

By: Hernandez

H.B. No. 3239

A BILL TO BE ENTITLED

AN ACT

relating to the participation of distributed energy resources in the ERCOT ancillary services and wholesale energy markets.

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

SECTION 1. Section 31.002, Utilities Code, is amended by adding Subdivision (4-c) and amending Subdivisions (10) and (17) to read as follows:

(4-c) "Distributed energy resource" means a resource that:

(A) is capable of providing energy, providing ancillary services, or providing both energy and ancillary services;

(B) is operated in parallel with and is connected to the distribution system at a voltage of less than 60 kilovolts; and

(C) has an installed capacity of more than 100 kilowatts and less than 10 megawatts.

(10) "Power generation company" means a person, including a person who owns or operates a distributed natural gas generation facility, that:

(A) generates electricity:

(i) that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35,

1 applies; or

2 (ii) from a facility that is part of an  
3 aggregated distributed energy resource or that is owned by a person  
4 who is part of an aggregated distributed energy resource;

5 (B) does not own a transmission or distribution  
6 facility in this state other than an essential interconnecting  
7 facility, a facility not dedicated to public use, or a facility  
8 otherwise excluded from the definition of "electric utility" under  
9 this section; and

10 (C) does not have a certificated service area,  
11 although its affiliated electric utility or transmission and  
12 distribution utility may have a certificated service area.

13 (17) "Retail electric provider" means a person that  
14 sells electric energy to retail customers in this state. A retail  
15 electric provider may not own or operate generation assets but may  
16 aggregate distributed energy resources. The term does not include  
17 a person not otherwise a retail electric provider who owns or  
18 operates equipment used solely to provide electricity charging  
19 service for consumption by an alternatively fueled vehicle, as  
20 defined by Section 502.004, Transportation Code.

21 SECTION 2. Section 39.351, Utilities Code, is amended by  
22 amending Subsections (b) and (c) and adding Subsection (d) to read  
23 as follows:

24 (b) A power generation company shall comply with the  
25 reliability standards adopted by an independent organization  
26 certified by the commission to ensure the reliability of the  
27 regional electrical network for a power region in which the power

1 generation company is generating or selling electricity and  
2 aggregated distributed energy resources.

3 (c) The commission may establish simplified filing  
4 requirements for distributed natural gas generation facilities and  
5 aggregated distributed energy resources.

6 (d) Notwithstanding Subsection (a):

7 (1) a facility or owner of a facility that is part of  
8 an aggregated distributed energy resource, or a retail electric  
9 provider that is involved in aggregating facilities as part of an  
10 aggregated distributed energy resource, is not considered to be a  
11 power generation company solely as a result of those activities;  
12 and

13 (2) a facility or owner of a facility that is part of  
14 an aggregated distributed energy resource is not required to  
15 register as a power generation company if the person who aggregates  
16 the resources registers as a power generation company.

17 SECTION 3. Subchapter 2, Chapter 39, Utilities Code, is  
18 amended by adding Section 39.9166 to read as follows:

19 Sec. 39.9166. PARTICIPATION OF DISTRIBUTED ENERGY  
20 RESOURCES IN MARKET. (a) The commission may delegate authority to  
21 the independent organization certified under Section 39.151 for the  
22 ERCOT power region to enforce requirements adopted by the  
23 commission under this section.

24 (b) The commission by rule shall allow a person who owns or  
25 operates a distributed energy resource or an aggregation of  
26 distributed energy resources to participate in the ancillary  
27 services and wholesale energy markets in the ERCOT power region if:

1           (1) the owner or operator is registered as a power  
2 generation company if required under Section 39.351 or is exempt  
3 from registration under Section 39.916(k); and

4           (2) the resource meets all requirements established by  
5 the commission and the independent organization, including  
6 electric utility specifications applicable under the  
7 commission-approved tariff.

8           (c) The commission by rule shall allow a person to aggregate  
9 resources that are geographically linked to the same electric bus  
10 or node so that the resources may be considered to be a single  
11 distributed energy resource for the purposes of operations,  
12 compliance, and participation in the ancillary services and  
13 wholesale energy markets in the ERCOT power region. The commission  
14 by rule shall direct the independent organization certified under  
15 Section 39.151 for the ERCOT power region to enable aggregations  
16 broader than a single electric bus or node when technically  
17 feasible. In addition to any other applicable requirements,  
18 aggregated distributed energy resources must:

19           (1) demonstrate the ability to deploy energy,  
20 ancillary services, or both at the direction of the independent  
21 organization certified under Section 39.151 for the ERCOT power  
22 region; and

23           (2) comply with applicable distribution system  
24 reliability and market requirements.

25           (d) In allowing for the participation of a person who owns  
26 or operates a distributed energy resource or aggregation of  
27 distributed energy resources under this section, the commission

1 shall adopt registration, qualification, interconnection,  
2 telemetry, data submission, compliance, cost allocation, and other  
3 appropriate requirements. The requirements:

4 (1) must ensure that:

5 (A) participation does not unduly affect the  
6 security or reliability of the transmission and distribution  
7 system; and

8 (B) the provision of ancillary services by a  
9 distributed energy resource or aggregation of distributed energy  
10 resources, to the extent technically necessary to the provision of  
11 ancillary services, can be measured and verified separately from  
12 any associated load;

13 (2) may differ from requirements for a generation  
14 resource that is not a distributed energy resource; and

15 (3) must provide for energy production and consumption  
16 at a single metering point to be accounted for and settled by the  
17 independent organization certified under Section 39.151 for the  
18 ERCOT power region to the distributed energy provider and the  
19 retail electric provider in a manner that prevents double counting.

20 (e) A retail electric provider may aggregate distributed  
21 energy resources or assist in the aggregation of distributed energy  
22 resources for a third party. The retail electric provider:

23 (1) is not:

24 (A) considered to be a power generation company  
25 solely for that reason;

26 (B) required to register as a power generation  
27 company; or

1           (C) exempt from Chapter 17, this chapter, or  
2 commission rules relating to the aggregation; and

3           (2) is responsible for ensuring the compliance of a  
4 subcontractor, an agent, or any other entity compensated by the  
5 retail electric provider for aggregation services.

6           (f) Participation in an aggregated distributed energy  
7 resource by a market participant or consumer is subject to the  
8 commission's consumer protection rules, jurisdiction, and  
9 authority under this title.

10           SECTION 4. (a) The Public Utility Commission of Texas shall  
11 adopt the rules required by Section 39.9166, Utilities Code, as  
12 added by this Act, as soon as practicable after the effective date  
13 of this Act to ensure that the requirements of Subsection (b) of  
14 this section are met.

15           (b) The Public Utility Commission of Texas shall allow the  
16 participation as required by Section 39.9166, Utilities Code, as  
17 added by this Act, not later than September 1, 2024.

18           (c) The Public Utility Commission of Texas:

19               (1) may operate a pilot program to allow the  
20 participation described by Section 39.9166, Utilities Code, as  
21 added by this Act, before September 1, 2024; and

22               (2) before September 1, 2024, is not required to  
23 modify a pilot program operated before the effective date of this  
24 Act to allow the participation of distributed energy resources in  
25 the ancillary services and wholesale energy markets in the ERCOT  
26 power region.

27           SECTION 5. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2023.