UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

CHAPTER 35. 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. 35.0021. WEATHER EMERGENCY PREPAREDNESS. (a) This section applies only to a municipally owned utility, electric cooperative, power generation company, or exempt wholesale generator that sells electric energy at wholesale in the ERCOT power region.

(b) The commission by rule shall require each provider of electric generation service described by Subsection (a) to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the commission. In adopting the rules, the commission shall take into consideration weather predictions produced by the office of the state climatologist.

(c) The independent organization certified under Section 39.151 for the ERCOT power region shall:

(1) inspect generation assets in the ERCOT power region for compliance with the reliability standards;

(2) provide the owner of a generation asset with a reasonable period of time in which to remedy any violation the independent organization discovers in an inspection; and

(3) report to the commission any violation.

(c-1) The independent organization certified under Section 39.151 for the ERCOT power region shall prioritize inspections conducted under Subsection (c)(1) based on risk level, as determined by the organization.

(d) The commission by rule shall require a provider of electric generation service described by Subsection (a) for a generation asset that experiences repeated or major weather-related forced interruptions of service to:

(1) contract with a person who is not an employee of the provider to assess the provider's weatherization plans, procedures, and operations for that asset; and

(2) submit the assessment to the commission and the independent organization certified under Section 39.151 for the ERCOT power region.

(e) The commission may require a provider of electric generation service described by Subsection (a) to implement appropriate recommendations included in an assessment submitted to the commission under Subsection (d).

(f) The independent organization certified under Section 39.151 for the ERCOT power region shall review, coordinate, and approve or deny requests by providers of electric generation service described by Subsection (a) for a planned power outage during any season and for any period of time.

(g) The commission shall impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a rule adopted under this section and does not remedy that violation within a reasonable period of time.

Added by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 13, eff. June 8, 2021.

Sec. 35.0022. SERVICE INTERRUPTION NOTIFICATIONS. (a) This section applies only to a provider of electric generation service described by Section 35.0021(a).

(b) The commission by rule shall require a provider of electric generation service to provide to the independent organization certified under Section 39.151 for the ERCOT power region the reason for each unplanned service interruption. Not later than the third business day after the service is restored, the independent organization shall include the reason for each unplanned service interruption in a publicly available report published on the independent organization's Internet website.

Added by Acts 2023, 88th Leg., R.S., Ch. 410 (H.B. 1500), Sec. 8, eff. September 1, 2023.

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, other than costs described by Subsections (d-2) and (d-3), 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).

(d-1) The commission by rule shall establish a reasonable allowance for transmission-owning utility costs incurred to interconnect generation resources directly with the ERCOT transmission system at transmission voltage. The allowance must take into account:

(1) the potential to reduce the costs to consumers of generation interconnection;

(2) historical generation interconnection costs; and

(3) any other factor that the commission considers reasonable to accomplish the goal of this subsection.

(d-2) Costs in excess of the transmission-owning utility allowance provided by Subsection (d-1) incurred to interconnect generation resources with the ERCOT transmission system must be directly assigned to and collected from the generation resource interconnecting through the facilities.

(d-3) Not later than September 1 of every fifth year, the commission shall review and may adjust the allowance provided by

Subsection (d-1) to account for inflation or supply chain issues.

(e) In this section, "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.

(f) 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. 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.

(g) The commission shall:

(1) review the type, volume, and cost of ancillary services to determine whether those services will continue to meet the needs of the electricity market in the ERCOT power region; and

(2) evaluate whether additional services are needed for reliability in the ERCOT power region while providing adequate incentives for dispatchable generation.

(h) The commission shall require the independent organization certified under Section 39.151 for the ERCOT power region to modify the design, procurement, and cost allocation of ancillary services for the region in a manner consistent with cost-causation principles and on a nondiscriminatory basis.

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.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 14, eff. June 8, 2021.

Acts 2023, 88th Leg., R.S., Ch. 410 (H.B. 1500), Sec. 9, eff. September 1, 2023.

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.

Text of subsection effective on voter approval of S.J.R. 93, 88th Leg., R.S.

(d) This subsection applies only to a facility in the ERCOT power region for which a loan or grant is provided under Subchapter A, Chapter 34. The independent organization certified under Section 39.151 for the ERCOT power region shall work with electric utilities to ensure that each facility in the ERCOT power region for which a loan or grant is provided is fully interconnected in the region not later than the date the facility is ready for commercial operation. The independent organization certified under Section 39.151 for the ERCOT power region shall give priority to interconnecting each facility for which a loan or grant is provided except that the organization shall prioritize transmission projects that the organization has formally designated as critical for reliability over a facility for which a loan or grant is provided. An electric utility that enters into an interconnection agreement for a facility for which a loan or grant is provided shall give priority to interconnecting the facility and complete construction of any other facilities necessary to interconnect the facility not later than the date the facility is ready for commercial operation except that the utility shall prioritize transmission projects that the independent organization certified under Section 39.151 for the ERCOT power region has formally designated as critical for reliability over a facility for which a

loan or grant is provided.

