

AN ACT

relating to the recovery of fuel and purchased power costs by electric utilities.

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

SECTION 1. Section 36.203, Utilities Code, is amended to read as follows:

Sec. 36.203. FUEL AND PURCHASED POWER COST RECOVERY; ADJUSTMENT OF FUEL FACTOR. (a) Section 36.201 does not prohibit the commission from reviewing and providing for adjustments of an electric ~~[a]~~ utility's fuel factor.

(b) The commission by rule shall implement procedures that provide for the timely adjustment of an electric ~~[a]~~ utility's fuel factor~~[, with or without a hearing]~~. The rules ~~[procedures]~~ must require that~~+~~

~~[(1)]~~ the findings required by Section 36.058 regarding fuel transactions with affiliated interests be ~~[are]~~ made in a fuel reconciliation proceeding or in a rate case filed under Subchapter C or D. The rules must ensure that:

(1) the utility collects as contemporaneously as reasonably possible the electric fuel and purchased power costs that the utility incurs and that the commission determines are eligible;

(2) the total of the utility's eligible electric fuel and purchased power costs, including any under-collected or

1 over-collected amounts to be recovered through an interim fuel  
2 adjustment, is allocated among customer classes based on actual  
3 historical calendar month usage;

4 (3) any material balance of amounts under-collected or  
5 over-collected for eligible electric fuel and purchased power costs  
6 is collected from or refunded to customers through an interim fuel  
7 adjustment:

8 (A) not later than the 90th day after the date the  
9 balance is accrued; or

10 (B) if the adjustment would result in a total  
11 bill increase of 10 percent or more compared to the total bill in  
12 the month before implementation, not later than a date ordered by  
13 the commission which must be after the 90th day after the date the  
14 balance is accrued; and

15 (4) [~~and~~

16 [~~(2)~~] an affected party will receive notice and have  
17 the opportunity to request a hearing before the commission.

18 (c) Notwithstanding Subsection (b)(3), on a finding that an  
19 electric utility has an under-collected balance that is the result  
20 of extraordinary electric fuel and purchased power costs that are  
21 unlikely to continue, the commission may approve an interim fuel  
22 adjustment that would defer recovery to take place over a period  
23 longer than 90 days [~~The commission may adjust a utility's fuel~~  
24 ~~factor without a hearing if the commission determines that a~~  
25 ~~hearing is not necessary. If the commission holds a hearing, the~~  
26 ~~commission may consider at the hearing any evidence that is~~  
27 ~~appropriate and in the public interest].~~

1           (d) The commission is not required to hold a hearing on the  
2 adjustment of an electric utility's fuel factor under this section.  
3 If the commission holds a hearing, the commission may consider at  
4 the hearing any evidence that is appropriate and in the public  
5 interest [~~The commission shall render a timely decision approving,~~  
6 ~~disapproving, or modifying the adjustment to the utility's fuel~~  
7 ~~factor~~].

8           (e) A customer of the electric utility, a municipality with  
9 original jurisdiction over the utility, or the office may protest a  
10 fuel factor or interim fuel adjustment proposed under this section.  
11 The prudence of costs may not be considered in a fuel factor or  
12 interim fuel adjustment proceeding and may only be considered in a  
13 fuel reconciliation proceeding under Subsection (h) or another  
14 appropriate proceeding [~~The commission by rule shall provide for~~  
15 ~~the reconciliation of a utility's fuel costs on a timely basis~~].

16           (f) The sole issue that may be considered on a protest of a  
17 fuel factor under Subsection (e) is whether the factor reasonably  
18 reflects costs the electric utility will incur so that the utility  
19 will not substantially under-collect or over-collect the utility's  
20 reasonably stated fuel and purchased power costs on an ongoing  
21 basis. The commission may adjust the utility's fuel factor based on  
22 its determination on that issue.

23           (g) The commission shall hold a hearing on a protest of an  
24 interim fuel adjustment under Subsection (e) if the adjustment  
25 would result in a total bill increase of 10 percent or more as  
26 described by Subsection (b)(3) or if the adjustment results from  
27 extraordinary electric fuel and purchased power costs as described

1 by Subsection (c). In response to a protest of an interim fuel  
2 adjustment, if the commission finds that the electric utility is in  
3 a state of material under-collection or over-collection of the  
4 utility's reasonably stated eligible fuel and purchased power costs  
5 and is projected to remain in that state on an ongoing basis, the  
6 commission shall order the utility to establish or modify an  
7 interim fuel adjustment to address the under-collection or  
8 over-collection in a manner consistent with this section.

9 (h) An electric utility shall apply to reconcile the  
10 utility's electric fuel and purchased power costs at least once  
11 every two years. The application must be made not later than the  
12 180th day after the last day of the period to be reconciled. The  
13 commission may by rule establish the calendar year timing of the  
14 reconciliation period for each electric utility subject to this  
15 section to facilitate efficient work by the commission. To the  
16 extent a reconciliation results in a change to the electric  
17 utility's under-collected or over-collected fuel balance, that  
18 change may be incorporated into an interim fuel adjustment as  
19 directed by the commission.

20 (i) A proceeding under this section is not a rate case under  
21 Subchapter C.

22 SECTION 2. The first time an electric utility applies to  
23 reconcile the utility's fuel costs and purchased power costs under  
24 Section 36.203(h), Utilities Code, as added by this Act, after the  
25 Public Utility Commission of Texas adopts the rules required to  
26 implement that subsection, the electric utility shall include in  
27 the application any period that has not been addressed in a previous

1 reconciliation proceeding.

2 SECTION 3. This Act takes effect September 1, 2023.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2073 was passed by the House on May 2, 2023, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2073 was passed by the Senate on May 15, 2023, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor