015. REQUIRED SAFETY RULES. (a) The railroad commission shall adopt rules regarding:

(1) public education and awareness relating to gas pipeline facilities; and

(2) community liaison for responding to an emergency relating to a gas pipeline facility.

(b) The railroad commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (c) only if the operator or the operator's representative has made an effort to conduct a community liaison meeting in person with the officials by one of the following methods:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(c) If the operator or operator's representative cannot arrange

a meeting in person after complying with Subsection (b), the operator or the operator's representative shall conduct community liaison activities by one of the following methods:

(1) holding a telephone conference with the appropriate officials; or

(2) delivering the community liaison information required to be conveyed by certified mail, return receipt requested.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.12(b), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 70, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1197 (H.B. 4300), Sec. 1, eff. September 1, 2009.

Sec. 121.202. MUNICIPAL AND COUNTY AUTHORITY. (a) A municipality or a county may not adopt or enforce an ordinance that establishes a safety standard or practice applicable to a facility that is regulated under this subchapter, another state law, or a federal law.

(b) Except as provided by Subsection (a) and by Section 121.2025, this subchapter does not reduce, limit, or impair:

(1) a power vested by law in:

(A) a county in relation to a county road; or

(B) a municipality; or

(2) the ability of a municipality to:

(A) adopt an ordinance that establishes conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the municipality; or

(B) establish conditions for mapping or taking an inventory in an area in a municipality's extraterritorial jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 5, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 3, eff. September 1, 2005.

Sec. 121.2025. AUTHORITY OF MUNICIPALITY TO ASSESS CHARGES. (a) Except as otherwise provided by this section or Section 182.025, Tax Code, a municipality may not assess a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a gas pipeline facility on, along, under, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) A municipality may:

(1) assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a gas pipeline facility on, along, or across the public roads, highways, streets, alleys, streams, canals, or other public ways located within the municipality and maintained by the municipality; and

(2) recover the reasonable cost of repairing damage to a public road, highway, street, alley, stream, canal, or other public way located within the municipality and maintained by the municipality that is caused by the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a gas pipeline facility if the owner or operator of the facility does not repair the damage in accordance with generally applicable paving standards or other applicable standards in the municipality.

(c) A charge authorized by Subsection (b)(1) may not exceed the cost to the municipality of administering, supervising, inspecting, and otherwise regulating the location of the gas pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) The owner or operator of a gas pipeline facility may appeal the assessment of a charge under Subsection (b)(1) to the railroad commission. The railroad commission shall hear the appeal de novo. Unless the municipality that assessed the charge establishes that the charge is authorized by this section, the railroad commission shall declare the charge invalid or reduce the charge to an amount authorized by this section. The railroad commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. The owner or operator of the gas pipeline facility and the municipality shall share equally the costs

incurred by the railroad commission in connection with the appeal.

(e) A municipality must file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. The running of the limitations period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) This section may not be construed to prevent a municipality from:

(1) recovering the reasonable cost of repairing damage to a municipal facility, other than a public way, caused by acts of the owner or operator of a gas pipeline facility; or

(2) requiring the owner or operator of a gas pipeline facility to relocate the pipeline facility, at the owner's or operator's expense, to permit the construction, maintenance, modification, or alteration of a municipal facility.

(g) Notwithstanding Subsection (f)(2), the municipality shall pay the cost of relocating a gas pipeline facility if the pipeline facility is authorized by a property right that has priority over the municipality's right to use the public way for the municipal facility.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 6, eff. June 17, 2005.
Added by Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 4, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1311 (H.B. 2572), Sec. 1, eff. June 19, 2009.

Sec. 121.203. ENFORCEMENT: INJUNCTION. The attorney general, on behalf of the railroad commission, is entitled to injunctive relief to restrain a violation of a safety standard adopted under this subchapter, including an injunction that restrains the transportation of gas or the operation of a pipeline facility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.204. CIVIL PENALTY. Each day of each violation of a

safety standard adopted under this subchapter is subject to a civil penalty of not more than $200,000, except that the maximum penalty that may be assessed for any related series of violations may not exceed $2 million. The penalty is payable to the state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 6, eff. September 1, 2013.

Sec. 121.205. SETTLEMENT BY ATTORNEY GENERAL. A civil penalty under Section 121.204 may be compromised by the attorney general who in determining a compromise shall consider:

(1) the appropriateness of the penalty in relation to the size of the business of the person charged;

(2) the gravity of the violation; and

(3) the good faith of the person charged in attempting to achieve compliance after notification of the violation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.206. ADMINISTRATIVE PENALTY FOR VIOLATION OF PIPELINE SAFETY STANDARD OR RULE. (a) The railroad commission may assess an administrative penalty against a person who violates Section 121.201 or a safety standard or other rule prescribed or adopted under that section.

(b) The penalty for each violation may not exceed $200,000. Each day a violation continues may be considered a separate violation for the purpose of penalty assessment, provided that the maximum penalty that may be assessed for any related series of violations may not exceed $2 million.

(c) In determining the amount of the penalty, the railroad commission shall consider the guidelines adopted under Subsection (d).

(d) The railroad commission by rule shall adopt guidelines to be used in determining the amount of a penalty under this subchapter. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the

enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the person's history of previous violations of Section 121.201 or a safety standard or other rule prescribed or adopted under that section, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.13(b), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 71, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 14, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 7, eff. September 1, 2013.

Sec. 121.207. PIPELINE SAFETY ADMINISTRATIVE PENALTY: ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged under Section 121.206 has been given an opportunity for a public hearing.

(b) If a public hearing is held, the railroad commission shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the penalty amount warranted by the violation, incorporating, if appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the railroad commission shall consolidate the hearings with other proceedings under Section 121.206.

(d) If a person charged under Section 121.206 fails to take advantage of the opportunity for a public hearing, an administrative penalty may be assessed by the railroad commission after it has determined:

(1) that a violation occurred; and

(2) the penalty amount warranted by the violation.

(e) After assessing an administrative penalty, the railroad commission shall issue an order requiring the penalty to be paid.

(f) Not later than the 30th day after the date an order is issued finding that a violation described under Section 121.206 occurred, the railroad commission shall inform the person found in violation of the amount of the penalty.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.208. PIPELINE SAFETY ADMINISTRATIVE PENALTY: PAYMENT OF PENALTY. Not later than the 30th day after the date the railroad commission's decision or order imposing an administrative penalty becomes final as provided by Section 2001.144, Government Code, the person charged with the violation shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) pay the penalty to the railroad commission for placement in an escrow account; or

(B) give to the railroad commission a supersedeas bond in a form approved by the railroad commission for the amount of the penalty that is effective until all judicial review of the order or decision is final.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.209. PIPELINE SAFETY ADMINISTRATIVE PENALTY: REFUND OF PAYMENT OR RELEASE OF BOND. If through judicial review of a decision or order regarding an administrative penalty it is determined that a violation did not occur or that the amount of the penalty should be reduced or not assessed, the railroad commission shall, not later than the 30th day after the date of that determination:

(1) remit the appropriate amount to the person, with accrued interest if the utility paid the penalty to the railroad commission; or

(2) execute a release of the bond if the utility posted a supersedeas bond.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.210. RECOVERY BY ATTORNEY GENERAL. An administrative penalty owed under Sections 121.206-121.208 may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES. (a) The railroad commission by rule may adopt a fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title.

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title.

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title, excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title an annual fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title an annual fee not to exceed $100 for each master metered system. The fee is due June 30 of each year.

(f) The railroad commission may assess a late payment penalty of 10 percent of the total assessment due under Subsection (d) or (e) that is not paid within 30 days after the annual due date established

by the applicable subsection.

(g) Each operator of a natural gas distribution system and each natural gas master meter operator shall recover as a surcharge to its existing rates the amounts paid to the commission under this section. Amounts collected under this subsection by an investor-owned natural gas distribution system or a cooperatively owned natural gas distribution system shall not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Those amounts are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Subtitle C, Title 3, Tax Code.

(h) A fee collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067, Natural Resources Code.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 12(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 520, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 21.003, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 948 (H.B. 872), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 62 (S.B. 1658), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.25, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.26, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 43, eff. September 1, 2015.

## SUBCHAPTER F. GAS SAFETY

Sec. 121.251. RAILROAD COMMISSION TO INVESTIGATE USE OF GAS MALODORANTS. The railroad commission shall investigate the use of malodorants by a person, firm, or corporation in the business of:

(1) handling, storing, selling, or distributing natural or liquefied petroleum gases, including butane and other odorless gases, for private or commercial uses; or

(2) supplying these products to a public building or the general public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.252. REGULATION OF USE OF MALODORANTS. (a) The railroad commission, by rule as necessary to carry out the purposes of this section, may:

(1) require a person, firm, or corporation subject to Section 121.251 to odorize the gas by using a malodorant agent that indicates the presence of gas by a distinctive odor;

(2) regulate the method of the use of malodorants; and

(3) direct and approve the use of containers and other equipment used in connection with malodorants.

(b) A required malodorant agent must be:

(1) nontoxic and noncorrosive; and

(2) not harmful to leather diaphragms in gas equipment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.253. INTERSTATE TRANSPORTATION OF GAS EXCLUDED. This subchapter does not apply to gas transported out of this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER G. ENFORCEMENT REMEDIES

Sec. 121.301. RECEIVERSHIP. (a) On application of the railroad commission, a court having jurisdiction to appoint a receiver may appoint a receiver to control and manage, under the direction of the court, the property of a pipeline subject to this chapter if the person or corporation owning, operating, or controlling the pipeline violates this chapter or a rule of the railroad commission.

(b) The railroad commission may apply for a receivership only if the railroad commission determines that the public interest requires a receivership.

(c) The grounds for the appointment of a receiver under this section are in addition to any other ground provided by law.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.302. CIVIL PENALTY. (a) A gas utility is subject to a civil penalty if the gas utility:

(1) violates this chapter;

(2) fails to perform a duty imposed by this chapter; or

(3) fails to comply with an order of the railroad commission if the order is not stayed or suspended by a court order.

(a-1) A penalty under this section is payable to the state and shall be:

(1) not less than $100 and not more than $1,000 for each violation or failure that is not related to pipeline safety; or

(2) not more than $200,000 for each violation or failure that is related to pipeline safety, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed $2 million.

(b) Each violation and each day that the failure continues is subject to a separate penalty.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 8, eff. September 1, 2013.

Sec. 121.303. PENALTY RECOVERABLE BY VICTIM OF DISCRIMINATION. (a) A penalty of not less than $100 and not more than $1,000 for each violation is recoverable by any person against whom discrimination prohibited by Section 121.104 is committed.

(b) A suit to collect a penalty under this section must be brought in the name of and for the benefit of the person aggrieved.

(c) A person who recovers a penalty under this section is also entitled to reasonable attorney's fees.

(d) The penalty under this section is in addition to a penalty under Section 121.302.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.304. POLLUTION OR PUBLIC SAFETY ADMINISTRATIVE

PENALTY. (a) The railroad commission may assess an administrative penalty against a gas utility that violates this chapter, fails to perform a duty imposed by this chapter, or fails to comply with an order of the railroad commission issued under this chapter and applicable to the gas utility if the violation:

(1) results in pollution of the air or water of this state; or

(2) poses a threat to the public safety.

(b) The penalty for each violation or failure that is not related to pipeline safety may not exceed $10,000 a day. The penalty for each violation or failure that is related to pipeline safety may not exceed $200,000 a day. Each day a violation continues may be considered a separate violation for purposes of penalty assessment, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed $2 million.

(c) In determining the amount of the penalty, the railroad commission shall consider:

(1) the gas utility's history of previous violations of this chapter;

(2) the seriousness of the violation; and

(3) any hazard to the health or safety of the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 9, eff. September 1, 2013.

Sec. 121.305. POLLUTION OR PUBLIC SAFETY ADMINISTRATIVE PENALTY: ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed under Section 121.304 only after a gas utility charged under Section 121.304 has been given an opportunity for a public hearing.

(b) If a public hearing is held, the railroad commission shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the penalty amount warranted by the violation, incorporating, if appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the railroad commission shall consolidate

the hearings with other proceedings under Section 121.304.

(d) If a gas utility charged under Section 121.304 fails to take advantage of the opportunity for a public hearing, an administrative penalty may be assessed by the railroad commission after it has determined:

(1) that a violation occurred; and

(2) the penalty amount warranted by the violation.

(e) After assessing an administrative penalty, the railroad commission shall issue an order requiring the penalty to be paid.

(f) Not later than the 30th day after the date an order is issued finding that a violation described under Section 121.304 occurred, the railroad commission shall inform the gas utility found in violation of the amount of the penalty.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.306. POLLUTION OR PUBLIC SAFETY ADMINISTRATIVE PENALTY: PAYMENT OF PENALTY. (a) Not later than the 30th day after the date the railroad commission's decision or order imposing an administrative penalty becomes final as provided by Section 2001.144, Government Code, the gas utility charged with the violation shall:

(1) pay the penalty in full; or

(2) if the gas utility seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) pay the penalty to the railroad commission for placement in an escrow account; or

(B) except as provided by Subsection (b), give to the railroad commission a supersedeas bond, in the amount of the penalty and in the form approved by the railroad commission, to stay the collection of the penalty until all judicial review of the order or decision is final.

(b) If the gas utility is appealing a second or subsequent decision or order assessing an administrative penalty against the gas utility, regardless of the finality of judicial review of any previous decision or order, the railroad commission may, but is not required to, accept a supersedeas bond.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.307. POLLUTION OR PUBLIC SAFETY ADMINISTRATIVE PENALTY: APPEALS. (a) The district courts of Travis County have exclusive jurisdiction of the appeal of an order or decision of the railroad commission assessing an administrative penalty under Section 121.304.

(b) Subchapter G, Chapter 2001, Government Code, and the substantial evidence rule apply to an appeal under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.308. POLLUTION OR PUBLIC SAFETY ADMINISTRATIVE PENALTY: REFUND OF PAYMENT OR RELEASE OF BOND. If through judicial review of a decision or order regarding an administrative penalty it is determined that a violation did not occur or that the amount of the penalty should be reduced or not assessed, the railroad commission shall, not later than the 30th day after the date of that determination:

(1) remit the appropriate amount to the gas utility with accrued interest if the utility paid the penalty to the railroad commission; or

(2) execute a release of the bond if the utility posted a supersedeas bond.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.309. POLLUTION OR PUBLIC SAFETY ADMINISTRATIVE PENALTY: RECOVERY. An administrative penalty owed under Sections 121.304-121.308 may be recovered in a civil action brought by the attorney general at the request of the railroad commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.310. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person is an owner, officer, director, agent, or employee of a person or corporation owning, operating, or controlling a pipeline of a gas utility; and

(2) the person wilfully violates this chapter or Chapter

122.

(b) An offense under this section that is not related to pipeline safety is punishable by a fine of not less than $50 and not more than $1,000. An offense under this section that is related to pipeline safety is punishable by a fine of not more than $2 million. In addition to the fine, the offense may be punishable by confinement in jail for not less than 10 days nor more than six months.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses related to pipeline safety are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section for offenses related to pipeline safety may not exceed the maximum amount imposed on conviction of a single offense under this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 10, eff. September 1, 2013.

## SUBCHAPTER H. APPEALS

Sec. 121.401. APPEAL TO COURT. (a) A gas utility or other party at interest may appeal to a court a decision of any rate, classification, rule, charge, order, or act adopted by the railroad commission by filing a petition against the railroad commission as defendant and specifying each particular reason for objection.

(b) An action under this section is tried and determined as are other civil causes in the court except as provided by Section 121.402.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.402. APPEAL: BURDEN AND STANDARD OF PROOF. In a trial under this subchapter, the burden of proof is on the plaintiff, who must show by clear and satisfactory evidence that the rate, rule, order, classification, act, or charge that is the subject of the complaint is unreasonable and unjust to the plaintiff.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 121.403. APPEAL FROM TRIAL COURT. An appeal from an action under Section 121.402:

(1) is at once returnable to the appellate court; and

(2) has precedence in the appellate court over each other pending cause of a different character.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER I. SOUR GAS PIPELINE FACILITIES**

Sec. 121.451. DEFINITIONS. In this subchapter:

(1) "Affected party" means the owner or occupant of real property located in the radius of exposure, as computed in accordance with a methodology approved by the railroad commission, of the proposed route of a sour gas pipeline facility.

(2) "Construction" includes any activity conducted during the initial construction of a pipeline, including the removal of earth, vegetation, or obstructions along the proposed pipeline right-of-way. The term does not include:

(A) surveying or acquiring the right-of-way; or

(B) clearing the right-of-way with the consent of the owner.

(3) "Low-pressure gathering system" means a pipeline that operates at a working pressure of less than 50 pounds per square inch.

(4) "Sour gas pipeline facility" means a pipeline facility that contains a concentration of 100 parts per million or more of hydrogen sulfide.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.13(a), eff. Sept. 1, 1999.

Sec. 121.452. APPLICABILITY. This subchapter does not apply to:

(1) an extension of an existing sour gas pipeline facility that is in compliance with the railroad commission's rules for oil, gas, or geothermal resource operation in a hydrogen sulfide area if:

(A) the extension is not longer than five miles;

(B) the nominal pipe size is not larger than six inches in diameter; and

(C) the railroad commission is given notice of the construction of the extension not later than 24 hours before the start of construction;

(2) a new or an extension of a low-pressure gathering system; or

(3) an interstate gas pipeline facility, as defined by 49 U.S.C. Section 60101 and its subsequent amendments or a succeeding law, that is used for the transportation of sour gas.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.13(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 12, eff. September 1, 2013.

Sec. 121.453. PERMIT APPLICATION. (a) A person may not begin construction of a sour gas pipeline facility before the person obtains from the railroad commission a permit to construct the facility.

(b) An applicant for a permit to construct a sour gas pipeline facility must:

(1) publish notice of the application in a form determined by the railroad commission in a newspaper of general circulation in each county that contains part of the proposed route of the sour gas pipeline facility; and

(2) provide a copy of the application to the county clerk of each county that contains part of the proposed route.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.13(a), eff. Sept. 1, 1999.

Sec. 121.454. RAILROAD COMMISSION APPROVAL OR DENIAL. (a) The railroad commission by order may approve an application for a permit to construct a sour gas pipeline facility if the railroad commission finds that the materials to be used in and method of construction and operation of the facility comply with the rules and safety standards

adopted by the railroad commission.

(b) The railroad commission may issue an order under this section without holding a hearing unless an affected party files a written protest with the railroad commission not later than the 30th day after the date notice is published under Section 121.453. If an affected party files a written protest, the railroad commission shall:

(1) hold a hearing not later than the 60th day after the date the protest is filed; and

(2) issue an order:

(A) approving the permit application; or

(B) denying the application and stating the reasons for the denial.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.13(a), eff. Sept. 1, 1999.

## SUBCHAPTER J. TESTING OF NATURAL GAS PIPING SYSTEMS IN SCHOOL FACILITIES

Sec. 121.5005. APPLICABILITY. This subchapter applies to a facility of a public elementary or secondary school, including a charter school, or a private elementary or secondary school, but does not apply to a home school.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 73, eff. Sept. 1, 2001.

Sec. 121.501. DEFINITION. In this subchapter, "supplier" means an individual or company that sells and delivers natural gas to a school facility. If more than one individual or company sells and delivers natural gas to a school facility, each individual or company is a supplier for purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 74, eff. Sept. 1, 2001.

Sec. 121.502. DUTY TO PRESSURE TEST. (a) A person responsible for a school facility shall perform biennial pressure tests on the

natural gas piping system in the school facility. The tests must be performed before the beginning of the school year.

(b) A person responsible for more than one school facility may perform the tests on a two-year cycle under which the person pressure tests the natural gas piping system in approximately one-half of the facilities each year.

(c) If the person responsible for one or more school facilities operates the facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the pressure test is performed.

(d) A natural gas piping pressure test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 74, eff. Sept. 1, 2001.

Sec. 121.503. REQUIREMENTS OF TEST. (a) The person responsible for a school facility shall perform the pressure test to determine whether the natural gas piping downstream of the school facility's meter holds at least normal operating pressure over a specified period determined by the railroad commission.

(b) During the pressure test, each system supply inlet and outlet in the school facility must be closed.

(c) At the request of a person responsible for a school facility, the railroad commission shall assist the person in developing a procedure for conducting the test.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 74, eff. Sept. 1, 2001.

Sec. 121.504. NOTICE OF TEST. (a) A person responsible for a school facility shall provide written notice to the school's supplier specifying the date and result of each pressure test or other inspection.

(b) The supplier shall maintain a copy of the notice until at least the first anniversary of the date on which the supplier

received the notice.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 74, eff. Sept. 1, 2001.

Sec. 121.505. TERMINATION OF SERVICE. (a) A supplier shall terminate service to a school facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous natural gas leakage in the facility piping system; or

(2) a test or other inspection at the facility is not performed as required by this subchapter.

(b) A supplier is not liable for any damages that result from a failure to terminate service as required by Subsection (a)(2) for a facility other than a school district facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 74, eff. Sept. 1, 2001.

Sec. 121.506. REPORT OF LEAKAGE. An identified natural gas leakage in a school district facility must be reported to the board of trustees of the district in which the facility is located. An identified natural gas leakage in another school facility must be reported to the person responsible for the school facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 74, eff. Sept. 1, 2001.

Sec. 121.507. ENFORCEMENT. The railroad commission shall enforce this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.14(a), eff. Sept. 1, 1999.

## CHAPTER 122. GAS UTILITY PIPELINE TAX

### SUBCHAPTER A. DEFINITIONS

Sec. 122.001. DEFINITIONS. In this chapter:

(1) "Gas utility" has the meaning assigned by Section 121.001(a)(2) and includes a person without regard to whether the person acquired a part of the right-of-way for the pipeline by eminent domain.

(2) "Gross income" includes all gross receipts the gas utility received from activities described by Section 121.001(a)(2) that are performed in this state, other than an activity excluded by Chapter 121 from the activities that make a person a gas utility for purposes of that chapter, and excludes the amount of the deduction allowed by Section 122.052.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. TAX IMPOSED

Sec. 122.051. TAX IMPOSED; RATE. (a) A tax is imposed on each gas utility.

(b) The gas utility tax is imposed at the rate of one-half of one percent of the gross income of the gas utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.052. DEDUCTION OF CERTAIN COSTS. A gas utility is entitled to deduct from the utility's gross receipts the amount of the cost paid to another person by the utility for purchasing, treating, or storing natural gas or for gathering or transporting natural gas to the utility's facilities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER C. PAYMENTS, REPORTS, AND RECORDS

Sec. 122.101. TAX PAYMENT. (a) A gas utility on whom a tax is imposed by this chapter during a calendar quarter shall pay the tax to the railroad commission.

(b) A gas utility shall make the tax payment payable to the comptroller.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.102. REPORT. (a) A gas utility on whom a tax is imposed by this chapter during a calendar quarter shall include with the tax payment a report to the railroad commission that includes a statement of:

(1) all activity subject to the tax during the period covered by the report; and

(2) the gross income from that activity.

(b) The president, secretary, or general manager of a gas utility that is a corporation or an owner of a gas utility that is not a corporation must verify the truth and accuracy of the report.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.103. PAYMENT AND REPORT DEADLINE. A tax payment and report under this chapter for a calendar quarter are due on or before the 20th day of the second month of the succeeding quarter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.104. RECORDS. A person on whom a tax is imposed by this chapter shall maintain until the fourth anniversary of the date the tax report and payment for a calendar quarter are due records sufficient to:

(1) document the person's tax report; and

(2) establish the amount of the tax imposed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. ADMINISTRATION

Sec. 122.151. ADMINISTRATION BY RAILROAD COMMISSION. The railroad commission:

(1) shall administer and collect the taxes imposed by this chapter; and

(2) may adopt rules necessary to administer this chapter and to collect and enforce the taxes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.152. EXAMINATION OF RECORDS AND PERSON DOING BUSINESS IN THIS STATE. To enforce this chapter, the railroad commission may examine:

(1) a book, record, or paper of a person permitted to do business in this state, including an agent of the person, at an office of the person or agent in the United States; and

(2) an officer or employee of a person described by Subdivision (1) under oath.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. PENALTIES AND INTEREST

Sec. 122.201. PENALTY FOR FAILURE TO REPORT TAX. A person who is required to report a tax imposed by this chapter and fails to report as required by Sections 122.102 and 122.103 shall pay:

(1) a penalty of five percent of the amount of the tax due with the report; and

(2) if the report is not made before the 31st day after the date the report is initially required to be made, an additional penalty of five percent of the amount of the tax due with the report.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.202. PENALTY FOR FAILURE TO PAY TAX. A person who is required to pay a tax imposed by this chapter and fails to pay the tax as required by Sections 122.101 and 122.103 shall pay:

(1) a penalty of five percent of the amount of the tax due and unpaid; and

(2) if the tax is not paid before the 31st day after the date the tax payment is initially required to be made, an additional penalty of five percent of the amount of the tax due and unpaid.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.203. PENALTY FOR FAILURE TO REPORT AND PAY TAX. If a

person fails to make the report and to pay the tax for a reporting period, only the penalty and additional penalty under Section 122.201, as applicable, for failure to make the report is imposed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.204. MINIMUM PENALTY. If the amount of a penalty or additional penalty computed as provided by this subchapter is less than $5, the amount of the penalty or additional penalty is $5.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 122.205. INTEREST. A tax imposed by this chapter that becomes delinquent draws interest at the rate of 12 percent a year beginning on the 60th day after the date the tax becomes delinquent and continues to draw interest until the date the tax is paid.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 123. USE OF NATURAL GAS FOR AGRICULTURAL PURPOSES

### SUBCHAPTER A. NATURAL GAS SUPPLY FOR AGRICULTURAL PURPOSES

Sec. 123.001. NATURAL GAS SUPPLY FOR AGRICULTURAL PURPOSES. A person, firm, corporation, partnership, association, or cooperative who sells natural gas for irrigation may not reduce the supply of natural gas for an agricultural purpose, including irrigation pumping or crop drying, if that person or entity:

(1) sells and distributes natural gas in a municipality; or

(2) delivers gas to the boundary of a municipality for resale in the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 123.002. EXCEPTION. This subchapter does not apply to the extent that the supply of natural gas is required to maintain natural gas service for:

(1) use by residential users or hospitals; or

(2) an analogous use that is vital to public health and safety.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER B. AGRICULTURE GAS USERS ACT

Sec. 123.021. SHORT TITLE. This subchapter may be cited as the Agriculture Gas Users Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 123.022. DEFINITIONS. In this subchapter:

(1) "Agriculture energy user" means a person who purchases or uses natural gas for fuel for an irrigation well.

(2) "Corporation" means a domestic or foreign corporation or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership.

(3) "Person" includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation.

(4) "Supplier" means a person who furnishes natural gas to an agriculture energy user.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 123.023. CONTRACT FOR NATURAL GAS. (a) A supplier and an agriculture energy user may by contract establish a price and other terms of service for the furnishing of natural gas.

