

Tex. Utilities Code § 39.151

This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results.

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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 those responsibilities to an independent organization. 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 independent 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 independent organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an independent 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 for the ERCOT power region under this section, an organization's governing body must be composed of persons selected by the ERCOT board selection committee.

(g-1) The bylaws of an independent organization certified for the ERCOT power region must be approved by and reflect the input of the commission. The bylaws must require that every member of the governing body be a resident of this state and must prohibit a legislator from serving as a member. The governing body must be composed of:

- (1) two members of the commission as ex officio nonvoting members:
 - (A) one of whom must be the presiding officer of the commission; and
 - (B) one of whom must be designated by the presiding officer of the commission to serve a one-year term on the governing body;
- (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 nonvoting member; and
- (4) eight members selected by the selection committee under Section 39.1513 with executive-level experience in any of the following professions:
 - (A) finance;
 - (B) business;

- (C) engineering, including electrical engineering;
- (D) trading;
- (E) risk management;
- (F) law; or
- (G) electric market design.

(g-2)Members of the governing body are entitled to receive a salary for their service.

(g-3)A person does not qualify for selection as a member of the governing body of an independent organization for the ERCOT power region if the person has a fiduciary duty or assets in the electricity market for that region.

(g-4)To maintain certification as an independent organization under this section, the organization's governing body may not include more than two members who are employed by an institution of higher education, as defined by Section 61.003, Education Code, in a professorial role.

(g-5)A former member of the governing body of an independent organization certified under this section may not, before the second anniversary of the date the member ceases to be a member of the governing body, engage in an activity that requires registration under Chapter 305, Government Code.

(g-6)In this subsection, a reference to a protocol includes a rule. Protocols adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the commission are subject to commission oversight and review and may not take effect before receiving commission approval. To maintain certification as an independent organization under this section, the organization's governing body must establish and implement a formal process for adopting new protocols or revisions to existing protocols. The process must require that new or revised protocols may not take effect until the commission approves a market impact statement describing the new or revised protocols. The commission may approve, reject, or remand with suggested modifications to the independent organization's governing body protocols adopted by the organization.

(g-7)[As added by Acts 2023, 88th Leg., HB 1500] The presiding officer of the commission shall designate commissioners to serve terms on the independent organization's governing body under Subsection (g-1)(1)(B) in the order in which the commissioners were first appointed to the commission. A commissioner may not serve an additional term until each commissioner has served a term.

(g-7)[As added by Acts 2023, 88th Leg., SB 2013] To maintain certification as an independent organization under this section, the organization must:

- (1) identify all employee positions in the organization that are critical to the security of the electric grid; and
- (2) before hiring a person for a position described by Subdivision (1), obtain from the Department of Public Safety or a private vendor criminal history record information relating to the prospective employee and any other background information considered necessary by the independent organization or required by the commission.

(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.

(j-1) Notwithstanding Subsection (j) of this section, Section 39.653(c), or any other law, the independent system operator in the ERCOT power region may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of that independent system operator on or after May 29, 2021, and before December 30, 2021, related to a default on a payment obligation by a market participant that occurred before May 29, 2021.

(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.

(n-1) [Expired pursuant to Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 1.09(a), effective September 1, 2013.]

(o) An independent organization certified by the commission under this section shall:

(1) conduct internal cybersecurity risk assessment, vulnerability testing, and employee training to the extent the independent organization is not otherwise required to do so under applicable state and federal cybersecurity and information security laws; and

(2) submit a report annually to the commission on the independent organization's compliance with applicable cybersecurity and information security laws.

(p) Information submitted in a report under Subsection (o) is confidential and not subject to disclosure under Chapter 552, Government Code.

History

Enacted by Acts 1999, 76th Leg., ch. 405 (S.B. 7), § 39, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 797 (S.B. 408), § 9, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 1.09(a), effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 170 (H.B. 1600), § 1.08, effective September 1, 2013; Acts 2019, 86th Leg., ch. 509 (S.B. 64), § 23, effective September 1, 2019; Acts 2021, 87th Leg., ch. 425 (S.B. 2), § 3, effective June 8, 2021; Acts 2021, 87th Leg., ch. 908 (H.B. 4492), § 3, effective June 16, 2021; Acts 2023, 88th Leg., ch. 464 (S.B. 2013), § 4, effective June 9, 2023; Acts 2023, 88th Leg., ch. 410 (H.B. 1500), § 15, effective September 1, 2023.

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