(e) If the commission receives an application under Chapter 37 for a certificate of convenience and necessity related to facilities necessary to interconnect a facility to which Subsection (d) applies and does not approve the application before the 90th day after the date the commission received the application, the deadline established by Subsection (d) is extended one day for each day after the 90th day in which the commission does not approve the application.

(f) The commission may extend the deadline established by Subsection (d) after notice, hearing, and a determination on a showing of good cause that fully interconnecting the facility before the deadline is not feasible.

(g) In this subsection, "Texas backup power package" has the meaning assigned by Section 34.0201. The commission by rule shall adopt procedures to expedite an electric utility interconnection request for a Texas backup power package for which a loan or grant is awarded under Chapter 34.

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.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 3.

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.

Sec. 35.010. COSTS RELATED TO REPORTING ON SAFETY PROCESSES AND INSPECTIONS FOR CERTAIN UTILITIES. (a) This section applies only to a municipally owned utility or electric cooperative that has wholesale transmission rates established by the commission.

(b) Costs incurred by a municipally owned utility or electric cooperative to comply with Section 38.102 shall be recorded as a regulatory asset for timely recovery in wholesale transmission rates established by the commission.

(c) The commission may adopt rules relating to the recording of regulatory assets under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1320 (H.B. 4150), Sec. 2, eff. September 1, 2019.

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.

Sec. 35.037. INTERCONNECTION AND OPERATION OF CERTAIN DISTRIBUTED GENERATION FACILITIES FOR FOOD SUPPLY CHAIN. (a) In this section:

(1) "Customer" means a retail electric customer:

(A) with a distributed generation facility installed on the retail electric customer's side of the meter; and

(B) that has a primary purpose of or derives a material source of revenue from:

(i) retail grocery sales; or

(ii) food manufacturing or distribution for retail grocery sales.

(2) "Distributed generation facility" means a facility installed on the customer's side of the meter but separately metered from the customer:

(A) with a nameplate capacity of at least 250 kilowatts and not more than 10 megawatts;

(B) that is capable of generating and providing backup or supplementary power to the customer's premises; and

(C) that is owned or operated by a person registered as a power generation company in accordance with Section 39.351.

(b) This section only applies in the ERCOT power region in areas where retail customer choice has not been implemented.

(c) A person who owns or operates a distributed generation facility served by a municipally owned utility or electric cooperative in the ERCOT power region may sell electric power generated by the distributed generation facility at wholesale, including the provision of ancillary services, subject to the limitations of this section.

(d) A person who owns or operates a distributed generation facility may sell electric power generated by the distributed generation facility at wholesale to a municipally owned utility or electric cooperative certificated for retail service to the area where the distributed generation facility is located or to a related generation and transmission electric cooperative. The municipally owned utility or electric cooperative shall purchase at wholesale the quantity of electric power generated by the distributed generation facility needed to satisfy the full electric requirements of the customer on whose side of the meter the distributed generation facility is installed and operated at a wholesale price agreed to by the customer and shall resell that quantity of power at retail to the customer at the rate applicable to the customer for retail service, which must at minimum include all amounts paid for the wholesale electric power, during:

(1) an emergency declared by the independent

organization certified under Section 39.151 for the ERCOT power region that creates the potential for interruption of service to the customer;

(2) any service interruption at the customer's premises;

(3) construction on the customer's premises that creates the potential for interruption of service to the customer;

(4) maintenance and testing of the distributed generation facility; and

(5) additional times mutually agreed on by the owner or operator of the distributed generation facility and the municipally owned utility or electric cooperative.

(e) The customer shall provide written notice as soon as reasonably practicable to the municipally owned utility or electric cooperative of a circumstance described by Subsection (d)(3) or (4).

(f) In addition to a sale authorized under Subsection (d), on request by an owner or operator of a distributed generation facility, the municipally owned utility or electric cooperative shall provide wholesale transmission service to the distributed generation facility owner in the same manner as to other power generation companies for the sale of power from the distributed generation facility at wholesale, including for the provision of ancillary services, in the ERCOT market. The distributed generation facility owner shall comply with all applicable commission rules and protocols and with governing documents of the independent organization certified under Section 39.151 for the ERCOT power region. This section does not require a municipally owned utility or electric cooperative to transmit electricity to a retail point of delivery in the certificated service area of the municipally owned utility or electric cooperative.

(g) In addition to a sale authorized under Subsection (d) or (f), a municipally owned utility or electric cooperative or related generation and transmission electric cooperative may purchase electric power provided by the owner or operator of the distributed generation facility at wholesale at a mutually agreed on price. The price may be based wholly or partly on the ERCOT market clearing

price of energy at the time of day and at the location at which the electric power is made available.

(h) A municipally owned utility or electric cooperative shall make available a standard interconnection application and agreement for distributed generation facilities that is substantially similar to the commission's interconnection agreement form and consistent with this section to facilitate the connection of distributed generation facilities. A municipally owned utility or electric cooperative shall allow interconnection of a distributed generation facility and provide to a distributed generation facility on a nondiscriminatory basis wholesale transmission service, including at distribution voltage, in the same manner as for other power generation companies to transmit to the ERCOT power grid the electric power generated by the distributed generation facility. A municipally owned utility or electric cooperative may recover from the owner or operator of the distributed generation facility all reasonable costs necessary for and directly attributable to the interconnection of the facility, including the reasonable costs of necessary system upgrades and improvements directly attributable to the distributed generation facility.

(i) Not later than the 30th day after the date a complete application for interconnection of a distributed generation facility is received, the municipally owned utility or electric cooperative shall provide the applicant with a written good faith cost estimate for interconnection-related costs. The municipally owned utility or electric cooperative may not incur any interconnection-related costs without entering into a written agreement for the payment of those costs by the applicant.

(j) The process to interconnect a distributed generation facility must be completed not later than the 240th day after the date the municipally owned utility or electric cooperative receives payment of all estimated costs to complete the interconnection, except that:

(1) the period may be extended by written agreement between the parties; or

(2) the period may be extended after a good faith

showing by the municipally owned utility or electric cooperative that the interconnection requires improvements, upgrades, or construction of new facilities that cannot reasonably be completed within that period, in which case the period may be extended for a time not to exceed the time necessary for the improvements, upgrades, or construction of new facilities to be completed.

(k) A municipally owned utility or electric cooperative shall charge the owner or operator of a distributed generation facility rates on a reasonable and nondiscriminatory basis for providing wholesale transmission service to the distributed generation facility owner in the same manner as for other power generation companies to transmit to the ERCOT power grid the electric power generated by the distributed generation facility in accordance with a tariff filed by the municipally owned utility or electric cooperative with the commission.

(l) The owner or operator of the distributed generation facility shall contract with the municipally owned utility or electric cooperative or the municipally owned utility's or electric cooperative's designee for any scheduling, settlement, communication, telemetry, or other services required to participate in the ERCOT wholesale market, but only to the extent that the utility, cooperative, or designee offers the services on a nondiscriminatory basis and at a commercially reasonable cost. If the municipally owned utility or electric cooperative or the municipally owned utility's or electric cooperative's designee does not offer or declines to offer the services, or fails to do so on a nondiscriminatory basis and at a commercially reasonable cost as determined by quotes from at least three third parties providing the same services, the owner or operator of the distributed generation facility may contract with a third party provider to obtain the services.

(m) A distributed 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.

(n) A municipally owned utility or electric cooperative is not required to interconnect a distributed generation facility

under this section if, on the date the utility or cooperative receives an application for interconnection of the facility, the municipally owned utility or electric cooperative has interconnected distributed generation facilities with an aggregate capacity that equals the lesser amount of:

(1) 5 percent of the municipally owned utility's or electric cooperative's average of the 15-minute summer peak load coincident with the independent system operator's 15-minute summer peak load in each of the months of June, July, August, and September; or

(2) 300 megawatts, adjusted annually by the percentage of total system load growth in the ERCOT power region beginning in 2022.

(o) A municipally owned utility or electric cooperative that, on the date the utility or cooperative receives an application for interconnection of a distributed generation facility, has interconnected distributed generation facilities with an aggregate capacity less than the threshold described by Subsection (n) is required to increase that capacity only up to that threshold.

(p) This section is not intended to change registration standards or other qualifications required by the independent organization certified under Section 39.151 for the ERCOT power region related to the participation of distributed generation facilities in the wholesale market. This section is not intended to allow distributed generation facilities to participate in a manner that is not technically feasible or that is otherwise in conflict with wholesale rules and requirements adopted by the independent organization certified under Section 39.151 for the ERCOT power region.

Added by Acts 2021, 87th Leg., R.S., Ch. 561 (S.B. 398), Sec. 3, eff. September 1, 2021.

Sec. 35.038. FACILITATING CERTAIN INTERCOMPANY LANDFILL GAS-TO-ELECTRICITY USE. (a) This section only applies in a county with a population of more than 1.2 million in which a national wildlife refuge is wholly or partly located.