(b) A contract under this section must be negotiated in good faith and the result of arm's-length bargaining between the parties.

(c) Each party shall provide information and maintain records as reasonably necessary for the contract.

(d) A price charged to an agriculture energy user under the contract may not exceed the price charged to a majority of the supplier's commercial users or other similar large-volume users.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 123.024. EXCEPTION. This subchapter does not apply to a transaction between an agriculture energy user and a supplier who does not deliver gas to a municipality unless:

(1) the parties agree the subchapter applies to the transaction; and

(2) the contract states the subchapter applies to the transaction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 124. SUBMETERING TO MOBILE HOME PARKS AND APARTMENT HOUSES

Sec. 124.001. DEFINITIONS. In this chapter:

(1) "Apartment house" means one or more buildings containing more than five dwelling units each of which is rented primarily for nontransient use with rent paid at intervals of one week or longer. The term includes a rented or owner-occupied residential condominium.

(2) "Dwelling unit" means:

(A) one or more rooms that are suitable for occupancy as a residence and that contain kitchen and bathroom facilities; or

(B) a mobile home in a mobile home park.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 124.002. SUBMETERING. (a) The railroad commission shall adopt rules under which an owner, operator, or manager of a mobile home park or apartment house may purchase natural gas through a master meter for delivery to a dwelling unit in the mobile home park or apartment house using individual submeters to allocate fairly the cost of the gas consumption of each dwelling unit.

(b) In addition to other appropriate safeguards for a resident of a mobile home park or apartment house, the rules must provide that the owner, operator, or manager of the mobile home park or apartment house:

(1) may not deliver natural gas for sale or resale for profit; and

(2) shall maintain adequate records relating to that submetering and make those records available for inspection by the resident during reasonable business hours.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBTITLE C. PROPANE GAS DISTRIBUTION SYSTEMS

## CHAPTER 141. STANDARDS FOR DISTRIBUTION SYSTEM RETAILERS

Sec. 141.001. DEFINITIONS. In this chapter:

(1) "Allowable markup" means the two-calendar-year rolling average of the differences between the monthly E.I.A. retail prices per gallon reported during the two calendar years immediately preceding the calendar year in which a billing month occurs and the corresponding spot prices per gallon reported for the same month an E.I.A. retail price was reported during those two calendar years. As an example of the calculated allowable markup, for 2013, the allowable markup is $1.48 per gallon.

(2) "Allowable spot price" means the average of the spot prices for the two months preceding the billing month. As an example of the calculated allowable spot price, for the billing month of January 2013, the allowable spot price was $0.844 per gallon. The commission shall identify the allowable spot price each month and publish that price on the commission's website.

(3) "Commission" means the Railroad Commission of Texas or its successor agency.

(4) "Customer" means a retail customer of propane gas purchased from and delivered by a distribution system retailer through a propane gas system.

(5) "Distribution system retailer":

(A) means a retail propane dealer that:

(i) owns or operates for compensation in this state a propane gas system; and

(ii) has a Category E or K license issued by the applicable license and permit section of the commission; and

(B) does not include a person that furnishes propane gas only to the person, to the person's employees, or to the person's tenants as an incident of employment or tenancy, if the service is not resold to customers.

(6) "E.I.A. retail price" means the monthly U.S. Propane

Residential Price as reported by the United States Energy Information Administration or its successor agency in dollars per gallon. As an example of the calculated E.I.A. retail price, for January 2013, the E.I.A. retail price was $2.449 per gallon.

(7) "Propane gas" means a normally gaseous hydrocarbon defined as propane by the United States Energy Information Administration or its successor agency.

(8) "Propane gas system" means one or more propane storage containers, equipment, and facilities connected to a contiguous piping system through which propane gas is supplied by a distribution system retailer to at least 10 customers.

(9) "Rate" means the price per cubic foot of gas passing through the meter levied, charged, or collected by a distribution system retailer from a customer for propane gas provided through a propane gas system to the customer exclusive of any fees, taxes, or other charges. A conversion factor of 36.4 cubic feet of propane gas per gallon shall be used for purposes of determining a rate.

(10) "Spot price" means the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon as reported by the United States Energy Information Administration or its successor agency in dollars per gallon. In January 2013, the spot price was $0.838 per gallon.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.002. APPLICABILITY. This chapter applies only to the retail sale of propane gas made by a distribution system retailer through a propane gas system. This chapter does not apply to any other retail or wholesale sale of propane gas.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.003. RATE AND FEE CEILINGS. (a) In each billing month, a distribution system retailer shall charge a customer a just and reasonable rate for propane gas provided through a propane gas system to the customer. For the purposes of this section, a just and reasonable rate charged monthly for propane gas is a rate for propane gas provided through a propane gas system to the customer if it is

less than or equal to the allowable spot price plus the allowable markup. For a customer's bill that contains days in more than one month, the month with the most days covered by the bill shall be considered the billing month. The price per gallon shall be converted to the cubic foot rate by dividing the price per gallon by 36.4.

(b) In addition to the rate authorized by Subsection (a), a distribution system retailer may charge customers special fees for services, including a connection fee, a disconnection fee, a monthly account fee to maintain an active account, a late payment fee, a disconnect or termination fee, a reconnection fee, an accelerated reconnection fee, a dishonored or canceled payment fee, a service initiation fee, and a tampering fee or an unauthorized gas consumption or diversion fee, if the fees are reasonable and customary. For purposes of this section, the fees described above that were charged or adopted by a distribution system retailer as of January 1, 2013, as adjusted pursuant to Subsection (c), are deemed reasonable and customary for that distribution system retailer and its successors regarding any systems owned or operated currently or in the future.

(c) The distribution system retailer may adjust the fees described by Subsection (b) up or down based on the 12-month changes in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, CPI-U, Not Seasonally Adjusted, published by the Bureau of Labor Statistics of the United States Department of Labor or a similar index if that index is unavailable. For calculation purposes, the beginning base month is December 2012.

(d) Nothing in this section limits a distribution system retailer's ability to pass through to a customer as a separate charge on a pro rata actual-cost basis:

(1) a tax, other than a tax assessed on the basis of income, gross income, property, or margins;

(2) an assessment, surcharge, levy, fee, or other charge imposed by a governmental entity, any one of which begins or is increased on or after January 1, 2013, either:

(A) directly on a propane gas system or any portion; or

(B) on a distribution system retailer by virtue of its ownership or operation of a propane gas system; or

(3) a sales tax or franchise fee.

(e) A fee passed through to a customer under Subsection (d)

shall be:

(1) passed through without any additional markup; and

(2) identified as a separate item on a customer's bill.

(f) Notwithstanding any other provision in this section, this subtitle does not apply to a new gas line construction charge, a gas line repair charge, or an appliance repair charge.

(g) In the event either or both the E.I.A. retail price or the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon cease to be available, the commission shall designate a reasonably similar available substitute index or indices as necessary for purposes of calculation of the rate deemed just and reasonable for purposes of this section. Until the commission publishes an order designating the substitute index or indices, distribution system retailers shall charge a rate not to exceed the most recent available allowable markup plus the most recent available Mont Belvieu, TX monthly Propane Spot Price FOB per gallon. If the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon is not available from the United States Energy Information Administration, the distribution system retailer, for the purpose of defining the spot price, may identify and use the Mont Belvieu, TX monthly Propane Spot Price FOB per gallon as reported by an alternative publicly available published source.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.0031. DAYS IN BILLING MONTH. (a) A customer's bill may not include charges for a period of more than:

(1) 32 days for a billing month in which the majority of days in the billing month occur in December, January, or February; or

(2) 31 days for a billing month in which the majority of days in the billing month occur in any other month.

(b) If an extreme condition occurs or continues on or after the 29th day of a billing month described by Subsection (a)(1), the billing month may be extended by the number of days the extreme condition occurs. Extreme conditions include:

(1) iced, flooded, closed, or otherwise impassable roads in the county in which the customer resides;

(2) a natural disaster, including an earthquake, a

hurricane, a tornado, or winds of more than 60 miles per hour; and

(3) civil disruption, including war, riot, or labor disruption or stoppage.

Added by Acts 2015, 84th Leg., R.S., Ch. 783 (H.B. 2558), Sec. 1, eff. September 1, 2015.

Sec. 141.004. DISCONNECTION OF PROPANE GAS SERVICE. (a) A distribution system retailer may not disconnect propane gas service to a residential customer on a weekend day or holiday officially observed by the State of Texas unless personnel of the distribution system retailer are available on that day to receive payments and reconnect service.

(b) A distribution system retailer may not disconnect propane gas service to a residential customer during an extreme weather emergency, as defined by Section 104.258. The distribution system retailer shall defer collection of the full payment of bills that are due during an extreme weather emergency, as defined by Section 104.258, until after the emergency is over.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.005. CONTINUITY OF SERVICE. (a) A distribution system retailer shall make all reasonable efforts to prevent interruptions of service. When an interruption occurs, the distribution system retailer shall reestablish service within the shortest possible time consistent with prudent operating principles so that the smallest number of customers are affected.

(b) Excluding service interruptions under Section 141.006, a distribution system retailer shall keep complete records of all emergency and scheduled service interruptions lasting more than six hours and affecting more than two customers. The records must describe the cause, date, length, and location of each interruption, the approximate number of customers affected by the interruption, and, in the case of an emergency interruption, the remedy and steps taken to prevent a recurrence, if applicable. The distribution system retailer shall submit copies of the service interruption records to the commission quarterly.

(c) The distribution system retailer shall notify the commission in writing not later than 48 hours after an interruption in service that affects the entire propane gas system, lasts more than four hours, represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous. The notice shall include the distribution system report of a service interruption. A written report of a service interruption in another form, including a part of a safety report, is sufficient to comply with this subsection.

(d) The commission shall establish and maintain a toll-free telephone number to enable a customer to notify the commission of a service interruption that does not involve a refusal to serve under Section 141.006. The commission shall immediately investigate the notification. A distribution system retailer shall notify the customer of the commission phone number on each billing statement.

(e) To restore and maintain service, the commission may assume temporary operational control of a propane gas system that experiences a service interruption that affects the entire propane gas system and that:

(1) continues to affect the entire propane gas system after the distribution system retailer has had direct access to and control of the system for more than 48 hours after the service interruption began;

(2) occurs more than three times in one month; or

(3) is the result of the distribution system retailer's failure or refusal to replenish the primary propane tank for a reason other than a general local market disruption, a restriction on wholesale propane supplies, mechanical failure, criminal activity, or an act of God.

(f) The commission may draw down all or part of the financial surety posted under Section 141.009, as required, to restore and maintain service under Subsection (e).

(g) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a distribution system retailer that:

(1) has abandoned operation of its facilities;

(2) informs the commission that the owner is abandoning the system; or

(3) experiences a service interruption as described under

Subsection (e).

(h) The court shall appoint a receiver if an appointment is necessary to guarantee:

(1) the collection of assessments, fees, penalties, or interest; or

(2) continuous and adequate service to the customers of the utility.

(i) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(j) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(k) On a showing of good cause by the distribution system retailer, the court may dissolve the receivership and order the assets and control of the business returned to the distribution system retailer.

(l) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek commission approval to acquire the distribution system retailer's facilities.

(m) Subject to the approval of the court and after giving notice to all interested parties, the receiver may sell or otherwise dispose of all or part of the real or personal property of a propane gas system against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

(1) payment of fees to the receiver for the receiver's services;

(2) payment of fees to attorneys, accountants, engineers, or any other persons or entities that provide goods or services necessary to the operation of the receivership; and

(3) payment of costs incurred ensuring that any property owned or controlled by a distribution system retailer is not used in violation of a final order of the court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.006. GROUNDS FOR REFUSAL TO SERVE. (a) A distribution system retailer may refuse service to an applicant for new service or to an existing customer for continued service or reconnection if:

(1) an applicant or customer fails to pay fees, advances, contributions, or deposits required for service under the distribution system retailer's policies;

(2) an applicant or customer fails to furnish a service or meter location specified for service by the distribution system retailer;

(3) the existence or repeated creation of an unsafe condition, such as impaired meter access or a leak in the applicant's piping system, may potentially create bodily harm or endanger life or property in the distribution system retailer's opinion;

(4) an applicant, customer, or service location owner is delinquent in payment for services provided by a distribution system retailer service location owner; or

(5) a current resident or occupant of the premises to receive service is delinquent in payment for services provided by a distribution system retailer.

(b) The right to refuse service ends when the cause for the refusal to serve is corrected.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.007. REASONABLE TIME TO BEGIN SERVICE. A distribution system retailer may delay providing service following an application or execution of an agreement for service for a reasonable amount of time considering required approvals, inspections, or permits, the extent of the facilities to be built, and the distribution system retailer's workload at the time.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.008. CUSTOMER COMPLAINTS. (a) A distribution system retailer that receives a written complaint shall promptly and

suitably investigate the complaint and advise the complainant of the results of the investigation. A distribution system retailer shall keep for at least three years after the final disposition of each complaint a record that includes each complainant's name and address, the date and nature of the complaint, and the adjustment or disposition of the complaint. A distribution system retailer is not required to keep a record of a complaint that does not require the distribution system retailer to take specific further action. A distribution system retailer shall notify each complainant of the right to file a complaint with the commission if the complainant is not satisfied by the distribution system retailer's resolution of the matter.

(b) On receipt of a written complaint from the commission on behalf of a customer, a distribution system retailer promptly and suitably shall investigate and notify the commission and complainant of the results of the investigation. An initial response must be made not later than the third business day after the date the distribution system retailer receives the complaint electronically delivered to a minimum of two electronic addresses designated by the distribution system retailer. A distribution system retailer shall send a final and complete response to the commission and complainant not later than the 15th day after the date the complaint was received, unless the commission grants additional time before the expiration of the 15-day period.

(c) The commission may impose sanctions on a distribution system retailer if, after an investigation, the commission determines that the distribution system retailer has violated Section 141.003. Sanctions may include:

(1) adopting an order requiring a distribution system retailer to refund the amounts of any overcharges to the distribution system retailer's customers;

(2) drawing down all or a portion of the financial surety for the purpose of refunding the amounts of any overcharges to the distribution system retailer's customers not refunded before the 61st day after the date the commission orders a refund; or

(3) adopting an order setting rates and fees for the distribution system retailer in accordance with Section 141.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.009. PERFORMANCE GUARANTEE. A distribution system retailer shall post, in favor of the commission, financial surety in the form of a letter of credit, bond, or other acceptable form of financial surety with the commission in an amount equal to the lesser of $3 multiplied by the number of gallons of aggregate storage capacity in all of the propane gas systems operated by the distribution system retailer or $50,000. The issuer of the financial surety used to meet this requirement shall honor the financial surety if the issuer receives from the commission notice that the financial surety is due and payable. The commission may draw down all or a portion of the financial surety. The distribution system retailer shall provide the commission with verification of the adequacy of the financial surety, and the commission may order the distribution system retailer to adjust the amount of the financial surety annually.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

Sec. 141.010. DISCLOSURE TO HOMEOWNERS. (a) A distribution system retailer shall record in the real property records of each county in which the distribution system retailer owns or operates a propane gas system a notice of disclosure of the existence of the propane gas system and the service the retailer provides. The notice shall include:

(1) a service map reflecting the location of the subdivisions or areas the distribution system retailer serves in the county;

(2) a copy of this chapter or a summary of the customer's rights under this chapter; and

(3) for development agreements entered into after September 1, 2013, a statement disclosing the existence of any financial interest held by a homeowners' association, municipal utility district, or developer in the propane gas system.

(b) If a person proposes to sell or convey real property located in a propane gas system service area owned by a distribution system retailer, the person must give to the purchaser written notice

as prescribed by this subsection. The notice must include a copy of the notice recorded in the real property records as required by Subsection (a), must be executed by the seller, and must read as follows: "The real property, described below, that you are about to purchase may be located in a propane gas system service area, which is authorized by law to provide propane gas service to the properties in the area pursuant to Chapter 141, Utilities Code. If your property is located in a propane gas system service area, there may be special costs or charges that you will be required to pay before you can receive propane gas service. There may be a period required to construct lines or other facilities necessary to provide propane gas service to your property. You are advised to determine if the property is in a propane gas system service area and contact the distribution system retailer to determine the cost that you will be required to pay and the period, if any, that is required to provide propane gas service to your property.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property.

_____

Date

_____

Signature of Purchaser"

(c) Each county shall accept and record in its real property records a distribution system retailer's service map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the later of January 1, 2014, or the 90th day after the date a distribution system retailer completes construction of a new propane gas system in the county.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1296 (H.B. 2532), Sec. 1, eff. September 1, 2013.

## TITLE 4. DELIVERY OF UTILITY SERVICES
## SUBTITLE A. UTILITY CORPORATIONS AND OTHER PROVIDERS
## CHAPTER 161. ELECTRIC COOPERATIVE CORPORATIONS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. SHORT TITLE. This chapter may be cited as the Electric Cooperative Corporation Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.002. DEFINITIONS. In this chapter:

(1) "Acquire" means and includes construct, acquire by purchase, lease, devise, or gift, or other mode of acquisition.

(2) "Board" means the board of directors of an electric cooperative.

(3) "Central station service" means electric service provided by a municipally owned electric system or by an electric corporation described by Subchapter A, Chapter 181.

(4) "Electric cooperative" means a corporation that is organized under this chapter or that becomes subject to this chapter as provided by this chapter.

(5) "Member" means:

(A) an incorporator of an electric cooperative; or

(B) a person admitted to membership in the electric cooperative as provided by Section 161.065.

(6) "Obligation" includes a bond, note, debenture, interim certificate or receipt, or other evidence of indebtedness issued by an electric cooperative.

(7) "Rural area" means an area, including both farm and nonfarm population of the area, that is not located in:

(A) a municipality having a population greater than 1,500; or

(B) an unincorporated city, town, village, or borough having a population greater than 1,500.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.003. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed. The enumeration of a purpose, power, method, or thing does not exclude similar purposes, powers, methods, or things.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.004. CERTAIN CORPORATE NAMES PROHIBITED. A corporation organized under the laws of this state or authorized to do business in this state may not use the words "electric cooperative" in the corporation's name unless the corporation is organized under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.005. CHAPTER COMPLETE AND CONTROLLING. This chapter is complete in itself and is controlling.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER B. CREATION AND OPERATION OF ELECTRIC COOPERATIVES**

Sec. 161.051. INCORPORATORS. (a) Three or more individuals may act as incorporators of an electric cooperative by executing articles of incorporation as provided by this chapter.

(b) An incorporator must:

(1) be at least 21 years of age; and

(2) reside in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.052. DURATION OF CORPORATION. An electric cooperative may be created as a perpetual corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.053. NAME OF ELECTRIC COOPERATIVE. The name of an electric cooperative must:

(1) include the words "Electric Cooperative";

(2) include the term "Corporation," "Incorporated," "Inc.," "Association," or "Company"; and

(3) be distinct from the name of any other corporation organized under the laws of this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.054. ARTICLES OF INCORPORATION. (a) The articles of incorporation of an electric cooperative must state:

(1) the name of the cooperative;

(2) the purpose for which the cooperative is formed;

(3) the name and address of each incorporator;

(4) the number of directors;

(5) the address of the cooperative's principal office and the name and address of its agent on whom process may be served;

(6) the duration of the cooperative;

(7) the terms under which a person is admitted to membership and retains membership in the cooperative, unless the articles expressly state that the determination of membership matters is reserved to the directors by the bylaws; and

(8) any provisions that the incorporators include for the regulation of the business and the conduct of the affairs of the cooperative.

(b) The articles of incorporation do not need to state any of the corporate powers enumerated in this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.055. FILING AND RECORDING OF ARTICLES OF INCORPORATION. (a) The secretary of state shall receive articles of incorporation of an electric cooperative if the incorporators of the cooperative:

(1) apply for filing the articles;

(2) furnish satisfactory evidence of compliance with this chapter to the secretary of state; and

(3) pay a fee of $10.

(b) The secretary of state shall:

(1) file the articles of incorporation in the secretary's office;

(2) record the articles at length in a book to be kept for that purpose;

(3) retain the original articles of incorporation on file in the secretary's office; and

(4) issue a certificate showing the recording of the

articles of incorporation and the electric cooperative's authority to do business under the articles.

(c) A copy of the articles of incorporation or of the record of the articles, certified under the state seal, is evidence of the creation of the electric cooperative.

(d) The existence of the electric cooperative dates from the filing of the articles in the office of the secretary of state. The certificate of the secretary of state is evidence of that filing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.056. REVIVAL OF ARTICLES OF INCORPORATION. (a) If the articles of incorporation of an electric cooperative expire by limitation, the cooperative, with the consent of a majority of its members, may revive the articles by filing:

(1) new articles of incorporation under this chapter; and

(2) a certified copy of the expired original articles.

(b) An electric cooperative that revives its articles of incorporation has all the privileges, immunities, and rights of property exercised and held by the cooperative at the time the original articles expired.

(c) New articles of incorporation filed under this section must recite the privileges, immunities, and rights of property exercised and held by the cooperative at the time the original articles expired.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.057. ORGANIZATIONAL MEETING. (a) After the certificate of incorporation is issued, the incorporators of an electric cooperative shall meet to adopt bylaws, elect officers, and transact other business that properly comes before the meeting.

(b) A majority of the incorporators shall call the organizational meeting.

(c) The incorporators calling the organizational meeting shall give at least three days' notice of the meeting by mail to each incorporator. The notice must state the time and place of the meeting. The notice may be waived in writing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.058. PERFECTING DEFECTIVELY ORGANIZED CORPORATION. (a) An electric cooperative that files defective articles of incorporation or fails to take an action necessary to perfect its corporate organization may:

(1) file corrected articles of incorporation or amend the original articles; and

(2) take any action necessary to correct the defect.

(b) An action taken under this section is valid and binding on any person concerned.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.059. NONPROFIT OPERATION. (a) An electric cooperative shall operate without profit to its members.

(b) The rates, fees, rents, and other charges for electric energy and other facilities, supplies, equipment, or services furnished by the cooperative must be sufficient at all times to:

(1) pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business;

(2) pay the principal of and interest on the obligations issued or assumed by the cooperative in performing the purpose for which the cooperative was organized; and

(3) create reserves.

(c) The cooperative shall devote its revenues:

(1) first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations; and

(2) then to the reserves prescribed by the board for improvement, new construction, depreciation, and contingencies.

(d) The cooperative shall periodically return revenues not required for the purposes prescribed by Subsection (c) to the members in proportion to the amount of business done with each member during the applicable period. The cooperative may return revenues:

(1) in cash, by abatement of current charges for electric energy, or in another manner determined by the board; or

(2) through a general rate reduction to members.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.060. MEMBERS NOT LIABLE FOR DEBTS OF ELECTRIC COOPERATIVE. A member is not liable for a debt of an electric cooperative except for:

(1) a debt contracted between the member and the cooperative; or

(2) an amount not to exceed the unpaid amount of the member's membership fee.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.061. LICENSE FEE. Not later than May 1 of each year, each electric cooperative shall pay to the secretary of state a license fee of $10.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.062. EXEMPTION FROM EXCISE TAXES. An electric cooperative is exempt from all excise taxes but is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the cooperative is exempted by that chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.063. EXEMPTION FROM APPLICATION OF SECURITIES ACT. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) does not apply to:

(1) an obligation issued to secure a debt of an electric cooperative to the United States; or

(2) the issuance of a membership certificate by an electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.064. BYLAWS. (a) The board may adopt, amend, or

repeal the bylaws of the cooperative.

(b) The bylaws may contain any provision for the regulation and management of the affairs of the electric cooperative that is consistent with the articles of incorporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.065. MEMBERSHIP. (a) A person is eligible to become a member of an electric cooperative if the person has a dwelling, structure, apparatus, or point of delivery at which the person does not receive central station service from another source and that is located in an area in which the cooperative is authorized to provide electric energy, and the person:

(1) uses or agrees to use electric energy or the facilities, supplies, equipment, or services furnished by the cooperative at the dwelling, structure, apparatus, or point of delivery; or

(2) is an incorporator of the cooperative.

(b) An electric cooperative may become a member of another electric cooperative and may fully use the facilities and services of that cooperative.

(c) Membership in an electric cooperative is not transferable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.066. CERTIFICATE OF MEMBERSHIP. (a) An electric cooperative shall issue a certificate of membership to a member who pays the member's membership fee in full.

(b) A certificate of membership is not transferable.

(c) A certificate of membership shall be surrendered to the cooperative on the resignation, expulsion, or death of the member.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.067. MEETINGS OF MEMBERS. (a) An electric cooperative may hold a meeting of its members at a place provided in the bylaws. If the bylaws do not provide for a place for a meeting, the cooperative shall hold the meeting in the principal office of the

cooperative in this state.

(b) An electric cooperative shall hold an annual meeting of its members at the time provided in the bylaws. Failure to hold the annual meeting at the designated time does not result in forfeiture or dissolution of the cooperative.

(c) A special meeting of the members may be called by:

(1) the president;

(2) the board;

(3) a majority of the directors;

(4) the members by a petition signed by at least 10 percent of the members; or

(5) an officer or other person as provided by the articles of incorporation or bylaws.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.068. NOTICE OF MEMBERS' MEETING. (a) Written notice of each meeting of the members shall be delivered to each member of record, either personally or by mail, not earlier than the 30th day or later than the 10th day before the date of the meeting. The notice must be delivered by or at the direction of the president, the secretary, or the officers or other persons calling the meeting.

(b) The notice must state the time and place of the meeting and, in the case of a special meeting, each purpose for which the meeting is called.

(c) A member may waive notice of meetings in writing.

(d) A notice that is mailed is considered to be delivered when the notice is deposited in the United States mail in a sealed envelope with postage prepaid addressed to the member at the member's address as it appears on the records of the electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.069. QUORUM OF MEMBERS. Unless otherwise provided by the articles of incorporation, a quorum for the transaction of business at a meeting of the members of an electric cooperative is a majority of the members present in person or represented by proxy. If voting by mail is provided for in the bylaws, members voting by mail are counted as present for purposes of determining whether a

quorum is present.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.070. VOTING BY MEMBERS. Each member present at a meeting of the members is entitled to one vote on each matter submitted to a vote at the meeting. The bylaws may provide for voting by proxy or by mail.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.071. BOARD OF DIRECTORS. (a) The business and affairs of an electric cooperative shall be managed by a board of directors. The board consists of at least three directors. Each director must be a member of the cooperative. The bylaws may prescribe additional qualifications for directors.

(b) The board may exercise any power of an electric cooperative not conferred on the members by this chapter or by the cooperative's articles of incorporation or bylaws.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.072. ELECTION OF DIRECTORS; VACANCIES. (a) The incorporators of an electric cooperative named in the articles of incorporation shall serve as directors until the first annual meeting of the members, and until their successors are elected and qualify. Subsequently, the directors shall be elected by the members at each annual meeting or as otherwise provided by the bylaws.

