

CHAPTER 308

S.B. No. 141

AN ACT

relating to certain contracts between electric utilities and cogenerators or small-power producers.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. The Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Section 41A to read as follows:

*Sec. 41A. (a) In this section "qualifying facility" means a qualifying cogenerator or a qualifying small-power producer, as defined by Sections 3(18)(C) and 3(17)(D), respectively, Federal Power Act (16 U.S.C. Sections 796(18)(C) and 796(17)(D)).*

*(b) If an electric utility and a qualifying facility enter into an agreement providing for the purchase of capacity, the electric utility or qualifying facility may submit a copy of the agreement to the commission for certification under this section. The*

agreement may provide that it is contingent on that certification. Before the deadline specified by Subsection (d) of this section, the commission shall determine whether:

(1) the payments provided for in the agreement over the contract term are equal to or less than the utility's avoided costs as established by the commission and in effect at the time the agreement was signed. Contracts entered into before the effective date of this section may not be submitted for certification by the commission; and

(2) the agreement provides the electric utility the opportunity to acquire the cogeneration or small-power production installation before the installation is offered to another purchaser in the event of its abandonment, 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.

(c) If the commission determines that the agreement meets the requirements of Subdivisions (1) and (2) of Subsection (b) of this section, it shall certify that the agreement meets these requirements. If the commission does not make a determination under Subsection (b) of this section before the deadline specified by Subsection (d) of this section, the agreement is considered to meet the requirements of Subdivisions (1) and (2) of Subsection (b) of this section and certification is considered granted. A certification is effective until the earlier of 15 years after the date of the certification or the expiration date of the agreement.

(d) The commission shall make its determination under this section within 90 days after the date that the agreement is submitted, unless before this deadline the electric utility, the qualifying facility, or an affected person requests a hearing or the commission on its own motion decides to hold a hearing. If a hearing is requested or the commission decides to hold a hearing, the commission shall hold the hearing and make its determination within 120 days after the date that the agreement is submitted, except that this deadline is extended two days for each day in excess of five days on which the commission conducts a hearing on the merits of the case.

(e) In setting the electric utility's rates for a period during which the certification is effective, the regulatory authority shall consider payments made under the agreement to be reasonable and necessary operating expenses of the electric utility. The regulatory authority shall allow full, concurrent, and monthly recovery of the amount of the payments.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 2, 1987, by the following vote: Yeas 30, Nays 0. Passed the House on May 21, 1987, by the following vote: Yeas 138, Nays 0, two present not voting.

Approved June 11, 1987.

Effective June 11, 1987.