

1-1 By: Price, et al. (Senate Sponsor - Schwertner) H.B. No. 2073  
1-2 (In the Senate - Received from the House May 3, 2023;  
1-3 May 4, 2023, read first time and referred to Committee on Business  
1-4 & Commerce; May 10, 2023, reported favorably by the following vote:  
1-5 Yeas 11, Nays 0; May 10, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Schwertner</u>	X		
1-9	<u>King</u>	X		
1-10	<u>Birdwell</u>	X		
1-11	<u>Campbell</u>	X		
1-12	<u>Creighton</u>	X		
1-13	<u>Johnson</u>	X		
1-14	<u>Kolkhorst</u>	X		
1-15	<u>Menéndez</u>	X		
1-16	<u>Middleton</u>	X		
1-17	<u>Nichols</u>	X		
1-18	<u>Zaffirini</u>	X		

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to the recovery of fuel and purchased power costs by  
1-22 electric utilities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 36.203, Utilities Code, is amended to  
1-25 read as follows:

1-26 Sec. 36.203. FUEL AND PURCHASED POWER COST RECOVERY;  
1-27 ADJUSTMENT OF FUEL FACTOR. (a) Section 36.201 does not prohibit  
1-28 the commission from reviewing and providing for adjustments of an  
1-29 electric [a] utility's fuel factor.

1-30 (b) The commission by rule shall implement procedures that  
1-31 provide for the timely adjustment of an electric [a] utility's fuel  
1-32 factor[, with or without a hearing]. The rules [procedures] must  
1-33 require that [+]

1-34 [(-)] the findings required by Section 36.058  
1-35 regarding fuel transactions with affiliated interests be [are] made  
1-36 in a fuel reconciliation proceeding or in a rate case filed under  
1-37 Subchapter C or D. The rules must ensure that:

1-38 (1) the utility collects as contemporaneously as  
1-39 reasonably possible the electric fuel and purchased power costs  
1-40 that the utility incurs and that the commission determines are  
1-41 eligible;

1-42 (2) the total of the utility's eligible electric fuel  
1-43 and purchased power costs, including any under-collected or  
1-44 over-collected amounts to be recovered through an interim fuel  
1-45 adjustment, is allocated among customer classes based on actual  
1-46 historical calendar month usage;

1-47 (3) any material balance of amounts under-collected or  
1-48 over-collected for eligible electric fuel and purchased power costs  
1-49 is collected from or refunded to customers through an interim fuel  
1-50 adjustment:

1-51 (A) not later than the 90th day after the date the  
1-52 balance is accrued; or

1-53 (B) if the adjustment would result in a total  
1-54 bill increase of 10 percent or more compared to the total bill in  
1-55 the month before implementation, not later than a date ordered by  
1-56 the commission which must be after the 90th day after the date the  
1-57 balance is accrued; and

1-58 (4) [, and  
1-59 [(-)] an affected party will receive notice and have  
1-60 the opportunity to request a hearing before the commission.

1-61 (c) Notwithstanding Subsection (b)(3), on a finding that an

2-1 electric utility has an under-collected balance that is the result  
 2-2 of extraordinary electric fuel and purchased power costs that are  
 2-3 unlikely to continue, the commission may approve an interim fuel  
 2-4 adjustment that would defer recovery to take place over a period  
 2-5 longer than 90 days [The commission may adjust a utility's fuel  
 2-6 factor without a hearing if the commission determines that a  
 2-7 hearing is not necessary. If the commission holds a hearing, the  
 2-8 commission may consider at the hearing any evidence that is  
 2-9 appropriate and in the public interest].

2-10 (d) The commission is not required to hold a hearing on the  
 2-11 adjustment of an electric utility's fuel factor under this section.  
 2-12 If the commission holds a hearing, the commission may consider at  
 2-13 the hearing any evidence that is appropriate and in the public  
 2-14 interest [The commission shall render a timely decision approving,  
 2-15 disapproving, or modifying the adjustment to the utility's fuel  
 2-16 factor].

2-17 (e) A customer of the electric utility, a municipality with  
 2-18 original jurisdiction over the utility, or the office may protest a  
 2-19 fuel factor or interim fuel adjustment proposed under this section.  
 2-20 The prudence of costs may not be considered in a fuel factor or  
 2-21 interim fuel adjustment proceeding and may only be considered in a  
 2-22 fuel reconciliation proceeding under Subsection (h) or another  
 2-23 appropriate proceeding [The commission by rule shall provide for  
 2-24 the reconciliation of a utility's fuel costs on a timely basis].

2-25 (f) The sole issue that may be considered on a protest of a  
 2-26 fuel factor under Subsection (e) is whether the factor reasonably  
 2-27 reflects costs the electric utility will incur so that the utility  
 2-28 will not substantially under-collect or over-collect the utility's  
 2-29 reasonably stated fuel and purchased power costs on an ongoing  
 2-30 basis. The commission may adjust the utility's fuel factor based on  
 2-31 its determination on that issue.

2-32 (g) The commission shall hold a hearing on a protest of an  
 2-33 interim fuel adjustment under Subsection (e) if the adjustment  
 2-34 would result in a total bill increase of 10 percent or more as  
 2-35 described by Subsection (b)(3) or if the adjustment results from  
 2-36 extraordinary electric fuel and purchased power costs as described  
 2-37 by Subsection (c). In response to a protest of an interim fuel  
 2-38 adjustment, if the commission finds that the electric utility is in  
 2-39 a state of material under-collection or over-collection of the  
 2-40 utility's reasonably stated eligible fuel and purchased power costs  
 2-41 and is projected to remain in that state on an ongoing basis, the  
 2-42 commission shall order the utility to establish or modify an  
 2-43 interim fuel adjustment to address the under-collection or  
 2-44 over-collection in a manner consistent with this section.

2-45 (h) An electric utility shall apply to reconcile the  
 2-46 utility's electric fuel and purchased power costs at least once  
 2-47 every two years. The application must be made not later than the  
 2-48 180th day after the last day of the period to be reconciled. The  
 2-49 commission may by rule establish the calendar year timing of the  
 2-50 reconciliation period for each electric utility subject to this  
 2-51 section to facilitate efficient work by the commission. To the  
 2-52 extent a reconciliation results in a change to the electric  
 2-53 utility's under-collected or over-collected fuel balance, that  
 2-54 change may be incorporated into an interim fuel adjustment as  
 2-55 directed by the commission.

2-56 (i) A proceeding under this section is not a rate case under  
 2-57 Subchapter C.

2-58 SECTION 2. The first time an electric utility applies to  
 2-59 reconcile the utility's fuel costs and purchased power costs under  
 2-60 Section 36.203(h), Utilities Code, as added by this Act, after the  
 2-61 Public Utility Commission of Texas adopts the rules required to  
 2-62 implement that subsection, the electric utility shall include in  
 2-63 the application any period that has not been addressed in a previous  
 2-64 reconciliation proceeding.

2-65 SECTION 3. This Act takes effect September 1, 2023.

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