(b) A vacancy on the board shall be filled as provided by the bylaws. A person selected to fill a vacancy serves until the next regular election of directors.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.073. COMPENSATION OF DIRECTORS. A director of an electric cooperative is entitled to the compensation and reimbursement for expenses actually and necessarily incurred by the

director as provided by the bylaws.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.074. QUORUM OF DIRECTORS. (a) A majority of the directors is a quorum unless the articles of incorporation or the bylaws provide that a greater number of the directors is a quorum.

(b) A majority of the directors present at a meeting at which a quorum is present may exercise the board's authority unless the articles of incorporation or the bylaws require a greater number of directors to exercise the board's authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a regular or special board meeting at the place and on the notice prescribed by the bylaws.

(b) The attendance of a director at a board meeting constitutes a waiver of notice of the meeting unless the director attends the meeting for the express purpose of objecting to the transaction of business at the meeting because the meeting is not lawfully called or convened.

(c) A notice or waiver of notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.076. OFFICERS, AGENTS, AND EMPLOYEES. (a) The board shall elect from the board's membership a president, a vice president, a secretary, and a treasurer. The terms of office, powers, duties, and compensation of the officers elected under this subsection shall be provided for by the bylaws.

(b) The same person may hold the offices of secretary and of treasurer.

(c) The board may appoint other officers, agents, and employees as the board considers necessary and shall prescribe the powers, duties, and compensation of those persons.

(d) The board may remove an officer, agent, or employee elected or appointed by the board if the board determines that the removal will serve the best interests of the cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.077. EXECUTIVE COMMITTEE. (a) The bylaws of an electric cooperative may authorize the board to elect an executive committee from the board's membership.

(b) The board may delegate to the executive committee the management of the current and ordinary business of the cooperative and other duties as prescribed by the bylaws.

(c) The designation of an executive committee and the delegation of authority to the committee does not relieve the board or any director of a responsibility imposed on the board or the director by this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.078. INDEMNIFICATION. An electric cooperative may indemnify and provide indemnity insurance in the same manner and to the same extent as a nonprofit corporation under Article 2.22A, Texas Non-Profit Corporation Act (Article 1396-2.22A, Vernon's Texas Civil Statutes).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.079. APPLICABILITY OF CHAPTER TO CORPORATIONS ORGANIZED UNDER OTHER LAW. A cooperative or nonprofit corporation or association organized under any other law of this state for the purpose of engaging in rural electrification may, by a majority vote of the members present in person or represented by proxy at a meeting called for that purpose, amend its articles of incorporation to comply with this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. POWERS OF ELECTRIC COOPERATIVE

Sec. 161.121. GENERAL POWERS. An electric cooperative may:

(1) sue and be sued in its corporate name;

(2) adopt and alter a corporate seal and use the seal or a facsimile of the seal as required by law;

(3) acquire, own, hold, maintain, exchange, or use property or an interest in property, including plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems that are necessary, convenient, or useful;

(4) dispose of, mortgage, or lease as lessor any of its property or assets;

(5) borrow money and otherwise contract indebtedness, issue obligations for its indebtedness, and secure the payment of indebtedness by mortgage, pledge, or deed of trust on any or all of its property or revenue;

(6) accept gifts or grants of money, services, or property;

(7) make any contracts necessary or convenient for the exercise of the powers granted by this chapter;

(8) conduct its business and have offices inside or outside this state;

(9) adopt and amend bylaws not inconsistent with the articles of incorporation for the administration and regulation of the affairs of the cooperative; and

(10) perform any other acts for the cooperative or its members or for another electric cooperative or its members, and exercise any other power, that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized, including other or additional purposes that benefit members and nonmembers, either directly or through affiliates, described in Section A, Article 2.01, Texas Non-Profit Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes).

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.15(a), eff. Sept. 1, 1999.

Sec. 161.122. PROVISION OF RURAL ELECTRIFICATION. An electric cooperative may engage in rural electrification by:

(1) furnishing electric energy to any person for delivery

to a dwelling, structure, apparatus, or point of delivery that is:

(A) located in a rural area; and

(B) not receiving central station service, even if the person is receiving central station service at other points of delivery;

(2) furnishing electric energy to a person desiring that service in a municipality or unincorporated city or town, rural or nonrural, served by the cooperative and in which central station service was not available at the time the cooperative began furnishing electric energy to the residents of the municipality or unincorporated city or town;

(3) assisting in the wiring of the premises of persons in rural areas or the acquisition, supply, or installation of electrical or plumbing equipment in those premises; or

(4) furnishing electric energy, wiring facilities, or electrical or plumbing equipment or service to another electric cooperative or to the members of another electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.123. POWERS RELATING TO PROVISION OF ELECTRIC ENERGY. An electric cooperative may:

(1) generate, acquire, and accumulate electric energy and transmit, distribute, sell, furnish, and dispose of that electric energy to its members only;

(2) assist its members only to wire their premises and install in those premises electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any kind, and in connection with those activities:

(A) acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any kind; and

(B) receive, acquire, endorse, pledge, and dispose of notes, bonds, and other evidences of indebtedness;

(3) furnish to other electric cooperatives or their members electric energy, wiring facilities, electrical and plumbing equipment, and services that are convenient or useful; and

(4) establish, regulate, and collect rates, fees, rents, or other charges for electric energy or other facilities, supplies,

equipment, or services furnished by the electric cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.124. PROVISION OF ELECTRIC ENERGY TO CERTAIN NONMEMBER ENTITIES. An electric cooperative may generate, acquire, and accumulate electric energy and transmit, distribute, sell, furnish, and dispose of that electric energy to any of the following that is engaged in the generation, transmission, or distribution of electricity:

(1) a corporation, association, or firm;

(2) the United States;

(3) this state or a political subdivision of this state; or

(4) a municipal power agency or political subdivision of this state that is a co-owner with the electric cooperative of an electric generation facility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.125. EMINENT DOMAIN. An electric cooperative may exercise the power of eminent domain in the manner provided by state law for acquiring private property for public use. The power does not apply to state property or property of a political subdivision in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. AMENDMENT OF ARTICLES OF INCORPORATION**

Sec. 161.151. AMENDMENT OF ARTICLES OF INCORPORATION. (a) An electric cooperative may amend its articles of incorporation by a majority vote of the members of the cooperative present in person or represented by proxy at a regular meeting or at a special meeting of its members called for that purpose as provided by the bylaws.

(b) Notice of the meeting to members must state the general nature of each proposed amendment to be presented and voted on at the meeting. Valid action may not be taken at the meeting unless at least five percent of the members of the electric cooperative either

attend the meeting in person or are represented at the meeting by proxy.

(c) The power to amend the articles of incorporation includes the power to accomplish any desired change in the articles of incorporation and to include any purpose, power, or provision that is permitted to be included in original articles of incorporation executed at the time the amendment is made.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.152. ARTICLES OF AMENDMENT. (a) Articles of amendment of an electric cooperative must be:

(1) signed by the president or vice president and attested by the secretary, certifying to the amendment and its lawful adoption; and

(2) executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation.

(b) An amendment takes effect when the secretary of state accepts the articles of amendment for filing and recording and issues a certificate of amendment. The certificate of amendment is evidence of the filing of the amendment.

(c) The secretary of state shall charge and collect a fee of $2.50 for filing articles of amendment and issuing a certificate of amendment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER E. CONSOLIDATION OF ELECTRIC COOPERATIVES**

Sec. 161.201. CONSOLIDATION. (a) Two or more electric cooperatives may enter into an agreement to consolidate the cooperatives. The agreement must state:

(1) the terms of the consolidation;

(2) the name of the proposed consolidated cooperative;

(3) the number of directors of the proposed consolidated cooperative;

(4) the time of the annual meeting and election; and

(5) the names of at least three persons to be directors until the first annual meeting.

(b) A consolidation agreement may be approved only on the votes

of a majority of the members of each electric cooperative present in person or represented by proxy at a regular meeting or at a special meeting of its members called for that purpose.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.202. ARTICLES OF CONSOLIDATION. (a) The articles of consolidation must:

(1) conform substantially to original articles of incorporation of an electric cooperative; and

(2) be executed, acknowledged, filed, and recorded in the same manner as original articles of incorporation.

(b) The directors named in the consolidation agreement shall as incorporators sign and acknowledge the articles of consolidation.

(c) The secretary of state shall charge and collect a fee of $10 for filing articles of consolidation and issuing a certificate of consolidation.

(d) When the secretary of state accepts the articles of consolidation for filing and recording and issues a certificate of consolidation, the proposed consolidated electric cooperative described in the articles under its designated name exists as a body corporate, with all the powers of an electric cooperative originally organized under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. DISSOLUTION

Sec. 161.251. DISSOLUTION. (a) An electric cooperative may be dissolved by a majority vote of its members present in person or represented by proxy at a regular meeting or at a special meeting of its members called for that purpose.

(b) A certificate of dissolution must be:

(1) signed by the president or vice president and attested by the secretary, certifying to the dissolution and stating that the officers have been authorized by a vote of the members under Subsection (a) to execute and file the certificate; and

(2) executed, acknowledged, filed, and recorded in the same manner as original articles of incorporation of an electric cooperative.

(c) The cooperative is dissolved when the secretary of state accepts the certificate of dissolution for filing and recording and issues a certificate of dissolution.

(d) The secretary of state shall charge and collect a fee of $2.50 for filing articles of dissolution.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.252. EXISTENCE FOLLOWING DISSOLUTION. (a) A dissolved electric cooperative continues to exist to:

(1) satisfy existing liabilities or obligations;

(2) collect or liquidate its assets; and

(3) take any other action required to adjust and wind up its business and affairs.

(b) A dissolved electric cooperative may sue and be sued in its corporate name.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.253. DISTRIBUTION OF NET ASSETS ON DISSOLUTION. Assets of a dissolved electric cooperative that remain after all liabilities or obligations of the cooperative have been satisfied shall be distributed pro rata to the members of the cooperative who were members when the certificate of dissolution was filed.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.254. DISSOLUTION OF DEFECTIVELY INCORPORATED ELECTRIC COOPERATIVE. (a) An electric cooperative that purports to have been incorporated or reincorporated under this chapter but that has not complied with a requirement for legal corporate existence may file a certificate of dissolution in the same manner as a validly incorporated electric cooperative.

(b) The certificate of dissolution may be authorized by a majority of the incorporators or directors at a meeting called by an incorporator and held at the principal office of the cooperative named in the articles of incorporation.

(c) The incorporator calling the meeting must give at least 10

days' notice of the meeting by mail to the last known post office address of each incorporator or director.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 162. TELEPHONE COOPERATIVE CORPORATIONS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 162.001. SHORT TITLE. This chapter may be cited as the Telephone Cooperative Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.002. PURPOSE. A cooperative, nonprofit corporation may be organized under this chapter to furnish communication service to the widest practicable number of users of that service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a telephone cooperative.

(2) "Communication service" means:

(A) the transmission or reception of information, signals, or messages by any means, including by wire, radio, cellular radio, microwave, or fiber optics; and

(B) the provision of lines, facilities, and systems used in the transmission or reception described by Paragraph (A).

(3) "Member" means:

(A) an incorporator of a telephone cooperative; or

(B) a person admitted to membership in a telephone cooperative as provided by Section 162.065.

(4) "Patron" means a member who is eligible to receive patronage dividends or to earn capital credits as a result of purchasing certain services from a telephone cooperative as provided by Section 162.066.

(5) "Telephone cooperative" means a corporation that is organized under this chapter or that becomes subject to this chapter as provided by this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.004. CERTAIN CORPORATE NAMES PROHIBITED. A corporation organized under the laws of this state or authorized to do business in this state may not use the words "telephone cooperative" in the corporation's name unless the corporation is organized under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.005. EFFECT OF RECORDING CERTAIN MORTGAGES EXECUTED BY TELEPHONE COOPERATIVES. (a) An instrument executed by a telephone cooperative or a foreign corporation doing business in this state under this chapter that affects real and personal property and that is recorded in the real property records of any county in which the property is located or is to be located has the same effect as if the instrument were also recorded as provided by law in the proper office in that county as a mortgage of personal property.

(b) All after-acquired property of a telephone cooperative or foreign corporation doing business in this state under this chapter described by or referred to as being pledged in an instrument to which Subsection (a) applies becomes subject to the lien described by the instrument immediately when the cooperative or corporation acquires the property, without regard to whether the property existed at the time the instrument was executed. The execution of the instrument constitutes notice and otherwise has the same effect with respect to after-acquired property to which this subsection applies as it has under the laws relating to recordation with respect to property that is owned by the cooperative or foreign corporation at the time the instrument is executed and that is described in the instrument as being pledged by the instrument.

(c) After a lien on personal property under an instrument to which Subsection (a) applies is recorded, the lien continues in existence and of record for the period specified in the instrument without:

(1) the refiling of the instrument; or

(2) the filing of any renewal certificate, affidavit, or other supplemental information required by a law relating to the

renewal, maintenance, or extension of a lien on personal property.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.006. CONSTRUCTION STANDARDS. A telephone cooperative that constructs communication lines or facilities must at a minimum comply with the standards of the National Electrical Safety Code in effect at the time of construction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER B. CREATION AND OPERATION OF TELEPHONE COOPERATIVES**

Sec. 162.051. INCORPORATORS. (a) Three or more individuals may act as incorporators of a telephone cooperative by executing articles of incorporation as provided by this chapter.

(b) An incorporator must:

(1) be at least 21 years of age; and

(2) reside in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.052. DURATION OF CORPORATION. A telephone cooperative may be created as a perpetual corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.053. NAME OF TELEPHONE COOPERATIVE. The name of a telephone cooperative must:

(1) include the words "telephone" and "cooperative" and the abbreviation "Inc."; and

(2) be distinct from the name of any other corporation organized under the laws of or authorized to do business in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.054. ARTICLES OF INCORPORATION. (a) The articles of incorporation of a telephone cooperative must:

(1) state that the articles are executed under this chapter;

(2) be signed by each incorporator and acknowledged by at least two incorporators; and

(3) state:

(A) the name of the cooperative;

(B) the purpose for which the cooperative is formed;

(C) the name and address of each incorporator;

(D) the number of directors;

(E) the address of the cooperative's principal office and the name and address of its agent on whom process may be served;

(F) the duration of the cooperative;

(G) the terms under which a person is admitted to membership and retains membership in the cooperative, unless the articles expressly state that the determination of membership matters is reserved to the directors by the bylaws; and

(H) any provisions that the incorporators include for the regulation of the business and the conduct of the affairs of the cooperative.

(b) The articles of incorporation do not need to state any of the corporate powers enumerated in this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.055. FILING AND RECORDING OF ARTICLES OF INCORPORATION. (a) The secretary of state shall receive articles of incorporation of a telephone cooperative if the incorporators of the cooperative:

(1) apply for filing the articles;

(2) furnish satisfactory evidence of compliance with this chapter to the secretary of state; and

(3) pay a fee of $25.

(b) The secretary of state shall:

(1) file the articles of incorporation in the secretary's office;

(2) record the articles at length in a book to be kept for that purpose;

(3) retain the original articles of incorporation on file in the secretary's office; and

(4) issue a certificate showing the recording of the articles of incorporation and the telephone cooperative's authority to do business under the articles.

(c) A copy of the articles of incorporation or of the record of the articles, certified under the state seal, is evidence of the creation of the telephone cooperative.

(d) The existence of the telephone cooperative dates from the filing of the articles in the office of the secretary of state. The certificate of the secretary of state is evidence of that filing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.056. REVIVAL OF ARTICLES OF INCORPORATION. (a) If the articles of incorporation of a telephone cooperative expire by limitation, the cooperative, with the consent of a majority of its members, may revive the articles by filing:

(1) new articles of incorporation under this chapter; and

(2) a certified copy of the expired original articles.

(b) A telephone cooperative that revives its articles of incorporation has all the privileges, immunities, and rights of property exercised and held by the cooperative at the time the original articles expired.

(c) New articles of incorporation filed under this section must recite the privileges, immunities, and rights of property exercised and held by the cooperative at the time the original articles expired.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.057. ORGANIZATIONAL MEETING. (a) After the certificate of incorporation is issued, the incorporators of a telephone cooperative shall meet to adopt bylaws, elect officers, and transact other business that properly comes before the meeting.

(b) A majority of the incorporators shall call the organizational meeting.

(c) The incorporators calling the organizational meeting shall give at least three days' notice of the meeting by mail to each

incorporator. The notice must state the time and place of the meeting. The notice may be waived in writing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.058. PERFECTING DEFECTIVELY ORGANIZED CORPORATIONS. (a) A telephone cooperative that files defective articles of incorporation or fails to take an action necessary to perfect its corporate organization may:

(1) file corrected articles of incorporation or amend the original articles; and

(2) take any action necessary to correct the defect.

(b) An action taken under this section is valid and binding on any person concerned.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.059. NONPROFIT OPERATION. (a) A telephone cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons.

(b) A cooperative's bylaws and its contracts with members and patrons must contain appropriate provisions relating to the disposition of revenues and receipts to establish and maintain the cooperative's nonprofit and cooperative character.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.060. MEMBERS NOT LIABLE FOR DEBTS OF TELEPHONE COOPERATIVE. A member is not liable for a debt of a telephone cooperative, and the member's property is not subject to execution for that debt.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.061. LICENSE FEE. Not later than July 1 of each year, each telephone cooperative doing business in this state shall pay to the secretary of state a fee of $10.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.062. EXEMPTION FROM EXCISE TAXES. A telephone cooperative doing business in this state is exempt from all excise taxes but is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the cooperative is exempted by that chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.063. EXEMPTION FROM APPLICATION OF SECURITIES ACT. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) does not apply to:

(1) a note, bond, or other evidence of indebtedness issued by a telephone cooperative doing business in this state to the United States;

(2) an instrument executed to secure a debt of a telephone cooperative to the United States; or

(3) the issuance of a membership certificate by a telephone cooperative or a foreign corporation doing business in this state under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.064. BYLAWS. (a) The board shall adopt the initial bylaws of a telephone cooperative to be adopted following:

(1) an incorporation;

(2) a consolidation; or

(3) an amendment by an existing cooperative, corporation, or association of its articles of incorporation as provided by Section 162.082.

(b) After the initial bylaws are adopted, the members may adopt, amend, or repeal the bylaws by the affirmative vote of a majority of those members voting on the question at a meeting of the members.

(c) The bylaws may contain any provision for the regulation and management of the affairs of the telephone cooperative that is consistent with the articles of incorporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.065. MEMBERSHIP. (a) Each incorporator of a telephone cooperative is a member of the cooperative. A person other than an incorporator may become a member of a telephone cooperative only if the person agrees to use communication service furnished by the cooperative when that service is made available through the cooperative's facilities. The bylaws may prescribe additional qualifications and limitations with respect to membership.

(b) Membership in a telephone cooperative is evidenced by a certificate of membership. A membership certificate must contain the provisions, consistent with this chapter and the articles of incorporation, that are prescribed by the cooperative's bylaws. A certificate may be transferred only as provided by the bylaws.

(c) A telephone cooperative may become a member of another telephone cooperative and may fully use the facilities and services of that cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.066. PATRONS. (a) A member is a patron of a telephone cooperative if the member purchases local telecommunications service or toll telecommunications service or pays end user access charges in the ordinary course of business of the cooperative.

(b) The use of interexchange access, payment of interexchange access fees or settlements, or purchase of equipment does not qualify a member or other person as a patron.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.067. MEETINGS OF MEMBERS. (a) A telephone cooperative shall hold an annual meeting of members at the time and place provided by the bylaws. Failure to hold the annual meeting at the designated time does not result in forfeiture or dissolution of the cooperative.

(b) A special meeting of the members may be called by:

(1) the president;

(2) the board;
(3) any three directors; or
(4) the lesser of:
(A) 200 members; or
(B) 10 percent of all the members.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.068. NOTICE OF MEMBERS' MEETING. (a) Except as otherwise provided by this chapter, written notice of each meeting of the members shall be given to each member, either personally or by mail, not earlier than the 25th day or later than the 10th day before the date of the meeting.

(b) The notice must state the time and place of the meeting and, in the case of a special meeting, each purpose for which the meeting is called.

(c) A notice that is mailed is considered to have been given when the notice is deposited in the United States mail with postage prepaid addressed to the member at the member's address as it appears on the records of the telephone cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.069. WAIVER OF NOTICE. A person entitled to notice of a meeting may waive notice in writing either before or after the meeting. If a person entitled to notice of a meeting attends the meeting, the person's attendance constitutes a waiver of notice of the meeting, unless the person participates in the meeting solely to object to the transaction of business because the meeting is not legally called or convened.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.070. MEMBERS' MEETING: QUORUM AND VOTING. (a) Unless the bylaws prescribe a greater percentage or number of members for a quorum, a quorum at a meeting of the members of a telephone cooperative is the personal presence of:

(1) 10 percent of all members, if the cooperative has 500

or fewer members; or

(2) the greater of 50 members or two percent of all members, if the cooperative has more than 500 members.

(b) If fewer than a quorum are present at a meeting, a majority of the members present in person may adjourn the meeting from time to time without further notice.

(c) Each member present at a meeting of the members is entitled to one vote on each matter submitted to a vote at the meeting. Voting must be in person unless the bylaws provide for voting by mail.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.071. BOARD OF DIRECTORS. (a) A board of at least five directors shall manage the business of a telephone cooperative. Each director must be a member of the cooperative. The bylaws must prescribe the number of directors and their qualifications other than those prescribed by this chapter.

(b) The board may exercise any power of a telephone cooperative not conferred on the members by this chapter or by the cooperative's articles of incorporation or bylaws.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.072. ELECTION OF DIRECTORS; TERMS. (a) The incorporators of a telephone cooperative named in the articles of incorporation shall serve as directors and hold office until the first annual meeting of the members and until their successors are elected and qualify.

(b) At each annual meeting or, in the case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual members' meeting, except as otherwise provided by this chapter. Except as provided by Subsection (e), each director holds office for the term for which the person is elected and until the person's successor is elected and qualifies.

(c) Instead of electing all the directors annually, the bylaws may provide that the directors, other than those named in the articles of incorporation to serve until the first annual meeting of

the members, are elected by the members for a term of two years or three years. The terms must be set so that:

(1) one-half of the directors, as nearly as possible, are elected annually, if a two-year term is provided; or

(2) one-third of the directors, as nearly as possible, are elected annually, if a three-year term is provided.

(d) After the implementation of two-year or three-year terms for directors, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election, as appropriate.

(e) The bylaws must prescribe the manner of electing a successor to a director who resigns, dies, or otherwise becomes incapable of acting. The bylaws may provide for the removal of a director from office and for the election of the director's successor.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.073. COMPENSATION OF DIRECTORS. (a) A director may not receive a salary for services as a director. Except in an emergency, a director may not receive a salary for services in a capacity other than director without the approval of the members.

(b) The bylaws may:

(1) prescribe a fixed fee for attendance at each board meeting, committee meeting, industry-related conference approved by the board, or training program; and

(2) provide for reimbursement of actual expenses of attendance or a reasonable per diem.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.074. INSURANCE FOR DIRECTORS. A telephone cooperative may provide liability, accident, life, and health insurance coverage for a director who chooses to have that coverage.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.075. BOARD MEETINGS; QUORUM. (a) The bylaws shall

prescribe the manner of holding board meetings.

(b) A majority of the directors is a quorum.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.076. DISTRICTS. (a) The bylaws may provide for the territory served or to be served by a telephone cooperative to be divided into two or more districts for any purpose, including the nomination and election of directors and the election and functioning of district delegates.

(b) The bylaws must prescribe:

(1) the boundaries of each district or the manner of establishing a district's boundaries;

(2) the manner of changing a district's boundaries; and

(3) the manner in which each district functions.

(c) District delegates may nominate and elect directors. A district delegate must be a member.

(d) A member may not vote by proxy or by mail at a district meeting.

(e) A district delegate may not vote by proxy or by mail at any meeting.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.077. OFFICERS, AGENTS, AND EMPLOYEES. (a) The board of a telephone cooperative shall annually elect from the board's membership a president, a vice president, a secretary, and a treasurer.

(b) An officer who ceases to be a director ceases to hold office.

(c) The same person may hold the offices of secretary and of treasurer.

(d) The board may also elect or appoint other officers, agents, or employees as the board considers appropriate and shall prescribe the powers and duties of those persons.

(e) An officer may be removed from office and a successor elected in the manner prescribed by the bylaws.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.078. EXECUTIVE COMMITTEE. (a) The bylaws of a telephone cooperative may authorize the board to elect an executive committee from the board's membership.

(b) The board may delegate to the executive committee the management of the current and ordinary business of the cooperative and other duties as prescribed by the bylaws.

(c) The designation of an executive committee and the delegation of authority to the committee does not relieve the board or any director of a responsibility imposed on the board or the director by this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.079. INDEMNIFICATION. Article 2.22A, Texas Non-Profit Corporation Act (Article 1396-2.22A, Vernon's Texas Civil Statutes), applies to a telephone cooperative in the same manner as if the cooperative were formed under the Texas Non-Profit Corporation Act.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.080. CHANGE OF LOCATION OF PRINCIPAL OFFICE. (a) A telephone cooperative may, with the authorization of the board or the members, change the location of its principal office by filing a certificate reciting the change of principal office with the secretary of state.

(b) The cooperative's president or vice president must execute and acknowledge the certificate under the cooperative's seal as attested by the secretary.

(c) The secretary of state shall charge and collect a fee of $5 for filing a certificate of change of principal office.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.081. DIRECTOR, OFFICER, OR MEMBER ACTING AS NOTARY. A person who is an officer, director, or member of a telephone cooperative and who is authorized to take acknowledgments under state

law is not disqualified because of the person's association with the cooperative from taking an acknowledgment of an instrument executed in favor of the cooperative or to which the cooperative is a party.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.082. APPLICABILITY TO CORPORATIONS ORGANIZED UNDER OTHER LAW. A cooperative or nonprofit corporation or association organized under any other law of this state for the purpose of furnishing communication service may, by a majority vote of the members present in person at a meeting called for that purpose, amend its articles of incorporation to comply with this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER C. POWERS OF TELEPHONE COOPERATIVE**

Sec. 162.121. GENERAL POWERS. A telephone cooperative may:

(1) sue and be sued in its corporate name;

(2) adopt and alter a corporate seal and use the seal or a facsimile of the seal as required by law;

(3) construct, acquire, lease, improve, install, equip, maintain, and operate, and, subject to Sections 162.125 and 162.126, dispose of, lease, or encumber, communication lines, facilities or systems, lands, structures, plants and equipment, exchanges, and other property, considered appropriate to accomplish the purpose for which the cooperative is organized;

(4) issue membership certificates as provided by this chapter;

(5) borrow money and otherwise contract indebtedness, issue or guarantee notes, bonds, and other evidences of indebtedness, and secure the payment of indebtedness by pledge or other encumbrance on any or all of its property or revenue;

(6) conduct its business and exercise its powers inside or outside this state;

(7) adopt, amend, and repeal bylaws;

(8) make any contracts appropriate for the full exercise of the powers granted by this chapter; and

(9) perform any other acts and exercise any other power that may be appropriate to accomplish the purpose for which the

cooperative is organized.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.122. POWERS RELATING TO PROVISION OF COMMUNICATION SERVICE. (a) A telephone cooperative may:

(1) furnish and improve communication service to its members, to governmental agencies and political subdivisions, to any number of subscribers of other communication systems through interconnection of facilities, and to any number of users through pay stations;

(2) connect and interconnect its communication lines, facilities, or systems with other communication lines, facilities, or systems;

(3) make its facilities available to persons furnishing communication service inside or outside this state; and

(4) construct, maintain, and operate a communication line along, on, under, or across publicly owned land or a public thoroughfare, subject to the same restrictions and obligations that apply to an electric transmission cooperative under Subchapter C, Chapter 181.

