

By: Schwertner, et al.

S.B. No. 2194

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of retail electric providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110. WHOLESALE INDEXED PRODUCTS PROHIBITED. (a)

In this section, "wholesale indexed product" means a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under Section 39.151 for the ERCOT power region.

(b) An aggregator, a broker, or a retail electric provider may not offer a wholesale indexed product to a residential or small commercial customer.

(c) An aggregator, a broker, or a retail electric provider may enroll a customer other than a residential and small commercial customer in a wholesale indexed product only if the provider, aggregator, or broker obtains before the customer's enrollment an acknowledgment signed by the customer that the customer accepts the potential price risks associated with a wholesale indexed product.

(d) An acknowledgment required by Subsection (c) must include the following statement, in clear, boldfaced text:

"I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be

1 multiple times higher in a month in which wholesale
2 energy prices are high. I understand that I will be
3 responsible for charges caused by fluctuations in
4 wholesale energy prices."

5 (e) An acknowledgment required by Subsection (c) may be
6 included as an addendum to a contract.

7 (f) A retail electric provider that provides a wholesale
8 indexed product to a customer must keep on file the acknowledgment
9 required by Subsection (c) for each customer while the customer is
10 enrolled with the retail electric provider in the wholesale indexed
11 product.

12 SECTION 2. Section 39.112, Utilities Code, is amended to
13 read as follows:

14 Sec. 39.112. NOTICE OF EXPIRATION AND PRICE CHANGE. (a) In
15 this section, "fixed rate product" means a retail electric product
16 with a term of at least three months for which the price for each
17 billing period, including recurring charges, does not change
18 throughout the term of the contract, except that the price may vary
19 to reflect actual changes in transmission and distribution utility
20 charges, changes to ERCOT or Texas Regional Entity administrative
21 fees charged to loads, or changes to federal, state, or local laws
22 that result in new or modified fees or costs that are not within the
23 retail electric provider's control.

24 (b) A retail electric provider shall provide a residential
25 customer who has a fixed rate product with at least three [~~one~~]
26 written notices [~~notice~~] of the date the fixed rate product will
27 expire. The notices [~~notice~~] must be provided during the last third

1 of the contract period and in intervals that allow for, as
2 practicable, even distribution of the notices throughout the last
3 third of the contract period. The final notice for a contract with
4 a period of more than four months must be provided at least 30 days
5 before the date that the contract will expire. The final notice for
6 a contract with a period of less than four months must be provided
7 at least 15 days before the date that the contract will expire.

8 (c) The retail electric provider must provide each notice
9 required by Subsection (b) to the customer by mail at the customer's
10 billing address, unless the customer has opted to receive
11 communications electronically from the retail electric provider.

12 (d) If the retail electric provider has access to customer
13 contact information that allows the provider to send the customer a
14 text message or call the customer, and the customer has agreed to
15 receive notices by text message or call, the retail electric
16 provider may provide additional notice to the customer by text
17 message or call of the date the fixed rate product will expire.
18 Notice provided by text message or call does not constitute notice
19 under Subsection (b).

20 (e) A notice required by Subsection (b) must:

21 (1) for a notice provided by mail, ~~[be sent to the~~
22 ~~customer's billing address by mail at least 30, but not more than~~
23 ~~60, days preceding the date the contract will expire,~~

24 ~~[(2) be sent to the customer's e-mail address, if~~
25 ~~available to the provider and if the customer has agreed to receive~~
26 ~~notices electronically, at least 30, but not more than 60, days~~
27 ~~preceding the date the contract will expire,~~

1 ~~(3)~~ include in a manner visible from ~~on~~ the
2 outside of the envelope in which the notice is sent, a statement
3 that reads: "Contract Expiration Notice. See Enclosed.";

4 (2) ~~(4)~~ if included with a customer's bill, be
5 printed on a separate page or included as a separate document; ~~and~~

6 (3) ~~(5)~~ include a description of any fees or charges
7 associated with the early termination of the customer's fixed rate
8 product; and

9 (4) describe any renewal offers the retail electric
10 provider chooses to make available to the customer and identify
11 methods by which the customer may obtain the contract documents for
12 each of the offered products.

13 (f) The final notice provided under Subsection (b) must
14 include the pricing terms for the default renewal product required
15 by Subsection (h).

16 (g) ~~(c)~~ A retail electric provider shall include on each
17 billing statement, in boldfaced and underlined text, the end date
18 of the fixed rate product.

19 (h) Except as provided by Subsection (j), if a customer does
20 not select another retail electric product before the expiration of
21 the customer's contract term with a retail electric provider, the
22 provider shall automatically serve the customer through a default
23 renewal product that the customer may cancel at any time without a
24 fee. The default renewal product must be:

25 (1) a month-to-month product in which the price the
26 customer pays for electricity may vary between billing cycles; and

27 (2) based on clear terms designed to be easily

1 understood by the average customer.