(b) Notwithstanding any other provision of this title, and for the purposes of reducing environmental emissions, putting to a beneficial purpose landfill gas as an electric generation fuel that would otherwise be flared, enabling the operation of electric generation to a greater degree, and enhancing the reliability and resilience of electric service in this state, a person who is not an electric utility and who owns and operates equipment or facilities to produce, generate, transmit, distribute, store, sell, or furnish electricity produced by the use of landfill methane gas may:

(1) use the equipment or facilities to provide electricity and electric service to the person and to the person's affiliates without being considered to be an electric utility, a public utility, a retail electric provider, a power marketer, or a person providing aggregation;

(2) interconnect the equipment or facilities in a timely manner and on reasonable and nondiscriminatory terms and conditions with any electric utility, municipally owned utility, or electric cooperative that has a retail service area for any portion of the equipment or facilities; and

(3) receive backup, supplemental, or other electric service for any of the person's or the person's affiliates' facilities that consume electricity from any electric utility, municipally owned utility, or electric cooperative that has a retail service area for any portion of the person's facilities or equipment that are interconnected regardless of whether those facilities are in the same retail service area as the location of the interconnection point.

(c) Backup, supplemental, or other electric service provided under this section through an interconnection for a person's electricity-consuming facilities that are connected to the person's interconnected equipment or facilities does not constitute a service area encroachment or other violation of law by the electric utility, municipally owned utility, or electric cooperative supplying the backup, supplemental, or other electric service.

Added by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 15, eff. June 8, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 270, eff. September 1, 2023.

Redesignated from Utilities Code, Section 35.037 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(61), eff. September 1, 2023.

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 E. ELECTRIC ENERGY STORAGE

Sec. 35.151. ELECTRIC ENERGY STORAGE. This subchapter applies only to the ownership or operation of electric energy storage equipment or facilities in the ERCOT power region that are intended to:

(1) 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; or

(2) provide reliable delivery of electric energy to distribution customers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. 943), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 562 (S.B. 415), Sec. 1, eff. September 1, 2021.

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.

(d) Subsection (b) does not require a municipally owned

utility or an electric cooperative that owns or operates electric energy storage equipment or facilities described by Subsection (a) to register as a power generation company under Section 39.351(a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. 943), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 77 (S.B. 1012), Sec. 1, eff. September 1, 2019.

Sec. 35.153. CONTRACTS FOR ELECTRIC ENERGY STORAGE FOR RELIABILITY SERVICES. (a) A transmission and distribution utility, with prior approval of the commission, may contract with a power generation company to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers.

(b) The commission may not authorize ownership of an electric energy storage facility by a transmission and distribution utility.

(c) Before entering into a contract under Subsection (a), the transmission and distribution utility must issue a request for proposals for use of an electric energy storage facility to meet the utility's reliability needs.

(d) A transmission and distribution utility may enter into a contract under Subsection (a) only if use of an electric energy storage facility is more cost-effective than construction or modification of traditional distribution facilities.

(e) A transmission and distribution utility may not enter into a contract under Subsection (a) that reserves an amount of capacity exceeding the amount of capacity required to ensure reliable service to the utility's distribution customers.

(f) A power generation company that owns or operates an electric energy storage facility subject to a contract under Subsection (a) may sell electric energy or ancillary services through use of the facility only to the extent that the company reserves capacity as required by the contract.

(g) A power generation company that owns or operates an electric energy storage facility subject to a contract under

Subsection (a) may not discharge the facility to satisfy the contract's requirements unless directed by the transmission and distribution utility.

(h) A contract under Subsection (a) must require a power generation company that owns or operates an electric energy storage facility to reimburse a transmission and distribution utility for the cost of an administrative penalty assessed against the utility for a violation caused by the facility's failure to meet the requirements of the agreement.

(i) In establishing the rates of a transmission and distribution utility, a regulatory authority shall review a contract between the utility and a power generation company under Subsection (a). The utility has the burden of proof to establish that the costs of the contract are reasonable and necessary. The regulatory authority may authorize a transmission and distribution utility to include a reasonable return on the payments required under the contract only if the contract terms satisfy the relevant accounting standards for a capital lease or finance lease.

(j) The total amount of electric energy storage capacity reserved by contracts under Subsection (a) may not exceed 100 megawatts. The commission shall by rule establish the maximum amount of electric energy storage capacity allotted to each transmission and distribution utility.

(k) The commission shall adopt rules as necessary to implement this section and establish criteria for approving contracts under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 562 (S.B. 415), Sec. 2, eff. September 1, 2021.