(b) A telephone cooperative that acquires communication facilities may continue to furnish service to a person who is already receiving service from those facilities without requiring the person to become a member, but the person may become a member on the terms prescribed by the bylaws.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.123. CONNECTION AND INTERCONNECTION OF FACILITIES. A telephone cooperative doing business in this state may require a person furnishing communication service to the public in this state to interconnect that person's lines, facilities, or systems with, or otherwise make available those lines, facilities, or systems to, the cooperative's communication lines, facilities, or systems to provide a continuous line of communication for the cooperative's subscribers.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.124. EMINENT DOMAIN. A telephone cooperative may exercise the power of eminent domain in the manner provided by state law for the exercise of that power by other corporations constructing or operating communication lines, facilities, or systems.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.125. ENCUMBRANCE AND DISPOSITION OF PROPERTY WITHOUT MEMBERS' AUTHORIZATION. (a) The board of a telephone cooperative may, without authorization of the members, authorize the execution and delivery of a mortgage or deed of trust of or the encumbering of any property of the cooperative, including property to be acquired and the revenues from property of the cooperative, to secure any indebtedness of the cooperative to the United States or any lending institution licensed by the United States or a state.

(b) A mortgage or deed of trust described by Subsection (a) is exempt from a tax for recording the instrument.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.126. ENCUMBRANCE, LEASE, AND DISPOSITION OF PROPERTY WITH MEMBERS' AUTHORIZATION. (a) Except as provided by Section 162.125, a telephone cooperative may not dispose of, lease, or encumber all or a major portion of its property unless the disposition, lease, or encumbrance is authorized by the affirmative vote of at least two-thirds of all the members of the cooperative.

(b) The board may, on the authorization of two-thirds of all the members of the cooperative at a members' meeting, dispose of or lease all or a major portion of its property to:

(1) another telephone cooperative;

(2) a foreign corporation doing business in this state under this chapter; or

(3) the holder of a note, bond, or other evidence of indebtedness issued to the United States or to a lending institution licensed by the United States or a state.

(c) The notice of a meeting at which a disposition or lease under Subsection (b) is to be considered must state the proposed action.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. AMENDMENT OF ARTICLES OF INCORPORATION**

Sec. 162.151. AMENDMENT OF ARTICLES OF INCORPORATION. A telephone cooperative may amend its articles of incorporation in accordance with this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.152. PRESENTATION AND APPROVAL OF PROPOSED AMENDMENT. (a) A proposed amendment to the articles of incorporation must be presented to a meeting of the members. The notice of the meeting must state the proposed amendment or must have the proposed amendment attached to it.

(b) A proposed amendment, with any changes, may be approved only on the affirmative vote of at least two-thirds of the members voting on the question at the meeting.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.153. ARTICLES OF AMENDMENT. (a) The president or vice president, on behalf of the telephone cooperative, shall execute and acknowledge the approved articles of amendment. The cooperative's seal must be affixed to the articles of amendment and attested by its secretary.

(b) The articles of amendment must state:

(1) that the articles of amendment are executed under this chapter;

(2) the name of the telephone cooperative;

(3) the address of the cooperative's principal office; and

(4) the amendment to the articles of incorporation.

(c) The president or vice president executing the articles of amendment shall make and attach to the articles an affidavit stating that the cooperative complied with this subchapter with respect to the amendment set forth in the articles.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.154. FILING OF ARTICLES OF AMENDMENT. (a) Articles of amendment shall be filed with the secretary of state in the same manner as the original articles of incorporation.

(b) The secretary of state shall charge and collect a fee of $25 for filing articles of amendment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER E. CONSOLIDATION OR MERGER OF TELEPHONE COOPERATIVES**

Sec. 162.201. CONSOLIDATION. (a) Two or more telephone cooperatives may enter into an agreement to consolidate the cooperatives. The agreement must state:

(1) the terms of the consolidation;

(2) the name of the proposed consolidated cooperative;

(3) the number of directors of the proposed consolidated cooperative;

(4) the time of the annual meeting and election; and

(5) the names of at least five persons to be directors until the first annual meeting.

(b) A consolidation agreement may be approved only on the votes of a majority of the members of each telephone cooperative at a regular meeting or at a special meeting of its members called for that purpose.

(c) Telephone cooperatives may not consolidate for the purpose of duplicating the facilities of another communication company where the other communication company is giving or is willing to give reasonably adequate communication service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.202. ARTICLES OF CONSOLIDATION. (a) The articles of consolidation must:

(1) conform substantially to original articles of incorporation of a telephone cooperative; and

(2) be executed, acknowledged, filed, and recorded in the same manner as original articles of incorporation.

(b) The directors named in the consolidation agreement shall as incorporators sign and acknowledge the articles of consolidation.

(c) The secretary of state shall charge and collect a fee of

$50 for filing articles of consolidation.

(d) When the secretary of state accepts the articles of consolidation for filing and recording and issues a certificate of consolidation, the proposed consolidated telephone cooperative described in the articles under its designated name exists as a body corporate, with all the powers of a telephone cooperative originally organized under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.203. MERGER. (a) One or more telephone cooperatives may merge into another cooperative as provided by this section and Section 162.204.

(b) The proposition for the merger and proposed articles of merger must be submitted at a meeting of the members of each merging cooperative and the surviving cooperative. A copy of the proposed articles of merger must be attached to the notice of each meeting.

(c) A proposed merger and proposed articles of merger, with any amendments, may be approved only on the affirmative vote of at least two-thirds of the members of each cooperative voting on the proposed merger and articles.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.204. ARTICLES OF MERGER. (a) The president or vice president of each telephone cooperative, on behalf of the telephone cooperative, shall execute and acknowledge the approved articles of merger. The cooperative's seal must be affixed to the articles of merger and attested by its secretary.

(b) The articles of merger must state:

(1) that they are executed under this chapter;

(2) the name of each merging cooperative and the address of its principal office;

(3) the name of the surviving cooperative and the address of its principal office;

(4) that each merging cooperative and the surviving cooperative agree to the merger;

(5) the name and address of each director of the surviving cooperative;

(6) the terms of the merger and the manner in which the merger will be carried out, including the manner in which members of the merging cooperatives become or may become members of the surviving cooperative;

(7) the duration of the surviving cooperative; and

(8) the purpose for which the surviving cooperative is formed.

(c) The articles of merger may contain any provision consistent with this chapter considered appropriate for the conduct of the business of the surviving cooperative. The president or vice president of each cooperative executing the articles of merger shall make and attach to the articles an affidavit stating that the cooperative complied with this subchapter with respect to the articles.

(d) The original and a copy of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that the articles conform to law, the secretary of state, on payment of a fee of $50, shall:

(1) file and record the articles of merger;

(2) issue a certificate of merger; and

(3) attach to the certificate of merger the copy of the articles of merger and deliver the certificate and attached copy to the surviving cooperative or its representative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.205. EFFECT OF CONSOLIDATION OR MERGER. (a) In a consolidation the existence of each telephone cooperative ceases and the articles of consolidation are considered to be the articles of incorporation of the new cooperative. In a merger the separate existence of each merging telephone cooperative ceases and the articles of incorporation of the surviving cooperative are considered to be amended to the extent, if any, that amendment is provided for in the articles of merger.

(b) All the rights, privileges, immunities, property, and applications for membership of each of the consolidating or merging cooperatives are transferred to and vested in the new or surviving cooperative, except that this chapter does not relieve a cooperative of the obligation to comply with the applicable provisions of Title

2.

(c) The new or surviving cooperative is liable for all the liabilities and obligations of the consolidating or merging cooperatives. A claim existing or action or proceeding pending by or against a consolidating or merging cooperative may be prosecuted as if the consolidation or merger had not taken place, and the new or surviving cooperative may be substituted in the place of the consolidating or merging cooperative. The consolidation or merger does not impair the rights of creditors of or liens on the property of a consolidating or merging cooperative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. CONVERSION OF CORPORATION INTO TELEPHONE COOPERATIVE

Sec. 162.251. CONVERSION OF CORPORATION INTO TELEPHONE COOPERATIVE. (a) A corporation organized under the laws of this state that furnishes or is authorized to furnish communication service may be converted into a telephone cooperative in accordance with this subchapter. On conversion, the corporation is subject to this chapter as if it had been originally organized under this chapter.

(b) The proposition for the conversion and proposed articles of conversion must be submitted at a meeting of the members or stockholders of the corporation or, in the case of a corporation that does not have members or stockholders, at a meeting of the incorporators of the corporation. A copy of the proposed articles of conversion must be attached to the notice of the meeting.

(c) A proposed conversion and proposed articles of conversion, with any amendments, may be approved only on the affirmative vote of:

(1) at least two-thirds of the members of the corporation voting on the proposed conversion and articles;

(2) the holders of at least two-thirds of the shares of the capital stock of the corporation represented at the meeting and voting on the proposition and articles, if the corporation is a stock corporation; or

(3) at least two-thirds of the corporation's incorporators, if the corporation does not have members or outstanding shares of capital stock.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.252. ARTICLES OF CONVERSION. (a) The president or vice president, on behalf of the corporation, shall execute and acknowledge the approved articles of conversion. The corporation's seal must be affixed to the articles and attested by its secretary.

(b) The articles of conversion must state:

(1) that they are executed under this chapter;

(2) the name of the corporation and the address of its principal office before its conversion into a telephone cooperative;

(3) the law under which the corporation was organized;

(4) that the corporation elects to become a cooperative, nonprofit corporation subject to this chapter;

(5) the corporation's name as a cooperative;

(6) the address of the principal office of the cooperative;

(7) the name and address of each director of the cooperative;

(8) the manner in which a member, stockholder, or incorporator of the corporation becomes or may become a member of the cooperative;

(9) the duration of the cooperative; and

(10) the purpose for which the cooperative is formed.

(c) The articles of conversion may contain any provision consistent with this chapter considered appropriate for the conduct of the business of the cooperative. The president or vice president executing the articles of conversion shall make and attach to the articles an affidavit stating that the corporation complied with this section with respect to the articles. The articles of conversion are considered to be the articles of incorporation of the cooperative.

(d) The original and a copy of the articles of conversion shall be delivered to the secretary of state. If the secretary of state finds that the articles conform to law, the secretary of state, on payment of a fee of $50, shall:

(1) file and record the articles of conversion;

(2) issue a certificate of conversion; and

(3) attach to the certificate of conversion the copy of the articles of conversion and deliver the certificate and attached copy to the cooperative or its representative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.253. CONSOLIDATION AND CONVERSION OF CORPORATIONS INTO TELEPHONE COOPERATIVE. (a) Two or more corporations organized under the laws of this state that furnish or are authorized to furnish communication service may, if otherwise permitted to consolidate under state law, consolidate and convert into a telephone cooperative in accordance with this subchapter. On consolidation and conversion, the new cooperative is subject to this chapter as if it had been originally organized under this chapter.

(b) The proposition for the consolidation and conversion and the proposed articles of consolidation and conversion, with any amendments, must be approved by each corporation in accordance with:

(1) the law under which it was organized; and

(2) Sections 162.251 and 162.252.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.254. ARTICLES OF CONSOLIDATION AND CONVERSION. (a) The approved articles of consolidation and conversion:

(1) shall be executed, acknowledged, and sealed as prescribed by Section 162.252 and by the law under which the consolidating and converting corporations were organized;

(2) must:

(A) state that they are executed under this chapter and the law under which the corporations were organized and that each consolidating corporation elects that the new corporation be a cooperative; and

(B) contain all other information required by the law under which the corporations were organized; and

(3) may contain any provision consistent with this chapter considered appropriate for the conduct of the business of the cooperative.

(b) The president or vice president executing the articles of consolidation and conversion shall make and attach to the articles an affidavit stating that the corporations complied with this section and Section 162.253 and with the applicable provisions of the law under which the consolidating corporations were organized with respect to the articles. The articles of consolidation and

conversion are considered to be the articles of incorporation of the cooperative and shall be filed in accordance with the provisions both of this chapter and of the law under which the consolidating corporations were organized.

(c) The original and a copy of the articles of consolidation and conversion shall be delivered to the secretary of state. If the secretary of state finds that the articles conform to law, the secretary of state, on payment of a fee of $50, shall:

(1) file and record the articles of consolidation and conversion;

(2) issue a certificate of consolidation and conversion; and

(3) attach to the certificate the copy of the articles and deliver the certificate and attached copy to the cooperative or its representative.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER G. DISSOLUTION

Sec. 162.301. DISSOLUTION. (a) A telephone cooperative may be dissolved by a two-thirds vote of all the members of the cooperative. The vote must be taken at a regular meeting or at a special meeting of its members called for that purpose. Votes must be cast in person.

(b) A certificate of dissolution must be:

(1) signed by the president or vice president and attested by the secretary, certifying to the dissolution and stating that the officers have been authorized by a vote of the members under Subsection (a) to execute and file the certificate; and

(2) executed, acknowledged, filed, and recorded in the same manner as original articles of incorporation of a telephone cooperative.

(c) The cooperative is dissolved when the secretary of state accepts the certificate of dissolution for filing and recording and issues a certificate of dissolution.

(d) The secretary of state shall charge and collect:

(1) a fee of $5 for filing a certificate of election to dissolve; and

(2) a fee of $5 for filing articles of dissolution.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.302. EXISTENCE FOLLOWING DISSOLUTION. (a) A dissolved telephone cooperative continues to exist to:

(1) satisfy existing liabilities or obligations;

(2) collect or liquidate its assets; and

(3) take any other action required to adjust and wind up its business and affairs.

(b) A dissolved telephone cooperative may sue and be sued in its corporate name.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.303. DISTRIBUTION OF NET ASSETS ON DISSOLUTION. Assets of a dissolved telephone cooperative that remain after all liabilities or obligations of the cooperative have been satisfied shall be distributed as follows:

(1) first, to patrons for the pro rata return of amounts standing to their credit because of their patronage; and

(2) second, to members for the pro rata repayment of membership fees.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 162.304. DISSOLUTION OF DEFECTIVELY INCORPORATED TELEPHONE COOPERATIVE. (a) A telephone cooperative that purports to have been incorporated or reincorporated under this chapter but that has not complied with a requirement for legal corporate existence may file a certificate of dissolution in the same manner as a validly incorporated telephone cooperative.

(b) The certificate of dissolution may be authorized by a majority of the incorporators or directors at a meeting called by an incorporator and held at the principal office of the cooperative named in the articles of incorporation.

(c) The incorporator calling the meeting must give at least ten days' notice of the meeting by mail to the last known post office address of each incorporator or director.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 163. JOINT POWERS AGENCIES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 163.001. DEFINITIONS. In this chapter:

(1) "Electric facility" means a facility necessary or incidental to generating or transmitting electric power and energy, including:

(A) a generating unit or plant or a plant site;

(B) transmission lines;

(C) a right-of-way or other right relating to a facility; and

(D) property and equipment.

(2) "Entity" means a person who engages in the authorized generation, transmission, or distribution of electric energy for sale to the public.

(3) "Private entity" means an entity that is not a public entity.

(4) "Public entity" means an entity that is an agency or political subdivision of this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. COOPERATION BY PUBLIC AND PRIVATE ENTITIES

Sec. 163.011. EFFECT OF SUBCHAPTER. This subchapter does not affect:

(1) the statutory purposes prescribed by state law relating to creating, establishing, or operating an entity that co-owns a facility;

(2) an entity's rights or powers in effect on August 27, 1973, relating to the generation, transmission, distribution, or sale of electric power and energy; or

(3) a contract in effect on August 27, 1973.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.012. AUTHORITY TO MAKE AGREEMENTS. Public and private entities may by agreement jointly plan, finance, acquire, construct,

own, operate, and maintain electric facilities to:

(1) achieve economies of scale in providing electric energy to the public;

(2) promote the economic development of this state and its natural resources; and

(3) meet the state's future power needs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.013. GENERAL RIGHTS, POWERS, AND DUTIES OF ENTITIES. (a) A participating entity may:

(1) use its means and assets to plan, acquire, construct, own, operate, and maintain its interest in an electric facility;

(2) issue bonds and other securities to raise money for a purpose described by Subdivision (1) in the same manner and to the same extent and subject to the same conditions as would be applicable if the entity had sole ownership of the electric facility;

(3) acquire, for the use and benefit of each participating entity, land, easements, and property for an electric facility by purchase or by exercising the power of eminent domain; and

(4) transfer or otherwise convey the acquired land, property, or property interest or otherwise cause the land, property, or interest to become vested in other participating entities to the extent to which and in the manner in which the participating entities agree.

(b) Each participating entity is a cotenant or co-owner of the electric facility and in relation to the entity's undivided interest in the facility has each right, privilege, exemption, power, duty, and liability the entity would have had if the entity had sole ownership.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.014. USE OF EMINENT DOMAIN. (a) A participating entity has the power of eminent domain to be exercised as provided by this section.

(b) The use of eminent domain authority by a participating entity is governed by the law relating to an eminent domain proceeding involving a municipality in this state.

(c) A participating entity may acquire a fee title to the condemned real property.

(d) A participating entity may not use eminent domain authority to acquire:

(1) an interest in an electric facility that belongs to another entity; or

(2) an interest in real property to drill, mine, or produce from that property oil, gas, geothermal resources, geothermal/geopressured resources, or lignite, coal, sulphur, uranium, plutonium, or other minerals that belong to another person regardless of whether the material is in place or is in the process of being drilled, mined, or produced.

(e) Subsection (d) does not affect the authority of a participating entity to acquire full title to real property for a plant site and any related surface installation or equipment, including a cooling reservoir.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.015. TAXATION. (a) A participating private entity shall render for ad valorem taxation its undivided fractional interest in a jointly owned electric facility. An ad valorem or similar tax shall be imposed separately against the undivided interest of the participating private entity.

(b) A tax or assessment, including an excise tax or sales and use tax, attributable to a property or service bought, sold, leased, or used to construct, maintain, repair, or operate a jointly owned electric facility shall be imposed separately against each participating entity in proportion to the entity's respective undivided interest in the facility.

(c) A participating entity is not liable for a tax or assessment attributable to another participating entity under Subsection (a) or (b).

(d) A participating entity is entitled to each constitutional or statutory ad valorem or other tax exemption attributable to the jointly owned electric facility or to a property or service bought, sold, leased, or used to construct, maintain, repair, or operate the facility to the extent the entity would have been exempt from the tax if the entity's undivided interest were an entire interest in the

facility or in the property or service. The entity is entitled to any applicable exemption certificate or statement provided by law to claim or prove the exemption.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.016. INSURANCE. A participating entity may:

(1) contract for insurance, including specialized insurance for property and risks relating to the ownership, operation, and maintenance of electric facilities;

(2) contract for insurance for the use and benefit of each of the other participating entities as though the insurance was for the sole benefit of the contracting entity; and

(3) cause the rights of the other participating entities to be protected under the contract in accordance with each entity's undivided interest or entitlement under any applicable agreement between the entities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. MUNICIPAL POWER AGENCIES

Sec. 163.051. DEFINITIONS. In this subchapter:

(1) "Agency" means a municipal power agency created under this subchapter.

(2) "Bond" includes a note, but does not include a nonnegotiable purchase money note issued under Section 163.067.

(3) "Concurrent ordinance" means an ordinance or order adopted under this subchapter by two or more public entities that relates to the creation or re-creation of a municipal power agency.

(4) "Obligations" means revenue bonds or notes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.052. CONSTRUCTION. This subchapter shall be liberally construed to carry out its purpose.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.053. CONFLICTS WITH OTHER LAW. This subchapter prevails to the extent of a conflict between this subchapter and any other law, including:

(1) a law regulating the affairs of a municipal corporation; or

(2) a home-rule charter provision.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.054. CREATION OF AGENCY. (a) Public entities may create an agency by concurrent ordinances subject to voter approval.

(b) A public entity may join in the creation of an agency under this subchapter only if on May 8, 1975, and at the time the concurrent ordinance is adopted, the entity was engaged in the authorized generation of electric energy for sale to the public. This subsection does not prohibit a public entity from disposing of its electric generating capabilities after creation of the agency.

(c) An agency is a:

(1) separate municipal corporation;

(2) political subdivision of this state; and

(3) political entity and corporate body.

(d) An agency may not impose a tax but has all the other powers relating to municipally owned utilities and provided by law to a municipality that owns a public utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.055. RE-CREATION OF AGENCY. (a) The public entities that create an agency may by concurrent ordinances re-create the agency by adding or deleting, or both, a public entity.

(b) The public entities may not re-create an agency if the re-creation will impair an agency obligation.

(c) Re-creation by adding a public entity is subject to voter approval in accordance with Section 163.058.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.056. NOTICE. (a) The governing body of each public

entity shall publish notice of its intention to create an agency once a week for two consecutive weeks.

(b) The first publication must appear before the 14th day before the date set for passage of the concurrent ordinance.

(c) The notice must state:

(1) the date, time, and location at which the governing body proposes to enact the concurrent ordinance; and

(2) that an agency will be created on the date on which the concurrent ordinances take effect.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.057. CONTENTS OF CONCURRENT ORDINANCE. A concurrent ordinance creating an agency under Section 163.054 or re-creating an agency under Section 163.055 must, as adopted by each public entity:

(1) contain identical provisions;

(2) define the boundaries of the agency to include the territory within the boundaries of each participating public entity;

(3) designate the name of the agency; and

(4) designate the number, place, initial term, and manner of appointment of directors in accordance with Section 163.059.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.058. ELECTION. (a) An agency may not be created unless the creation is approved by a majority of the qualified voters of each public entity creating the agency at an election called and held for that purpose.

(b) An agency may not be re-created by addition of a public entity unless the re-creation is approved by a majority of the qualified voters of the additional public entity at an election called and held for that purpose.

(c) Notice of an election under this section shall be given in accordance with Section 1251.003, Government Code. The election shall be called and held in accordance with:

(1) the Election Code;

(2) Chapter 1251, Government Code; and

(3) this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.404, eff. Sept. 1, 2001.

Sec. 163.059. BOARD OF DIRECTORS. (a) The agency shall be governed by a board of directors. The board is responsible for the management, operation, and control of the property belonging to the agency.

(b) The board must include at least four directors. Each director must be appointed by place by the governing bodies of the participating public entities. Each participating public entity is entitled to appoint at least one director.

(c) Directors must serve staggered terms. Successor directors are appointed in the same manner as the original appointees.

(d) To qualify to serve as a director, a person must be a qualified voter and reside in the boundaries of the appointing public entity when the person takes the constitutional oath of office.

(e) An employee, officer, or member of the governing body of a public entity may serve as a director but may not have a personal interest in a contract executed by the agency other than as an employee, officer, or member of the governing body of the public entity.

(f) Directors serve without compensation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.060. POWERS. (a) An agency may not engage in any utility business other than the generation, transmission, and sale or exchange of electric energy to:

(1) a participating public entity; or

(2) a private entity that owns jointly with the agency an electric generating facility in this state.

(b) The agency may:

(1) perform any act necessary to the full exercise of the agency's powers;

(2) enter into a contract, lease, or agreement with or accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of

this state; or

(C) public or private person;

(3) sell, lease, convey, or otherwise dispose of any right, interest, or property the agency considers to be unnecessary for the efficient maintenance or operation of its electric facilities;

(4) use the uniform system of accounts prescribed for utilities and licenses by the Federal Energy Regulatory Commission; and

(5) adopt rules to govern the operation of the agency and its employees, facilities, and service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.061. CONSTRUCTION CONTRACTS. (a) Except as provided by Subsection (c), an agency may award a contract for construction of an improvement that involves the expenditure of more than $20,000 only on the basis of competitive bids.

(b) The agency shall publish notice of intent to receive bids once a week for two consecutive weeks in a newspaper of general circulation in this state. The first publication must appear before the 14th day before the date bids are to be received.

(c) An entity that has joint ownership of the improvement to be constructed or that is an agent of a joint owner shall award a contract using the entity's contracting procedures.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.062. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) An agency may participate through appropriate contracts in power pooling and power exchange agreements with other entities through direct or indirect system interconnections.

(b) An entity that participates with an agency under this section may:

(1) purchase electric energy from the agency;

(2) sell or dispose of electric energy to the agency; or

(3) exchange electric energy with the agency.

(c) An entity payment for electric energy purchased from the agency is an operating expense of the entity's electric system.

(d) An agency contract to sell or exchange electric energy may

require the purchaser to pay for the electric energy regardless of whether the electric energy is produced or delivered.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.063. RATES AND CHARGES. (a) An agency may establish and maintain rates and charges for electric power and energy the agency delivers, transmits, or exchanges. The rates and charges must:

(1) be reasonable and in accordance with prudent utility practices;

(2) be based on periodic cost of service studies and subject to modification, unless such a basis for rates and charges is waived by the purchaser by contract; and

(3) be developed to recover the agency's cost of producing and transmitting the electric power and energy, as applicable, which cost must include the amortization of capital investment.

(b) Notwithstanding Subsection (a), this state reserves its power to regulate an agency's rates and charges for electric energy supplied by the agency's facilities.

(c) Until obligations issued under this subchapter have been paid and discharged, with all interest on the obligations, interest on unpaid interest installments on the obligations, and other connected and incurred costs or expenses, this state pledges to and agrees with the purchasers and successive holders of the obligations that it will not:

(1) limit or alter the power of an agency to establish and collect rates and charges under this section sufficient to pay:

(A) necessary operational and maintenance expenses;

(B) interest and principal on obligations issued by the agency;

(C) sinking funds and reserve fund payments; and

(D) other charges necessary to fulfill the terms of any agreement; or

(2) take any action that will impair the rights or remedies of the holders of the obligations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.064. REVENUE BONDS. (a) The agency may issue revenue bonds to accomplish the purposes of the agency.

(b) The agency may pledge to the payment of the obligations the revenues of all or part of its electric facilities, including facilities acquired after the obligations are issued. However, operating and maintenance expenses, including salaries and labor, materials, and repairs of electric facilities necessary to render efficient service constitute a first lien on and charge against the pledged revenue.

(c) The agency may set aside from the proceeds from the sale of the obligations amounts for payment into the interest and sinking fund and reserve fund, and for interest and operating expenses during construction and development, as specified in the proceedings authorizing the obligations.