2 (i) A retail electric provider shall include in each
3 contract for service the terms of the default renewal product that
4 the customer will automatically be enrolled in under Subsection (h)
5 if the customer does not select another retail electric product
6 before the expiration of the contract term.

7 (j) If a retail electric provider does not provide notice of
8 the expiration of a customer's contract with the provider in
9 accordance with this section and the customer does not select
10 another retail electric product before the expiration of the
11 customer's contract term with the provider, the retail electric
12 provider must continue to serve the customer under the pricing
13 terms of the fixed rate product contract until:

14 (1) the provider provides notice of the expiration of
15 the contract in accordance with this section; or

16 (2) the customer selects another retail electric
17 product.

18 (k) [~~(d)~~] No provision in this section shall be construed to
19 prohibit the commission from adopting rules that would provide a
20 greater degree of customer protection.

21 SECTION 3. (a) Section 17.004, Utilities Code, is amended
22 by adding Subsection (a-1) to read as follows:

23 (a-1) Notwithstanding any other law, a buyer of retail
24 electric service has the right to:

25 (1) avoid discontinuation of electric service for
26 nonpayment on a Saturday or Sunday or a holiday observed by an
27 electric utility or retail electric provider, unless the utility or

1 provider is open to accept payment and restore service on that day;

2 (2) avoid discontinuation of electric service for a
3 period of 60 days of nonpayment if an electric utility or retail
4 electric provider receives written notice from a medical doctor
5 licensed to practice in this state or a state that shares a border
6 with this state that certifies that discontinuation of service
7 would create a life-threatening situation for the customer or a
8 permanent resident of the customer's household;

9 (3) negotiate with a retail electric provider a
10 deferred payment plan to avoid discontinuation of electric service
11 for a delinquent account in accordance with the utility's or
12 provider's terms and conditions;

13 (4) avoid discontinuation of electric service or
14 refusal of service for a location because a former occupant at that
15 location, not of the same household, failed to pay a previous bill;

16 (5) avoid disconnection of electric service during
17 periods when temperatures exceed 100 degrees Fahrenheit or fall
18 below 32 degrees Fahrenheit and at times described by Section
19 [39.101\(h\)](#);

20 (6) avoid discontinuation of electric service on
21 account of nonpayment if the customer has been approved for Low
22 Income Home Energy Assistance Program benefits in an amount equal
23 to the delinquent balance, the customer has provided notice of the
24 approval to the electric utility, and the benefits are payable
25 before the 30th day after the date the customer provides the notice;

26 (7) avoid discontinuation of electric service for
27 failure to pay a portion of any bill that is in dispute if the

1 customer provides a deposit for the amount in dispute;

2 (8) avoid discontinuation of electric service for
3 nonpayment of bills if, as of 8 a.m. on the scheduled date of
4 disconnection, a freeze warning has been issued by the National
5 Weather Service for the county of the scheduled disconnection;

6 (9) avoid discontinuation of electric service for
7 nonpayment of bills if, as of 8 a.m. on the scheduled date of
8 disconnection, an excessive heat warning has been issued by the
9 National Weather Service for the county of the scheduled
10 disconnection;

11 (10) request a written explanation for the reason a
12 retail electric provider refuses to serve a customer if the utility
13 or provider refuses to initially serve the customer;

14 (11) receive a written explanation from an electric
15 provider that refuses to initially serve a customer, after the
16 customer provides the utility or provider with a valid mailing
17 address, that includes:

18 (A) the reason service is being refused; and

19 (B) a description of the actions the customer
20 must take in order to receive service;

21 (12) be given accurate and understandable information
22 concerning the price and terms of service for electric service; and

23 (13) have access through the commission to an
24 independent administrative process that provides a simple, quick,
25 and effective means of resolving complaints about electric service
26 and bills for customers who are unable to resolve disputed bills
27 directly with a retail electric provider.

1 (b) The Public Utility Commission of Texas shall adopt rules
2 as required to implement, administer, and enforce Section
3 17.004(a-1), Utilities Code, as added by this section, not later
4 than July 1, 2022.

5 SECTION 4. The changes in law made by this Act apply only to
6 an enrollment or reenrollment of a customer in a retail electric
7 product that is executed on or after the effective date of this Act.
8 An enrollment or reenrollment of a customer in a retail electric
9 product that is executed before the effective date of this Act is
10 governed by the law as it existed immediately before the effective
11 date of this Act, and that law is continued in effect for that
12 purpose.

13 SECTION 5. This Act takes effect September 1, 2021.