(d) Obligation proceeds may be invested, pending their use, in securities, interest-bearing certificates, or time deposits as specified in the authorizing proceedings.

(e) Agency obligations are authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association; and

(5) an insurance company.

(f) The obligations, when accompanied by all appurtenant, unmatured coupons and to the extent of the lesser of their face value or market value, are eligible to secure the deposit of public funds of this state, a political subdivision of this state, and any other political corporation of this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.065. REFUNDING BONDS. The agency may issue refunding bonds.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.066. ISSUANCE, FORM, AND PROVISIONS OF BONDS. (a) Agency bonds that are payable from agency revenues or anticipated bond proceeds and the records relating to their issuance must be

submitted to the attorney general for examination before delivery.

(b) The bonds:

(1) must mature serially or otherwise not more than 50 years after the date of issuance;

(2) may be made redeemable before maturity at the time and at the price or prices set by the agency; and

(3) may be sold at public or private sale under the terms and for the price the agency determines to be in the best interest of the agency.

(c) The bonds must be signed by the presiding officer or assistant presiding officer of the agency, be attested by the secretary, and bear the seal of the agency. The signatures may be printed on the bonds if authorized by the agency, and the seal may be impressed or printed on the bonds. The agency may adopt or use for any purpose the signature of an individual who has been an officer of the agency, regardless of whether the individual has ceased to be an officer at the time the bonds are delivered to the purchaser.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.067. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) The agency may issue nonnegotiable purchase money notes to acquire land or fuel resources.

(b) Nonnegotiable purchase money notes are:

(1) payable in installments;

(2) secured by the property acquired with the notes or other collateral the agency substitutes; and

(3) not a security or agency obligation.

(c) Nonnegotiable purchase money notes may be further secured by a promise to issue bonds or bond anticipation notes to pay the purchase money notes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.068. BOND ANTICIPATION NOTES. (a) The agency may issue bond anticipation notes:

(1) for any purpose for which the agency may issue bonds; or

(2) to refund previously issued bond anticipation notes or

nonnegotiable purchase money notes.

(b) Bond anticipation notes are subject to the limitations and conditions prescribed by this subchapter for bonds.

(c) The agency may contract with purchasers of bond anticipation notes that the proceeds of one or more series of bonds will be used to pay or refund the notes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C-1. ALTERNATE GOVERNANCE FOR CERTAIN MUNICIPAL POWER AGENCIES

Sec. 163.071. DEFINITIONS. In this subchapter:

(1) "Agency" means a municipal power agency for which concurrent ordinances are adopted under Section 163.073.

(2) "Bond" includes a note, but does not include a nonnegotiable purchase money note issued under Section 163.067 or 163.087.

(3) "Concurrent ordinance" means an ordinance or order adopted under this subchapter by all of the participating public entities of an agency.

(4) "Obligations" means revenue bonds or notes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.072. CONSTRUCTION. This subchapter shall be liberally construed to carry out its purpose.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.073. APPLICABILITY; ALTERNATE GOVERNANCE. (a) This subchapter applies to a municipal power agency created by two or more public entities under Subchapter C or a predecessor statute, including an agency re-created under Section 163.055 or a predecessor statute.

(b) The participating public entities of a municipal power agency may by concurrent ordinance elect to apply this subchapter to

the agency as an alternative to Subchapter C.

(c) Concurrent ordinances described by this section must, as adopted by each public entity:

(1) contain identical provisions; and

(2) state that the public entity has elected that the agency shall, on and after the date designated in the ordinance, be governed by the provisions of this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.074. CONFLICTS WITH OTHER LAW. This subchapter prevails to the extent of a conflict between this subchapter and any other law, including:

(1) a law regulating the affairs of a municipal corporation; or

(2) a home-rule charter provision.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.075. NATURE OF AGENCY. (a) An agency is a:

(1) separate municipal corporation;

(2) political subdivision of this state; and

(3) political entity and corporate body.

(b) An agency may not impose a tax but has all the other powers relating to municipally owned utilities and provided by law to a municipality that owns a public utility.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.076. ADDITION OR REMOVAL OF PUBLIC ENTITIES. (a) The public entities that created or re-created an agency may by concurrent ordinances:

(1) add a new public entity as a participating public entity in the agency; or

(2) remove a public entity from participation in the

agency.

(b) Concurrent ordinances described by this section must, as adopted by each public entity:

(1) contain identical provisions;

(2) define the boundaries of the agency to include the territory within the boundaries of each participating public entity;

(3) designate the name of the agency; and

(4) designate the number, place, terms, and manner of appointment of directors, as provided by Section 163.078.

(c) The public entities may not add or remove a public entity if the addition or removal will impair an agency obligation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.077. ELECTION FOR ADDITION OF PUBLIC ENTITY. (a) Public entities may not adopt concurrent ordinances under Section 163.076 adding a participating public entity unless the addition has been approved by a majority of the qualified voters of the additional public entity at an election called and held for that purpose.

(b) Notice of an election under this section shall be given in accordance with Section 1251.003, Government Code. The election shall be called and held in accordance with:

(1) the Election Code;

(2) Chapter 1251, Government Code; and

(3) this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.078. BOARD OF DIRECTORS. (a) The agency shall be governed by a board of directors.

(b) The board is responsible for the management, operation, and control of the property belonging to the agency.

(c) The board may by resolution delegate management or operational authority to an officer, employee, or committee of the agency, except that the delegation may not include legislative functions, including the sale or purchase of agency properties, the exercise of the power of eminent domain, the adoption or amendment of

budgets and rates, or the issuance of debt. The board may repeal a resolution delegating management or operational authority:

(1) if the board is composed of six or more directors, by the affirmative vote of six directors, including the affirmative vote of at least one director appointed by each participating public entity; or

(2) if the board is composed of fewer than six directors, by the affirmative vote of at least one director appointed by each participating public entity.

(d) The board must include at least four directors. Each director must be appointed by place by the governing bodies of the participating public entities. Each participating public entity is entitled to appoint at least one director.

(e) Directors must serve staggered terms. Successor directors are appointed in the same manner as the original appointees.

(f) To qualify to serve as a director, when the person takes the constitutional oath of office, the person must be:

(1) a qualified voter and reside in the boundaries of the appointing public entity;

(2) an employee, officer, or member of the governing body of the appointing public entity; or

(3) a retail electric customer of the appointing public entity.

(g) Except as provided by Subsections (h) and (i), an employee, officer, or member of the governing body of a participating public entity serving as a director may not have a personal interest in a contract executed by the agency other than as an employee, officer, or member of the governing body of the public entity.

(h) An employee, officer, or member of the governing body of a participating public entity serving as a director is considered to be a local public official for the purposes of Chapter 171, Local Government Code.

(i) An agency and a participating public entity are considered to be political subdivisions for the purposes of Section 131.903, Local Government Code.

(j) Directors serve without compensation. A director who is an employee, officer, or member of the governing body of a participating public entity may continue to receive from the public entity the compensation associated with the office or employment.

(k) A director serves at the discretion of the appointing

public entity. The governing body of a public entity that appoints a director may remove the director from office at any time with or without cause. The governing body shall promptly appoint a new director to serve the remainder of the unexpired term of the removed director.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.079. SEPARATE BOARDS OF DIRECTORS. (a) The public entities that created or re-created an agency may amend the creating concurrent ordinances to provide for the agency to be governed by one board of directors for the agency's generation system and another board of directors for the agency's transmission system.

(b) The concurrent ordinances as amended must contain identical provisions.

(c) Section 163.078 applies to the separate boards and to the directors of the separate boards, except that:

(1) there is no minimum number of directors for a board established under this section;

(2) each participating public entity is not entitled to appoint a director to each board of an agency; and

(3) the repeal of a resolution under Section 163.078(c) does not require approval by at least one director appointed by each participating public entity.

(d) Separate boards established under this section are not required to have the same number of directors.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.080. POWERS. (a) An agency may not engage in any utility business other than:

(1) the generation and sale or exchange of electric energy to:

(A) a participating public entity; or

(B) a private entity that owns jointly with the agency an electric generating facility in this state; or

(2) the provision of wholesale transmission service under

Chapter 35.

(b) The agency may:

(1) perform any act necessary to the full exercise of the agency's powers;

(2) enter into a contract, lease, or agreement with or accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of this state; or

(C) public or private person;

(3) use the uniform system of accounts prescribed for utilities and licenses by the Federal Energy Regulatory Commission; and

(4) adopt rules to govern the operation of the agency and its employees, facilities, and service.

(c) The agency may sell, lease, convey, or otherwise dispose of any right, interest, or property of the agency, including its electric facilities. A sale, lease, conveyance, or other disposition having a value of more than $10 million shall require prior approval of each participating public entity, unless the public entities have agreed otherwise by written contract or the property was purchased by the agency for mining purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.081. CONSTRUCTION CONTRACTS. (a) Except as provided by Subsection (c), an agency may award a contract for construction of an improvement that involves the expenditure of more than $20,000 only on the basis of competitive bids.

(b) The agency shall publish notice of intent to receive bids once a week for two consecutive weeks in a newspaper of general circulation in this state. The first publication must appear before the 14th day before the date bids are to be received.

(c) An entity that has joint ownership of the improvement to be constructed or that is an agent of a joint owner shall award a contract using the entity's contracting procedures.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.082. SALE OR EXCHANGE OF ELECTRIC ENERGY. (a) An agency may participate through appropriate contracts in power pooling and power exchange agreements with other entities through direct or indirect system interconnections.

(b) An entity that participates with an agency under this section may:

(1) purchase electric energy from the agency;

(2) sell or dispose of electric energy to the agency; or

(3) exchange electric energy with the agency.

(c) An entity payment for electric energy purchased from the agency is an operating expense of the entity's electric system.

(d) An agency contract to sell or exchange electric energy may require the purchaser to pay for the electric energy regardless of whether the electric energy is produced or delivered.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.083. RATES AND CHARGES. (a) An agency may establish and maintain rates and charges for electric power and energy the agency delivers, transmits, or exchanges. The rates and charges must:

(1) be reasonable and in accordance with prudent utility practices;

(2) be based on periodic cost of service studies and subject to modification, unless such a basis for rates and charges is waived by the purchaser by contract; and

(3) be developed to recover the agency's cost of producing and transmitting the electric power and energy, as applicable, which cost must include the amortization of capital investment.

(b) Notwithstanding Subsection (a), this state reserves its power to regulate an agency's rates and charges for electric energy supplied by the agency's facilities.

(c) Until obligations issued under this chapter have been paid and discharged, with all interest on the obligations, interest on unpaid interest installments on the obligations, and other connected and incurred costs or expenses, this state pledges to and agrees with

the purchasers and successive holders of the obligations that it will not:

(1) limit or alter the power of an agency to establish and collect rates and charges under this section sufficient to pay:

(A) necessary operational and maintenance expenses;

(B) interest and principal on obligations issued by the agency;

(C) sinking funds and reserve fund payments; and

(D) other charges necessary to fulfill the terms of any agreement; or

(2) take any action that will impair the rights or remedies of the holders of the obligations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.084. REVENUE BONDS. (a) The agency may issue revenue bonds to accomplish the purposes of the agency.

(b) The agency may pledge to the payment of the obligations the revenues of all or part of its electric facilities, including facilities acquired after the obligations are issued. However, operating and maintenance expenses, including salaries and labor, materials, and repairs of electric facilities necessary to render efficient service, constitute a first lien on and charge against the pledged revenue.

(c) The agency may set aside from the proceeds from the sale of the obligations amounts for payment into the interest and sinking fund and reserve fund, and for interest and operating expenses during construction and development, as specified in the proceedings authorizing the obligations.

(d) Obligation proceeds may be invested, pending their use, in securities, interest-bearing certificates, or time deposits as specified in the authorizing proceedings.

(e) Agency obligations are authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association; and

(5) an insurance company.

(f) The obligations, when accompanied by all appurtenant, unmatured coupons and to the extent of the lesser of their face value or market value, are eligible to secure the deposit of public funds of this state, a political subdivision of this state, and any other political corporation of this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.085. REFUNDING BONDS. The agency may issue refunding bonds.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.086. ISSUANCE, FORM, AND PROVISIONS OF BONDS. (a) Agency bonds that are payable from agency revenues or anticipated bond proceeds and the records relating to their issuance must be submitted to the attorney general for examination before delivery.

(b) The bonds:

(1) must mature serially or otherwise not more than 50 years after the date of issuance;

(2) may be made redeemable before maturity at the time and at the price or prices set by the agency; and

(3) may be sold at public or private sale under the terms and for the price the agency determines to be in the best interest of the agency.

(c) The bonds must be signed by the presiding officer or assistant presiding officer of the agency, be attested by the secretary, and bear the seal of the agency. The signatures may be printed on the bonds if authorized by the agency, and the seal may be impressed or printed on the bonds. The agency may adopt or use for any purpose the signature of an individual who has been an officer of the agency, regardless of whether the individual has ceased to be an officer at the time the bonds are delivered to the purchaser.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.087. NONNEGOTIABLE PURCHASE MONEY NOTES. (a) The agency may issue nonnegotiable purchase money notes to acquire land or fuel resources.

(b) Nonnegotiable purchase money notes are:

(1) payable in installments;

(2) secured by the property acquired with the notes or other collateral the agency substitutes; and

(3) not a security or agency obligation.

(c) Nonnegotiable purchase money notes may be further secured by a promise to issue bonds or bond anticipation notes to pay the purchase money notes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.088. BOND ANTICIPATION NOTES. (a) The agency may issue bond anticipation notes:

(1) for any purpose for which the agency may issue bonds; or

(2) to refund previously issued bond anticipation notes or nonnegotiable purchase money notes.

(b) Bond anticipation notes are subject to the limitations and conditions prescribed by this subchapter for bonds.

(c) The agency may contract with purchasers of bond anticipation notes that the proceeds of one or more series of bonds will be used to pay or refund the notes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.089. PUBLIC SECURITIES. (a) It is a public purpose for a public entity that has participated in the creation of an agency to pay costs of planning, acquisition, construction, ownership, operation, and maintenance of electric facilities.

(b) A public entity may issue public securities, as defined by Section 1201.002(2), Government Code, including bonds, notes, or other forms of indebtedness, in the principal amount approved by the governing body of the public entity, for the purpose of financing electric facilities or improvements to electric facilities to be

owned or operated by the agency or otherwise in furtherance of a purpose described by this section.

(c) A public entity and an agency may agree in a contract, or by other official action of the public entity and agency, to terms and conditions governing the use by the agency of the proceeds of the public securities issued by a public entity for a purpose described by this section.

(d) A contract or other official action described by Subsection (c) may include provisions with respect to, and conclusively establish sufficient consideration for, the use of the proceeds. The consideration may include the right to:

(1) use the financed facilities or portions of the facilities;

(2) receive output from the financed facilities; or

(3) receive an ownership interest in the financed facilities upon the dissolution of the agency or an undivided interest in the financed facilities at the time a public entity funds facility improvements.

(e) A contract or other official action described by Subsection (c) may contain other terms and extend for any period on which all of the parties agree.

(f) A public security issued for the purposes described by this section may include:

(1) debt obligations issued in accordance with Chapter 1207, 1331, 1371, 1431, or 1502, Government Code, or Chapter 271, Local Government Code; or

(2) other types or forms of debt that the public entity is authorized to issue.

(g) Each participating public entity may exercise any power of an issuer under Chapter 1371, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

Sec. 163.090. DISSOLUTION. (a) The participating public entities of an agency may by concurrent ordinance dissolve the agency.

(b) Concurrent ordinances dissolving an agency must:

(1) contain identical provisions;

(2) state that the agency will be dissolved upon the winding up of agency affairs;

(3) direct the board or boards of the agency to wind up the business and affairs of the agency and to inform the participating public entities by resolution when the winding up of the business and affairs of the agency is complete; and

(4) state the date on which the dissolution takes effect, provided that the date provides sufficient time for the board or boards of the agency to wind up agency affairs.

(c) The participating public entities may not dissolve an agency if the dissolution will impair the rights or remedies of holders of obligations issued by the agency.

(d) The dissolved agency continues to exist to:

(1) satisfy existing liabilities or obligations;

(2) collect, distribute, or liquidate its assets; and

(3) take any other action required to adjust and wind up its business and affairs.

(e) The assets of the dissolved agency that remain after all liabilities or obligations of the agency have been satisfied shall be distributed to the public entities that created the agency. The public entities shall establish the method of distribution by agreement.

(f) An agreement between a public entity and an agency entered into before September 1, 2015, regarding the distribution of the agency's assets after dissolution is enforceable according to the terms of the agreement, regardless of a provision to the contrary in this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 3, eff. September 1, 2015.

**SUBCHAPTER D. AGENCY RECEIVING POWER THROUGH INTERSTATE SYSTEM**

Sec. 163.101. CREATION. (a) Notwithstanding Section 163.054, two or more public entities may create a municipal power agency governed by Subchapter C if the entities:

(1) are municipalities;

(2) are engaged in the distribution and sale of electric energy to the public; and

(3) receive a major portion of their power through or from

an interstate electric system.

(b) The entities must comply with the provisions of Subchapter C relating to the creation of a municipal power agency, including the concurrent ordinance and election provisions.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.102. POWERS. (a) An agency created under this subchapter may:

(1) generate and transmit electric power and energy inside and outside this state;

(2) sell, purchase, or exchange electric power and energy with entities inside or outside this state; and

(3) construct or acquire new steam electric generating facilities, but only if the facilities are owned jointly by the agency and one or more private entities.

(b) This section does not authorize an agency created under this subchapter to engage in the distribution and retail sale of electric power and energy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. ELECTRIC COOPERATIVE CORPORATIONS

Sec. 163.121. CREATION. An electric cooperative corporation may join one or more public entities to create a joint powers agency as if the corporation were also a public entity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.122. APPLICATION OF OPEN MEETINGS LAW. A joint powers agency created under this subchapter is a governmental body subject to Chapter 551, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.123. AUTHORITY OF PUBLIC UTILITY COMMISSION. A joint powers agency created under this subchapter is:

(1) subject to all applicable provisions of Title 2; and

(2) under the jurisdiction of the Public Utility Commission of Texas as provided by Title 2.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 163.124. POWER TO ISSUE CERTAIN BONDS OR SECURITIES. This subchapter does not authorize an electric cooperative corporation to issue bonds or other securities that are tax exempt under federal law.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 164. JOINT OWNERSHIP OF ELECTRIC FACILITIES BY PUBLIC ENTITIES

Sec. 164.001. JOINT OWNERSHIP OF ELECTRIC UTILITY FACILITIES AUTHORIZED. (a) Political subdivisions may join together to finance, construct, complete, acquire, or operate electric utility facilities so that the facilities or an undivided interest in the facilities is jointly owned by the political subdivisions as cotenants or co-owners.

(b) The ownership shares in the facilities are those approved by the governing bodies of the political subdivisions, as set forth in an agreement authorized by the governing bodies.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 164.002. PUBLIC PURPOSE. The exercise by a political subdivision of the authority granted by this chapter, including the exercise of the power to issue bonds, notes, or other obligations to accomplish the purposes of this chapter, and the performance of an agreement entered into under this chapter are considered to be additional public purposes of the political subdivision, without regard to any express or implied limitation on the authority or purposes of the political subdivision under any other general or special law or charter provision.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 164.003. APPROVAL OF AGREEMENT BY ATTORNEY GENERAL. (a) An agreement between political subdivisions establishing an interest in electric utility facilities that is executed under this chapter shall be submitted to the attorney general in connection with any proceeding to finance the contractual obligation by the issuance of bonds.

(b) An agreement submitted under Subsection (a) is incontestable on approval as to legality by the attorney general.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 164.004. INCREASE IN OWNERSHIP SHARES. (a) An agreement under this chapter may provide for a political subdivision to increase its present or future ownership share of the electric utility facilities by installment purchase payments and for another political subdivision that is a party to the agreement to transfer, in consideration of those payments, any portion of its present or future ownership share of the facilities to the purchasing political subdivision.

(b) A payment made by a political subdivision to acquire an ownership interest is not treated as a maintenance and operating expense but is treated as a capital cost as if the political subdivision had issued bonds to construct or acquire the ownership interest, unless otherwise specified in the agreement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 164.005. CONTRACTUAL OBLIGATIONS AS LIEN ON SYSTEM REVENUE. (a) If the electric utility facilities financed, acquired, constructed, or completed are a part of a utility system of a political subdivision, the obligation to make the contract payments to acquire an ownership interest is a lien on the revenue of the system on a parity with the outstanding bonds of the system to the extent permitted in the ordinance or resolution authorizing or the deed of trust or indenture securing the payment of the outstanding bonds.

(b) If the ordinance or resolution authorizing or the deed of

trust or trust indenture securing the revenue bonds of a utility system provides for the subsequent issuance of additional bonds or the creation of a contractual obligation described by Section 164.004 and provides that the payments to be made for the security or payment of the subsequent bonds or contractual obligation are to be on a parity with the previously issued bonds or bonds then to be issued, the political subdivision may, subject to any conditions contained in that ordinance, resolution, deed of trust, or trust indenture, authorize, issue, and sell additional bonds or incur the contractual obligation in a different series payable from the entire revenue of the utility system on a parity with the previously issued bonds or bonds then to be issued and secured by a lien on the revenue of the system on a parity with the lien securing the previously issued bonds or bonds then to be issued. This subsection applies without regard to whether the previously issued bonds:

(1) were issued before August 29, 1977; or

(2) are an original issue or a refunding issue.

(c) A political subdivision may pledge the revenue of a utility system to pay contract payments to acquire an ownership interest in an electric utility facility under this chapter.

(d) In this section, "utility system" includes a combined utility system.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 164.006. CONSTRUCTION WITH OTHER LAWS. To provide full authority for the execution of an agreement under this chapter, this chapter applies to a municipality as if this chapter were originally contained in Chapter 1501 or 1502, Government Code, or Chapter 552, Local Government Code. This chapter prevails over any charter provision or general or special law.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.405, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(30), eff. April 1, 2009.

## SUBTITLE B. PROVISIONS REGULATING DELIVERY OF SERVICES

## CHAPTER 181. MISCELLANEOUS POWERS AND DUTIES OF UTILITIES

### SUBCHAPTER A. POWERS AND DUTIES OF GAS AND ELECTRIC CORPORATIONS

Sec. 181.001. DEFINITIONS. In this chapter:

(1) "Corporation" includes:

(A) a partnership, limited partnership, or master limited partnership;

(B) a combination of business entities composed exclusively of corporations or in which a corporation is a general partner;

(C) a limited liability company; and

(D) a gas utility or electric utility regardless of form of organization, but not including a municipally owned utility.

(2) "Electric corporation" means an electric current and power corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 11, Sec. 3, eff. May 3, 1999; Acts 2003, 78th Leg., ch. 559, Sec. 1, eff. June 20, 2003.

Sec. 181.002. CORPORATE POWERS. A gas or electric corporation has the powers and rights of a corporation organized for profit in this state whenever those powers and duties may be applicable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.003. AUTHORITY TO BORROW MONEY, ISSUE STOCK, OR MORTGAGE PROPERTY. A gas or electric corporation has the right to:

(1) borrow money;

(2) issue stock, including preferred stock; or

(3) mortgage a franchise or other property of the corporation to secure a debt contracted for any purpose of the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.004. CONDEMNATION OF PROPERTY. A gas or electric corporation has the right and power to enter on, condemn, and appropriate the land, right-of-way, easement, or other property of

any person or corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.005. AUTHORITY TO LAY AND MAINTAIN LINES. (a) A gas corporation has the right to lay and maintain lines over, along, under, and across a public road, an interurban railroad, a street railroad, a canal or stream, or a municipal street or alley and over, under, and across a railroad or a railroad right-of-way only if:

(1) the pipeline complies with:

(A) all safety regulations adopted by the Railroad Commission of Texas and all federal regulations relating to pipeline facilities and pipelines; and

(B) all rules adopted by the Texas Department of Transportation or the Railroad Commission of Texas and all federal regulations regarding the accommodation of utility facilities on a right-of-way, including regulations relating to the horizontal or vertical placement of the pipeline; and

(2) the owner or operator of the pipeline ensures that the public right-of-way and any associated facility are promptly restored to their former condition of usefulness after the installation or maintenance of the pipeline.

(b) The right granted by Subsection (a) relating to the use of a municipal street or alley is subject to the payment of charges in accordance with Section 121.2025 of this code and Sections 182.025 and 182.026, Tax Code.

(c) In determining the route of a pipeline within a municipality, a gas corporation shall consider using existing easements and public rights-of-way, including streets, roads, highways, and utility rights-of-way. In deciding whether to use a public easement or right-of-way, the gas corporation shall consider whether:

(1) the use is economically practicable;

(2) adequate space exists; and

(3) the use will violate, or cause the violation of any pipeline safety regulations.

(d) The Texas Department of Transportation may require the owner or operator of a pipeline to relocate the pipeline:

(1) at the expense of the owner or operator of the

pipeline, if the pipeline is located on a right-of-way of the state highway system;

(2) at the expense of this state, if the pipeline is located on property in which the owner or operator of the pipeline has a private interest; or

(3) in accordance with Section 203.092, Transportation Code, at the expense of this state, if the pipeline is owned or operated by a gas utility as defined by Section 181.021 of this code or a common carrier as defined by Chapter 111, Natural Resources Code.

(e) Rules adopted by the Texas Department of Transportation regarding horizontal and vertical placement of pipelines must be reasonable and, for rights-of-way of the state highway system, must provide an appeals process through the Texas Department of Transportation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1311 (H.B. 2572), Sec. 2, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 313 (H.B. 2289), Sec. 1, eff. June 17, 2011.

Sec. 181.006. CONSENT REQUIRED IN MUNICIPALITY. A gas corporation may exercise authority under Section 181.005 in relation to a municipal street or alley with the consent of and subject to the direction of the governing body of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.007. AUTHORITY TO HOLD LAND OR OTHER PROPERTY. A gas or electric corporation has the power to own, hold, or use land, a right-of-way, an easement, a franchise, or a building or other structure as necessary for the purpose of the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.008. AUTHORITY RELATING TO TRANSPORT OR SALE. (a) A

gas or electric corporation has the power to generate, make, manufacture, transport, and sell gas, electric current, and power to an individual, the public, or a municipality for any purpose.

(b) A gas or electric corporation may:

(1) impose reasonable charges for an action taken under Subsection (a); and

(2) construct, maintain, and operate power plants and substations and any machinery, apparatus, pipe, pole, wire, device, or arrangements as necessary to operate its lines in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.009. DISCRIMINATION PROHIBITED. A gas or electric corporation may not discriminate against a person, corporation, firm, association, or location in:

(1) charging for gas, electric current, or power; or

(2) providing service under similar circumstances.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER B. PROVISIONS APPLYING TO GAS UTILITIES**

Sec. 181.021. DEFINITIONS. In this subchapter:

(1) "Gas facility" means a pipe, main, conductor, or other facility or fixture used to carry gas.

(2) "Gas utility" means a person, firm, corporation, or municipality engaged in the business of transporting or distributing gas for public consumption.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.022. AUTHORITY TO LAY AND MAINTAIN GAS FACILITY. A gas utility has the right to lay and maintain a gas facility through, under, along, across, or over a public highway, a public road, a public street or alley, or public water.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.023. CONSENT REQUIRED IN MUNICIPALITY. A gas utility may exercise authority under Section 181.022 in a municipality with the consent of and subject to the direction of the governing body of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.024. NOTICE TO STATE OR COUNTY. (a) A gas utility proposing under this subchapter to locate a gas facility in the right-of-way of a state highway or a county road not in a municipality shall give notice of the proposal to:

(1) the Texas Transportation Commission if the proposal relates to a state highway; or

(2) the commissioners court of the county if the proposal relates to a county road.

(b) On receipt of the notice, the Texas Transportation Commission or the commissioners court may designate the location in the right-of-way where the gas utility may place the gas facility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.025. RELOCATION OF GAS FACILITY TO ALLOW CHANGE TO TRAFFIC LANE. (a) The authority of the Texas Transportation Commission under this section is limited to a gas facility on a state highway not in a municipality. The authority of the commissioners court under this section is limited to a gas facility on a county road not in a municipality.

(b) The Texas Transportation Commission or the commissioners court of a county may require a gas utility to relocate the utility's gas facility, at the utility's own expense, to allow the widening or other changing of a traffic lane.

(c) To impose a requirement under this section, the Texas Transportation Commission or the commissioners court, as appropriate, must give to the gas utility 30 days' written notice of the requirement. The notice must identify the gas facility to be relocated and indicate the location on the new right-of-way where the gas utility may place the facility.

(d) The gas utility shall replace the grade and surface of the highway or road at the utility's own expense.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.026. EFFECT OF MUNICIPAL INCORPORATION ON GAS FACILITY PREVIOUSLY LAID. A gas utility having a gas facility located in an area that becomes incorporated after the facility is in place may continue to exercise in that area the authority granted by this subchapter until the 10th anniversary of the date of the incorporation without the consent of but subject to the direction of the governing body of the municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER C. PROVISIONS APPLYING TO ELECTRIC UTILITIES**

Sec. 181.041. DEFINITIONS. In this subchapter:

(1) "Electric utility" means:

(A) an electric cooperative organized under Chapter 161;

(B) a corporation or river authority, if the river authority is created by a statute of this state:

(i) that generates, transmits, or distributes electric energy in this state; and

(ii) whose operations are subject to the judicial and legislative processes of this state; or

(C) a municipal electric utility.

(2) "Municipal electric utility" means a municipality in this state that owns and operates an electric generating plant or that operates electric transmission lines or an electric distribution system.

(3) "Distribution line" means a power line operated below 60,000 volts when measured phase to phase.

(4) "Transmission line" means a power line operated at 60,000 volts or more when measured phase to phase.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 77 (S.B. 349), Sec. 1, eff. May 18, 2013.

Sec. 181.042. AUTHORITY TO CONSTRUCT, MAINTAIN, AND OPERATE LINES. An electric utility has the right to construct, maintain, and operate lines over, under, across, on, or along a state highway, a county road, a municipal street or alley, or other public property in a municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.043. CONSENT REQUIRED IN MUNICIPALITY. (a) An electric utility may exercise authority under Section 181.042 in a municipality with the consent of and subject to the direction of the governing body of the municipality.

(b) Subsection (a) does not apply to a municipal electric utility exercising authority under Section 181.042 in its municipal territory.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.044. NOTICE TO STATE OR COUNTY. (a) An electric utility proposing under this subchapter to construct a line along the right-of-way of a state highway or a county road not in a municipality shall give notice of the proposal to:

(1) the Texas Transportation Commission if the proposal relates to a state highway; or

(2) the commissioners court of the county if the proposal relates to a county road.

(b) On receipt of the notice, the Texas Transportation Commission or the commissioners court may designate the location along the right-of-way where the electric utility may construct the line.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.045. STANDARDS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF LINES. (a) A municipal electric utility shall construct, operate, and maintain its transmission lines and distribution lines along highways and at other places in accordance with the national electrical safety code. With regard to clearances,

an electric utility that is not a municipal electric utility shall construct, operate, and maintain its transmission lines and distribution lines along highways and at other places in accordance with the national electrical safety code.

(b) Regardless of Subsection (a), an electric utility shall:

(1) use single pole construction for a line along a highway or county road;

(2) construct a transmission line that crosses a highway or road so that the line is at least 22 feet above the surface of the traffic lane; and

(3) construct a line that is above a railroad track or railroad siding so that the line is at least 22 feet above the surface of the track or siding.

(c) Subsection (a) does not apply to a line in a municipality to the extent an ordinance or regulation applying in the municipality provides differently than the national electrical safety code.

(d) In this section, "national electrical safety code" means the National Electrical Safety Code, as published in March 1948 by the National Bureau of Standards, Handbook 30, as revised by Handbook 81, published by the National Bureau of Standards in November 1961.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 77 (S.B. 349), Sec. 2, eff. May 18, 2013.

Sec. 181.046. RELOCATION OF LINE TO ALLOW ROAD OR DITCH IMPROVEMENT. (a) The authority of the Texas Transportation Commission under this section is limited to a line on a state highway not in a municipality. The authority of the commissioners court under this section is limited to a line on a county road not in a municipality.

(b) The Texas Transportation Commission or the commissioners court of a county may require an electric utility to relocate a line of the utility, at the utility's own expense, to allow the:

(1) widening of a right-of-way;

(2) changing of a traffic lane;

(3) improving of a road bed; or

(4) improving of a drainage ditch located on a right-of-

way.

(c) To impose a requirement under this section, the Texas Transportation Commission or the commissioners court, as appropriate, must give to the electric utility 30 days' written notice of the requirement. The notice must identify the line to be relocated and indicate the location on the new right-of-way where the electric utility may place the line.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.047. EFFECT OF MUNICIPAL INCORPORATION ON LINE PREVIOUSLY CONSTRUCTED. (a) An electric utility that owns a line on a state highway or county road in a city or town that, at the time of the construction of the line, is unincorporated but that later incorporates as a municipality may continue to exercise in the municipality the authority granted by Section 181.042 until the 10th anniversary of the date of the incorporation.

(b) After that period, to continue to exercise the authority in the municipality the electric utility must have the consent of the governing body of the municipality.

(c) The governing body of the municipality may require the electric utility to relocate a pole or line, at the utility's own expense, to allow the widening or straightening of a street. To impose a requirement under this subsection, the governing body of the municipality must give to the electric utility 30 days' notice. The notice must indicate the new location for the pole or line along the right-of-way of the street.

(d) This section does not prohibit a municipality from imposing a tax or special charge for the use of a street as authorized by Subchapter B, Chapter 182, Tax Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. PROVISIONS APPLYING TO TELEGRAPH COMPANIES

Sec. 181.061. DEFINITION. In this subchapter, "telegraph company" includes a person, firm, corporation, or association engaged in the business of accepting and transmitting messages to and from different locations in this state through use of a telegraph.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.062. TELEGRAPH CONNECTIONS. A telegraph company engaged in business at the same location or in the same municipality as another telegraph company shall provide:

(1) means through which a message may be transferred to the lines of the other telegraph company at common locations and transmitted to the message's final destination; and

(2) facilities to assure the transfer of a message in compliance with this section.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.063. EXCEPTIONS. (a) A telegraph company is not required to transfer a message to another line if:

(1) the message originated on the company's line; and

(2) the company can deliver the message directly to its intended recipient on the company's lines.

(b) A telegraph company is not required to receive a message from another's line and transmit the message to its final destination if the message originated at a location on the company's lines.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.064. HEARING AND DETERMINATION. (a) The governing body of a municipality or, for an unincorporated area, the commissioners court of the county, shall on its own motion or on application of at least 100 residents:

(1) hear evidence as the governing body or commissioners court considers necessary; and

(2) determine whether a connection between different lines or other arrangements for transfer of messages is:

(A) necessary for public convenience; and

(B) just to the telegraph companies.

(b) After conducting a hearing and making the determinations required by Subsection (a), the governing body or commissioners court shall issue an order that:

(1) includes the findings of the governing body or

commissioners court;

(2) specifies the conditions under which the arrangements for transfer of messages will be made; and

(3) specifies the proportion of expense to be paid by the owner or operator of each line.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.065. PENALTY. (a) A telegraph company shall comply with an order of a municipality's governing body or a commissioners court requiring the company to arrange for transfer of messages.

(b) A telegraph company that fails to comply with an order is subject to a penalty of $10 for each day of noncompliance, payable to the state. The county or district attorney may bring suit to recover the penalty.

(c) A penalty may not be imposed against a telegraph company for noncompliance with an order if:

(1) the company is prevented from making a connection through the fault or omission of another company; and

(2) the fault or omission causes the company's failure to connect.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.066. APPEAL. (a) A telegraph company ordered to transfer messages under this subchapter has the right to appeal to the court having jurisdiction over the matter.

(b) If the court finds that the telegraph company had reasonable grounds for bringing the appeal, the court shall suspend any penalty imposed under this subchapter until the appeal is finally determined.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. PROVISIONS APPLYING TO TELEPHONE AND TELEGRAPH CORPORATIONS

Sec. 181.081. DEFINITIONS. In this subchapter:

(1) "Facility" means a pole, pier, abutment, wire, or other

fixture related to a telephone or magnetic telegraph line.

(2) "Telegraph corporation" means a corporation created to construct and maintain magnetic telegraph lines.

(3) "Telephone corporation" means a corporation created to construct and maintain telephone lines.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.082. AUTHORITY TO INSTALL FACILITY IN RELATION TO PUBLIC PROPERTY. A telephone or telegraph corporation may install a facility of the corporation along, on, or across a public road, a public street, or public water in a manner that does not inconvenience the public in the use of the road, street, or water.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.083. AUTHORITY TO CONSTRUCT LINE ON PRIVATE PROPERTY. A telephone or telegraph corporation may enter land in which a private person or a corporation owns a fee or lesser estate to:

(1) make a preliminary survey or examination to prepare for the construction of a telephone or telegraph line;

(2) change the location of a part of a telephone or telegraph line as necessary; or

(3) construct or repair a telephone or telegraph line.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.084. APPROPRIATION OR CONDEMNATION OF LAND. A telephone or telegraph corporation has the right to:

(1) appropriate as much land owned by a private person or a corporation as is necessary to construct a facility; or

(2) condemn land to acquire a right-of-way or other interest in the land for the use of the telephone or telegraph corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.085. PROHIBITION ON LAND CONTRACT EXCLUDING ANOTHER TELEGRAPH UTILITY. A telegraph corporation may not contract with an owner of land for the right to construct and maintain a telegraph line over the land to the exclusion of the line of another telegraph corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.086. LINES IN OR OUTSIDE STATE. A telegraph corporation may construct, own, use, or maintain a telegraph line in or outside this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.087. USE OF ANOTHER'S TELEGRAPH LINE. (a) A telegraph corporation may:

(1) lease the telegraph line of another telegraph corporation;

(2) as the result of a lease or purchase, attach to its telegraph line the telegraph line of another telegraph corporation; or

(3) join with any other corporation or association to construct, lease, own, use, or maintain a telegraph line.

(b) An action under Subsection (a)(3) must be taken in accordance with an agreement made by the directors or managers of the telegraph corporations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.088. CONSOLIDATION OF UTILITIES. (a) A telephone or telegraph corporation organized under the law of this state may consolidate or otherwise unite with one or more other companies organized under the law of a state or the United States if the union or consolidation:

(1) is approved, at a regular meeting of the corporation's stockholders, by a vote of persons holding a majority of the shares of stock of the corporation; and

(2) is done with the consent of each other company.

(b) The company resulting from the consolidation or other union may hold, use, and enjoy the rights and privileges given by the law of this state to, and has the same liabilities of, a company separately organized under the law of this state relating to corporations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.089. MUNICIPAL REGULATION. (a) The appropriate authorities of a municipality through which a line of a telephone or telegraph corporation is to pass may adopt, by ordinance or another method, regulations governing the corporation that specify the:

(1) location of the facilities of the corporation;

(2) kind of posts that must be used by the corporation; or

(3) height at which the wires of the corporation must be placed.

(b) After the construction of the telephone or telegraph line, the appropriate authorities of the municipality, after giving the corporation or its agents an opportunity to be heard, may direct any change in:

(1) the construction or location of the facilities; or

(2) the height at which the corporation must locate the wires.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER F. PROVISIONS APPLYING TO COMMUNITY ANTENNA AND CABLE TELEVISION UTILITIES

Sec. 181.101. DEFINITIONS. In this subchapter:

(1) "Equipment" means a line, wire, cable, pipe, conduit, conductor, pole, or other facility for the transmission of community antenna or cable television service.

(2) "Person" means an individual, firm, or corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.102. AUTHORITY TO INSTALL AND MAINTAIN EQUIPMENT. (a) In an unincorporated area, a person in the business of providing

community antenna or cable television service to the public may install and maintain equipment through, under, along, across, or over a utility easement, a public road, an alley, or a body of public water in accordance with this subchapter.

(b) The installation and maintenance of the equipment must be done in a way that does not unduly inconvenience the public using the affected property.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.103. NOTICE TO STATE OR COUNTY. (a) A person proposing to install equipment under Section 181.102 in the right-of-way of a state highway or a county road shall give notice of the proposal to:

(1) the Texas Department of Transportation if the proposal relates to a state highway; or

(2) the commissioners court of the county if the proposal relates to a county road.

(b) On receipt of the notice, the Texas Department of Transportation or commissioners court may designate the location in the right-of-way where the person may install the equipment, if the equipment is not to be installed on an existing facility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.104. RELOCATION OF EQUIPMENT TO ALLOW CHANGE TO TRAFFIC LANE. (a) The authority of the Texas Department of Transportation under this section is limited to equipment installed in connection with a state highway. The authority of the commissioners court under this section is limited to equipment installed in connection with a county road.

(b) The Texas Department of Transportation or the commissioners court of a county may require a person who has installed equipment in the right-of-way of a state highway or county road to relocate the person's equipment to allow the widening or other changing of a traffic lane.

(c) To impose a requirement under this section, the Texas Department of Transportation or the commissioners court, as appropriate, must give to the person written notice of the

requirement not later than the 45th day before the date the relocation is to be made. The notice must identify the equipment to be relocated and indicate the location in the right-of-way where the person may reinstall the equipment.

(d) The person shall pay the cost of repairing a state highway or county road damaged by the relocation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 181.901. AUTHORITY OF GENERAL-LAW MUNICIPALITY TO PROTECT UTILITY. (a) The governing body of a general-law municipality may adopt an ordinance that applies to a utility using the streets and public grounds of the municipality and that protects the utility:

(1) in the free enjoyment of the utility's rights and privileges; and

(2) from interference with the utility's property and franchises.

(b) In this section, "utility" means a person, company, or corporation engaged in furnishing water, gas, telephone, light, power, or sewage service to the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 181.902. AUTHORITY OF GENERAL-LAW MUNICIPALITY TO PREVENT USE OR WASTE OF UTILITY COMMODITY OR SERVICE. (a) The governing body of a general-law municipality may adopt an ordinance that prevents the free or unauthorized use or the waste of a commodity or service furnished by a utility that uses the streets and public grounds of the municipality.

(b) In this section, "utility" has the meaning assigned to the term by Section 181.901.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

# CHAPTER 182. RIGHTS OF UTILITY CUSTOMERS

## SUBCHAPTER A. PAYMENT DATE OF UTILITY BILL FOR ELDERLY INDIVIDUAL

Sec. 182.001. DEFINITIONS. In this subchapter:

(1) "Elderly individual" means an individual who is 60 years of age or older.

(2) "Utility" means an electric, gas, water, or telephone utility operated by a public or private entity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.002. DELAY OF BILL PAYMENT DATE FOR ELDERLY INDIVIDUAL. (a) On request by an elderly individual, a utility shall delay without penalty the payment date of a bill for providing utility service to that individual until the 25th day after the date the bill is issued.

(b) This subchapter applies only to an elderly individual who:

(1) is a residential customer; and

(2) occupies the entire premises for which a delay is requested.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.003. REQUEST FOR DELAY. An elderly individual may request that the utility implement the delay under Section 182.002 for:

(1) the most recent utility bill; or

(2) the most recent utility bill and each subsequent utility bill.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.004. PROOF OF AGE. A utility may require an individual requesting a delay under this subchapter to present reasonable proof that the individual is 60 years of age or older.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.005. CERTAIN UTILITIES NOT AFFECTED. This subchapter does not apply to a utility that:

(1) does not assess a late payment charge on a residential

customer;

(2) does not suspend service before the 26th day after the date of the bill for which collection action is taken; and

(3) is regulated under Title 2.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER B. CONFIDENTIALITY OF CUSTOMER INFORMATION**

Sec. 182.051. DEFINITIONS. In this subchapter:

(1) "Consumer reporting agency" means a person who, for a monetary fee or payment of dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information relating to consumers in order to furnish a consumer report to a third party.

(2) "Governmental body" has the meaning assigned by Section 552.003, Government Code.

(3) "Government-operated utility" means a governmental body or an entity governed by a governmental body that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service.

(4) "Personal information" means an individual's address, telephone number, or social security number.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.052. CONFIDENTIALITY OF PERSONAL INFORMATION. (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for

confidentiality.

(c) A government-operated utility shall include with a bill sent to each customer:

(1) a notice of the customer's right to request confidentiality under this subchapter;

(2) a statement of the amount of any fee applicable to the request; and

(3) a form by which the customer may request confidentiality by marking an appropriate box on the form and returning it to the government-operated utility.

(d) A customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.

(e) A governmental body as defined by Section 552.003, Government Code, may withhold information prohibited from being disclosed under this section without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.59, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 692 (H.B. 685), Sec. 2, eff. September 1, 2015.

Sec. 182.053. FEE. A government-operated utility may charge each customer who requests confidentiality under this subchapter a fee not to exceed the administrative cost of complying with the request of confidentiality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.054. EXCEPTIONS. This subchapter does not prohibit a government-operated utility from disclosing personal information in a customer's account record to:

(1) an official or employee of the state, a political subdivision of the state, or the United States acting in an official capacity;

(2) an employee of a utility acting in connection with the

employee's duties;

(3) a consumer reporting agency;

(4) a contractor or subcontractor approved by and providing services to the utility, the state, a political subdivision of the state, or the United States;

(5) a person for whom the customer has contractually waived confidentiality for personal information; or

(6) another entity that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service for compensation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.055. NO CIVIL LIABILITY FROM VIOLATION. A government-operated utility or an officer or employee of a government-operated utility is immune from civil liability for a violation of this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. TESTING OF METERS

Sec. 182.101. DEFINITIONS. In this subchapter:

(1) "Consumer" means a person who obtains electricity or gas from a utility.

(2) "Gas" includes natural gas and artificial gas.

(3) "Meter" means an instrument or machine used to measure and record the use of electricity or gas.

(4) "Test" includes, in reference to the testing of a meter and as necessary to the reading and examination of a meter, the authority to break the seal.

(5) "Utility" means a person, other than a governmental entity, who provides for compensation electricity or gas for consumption in a municipality.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.102. TESTING OF METER. (a) On complaint by a consumer to the governing body of a municipality, an agent or employee of the municipality shall examine, read, and test a meter

that is installed by the utility furnishing the electricity or gas.

(b) On demand by a consumer to the governing body of a municipality, the governing body shall provide the consumer with a detailed report stating the results of the examination, reading, and test, including:

(1) whether the meter is in good condition;

(2) whether the meter functions properly; and

(3) the amount of electricity or gas used during a period designated by the consumer in the demand, not to exceed one year.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.103. UTILITY REPRESENTATIVE; NOTICE. A utility representative may be present during a meter test. The municipality shall provide notice to a utility regarding the testing of a meter not later than the third day before the date the meter test is conducted.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 182.104. OFFENSE. (a) A utility or other person commits an offense if the utility or other person fails or refuses to allow an agent or employee of a municipality to examine a meter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $200.

(c) Each day a utility or other person refuses to allow an agent or employee of a municipality to examine a meter is a separate offense.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER D. BILL PAYMENT ASSISTANCE PROGRAM FOR BURNED VETERANS

Sec. 182.201. DEFINITIONS. In this subchapter, "electric cooperative" and "municipally owned utility" have the meanings assigned by Section 11.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 597 (S.B. 981), Sec. 3, eff. June 14, 2013.

Sec. 182.202. BURNED VETERANS ASSISTANCE PROGRAM. (a) The board of directors of an electric cooperative or the governing body of a municipally owned utility may establish a bill payment assistance program for a customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate the individual's body temperature because of severe burns received in combat.

(b) The costs of a bill payment assistance program established under Subsection (a) are considered a necessary operations expense.

(c) The board of directors of an electric cooperative or the governing body of a municipally owned utility may determine the method to fund a bill payment assistance program established under Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 597 (S.B. 981), Sec. 3, eff. June 14, 2013.

## CHAPTER 183. UTILITY DEPOSITS

Sec. 183.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Public Utility Commission of Texas.

(2) "Utility" means a person, firm, company, corporation, receiver, or trustee who furnishes water, electric, gas, or telephone service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 183.002. INTEREST ON DEPOSIT. A utility that requires the user of a service to pay a money deposit as a condition to furnishing the service shall pay interest on the deposit from the time the deposit is made.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 183.003. RATE OF INTEREST. The commission on or before each December 1 shall set the annual interest rate for the next

calendar year on deposits governed by this chapter at the average rate paid over the previous 12-month period on United States treasury bills with a 26-week maturity.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1320 (H.B. 3460), Sec. 1, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 372 (S.B. 734), Sec. 1, eff. September 1, 2015.

Sec. 183.004. INTEREST PAYMENT TO DEPOSITOR. A utility shall pay interest on the deposit to the depositor or the depositor's heirs or assigns annually on demand or sooner if the service is discontinued.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 183.005. RETURN OF DEPOSIT. (a) When the service is discontinued, the utility shall return the deposit and any unpaid interest on the deposit to the depositor or the depositor's heirs or legal representatives.
(b) The utility company may deduct from the amount returned under Subsection (a) any payments due for the services.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 183.006. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.
(b) An offense under this section is punishable by:
(1) a fine of not less than $25 and not more than $200;
(2) confinement in jail for not less than six months and not more than one year; or
(3) both the fine and confinement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 184. ELECTRIC AND WATER METERING

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 184.001. DEFINITION. In this chapter, "commission" means the Public Utility Commission of Texas.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

### SUBCHAPTER B. METERING IN APARTMENTS, CONDOMINIUMS, AND MOBILE HOME PARKS

Sec. 184.011. DEFINITIONS. In this subchapter:

(1) "Apartment house" means one or more buildings containing more than five dwelling units each of which is rented primarily for nontransient use with rent paid at intervals of one week or longer. The term includes a rented or owner-occupied residential condominium.

(2) "Dwelling unit":

(A) means:

(i) one or more rooms that are suitable for occupancy as a residence and that contain kitchen and bathroom facilities; or

(ii) a mobile home in a mobile home park; and

(B) does not include a recreational vehicle, as defined by Section 522.004(b), Transportation Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 4, eff. September 1, 2013.

Sec. 184.012. NEW CONSTRUCTION OR CONVERSION. (a) A political subdivision may not authorize the construction or occupancy of a new apartment house, including the conversion of property to a condominium, unless the construction plan provides for the measurement of the quantity of electricity consumed by the occupants of each dwelling unit of the apartment house, either by individual metering by the utility company or by submetering by the owner.

(b) This section does not prohibit a political subdivision from issuing a permit to a nonprofit organization for construction of a new apartment house for occupancy by low-income elderly tenants if

the nonprofit organization establishes, by submitting engineering and cost data and a sworn statement, that all cost savings will be passed on to the low-income elderly tenants.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.0125. HOUSING FOR OLDER PERSONS. (a) Section 184.012 does not prohibit a political subdivision from issuing a permit for the construction of housing for older persons with 100 or more dwelling units.

(b) Before issuing a permit, certificate, or other authorization for the construction of housing for older persons, a political subdivision shall require that the construction plan provide for the requirements prescribed by this section.

(c) To qualify for the exemption provided by this section, the housing, at a minimum, must have:

(1) significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of those facilities and services is not practicable, the housing must be necessary to provide important housing opportunities for older persons;

(2) at least 80 percent of the dwelling units set aside for occupancy by at least one person 55 years of age or older in each dwelling unit; and

(3) policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(d) The owner or manager must adhere to the policies and procedures required by Subsection (c)(3).

(e) In this section, "housing for older persons" means housing:

(1) intended for and solely occupied by persons 62 years of age or older; or

(2) intended and operated for occupancy by at least one person 55 years of age or older in each dwelling unit.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.16(a), eff. Sept. 1, 1999.

Sec. 184.013. SUBMETERING. (a) The owner of an apartment

house or mobile home park may submeter each dwelling unit in the apartment house or mobile home park to measure the quantity of electricity consumed by the occupants of the dwelling unit.

(b) Electric submetering equipment is subject to:

(1) the same rules adopted by the commission for accuracy, testing, and recordkeeping of meters installed by electric utilities; and

(2) the meter testing requirements of Subchapter C, Chapter 38.

(c) If not more than 90 days before the date an owner, operator, or manager of an apartment house installs individual meters or submeters in the apartment house the owner, operator, or manager increases rental rates and the increase in rental rates is attributable to the increased cost of utilities, the owner, operator, or manager, on installation of the meters or submeters, shall:

(1) immediately reduce the rental rate by the amount of the increase attributable to the increased cost of utilities; and

(2) refund the amount of the increased rent:

(A) collected in the 90-day period preceding the installation of the meters or submeters; and

(B) attributable to the cost of increased utilities.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.014. RULES. (a) The commission shall adopt rules under which an owner, operator, or manager of an apartment house or mobile home park for which electricity is not individually metered may install submetering equipment to allocate fairly the cost of the electrical consumption of each dwelling unit in the apartment house or mobile home park.

(b) In addition to other appropriate safeguards for a tenant of an apartment house or mobile home park, a rule adopted under Subsection (a) must provide that:

(1) the apartment house owner or a mobile home park owner may not charge a tenant more than the cost per kilowatt hour charged by the utility to the owner; and

(2) the apartment house owner shall maintain adequate records relating to submetering and make those records available for inspection by the tenant during reasonable business hours.

(c) A rule adopted under this section has the same effect as a rule adopted under Title 2, and a utility company and the owner, operator, or manager of an apartment house subject to this subchapter is subject to enforcement under Sections 15.021, 15.022, 15.028, 15.029, 15.030, 15.031, 15.032, and 15.033.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER C. METERING IN RECREATIONAL VEHICLE PARKS**

Sec. 184.031. DEFINITIONS. In this subchapter:

(1) "Recreational vehicle" has the meaning assigned by Section 522.004(b), Transportation Code.

(2) "Supplying utility" means the electric utility from which a recreational vehicle park owner purchases electricity consumed at the recreational vehicle park.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.032. METERED SALE UNDER COMMISSION RULES. The metered sale of electricity by a recreational vehicle park owner in compliance with submetering rules adopted by the commission under Title 2 does not constitute the provision of electric service for compensation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.033. METERED SALE UNDER THIS CHAPTER. Notwithstanding any provision of Title 2, the metered sale of electricity by a recreational vehicle park owner does not constitute the provision of electric service for compensation if:

(1) the electricity is consumed in a recreational vehicle that is located in a recreational vehicle park;

(2) the owner can show that the owner does not annually recover from recreational vehicle occupants through metered charges more than the supplying utility charges the owner for electricity that is submetered, taking into account fuel refunds;

(3) the owner establishes a fiscal year for the purposes of this subchapter and maintains for at least three years records of:

(A) bills received from the supplying utility;

(B) charges made to recreational vehicle occupants; and

(C) consumption records for each fiscal year;

(4) the owner charges for electricity using a fixed rate per kilowatt hour for each fiscal year computed at the beginning of the fiscal year in the manner provided by Section 184.034; and

(5) the owner complies with the refund requirements of Section 184.035.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.034. COMPUTATION OF CHARGES. (a) For the purposes of computing the charge for electricity under Section 184.033(4), the recreational vehicle park owner shall divide the amount charged the owner by the supplying utility for the preceding fiscal year by the total number of kilowatt hours consumed by occupants visiting the park in the preceding fiscal year and round the quotient to the nearest cent.

(b) If since or during the preceding fiscal year the supplying utility increases its rates, the owner may recompute the preceding fiscal year's charges by the utility using the current rates charged by the utility.

(c) If since or during the preceding fiscal year the supplying utility decreases its rates, the owner shall recompute the preceding fiscal year's charges by the utility using the current rates charged by the utility.

(d) An owner may not:

(1) include a charge by the supplying utility for electricity used in a common area or office of the recreational vehicle park in computing the amounts under Subsection (b) or (c); or

(2) recover that charge through a metered charge to a recreational vehicle occupant.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.035. REFUND OF SURCHARGES. A recreational vehicle park owner who determines at the end of a fiscal year that the owner

has collected more than the amount charged by the supplying utility shall refund the excess amount to occupants visiting the park in the succeeding fiscal year.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.036. UTILITY CUTOFF AT RECREATIONAL VEHICLE PARK. Notwithstanding any other law, a person who operates a recreational vehicle park, as defined by Section 13.087, Water Code, may withhold electric, water, or wastewater utility services from a person occupying a recreational vehicle at the park if the occupant is delinquent in paying for utility services provided by the operator until the occupant pays the delinquent amount.

Added by Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 5, eff. September 1, 2013.

## SUBCHAPTER D. CENTRAL SYSTEM UTILITIES

Sec. 184.051. DEFINITIONS. In this subchapter:

(1) "Apartment house" means one or more buildings containing two or more dwelling units rented primarily for nontransient use with rent paid at intervals of one week or longer.

(2) "Apartment house owner" means the legal titleholder of an apartment house or an individual, firm, or corporation purporting to be the landlord of tenants in the apartment house.

(3) "Central system utilities" means electricity and water consumed by and wastewater services related to a central air conditioning system, central heating system, central hot water system, or central chilled water system in an apartment house. The term does not include utilities directly consumed in a dwelling unit.

(4) "Customer" means an individual, firm, or corporation in whose name a master meter is connected by a utility.

(5) "Dwelling unit" means one or more rooms that are suitable for occupancy as a residence and that contain kitchen and bathroom facilities.

(6) "Nonsubmetered master metered utility service" means an electric utility service that is master metered for an apartment house but is not submetered.

(7) "Tenant" means a person who is entitled to occupy a

dwelling unit in an apartment house to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(8) "Utility" means a public, private, or member-owned utility that provides electricity, water, or wastewater service to an apartment house served by a master meter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 184.052. RULES. (a) The commission shall adopt rules governing billing systems or methods used by an apartment house owner to prorate or allocate among tenants central system utility costs or nonsubmetered master metered utility service costs.

(b) In addition to other appropriate safeguards for a tenant of an apartment house, a rule adopted under this section must require that:

(1) a rental agreement contain:

(A) a clear written description of the method of computing the allocation of central system utilities or nonsubmetered master metered utilities for the apartment house; and

(B) a statement of the average apartment unit monthly bill for all apartment units for any allocation of central system utilities' costs or nonsubmetered master metered utility service costs for the previous calendar year; and

(2) the apartment house owner:

(A) not impose a charge on a tenant in excess of the actual charge imposed on the owner for utility consumption by the apartment house; and

(B) maintain adequate records, including utility bills and records concerning the central system utility or nonsubmetered master metered utility service consumption of the apartment house, the charges assessed by the utility, and the allocation of central system utilities' costs or nonsubmetered master metered utility service costs to the tenants and make the records available for inspection by the tenants during normal business hours.

(c) A rule adopted under this section has the same effect as a rule adopted under Title 2, and an owner, operator, or manager of an apartment house subject to this subchapter is subject to enforcement under Sections 15.021, 15.022, 15.028, 15.029, 15.030, 15.031,

15.032, and 15.033.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. LIABILITY FOR RULE VIOLATION

Sec. 184.071. LIABILITY. (a) A landlord who violates a commission rule relating to submetering of electric utilities consumed exclusively in a tenant's dwelling unit or a rule relating to the allocation of central system utility costs or nonsubmetered master metered electric utility costs is liable to the tenant for:

(1) three times the amount of any overcharge;

(2) a civil penalty equal to one month's rent;

(3) reasonable attorney's fees; and

(4) court costs.

(b) A landlord is not liable for the civil penalty provided by Subsection (a)(2) if the landlord proves that the landlord's violation of the rule was an unintentional mistake made in good faith.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 185. RATING OF SOLAR ENERGY DEVICES

Sec. 185.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Public Utility Commission of Texas.

(2) "Solar energy device" means a solar energy collector or solar energy system that provides for the collection of solar energy or the subsequent use of that energy as thermal, mechanical, or electrical energy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 185.002. COMPLIANCE. A person who rates, labels, or certifies the performance of a solar energy device in this state shall comply with the standards adopted by the commission under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 185.003. ADOPTION OF STANDARDS. (a) The commission shall study and adopt standards for rating solar energy devices. The standards shall be used in performance labeling and certification of solar energy devices in this state.

(b) The commission shall examine rating standards and certification programs used by other states and by industry in adopting standards under this section.

(c) The commission shall adopt the standards that the commission finds are the most widely used unless the commission finds that those standards are not suitable for use in this state. If the commission finds that a widely used standard is not suitable, the commission may amend the standard or adopt a standard that the commission finds suitable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 185.004. USE OF NATIONAL STANDARDS. If national standards for rating and certifying solar energy devices are developed by a federal agency in conjunction with the states and industry, the commission shall adopt those national standards as the standards for use in this state.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 185.005. REVIEW OF STANDARDS. The commission shall periodically review the standards adopted under this chapter and shall amend those standards as necessary to ensure that the standards are:

(1) appropriate in view of current technology; and

(2) the same as or similar to the standards widely used by other states and by industry.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## CHAPTER 186. PROVISIONS TO ENSURE THE RELIABILITY AND INTEGRITY OF UTILITY SERVICE

## SUBCHAPTER A. CONTINUITY OF UTILITY SERVICE

Sec. 186.001. DEFINITION. In this subchapter, "public utility" means and includes a private corporation that does business in this state and has the right of eminent domain, a municipality, or a state agency, authority, or subdivision engaged in the business of:

(1) generating, transmitting, or distributing electric energy to the public;

(2) producing, transmitting, or distributing natural or artificial gas to the public; or

(3) furnishing water to the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.002. POLICY. (a) Continuous service by a public utility is essential to the life, health, and safety of the public. A person's wilful interruption of that service is a public calamity that cannot be endured.

(b) A public utility is dedicated to public service. The primary duty of a public utility, including its management and employees, is to maintain continuous and adequate service at all times to protect the safety and health of the public against the danger inherent in the interruption of service.

(c) Each court and administrative agency of this state shall:

(1) recognize the policy stated in this section; and

(2) interpret and apply this subchapter in accordance with that policy.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.003. ENFORCEMENT BY EXECUTIVE DEPARTMENT. In accordance with Section 186.002, the governor, and the department of the executive branch of government under the governor's direction, shall exercise all power available under the constitution and laws of this state to protect the public from dangers incident to an interruption in water, electric, or gas utility service in this state that occurs because of a violation of this subchapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.004. UNLAWFUL PICKETING, THREATS, OR INTIMIDATION. (a) A person may not:

(1) picket the plant, premises, or other property of a public utility with intent to disrupt the service of that utility or to prevent the maintenance of that service; or

(2) engage in picketing that has the effect of disrupting the service of a public utility or preventing the maintenance of that service.

(b) A person may not:

(1) intimidate, threaten, or harass an employee of a public utility with intent to disrupt the service of the utility or prevent the maintenance of that service; or

(2) intimidate, threaten, or harass an employee of a public utility if that conduct has the effect of disrupting the service of the utility or preventing the maintenance of that service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.005. RESTRAINING ORDER. (a) A district court shall immediately inquire into the matter if a public utility presents a verified petition to the court:

(1) alleging that in the judicial district of the court a person is violating or threatening to violate Section 186.004 and that the violation or threatened violation will interfere with the maintenance of adequate water, electric, or gas service; and

(2) describing the acts committed in violation of Section 186.004, or the threatened acts that, if committed, will violate Section 186.004.

(b) If it appears that there is a violation or threatened violation of Section 186.004, the court shall immediately issue an order restraining the person, the person's agent, and any other person acting with them from committing an act prohibited by that section.

(c) A restraining order issued under this section is effective when the petitioner files with the clerk of the court a good and sufficient bond in an amount set by the court to cover court costs that may reasonably accrue in connection with the case. A judgment rendered in the case may not be superseded pending appeal.

(d) Venue for a suit under this section is in any judicial

district in which the violation or threat to violate occurs.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.006. EMPLOYEE RIGHTS. This subchapter does not limit the right of an employee of a public utility to:

(1) quit work and leave the employer's premises at any time the employee chooses; or

(2) refuse to report for work when the employee does not want to report.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.007. WEATHER EMERGENCY PREPAREDNESS REPORT. (a) In this section, "commission" means the Public Utility Commission of Texas.

(a-1) The commission shall analyze emergency operations plans developed by electric utilities as defined by Section 31.002, power generation companies, municipally owned utilities, and electric cooperatives that operate generation facilities in this state and prepare a weather emergency preparedness report on power generation weatherization preparedness. In preparing the report, the commission shall:

(1) review the emergency operations plans currently on file with the commission;

(2) analyze and determine the ability of the electric grid to withstand extreme weather events in the upcoming year;

(3) consider the anticipated weather patterns for the upcoming year as forecasted by the National Weather Service or any similar state or national agency; and

(4) make recommendations on improving emergency operations plans and procedures in order to ensure the continuity of electric service.

(b) The commission may require an electric generation entity subject to this section to file an updated emergency operations plan if it finds that an emergency operations plan on file does not contain adequate information to determine whether the electric generation entity can provide adequate electric generation services.

(c) The commission may adopt rules relating to the

implementation of the report described by Subsection (a-1).

(d) The commission shall submit the report described by Subsection (a-1) to the lieutenant governor, the speaker of the house of representatives, and the members of the legislature not later than September 30, 2012.

(e) The commission may submit subsequent weather emergency preparedness reports if the commission finds that significant changes to weatherization techniques have occurred or are necessary to protect consumers or vital services, or if there have been changes to statutes or rules relating to weatherization requirements. A report under this subsection must be submitted not later than:

(1) March 1 for a summer weather emergency preparedness report; and

(2) September 1 for a winter weather emergency preparedness report.

(f) The emergency operations plans submitted for the report described by Subsection (a-1) and any subsequent plans submitted under Subsection (e) are public information except for the portions of the plan considered confidential under Chapter 552, Government Code, or other state or federal law. If portions of a plan are designated as confidential, the plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed. An electric generation entity within the ERCOT power region shall provide the entity's plan to ERCOT in its entirety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1335 (S.B. 1133), Sec. 1, eff. June 17, 2011.

## SUBCHAPTER B. MANIPULATION OF SERVICE FOR CERTAIN LAW ENFORCEMENT PURPOSES

Sec. 186.021. EMERGENCY INVOLVING HOSTAGE OR ARMED SUSPECT. (a) In an emergency in which the supervising law enforcement official having jurisdiction in the geographical area has probable cause to believe that an armed and barricaded suspect or a person holding a hostage is committing a crime, the supervising law enforcement official may order a designated telephone company security official to cut or otherwise control telephone lines to prevent telephone communication by the armed suspect or the hostage

holder with a person other than a peace officer or person authorized by a peace officer.

(b) The serving telephone company in the geographical area of a law enforcement unit shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out this section.

(c) Good faith reliance on an order given by a supervising law enforcement official under this section is a complete defense to a civil or criminal action brought against a telephone company or the company's director, officer, agent, or employee as a result of compliance with the order.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER C. FRAUDULENT OBTAINING OF SERVICE

Sec. 186.031. DEFINITIONS. In this subchapter:

(1) "Publish" means to communicate information to another by any means.

(2) "Telecommunications service" means the transmission of a message or other information by a public utility, including a telephone or telegraph company.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.032. FRAUDULENTLY OBTAINING TELECOMMUNICATIONS SERVICES. (a) A person commits an offense if:

(1) knowing that another will use the published information to avoid payment of a charge for telecommunications service, the person publishes:

(A) an existing, cancelled, revoked, or nonexistent telephone number;

(B) a credit number or other credit device; or

(C) a method of numbering or coding that is used in issuing telephone numbers or credit devices, including credit numbers; or

(2) the person makes or possesses equipment specifically designed to be used fraudulently to avoid charges for telecommunications service.

(b) An offense under this section is a misdemeanor punishable

by a fine of not more than $500, by confinement in jail for not more than 60 days, or by both, unless the person has been previously convicted of an offense under this section. A second or subsequent offense is a felony punishable by a fine of not more than $5,000, by imprisonment in the Texas Department of Criminal Justice for not less than two years and not more than five years, or by both.

(c) This section does not apply to an employee of a public utility who provides telecommunications service while acting in the course of employment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.156, eff. September 1, 2009.

Sec. 186.033. DISPOSITION OF CERTAIN EQUIPMENT. (a) A peace officer may seize equipment described by Section 186.032(a)(2) under a warrant or incident to a lawful arrest.

(b) If the person who possessed equipment seized under Subsection (a) is convicted under Section 186.032, the court entering the judgment of conviction shall order the sheriff to destroy the equipment.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

**SUBCHAPTER D. AVAILABILITY OF EMERGENCY TELEPHONE SERVICE**

Sec. 186.041. DEFINITIONS. In this subchapter:

(1) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

(2) "Party line" means a subscriber's telephone circuit, consisting of two or more main telephone stations connected with the circuit, each station with a distinctive ring or telephone number.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.042. OBSTRUCTION OF EMERGENCY TELEPHONE CALL; PENALTY. (a) A person commits an offense if:

(1) the person wilfully refuses to relinquish a party line immediately on being informed that the line is needed for an emergency call described by Subdivision (2); and

(2) the party line is needed for an emergency call:

(A) to a fire or police department; or

(B) for medical aid or an ambulance service.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 and not more than $500;

(2) confinement in the county jail for not more than one month; or

(3) both fine and confinement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.043. FALSIFICATION OF EMERGENCY TELEPHONE CALL; PENALTY. (a) A person commits an offense if the person secures the use of a party line by falsely stating that the line is needed for an emergency call:

(1) to a fire or police department; or

(2) for medical aid or an ambulance service.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 and not more than $500;

(2) confinement in the county jail for not more than one month; or

(3) both fine and confinement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.044. NOTICE OF CERTAIN OFFENSES REQUIRED. (a) A telephone directory distributed to the public in this state that lists the telephone numbers of an exchange located in this state must contain a notice explaining the offenses under Sections 186.042 and 186.043. The notice must be:

(1) printed in type not smaller than the smallest type on the same page; and

(2) preceded by the word "warning" printed in type at least as large as the largest type on the same page.

(b) At least once each year, a person providing telephone service shall enclose in the telephone bill mailed to each person who uses a party line telephone a notice of Sections 186.042 and 186.043.

(c) This section does not apply to a directory, commonly known as a classified directory, that is distributed solely for business advertising purposes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 186.045. FAILURE TO PROVIDE NOTICE; PENALTY. (a) A person providing telephone service commits an offense if the person:

(1) distributes copies of a telephone directory subject to Section 186.044(a) from which the notice required by that section is wilfully omitted; or

(2) wilfully fails to enclose in telephone bills the notice required by Section 186.044(b).

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 and not more than $500.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

## SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES ALONG, OVER, UNDER, OR ACROSS RAILROAD RIGHT-OF-WAY

Sec. 186.051. DEFINITIONS. In this subchapter:

(1) "Cable operator" means an entity that owns or operates a cable system, as that term is defined by 47 U.S.C. Section 522, as amended.

(2) "Common carrier" means a common carrier as described by Section 111.002, Natural Resources Code, or a person who submits to regulation by the state as a common carrier under Article 2.01, Texas Business Corporation Act.

(3) "Energy transporter" means a person who gathers or transports oil, gas, or oil and gas products by pipeline.

(4) "Railroad" means an entity that owns, operates, or controls a railroad or property or assets owned or previously owned by a railroad in this state, including agents, assignees, or parties that by contract own, control, or manage railroad rights-of-way, easements, or other real property rights belonging to a railroad. The term includes interurban and street railroads owned by a private

entity but excludes a terminal railroad and a railroad or interurban and street railroad owned by a governmental entity, including a navigation district or port authority, or a wharf.

(5) "Railroad right-of-way" means the real property rights owned or controlled by a railroad, including fee and easement interests used or previously used as a railroad operating corridor.

(6) "Utility" means:

(A) a gas, water, electric, or telecommunications entity that is defined as a utility under the laws of this state;

(B) an electric cooperative; or

(C) a municipally owned utility.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.052. EXEMPTIONS. (a) The inclusion of an energy transporter or cable operator in this subchapter does not subject the transporter or operator to regulation as a utility or common carrier.

(b) The inclusion of a common carrier in this subchapter does not subject the carrier to regulation as a utility.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.053. APPLICABILITY. (a) Except as provided by Section 186.058, this subchapter applies only to facilities along, over, under, or across a railroad or railroad right-of-way in place under a license, agreement, or nonperpetual easement.

(b) In relation to cable operators, this subchapter applies only to those lines over which the cable operator is offering or transporting high-speed Internet or broadband information services.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.054. CONSTRUCTION AND MAINTENANCE OF UTILITY, COMMON CARRIER, CABLE OPERATOR, AND ENERGY TRANSPORTER FACILITIES. (a) A utility, common carrier, cable operator, or energy transporter may acquire an easement by eminent domain along, over, under, or across a railroad or railroad right-of-way as provided by this subchapter to maintain, operate, or upgrade its facilities consistent with

preexisting licenses or agreements.

(b) A utility, common carrier, cable operator, or energy transporter:

(1) shall provide notice to the railroad within a reasonable period of any proposed activity relating to the construction, maintenance, or operation of the facilities; and

(2) may not unreasonably interfere with railroad operations.

(c) Absent terms to the contrary in an easement acquired by condemnation under this subchapter, existing license, or agreement, a railroad may require a utility, common carrier, cable operator, or energy transporter to relocate any portion of a facility that is located in the railroad right-of-way that is not in the public right-of-way if:

(1) a reasonable alternate route is available;

(2) a reasonable amount of time is provided;

(3) substantial interference with the railroad operations is established; and

(4) the railroad reimburses the utility, common carrier, cable operator, or energy transporter for the reasonable cost of relocation.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.055. DOCUMENTATION OF RIGHTS ACQUIRED. If a railroad requires a utility, common carrier, cable operator, or energy transporter to obtain from the railroad a right to use a railroad right-of-way, the railroad shall produce, if requested in writing, the readily available documentation from the railroad's records indicating the extent of the railroad's right, title, or interest in the property sought to be used by the utility, common carrier, cable operator, or energy transporter. The utility, common carrier, cable operator, or energy transporter shall reimburse the railroad for the reasonable cost of producing the documentation as required by this section. The reimbursable cost, including internal costs, may not exceed $500, unless the parties agree otherwise. A railroad that produces documentation as provided by this section is not limited or prevented from asserting a right, title, or interest in real property based on documentation that has not been produced under this section.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.056. VALUATION OF RIGHTS ACQUIRED. (a) In the absence of an agreement to convey a permanent easement for the continued right to use a preexisting facility located in a railroad right-of-way, a utility, common carrier, cable operator, or energy transporter may obtain the right to continuously use the right-of-way through the exercise of eminent domain under Chapter 21, Property Code.

(b) The award of damages due the railroad under an eminent domain proceeding as provided by Subsection (a) is:

(1) the market value of the real property interest to be used; and

(2) if a portion of the railroad's right-of-way is taken, damages, if any, to the railroad's remaining property.

(c) The railroad may also recover:

(1) reasonable costs and expenses for interference with railroad operations, including internal costs for providing flagging services; and

(2) reasonable costs and expenses to repair any damage to its facilities caused by the maintenance, operation, or upgrade of the preexisting utility, common carrier, cable operator, or energy transporter facilities.

(d) The payment by the utility, common carrier, cable operator, or energy transporter determined under this section is the only compensation due to the railroad for the perpetual use of the interest obtained.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.057. RIGHT TO MAINTAIN FACILITIES. (a) A utility, common carrier, cable operator, or energy transporter may not be required to remove an existing facility for 180 days after the date the utility, common carrier, cable operator, or energy transporter receives a written notice from the railroad that an existing facility must be removed from the railroad's right-of-way if:

(1) the facility was located along, under, over, or across the railroad right-of-way with the written consent of the railroad;

and

(2) the utility, common carrier, cable operator, or energy transporter is not in default under an agreement with the railroad.

(b) If a utility, common carrier, cable operator, or energy transporter requests documentation under Section 186.055, the 180-day period provided by Subsection (a) is tolled until the utility, common carrier, cable operator, or energy transporter receives a written response to its request from the railroad.

(c) If a utility, common carrier, cable operator, or energy transporter does not condemn or enter into an agreement regarding the disputed area involving the railroad's right-of-way within the 180-day period provided by Subsection (a) or any extended period provided by Subsection (b), the license or agreement between the utility, common carrier, cable operator, or energy transporter and the railroad is terminated.

(d) The possessory right provided by this section is in addition to any possessory right provided by Chapter 21, Property Code.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.058. LICENSE AND RENEWAL. (a) A utility, common carrier, cable operator, or energy transporter may obtain an original license or renew a license for the right to use a railroad right-of-way for a one-time fee paid based on:

(1) the agreement of the railroad and the utility, common carrier, cable operator, or energy transporter; or

(2) a mutually acceptable third-party determination of market value.

(b) A fee paid under this section is the only fee payment required. The license remains in effect without the requirement of additional fee payments for renewal of the license.

(c) The terms of the license or license renewal may provide that the railroad is not later subject to this subchapter, except the railroad continues to be subject to eminent domain authority granted by other law.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.059. RESTRICTIONS ON PAYMENT OF COSTS AWARDED AGAINST RAILROAD IN CONDEMNATION. If the special commissioners or a court awards costs against a railroad under Section 21.047, Property Code, because the award of damages to the railroad is equal to or less than the amount the utility, common carrier, cable operator, or energy transporter exercising the right of eminent domain under this subchapter offered to pay, the costs awarded against the railroad must be paid by the railroad without reimbursement by or contribution from any agent or representative, including an agent or representative that handled or assisted in the condemnation proceedings.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.060. CUMULATIVE RIGHTS AND RESPONSIBILITIES. The rights, privileges, and responsibilities provided by this subchapter are in addition to and not in diminution of or substitution for those rights granted by any other state or federal law.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

Sec. 186.061. EFFECT ON OTHER LAW. This subchapter does not affect the elements a condemnor must establish by law to acquire real property.

Added by Acts 2003, 78th Leg., ch. 1087, Sec. 2, eff. Sept. 1, 2003.

## TITLE 5. PROVISIONS AFFECTING THE OPERATION OF UTILITY FACILITIES
## CHAPTER 251. UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY
### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. SHORT TITLE. This chapter may be cited as the Underground Facility Damage Prevention and Safety Act.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.002. DEFINITIONS. In this chapter:

(1) "Class A underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

(A) electrical energy;

(B) natural or synthetic gas;

(C) petroleum or petroleum products;

(D) steam;

(E) any form of telecommunications service, including voice, data, video, or optical transmission, or cable television service; or

(F) any other liquid, material, or product not defined as a Class B underground facility.

(2) "Class B underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

(A) water;

(B) slurry; or

(C) sewage.

(3) "Corporation" means the Texas Underground Facility Notification Corporation.

(4) "Damage" means:

(A) the defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground facility or of any protective coating, housing, or other protective device of an underground facility;

(B) the weakening of structural or lateral support of an underground facility; or

(C) the failure to properly replace the backfill covering an underground facility.

(5) "Excavate" means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches.

(6) "Excavator" means a person that excavates or intends to excavate in this state.

(7) "Exploration and production underground facility" means an underground facility used by a person producing gas or oil, or

both, for the production of that gas or oil, including facilities used for field separation, treatment, gathering, or storage of gas or oil.

(8) "High speed data transmission" means a method of data transmission that does not include facsimile or voice transmission.

(9) "Legal holiday" means a holiday specified as a legal holiday by Subchapter B, Chapter 662, Government Code.

(10) "Mechanized equipment" means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow, and other equipment used to plow in or pull in cable or pipe.

(11) "Operator" means a person that operates an underground facility.

(12) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one or more gates that are locked at all times or monitored by an individual who can prevent unauthorized access.

(13) "Underground facility" means a line, cable, pipeline system, conduit, or structure that is located partially or totally underground and that is used to produce, store, convey, transmit, or distribute telecommunications, electricity, gas, water, sewage, steam, or liquids such as petroleum, petroleum products, or hazardous liquids.

(14) "Saturday notification" means a notice of intent to excavate provided by an excavator to a notification center on a Saturday before 11:59 a.m.

(15) "Violation" means a violation of Section 251.151, 251.152, or 251.159.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.003. EXEMPTIONS. The following are not subject to this chapter as underground facilities:

(1) an aboveground or underground storage tank, sump, or impoundment or piping connected to an aboveground or underground storage tank, sump, or impoundment located in the same tract of land as the storage tank, sump, or impoundment;

(2) an underground facility operated by the owner of a secured facility and located entirely within the secured facility;

(3) an underground facility that serves only the owner of the underground facility or the owner's tenant and that is located solely on the owner's property;

(4) piping within a well bore;

(5) the portion of an exploration and production underground facility that is located within the boundaries of the oil or gas field from which the oil and gas is produced and that is not located in the boundaries of an established easement or right-of-way granted for the benefit of a governmental entity or a private entity if the easement or right-of-way is granted for a public purpose; or

(6) an underground facility that serves a cemetery and is located solely on the cemetery's property.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.004. APPLICATION TO CERTAIN CONTRACTORS AND STATE EMPLOYEES. (a) This chapter does not apply to a contractor working in the public right-of-way under a contract with the Texas Department of Transportation.

(b) Excavation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this chapter if the excavation is more than 10 feet from the right-of-way line.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 17.004(a), eff. Sept. 1, 2003.

Sec. 251.005. CONVERSION OF FACILITY OR OPERATOR. (a) An operator of an underground facility that is exempted under this subchapter may voluntarily convert that facility to a Class A underground facility by sending written communication from a competent authority of the operator to the corporation advising of the status change.

(b) An operator of a Class B underground facility may voluntarily convert to a Class A underground facility operator by

sending written communication from a competent authority of the operator to the corporation advising of the status change.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.006. COMPLIANCE BY PERMIT HOLDERS. (a) The fact that a person has a legal permit, permission from the owner of the property or the owner's licensee, or an easement to conduct excavation operations does not affect the person's duty to comply with this chapter.

(b) Compliance with this chapter does not affect a person's responsibility to obtain a permit required by law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.007. FACILITY ON COUNTY OR MUNICIPAL ROAD. This chapter does not affect a contractual or statutory right of a county or municipality to require an operator to relocate, replace, or repair its underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.008. EFFECT ON CIVIL REMEDIES. Except as otherwise specifically provided by this chapter, this chapter, including Section 251.201, does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.009. PROVISION OF GENERAL INFORMATION. At least once each calendar year, at intervals not exceeding 15 months, each Class A underground facility operator who conveys, transmits, or

distributes by means of its underground facilities service directly to more than one million residential customers within this state shall provide all of its residential customers in this state general information about excavation activities covered by this chapter and the statewide toll-free telephone number established by the corporation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

**SUBCHAPTER B. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION**

Sec. 251.051. PURPOSE. The Texas Underground Facility Notification Corporation provides statewide notification services under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.052. NONPROFIT CORPORATION. The corporation is a public nonprofit corporation and has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except that the corporation:

(1) may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war activities;

(2) may not merge or consolidate with another corporation;

(3) is not subject to voluntary or involuntary dissolution; and

(4) may not be placed in receivership.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.053. APPLICATION OF OPEN MEETINGS AND OPEN RECORDS LAWS. The corporation is subject to Chapters 551 and 552, Government Code, except that the corporation may not disseminate, make available, or otherwise distribute service area map data or

information provided by an operator unless that action is necessary to perform the corporation's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.054. EXPENSES AND LIABILITIES OF CORPORATION. (a) All expenses of the corporation shall be paid from income of the corporation.

(b) A liability created by the corporation is not a debt of this state, and the corporation may not secure a liability with funds or assets of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.055. BOARD OF DIRECTORS. (a) The board of directors of the corporation is composed of the following 12 members appointed by the governor:

(1) six representatives of the general public;

(2) one representative of the gas industry;

(3) one representative of the telecommunications industry;

(4) one representative of the electric industry;

(5) one representative of cable television companies;

(6) one representative of municipalities; and

(7) one representative of persons who engage in excavation operations who are not also facility operators.

(b) Board membership is voluntary and a director is not entitled to receive compensation for serving on the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.056. TERMS. (a) Directors serve staggered three-year terms, with the terms of four directors expiring each August 31.

(b) A director serves until the director's successor is appointed by the governor and assumes office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.057. DECLARATION OF BOARD VACANCY. (a) The board may declare a director's office vacant if the director ceases to be associated with the industry or an operator the director represents.

(b) Not later than the 60th day after the date a vacancy on the board is declared, the governor shall appoint a person to fill the vacancy for the remainder of the unexpired term.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.058. OFFICERS. (a) The board shall elect from among its directors a chair and vice chair.

(b) The chair and vice chair serve for a term of one year and may be reelected.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.059. ENTITLEMENT TO VOTE. The corporation's bylaws must provide that each director is entitled to one vote.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.060. DUTIES OF CORPORATION. The corporation shall develop and implement processes to:

(1) maintain a registration of:

(A) notification centers as provided by Section 251.101(a)(3);

(B) operators who elect to convert facilities to Class A facilities under Section 251.005(a); or

(C) operators who elect to become Class A underground facility operators under Section 251.005(b);

(2) establish minimum technical standards used by

notification centers;

(3) establish a statewide toll-free telephone number to be used by excavators that incorporates the use of a call router system that routes calls to the notification centers on a pro rata basis;

(4) oversee the bid process and select the vendor for the statewide toll-free telephone number;

(5) oversee the bid process and select the vendor for the call router system;

(6) determine before May 1 of each year the cost-sharing between the notification centers of:

(A) the toll-free telephone number; and

(B) the call router system prescribed by Section 251.102(4);

(7) develop public service announcements to educate the public about statewide one-call notification and its availability;

(8) establish a format for information transfer among notification centers other than high speed data transmission, if appropriate;

(9) on a complaint concerning charges, investigate and determine appropriate charges;

(10) recommend a civil penalty against a notification center that does not meet the requirements of this chapter of not less than $1,000 or more than $5,000 for each violation;

(11) refer the recommended penalty to the attorney general, who shall institute a suit in a court of competent jurisdiction to recover the penalty;

(12) assist in dispute resolution among notification centers or between a notification center and an operator;

(13) assist any operator who encounters difficulty in joining a notification center; and

(14) review and study design standards for the placement of underground facilities throughout this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.061. CONTRACT FOR STATEWIDE TOLL-FREE NUMBER AND CALL ROUTER SYSTEM. (a) The corporation shall solicit proposals for the contract to establish and operate the statewide toll-free telephone

number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this chapter.

(b) The corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. The corporation may reject all proposals if the corporation finds that none of the proposals is acceptable.

(c) After the proposals are opened, each document relating to the consideration of a proposal or the award of a contract and the text of the contract are considered books and records of the corporation for the purposes of Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.062. FEES AND RATES. (a) Except as provided by this section, the corporation may not, for any reason, impose an assessment, fee, or other charge, including a charge for inputting data, against an operator.

(b) Before January 15 of each year, a Class A facility operator shall pay to the corporation a fee of $50 for services to be performed by the corporation during that calendar year. A fee for a part of a year may not be prorated.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

## SUBCHAPTER C. NOTIFICATION CENTERS

Sec. 251.101. NOTIFICATION CENTER. (a) A notification center is a legal entity that:

(1) operates a notification system capable of serving excavators and operators statewide;

(2) is created to:

(A) receive notification of an intent to excavate and of damage to an underground facility and disseminate that information to member operators that may be affected by the excavation or damage and to other notification centers operating in this state; and

(B) receive notification of an extraordinary circumstance and disseminate that information to member operators and to other notification centers operating in this state; and

(3) registers the following information with the corporation:

(A) its name, address, and telephone number;

(B) the name of a contact person;

(C) a statement of compliance with Section 251.104; and

(D) a listing of the counties in which it operates.

(b) A notification center operating on September 1, 1997, may continue to operate if the notification center complies with this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.102. GENERAL DUTIES OF NOTIFICATION CENTER. A notification center shall:

(1) operate 24 hours a day every day of the year;

(2) have the capability to receive emergency information 24 hours a day from excavators and disseminate the information as soon as it is received to the appropriate operators and to all registered and affected notification centers operating in this state;

(3) have the capacity to receive extraordinary circumstance information 24 hours a day from operators and disseminate the information as soon as it is received to all registered and affected notification centers;

(4) submit to the corporation, not later than May 15 of each year, a pro rata share of the expense, as established by the corporation, of the statewide toll-free telephone number and the call router;

(5) provide, on request of an excavator, a contact name and telephone number of a representative of the operator for special circumstances; and

(6) have personnel capable of assisting Spanish-speaking customers.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.103. RECORDS. (a) A notification center shall maintain for not less than four years a record to document:

(1) the receipt of a notice of:

(A) intent to excavate;

(B) damage to an underground facility;

(C) an emergency excavation; and

(D) an extraordinary circumstance;

(2) the information the excavator is required to provide to the notification center under this chapter;

(3) contact with operators and other notification centers; and

(4) the information the notification center provided to the excavator.

(b) A notification center may not destroy records that relate to any matter that is involved in litigation if the notification center is placed on notice that the litigation has not been finally resolved.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.104. INSURANCE. A notification center shall, at all times, maintain a minimum of $5 million professional liability and errors and omissions insurance to cover duties prescribed by this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.105. FEES AND CHARGES. (a) A notification center that notifies another notification center under Section 251.102(2) or (3) or Section 251.153(b) shall recover an amount not exceeding the actual cost of providing the notice from the notification center receiving the notice.

(b) The notification center shall charge a Class A underground facility operator not more than $1.25 for a call made to the system that affects the operator. The board may increase or decrease the

maximum charge only on an affirmative vote of at least two-thirds of the total number of votes entitled to be cast. A notification center may petition the corporation for an increase in the maximum charge and is entitled to the increase on proof that costs exceed the maximum charge.

(c) The notification center may not charge an operator any additional fee such as an initiation fee, a membership fee, or a set-up fee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.106. PAYMENTS TO CORPORATION. Each time a notification center receives a call from an excavator under Section 251.151, the notification center shall pay the corporation five cents. The corporation shall waive this charge for the remainder of any year in which the corporation receives $250,000 under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 1, eff. Sept. 1, 2001.

Sec. 251.107. DUTY TO PARTICIPATE IN NOTIFICATION CENTER. (a) Each operator of a Class A underground facility, including a political subdivision of this state, shall participate in a notification center as a condition of doing business in this state.

(b) Each operator of a Class A underground facility shall provide to the notification center:

(1) maps or grid locations or other identifiers determined by the operator indicating the location of the operator's underground facilities;

(2) the name and telephone number of a contact person or persons; and

(3) at least quarterly but, if possible, as those changes occur, information relating to each change in the operator's maps or grid locations or other identifiers or in the person or persons designated as the operator's contact person or persons.

(c) The notification center may not require an operator to

conduct a survey of the operator's underground facilities or alter the operator's existing signage.

(d) A notification center may not disseminate, make available, or otherwise distribute maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

## SUBCHAPTER D. REQUIREMENTS RELATING TO EXCAVATION

Sec. 251.151. DUTY OF AN EXCAVATOR. (a) Except as provided by Sections 251.155 and 251.156, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays.

(b) Notwithstanding Subsection (a), if an excavator makes a Saturday notification, the excavator may begin the excavation the following Tuesday at 11:59 a.m. unless the intervening Monday is a holiday. If the intervening Monday is a holiday, the excavator may begin the excavation the following Wednesday at 11:59 a.m.

(c) To have a representative present during the excavation, the operator shall contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. If the excavator wants to change the start time, the excavator shall notify the operator to set a mutually agreed-to time to begin the excavation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.152. INFORMATION INCLUDED IN NOTICE. The excavator shall include in the notice required under Section 251.151:

(1) the name of the person serving the notice;

(2) the location of the proposed area of excavation, including:

(A) the street address, if available, and the location of the excavation at the street address; or

(B) if there is no street address, an accurate description of the excavation area using any available designations such as the closest street, road, or intersection;

(3) the name, address, and telephone number of the excavator or the excavator's company;

(4) the excavator's field telephone number, if one is available;

(5) a telephone facsimile number, e-mail address, or another electronic number or address approved by the board to which an operator may send the notification required by Section 251.157(d);

(6) the starting date and time and the anticipated completion date of excavation; and

(7) a statement as to whether explosives will be used.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 1, eff. Nov. 1, 2001.

Sec. 251.153. DUTY OF NOTIFICATION CENTER. (a) At the time an excavator provides a notification center with the excavator's intent to excavate, the notification center shall advise the excavator that water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive information concerning the excavator's proposed excavation.

(b) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, the notification center shall provide to every other affected notification center operating in this state the information required by Section 251.152 and received from the excavator. The notification center shall provide the information by the use of high speed data transmission.

(c) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator or from a different notification center, the notification center shall notify each member operator that may have an underground facility in the vicinity of the proposed excavation operation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.154. NOTIFICATION BY AN EXCAVATOR. (a) A person required to provide notice under this chapter is considered to have provided the notice when the person delivers the required information and a notification center receives that information within the time limits prescribed by this chapter.

(b) A person may deliver information required under this chapter by any appropriate method, including the use of any electronic means of data transfer.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.155. EXCEPTION IN CASE OF EMERGENCY; OFFENSE. (a) Section 251.151 does not apply to an emergency excavation that is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for uninterrupted service and immediate reestablishment of service if service is interrupted compels immediate action.

(b) The excavator may begin emergency excavation under Subsection (a) immediately and shall take reasonable care to protect underground facilities.

(c) When an emergency exists, the excavator shall notify a notification center as promptly as practicably possible.

(d) An excavator may not misrepresent a fact or circumstance used in the determination of an emergency excavation under Subsection (a). A person that violates this subsection is subject to a penalty under:

(1) Section 251.201;

(2) Section 251.203; or

(3) both Section 251.201 and Section 251.203.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 1, eff. September 1, 2011.

Sec. 251.156. OTHER EXCEPTIONS TO DUTY OF EXCAVATORS. (a) Section 251.151 does not apply to:

(1) interment operations of a cemetery;

(2) operations at a secured facility if:

(A) the excavator operates each underground facility at the secured facility, other than those within a third-party underground facility easement or right-of-way; and

(B) the excavation activity is not within a third-party underground facility or right-of-way;

(3) routine railroad maintenance within 15 feet of either side of the midline of the track if the maintenance will not disturb the ground at a depth of more than 18 inches;

(4) activities performed on private property in connection with agricultural operations;

(5) operations associated with the exploration or production of oil or gas if the operations are not conducted within an underground facility easement or right-of-way;

(6) excavations by or for a person that:

(A) owns, leases, or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(B) operates all underground facilities located at the excavation site; or

(7) routine maintenance by a county employee on a county road right-of-way to a depth of not more than 24 inches.

(b) If a person excepted under Subsection (a)(4) elects to comply with this chapter and the operator fails to comply with this chapter, the person is not liable to the underground facility owner for damages to the underground facility.

(c) In this section:

(1) "Agricultural operations" means activities performed on land and described by Section 23.51(2), Tax Code.

(2) "Routine maintenance" means operations, not to exceed 24 inches in depth, within a road or drainage ditch involving grading and removal or replacement of pavement and structures.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.157. DUTY OF OPERATOR TO PERSON EXCAVATING. (a) Each Class A underground facility operator contacted by the notification system shall mark the approximate location of its underground

facilities at or near the site of the proposed excavation if the operator believes that marking the location is necessary. The operator shall mark the location not later than:

(1) the 48th hour after the time the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays;

(2) 11:59 a.m. on the Tuesday following a Saturday notification unless the intervening Monday is a holiday;

(3) 11:59 a.m. on the Wednesday following a Saturday notification if the intervening Monday is a holiday; or

(4) a time agreed to by the operator and the excavator.

(b) An operator shall refer to the American Public Works Association color coding standards when marking.

(c) An excavator who has fully complied with this chapter may not be liable for damage to an underground facility that was not marked in accordance with this chapter.

(d) Not later than the 48th hour after the time the excavator gives to the notification center notice of intent to excavate, an operator contacted by the notification center shall notify the excavator of the operator's plans to not mark the proximate location of an underground facility at or near the site of the proposed excavation. The operator must provide the notification by e-mail or facsimile or by another verifiable electronic method approved by the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 2, eff. Nov. 1, 2001.

Sec. 251.158. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE. (a) The deadline prescribed by Section 251.157(a) does not apply if the operator experiences an extraordinary circumstance due to an act of God, including a tornado, a hurricane, an ice storm, or a severe flood, or a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill the operator's obligations under this chapter.

(b) The operator shall notify a notification center of the extraordinary circumstance and shall include in the notification:

(1) the nature and location of the extraordinary

circumstance;

(2) the expected duration of the situation and the approximate time at which the operator will be able to resume location request activities; and

(3) the name and telephone number of the individual that the notification system can contact if there is an emergency that requires the operator's immediate attention.

(c) In addition to the notification required by Subsection (b), the operator shall also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and shall include in the notification:

(1) the fact that the operator is experiencing an extraordinary circumstance; and

(2) the approximate time at which the operator will mark the requested location.

(d) A notification center shall inform each excavator notifying the system under Section 251.151 that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location.

(e) An excavator is relieved from all provisions of this chapter until the operator notifies the notification center that the operator has resumed location request activities within the affected location.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.159. EXCAVATION DAMAGE. (a) If an excavation operation results in damage to an underground facility, the excavator shall immediately contact the underground facility operator to report the damage.

(b) If the excavator is not certain of the operator's identity, the excavator shall contact a notification center to report the damage, and the notification center shall immediately notify all other affected notification centers. Immediately on receiving notification, each notification center shall contact each member operator that has underground facilities in or near the area in which the damage occurred.

(c) Only the operator or a person authorized by the operator

may perform repairs, and the repairs must be made in an expeditious manner.

(d) An excavator shall delay backfilling in the immediate area of the damage until the damage is reported to the operator and a repair schedule is mutually agreed to by the excavator and the operator.

(e) If damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

## SUBCHAPTER E. PENALTIES

Sec. 251.201. CIVIL PENALTY OR WARNING LETTER. (a) An excavator that violates Section 251.151, 251.152, or 251.159 is liable for a civil penalty of not less than $500 or more than $1,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.

(a-1) An excavator that violates Section 251.155(d) is liable for a civil penalty of not less than $1,000 or more than $2,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.

(b) Except as provided by Subsection (b-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than $1,000 or more than $2,000.

(b-1) If it is found at the trial on a civil penalty that the

excavator has violated Section 251.155(d) and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than $2,000 or more than $5,000.

(c) Except as provided by Subsection (c-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than $2,000 or more than $5,000.

(c-1) If it is found at the trial on a civil penalty that the excavator has violated Section 251.155(d) and has been assessed a penalty under this section at least two other times before the first anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than $5,000 or more than $10,000.

(d) In assessing the civil penalty the court shall consider the actual damage to the facility, the effect of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(e) Venue for a proceeding to collect a civil penalty under this section is in the county in which:

(1) all or part of the alleged violation occurred;

(2) the defendant has its principal place of business in this state; or

(3) the defendant resides, if in this state.

(f) The appropriate county attorney or criminal district attorney shall bring the action to recover the civil penalty.

(g) This section does not apply to a residential property owner excavating on the property owner's own residential lot.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1,

1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 2, eff. September 1, 2011.

Sec. 251.2011. WARNING LETTER AND SAFETY TRAINING COURSE. (a) The board of directors of the corporation shall establish a procedure to ensure that the board verifies that an excavator has violated Section 251.151, 251.152, or 251.159 before giving the excavator a warning letter and requiring the excavator to attend a safety training course under Section 251.201.
(b) The board shall solicit and consider advice and recommendations from excavators in establishing or approving a safety training course that an excavator may be required to attend under Section 251.201.

Added by Acts 2001, 77th Leg., ch. 652, Sec. 3, eff. Sept. 1, 2001.

Sec. 251.202. ALLOCATION OF CIVIL PENALTY. (a) Fifty percent of the civil penalty collected under Section 251.201 shall be transferred to the county treasurer of the county prosecuting the action and 50 percent of the civil penalty collected under Section 251.201 shall be transferred to the corporation.
(b) The county treasurer shall deposit all money received under this section in the county road and bridge fund.
(c) The corporation shall use the money received under this section to develop public service announcements to educate the public about the statewide one-call notification system and its availability as prescribed by Section 251.060(7).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.203. CRIMINAL PENALTY. (a) A person commits an offense if:
(1) the person without authorization from the owner or operator of the facility intentionally removes, damages, or conceals

a marker or sign giving information about the location of a Class A underground facility; and

(2) the marker or sign gives notice of the penalty for intentional removal, damage, or concealment of the marker or sign.

(a-1) A person commits an offense if the person intentionally or recklessly violates Section 251.155(d).

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 184 (S.B. 1217), Sec. 4, eff. September 1, 2011.

## CHAPTER 252. ATTACHMENTS TO ELECTRIC COOPERATIVE'S DISTRIBUTION POLES

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Abandoned pole attachment" means a pole attachment:

(A) for which a cable operator has not paid, for a period of 90 consecutive days or more, an invoice for rental charges presented by an electric cooperative, unless there is a bona fide dispute over the invoice; or

(B) that is not removed after authority for the pole attachment has terminated or expired, subject to any extension period for negotiation and mediation described by Section 252.005(c).

(2) "Cable operator" means an entity that owns or operates a cable system, as that term is defined by 47 U.S.C. Section 522, regardless of the nature of the services offered or provided by the entity in addition to cable services.

(3) "Pole" means a pole carrying distribution lines with a voltage rating no higher than 34.5 kilovolts.

(4) "Pole attachment" means an affixture of cables, strands, wires, and associated equipment attached to a pole directly or indirectly.

(5) "Security instrument" means a performance bond or an equivalent financial instrument that guarantees payments of amounts payable to an electric cooperative by a cable operator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.002. APPLICABILITY. (a) This chapter applies to a pole attachment affixed by a cable operator to a pole owned and controlled by an electric cooperative. This chapter does not apply to a pole attachment regulated by the Federal Communications Commission under 47 U.S.C. Section 224.

(b) This chapter does not abrogate or affect a right or obligation of a party to a pole attachment contract entered into by a cable operator and an electric cooperative before September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.003. LIMITATION. (a) This chapter does not constitute state certification under 47 U.S.C. Section 224(c). If a court determines that this chapter constitutes certification under that section, this chapter is not enforceable and has no effect.

(b) This chapter may not be construed to subject an electric cooperative to regulation by the Federal Communications Commission under 47 U.S.C. Section 224. This chapter does not authorize a department, agency, or political subdivision of the state to exercise enforcement or regulatory authority over attachments to electric cooperative poles.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.004. CONSTRUCTION. Unless defined by Section 252.001, the technical terms and phrases in this chapter shall be construed using their usual and customary meanings in the electric and cable industries.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.005. POLE ATTACHMENT CONTRACTS; ACCESS REQUIREMENTS. (a) A cable operator and an electric cooperative shall establish the rates, terms, and conditions for pole attachments, including the cooperative's application and permitting processes by a written pole attachment contract executed by both parties. The rates, terms, and conditions for attachments by a cable operator on an electric cooperative's poles must be just and reasonable.

(b) A cable operator and an electric cooperative shall negotiate a pole attachment contract in good faith.

(c) A request to negotiate a new pole attachment contract by a cable operator or an electric cooperative must be in writing. If a cable operator and an electric cooperative are unable to agree to a new pole attachment contract before the expiration date of an existing pole attachment contract, the rates, terms, and conditions of the existing pole attachment contract and the terms and conditions of the electric cooperative's application and permitting processes remain in force:

(1) during the 180-day negotiation period described by Subsection (d) and during the period of any agreed extension; and

(2) during the 90-day mediation period described by Subsection (d) and during the period of any agreed extension.

(d) If a cable operator and an electric cooperative are unable to agree to a new pole attachment contract before the 181st day after the expiration date of the existing pole attachment contract and are unable to agree to an extension of the negotiation period for a certain number of days, the cable operator and electric cooperative shall attempt to resolve any disagreement over the rates, terms, or conditions by submitting the contract negotiations to mediation. The mediation process may not extend later than the 90th day after the end of the 180-day negotiation period and any agreed extension of that period unless the cable operator and an electric cooperative agree to an extension of the mediation period for a certain number of days. The mediation process must be conducted in a county in which the electric cooperative has distribution poles. The cable operator and an electric cooperative must share the expenses for the mediator equally.

(e) If the mediation process does not resolve the disagreement over the rates, terms, or conditions, the cable operator or the electric cooperative may request that a court resolve the disagreement over the rates, terms, and conditions.

(f) Access to a pole may be denied where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(g) In determining whether rates, terms, and conditions are just and reasonable, at least the following factors must be considered:

(1) the interests of and benefits to the consumers and potential consumers of the electric cooperative's services;

(2) the interests of and benefits to the subscribers and potential subscribers of the services offered through the pole attachments;

(3) compliance with applicable safety standards; and

(4) the maintenance and reliability of both electric distribution and cable services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.006. TRANSFER OF ATTACHMENTS. (a) An electric cooperative shall provide a cable operator with notice when the electric cooperative is installing a new pole to replace an existing pole to which a pole attachment is affixed due to the rerouting, maintenance, or upgrading of the electric distribution system. In the notice, the electric cooperative shall specify a date for the cable operator to remove its attachment from the existing pole and transfer the attachment to the new pole.

(b) If a cable operator does not transfer a pole attachment to the new pole on or before the 30th day after the date specified by the electric cooperative under Subsection (a), the electric cooperative may transfer the pole attachment to the new pole at the cable operator's expense, including the cost for the electric cooperative to return to the site.

(c) A cable operator shall indemnify, defend, and hold harmless the electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against all liability for the removal and transfer of a pole attachment subject to this section, except for personal injury or property damage arising from gross negligence or wilful misconduct of the electric cooperative during the removal and transfer process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.007. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) A cable operator shall remove the operator's abandoned pole attachment from an electric cooperative's pole not later than the 60th day after the date the cable operator receives from the electric cooperative a written request for removal of the pole attachment. A cable operator may request an electric cooperative to extend for a reasonable period the 60-day period prescribed by this section at any time before the 60-day period expires. The request for an extension must be in writing. The electric cooperative may grant a cable operator a reasonable extension of time to remove an abandoned attachment.

(b) If a cable operator does not remove a pole attachment for which a request for removal was made under Subsection (a) before the expiration of the period described by that subsection or before the expiration of an extended period granted by the electric cooperative, the electric cooperative may remove, use, sell, or dispose of the pole attachment at the cable operator's expense.

(c) An electric cooperative may require that a cable operator post a security instrument in an amount reasonably sufficient to cover the potential cost to the electric cooperative of removal and disposal of abandoned pole attachments.

(d) A cable operator shall indemnify, defend, and hold harmless the electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against all liability for the removal, use, sale, or disposal of abandoned pole attachments, except for personal injury or property damage arising from the gross negligence or wilful misconduct of the electric cooperative during the removal and disposal process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.

Sec. 252.008. EASEMENTS; INDEMNITY. (a) A cable operator is responsible for obtaining all rights-of-way and easements necessary for the installation, operation, and maintenance of the operator's pole attachments.

(b) An electric cooperative is not required to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a cable operator.

(c) An electric cooperative is not liable if a cable operator is prevented from placing or maintaining a pole attachment because the cable operator did not obtain a necessary right-of-way or easement.

(d) A cable operator shall indemnify, defend, and hold harmless the electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against any liability resulting from the cable operator's failure to obtain a necessary right-of-way or an easement for a pole attachment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1077 (H.B. 3355), Sec. 1, eff. September 1, 2013.