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H.B. No. 1243

A BILL TO BE ENTITLED

1 AN ACT
2 relating to net metering for retail electric service customers and
3 compensation for excess electricity generated by a retail electric
4 customer's on-site generator.

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

6 SECTION 1. Section 31.002(6), Utilities Code, is amended to
7 read as follows:

8 (6) "Electric utility" means a person or river
9 authority that owns or operates for compensation in this state
10 equipment or facilities to produce, generate, transmit,
11 distribute, sell, or furnish electricity in this state. The term
12 includes a lessee, trustee, or receiver of an electric utility and a
13 recreational vehicle park owner who does not comply with Subchapter
14 C, Chapter 184, with regard to the metered sale of electricity at
15 the recreational vehicle park. The term does not include:

16 (A) a municipal corporation;

17 (B) a qualifying facility;

18 (C) a power generation company;

19 (D) an exempt wholesale generator;

20 (E) a power marketer;

21 (F) a corporation described by Section 32.053 to
22 the extent the corporation sells electricity exclusively at
23 wholesale and not to the ultimate consumer;

24 (G) an electric cooperative;

- 1 (H) a retail electric provider;
2 (I) this state or an agency of this state; ~~[or]~~
3 (J) a person not otherwise an electric utility

4 who:

5 (i) furnishes an electric service or
6 commodity only to itself, its employees, or its tenants as an
7 incident of employment or tenancy, if that service or commodity is
8 not resold to or used by others;

9 (ii) owns or operates in this state
10 equipment or facilities to produce, generate, transmit,
11 distribute, sell, or furnish electric energy to an electric
12 utility, if the equipment or facilities are used primarily to
13 produce and generate electric energy for consumption by that
14 person; or

15 (iii) owns or operates in this state a
16 recreational vehicle park that provides metered electric service in
17 accordance with Subchapter C, Chapter 184; or

18 (K) a distributed renewable generation owner, as
19 defined by Section 39.916.

20 SECTION 2. Section 39.002, Utilities Code, is amended to
21 read as follows:

22 Sec. 39.002. APPLICABILITY. Except as provided by this
23 section, this ~~[This]~~ chapter, other than Sections 39.155,
24 39.157(e), 39.203, 39.903, 39.904, 39.9051, 39.9052, and
25 39.914(e), does not apply to a municipally owned utility or to an
26 electric cooperative. Sections 39.157(e), 39.203, and 39.904~~[~~
27 ~~however,~~] apply only to a municipally owned utility or an electric

1 cooperative that is offering customer choice. Section 39.916
2 applies to an electric cooperative. Section 39.9161 applies to a
3 municipally owned utility. If there is a conflict between the
4 specific provisions of this chapter and any other provisions of
5 this title, except for Chapters 40 and 41, the provisions of this
6 chapter control.

7 SECTION 3. The heading to Section 39.916, Utilities Code,
8 is amended to read as follows:

9 Sec. 39.916. [~~INTERCONNECTION OF~~] DISTRIBUTED RENEWABLE
10 GENERATION.

11 SECTION 4. Section 39.916, Utilities Code, is amended by
12 amending Subsections (a), (b), (c), (e), (f), (h), and (j) and
13 adding Subsections (d-1), (k), (l), (m), (n), (o), (p), and (r) to
14 read as follows:

15 (a) In this section:

16 (1) "Distributed renewable generation" means electric
17 generation with a capacity of not more than 2,000 kilowatts
18 provided by a renewable energy technology, as defined by Section
19 39.904, that is installed on a retail electric customer's side of
20 the meter.

21 (2) "Distributed renewable generation owner" means:

22 (A) the owner of distributed renewable
23 generation;

24 (B) a retail electric customer who contracts with
25 another person to finance, install, or maintain distributed
26 renewable generation on the customer's side of the meter,
27 regardless of whether the customer takes ownership of the installed

1 distributed renewable generation; or

2 (C) a person who by contract is assigned
3 ownership rights to distributed renewable generation located at the
4 premises of a customer on the customer's side of the meter.

5 (3) "Interconnection" means the right of a distributed
6 renewable generation owner to physically connect distributed
7 renewable generation to an electricity distribution system, and the
8 technical requirements, rules, or processes for the connection.

9 (b) A transmission and distribution utility, electric
10 cooperative, or electric utility shall allow interconnection if:

11 (1) the distributed renewable generation to be
12 interconnected has a five-year warranty against breakdown or undue
13 degradation; and

14 (2) the rated capacity of the distributed renewable
15 generation does not exceed the transmission and distribution
16 utility, electric cooperative, or electric utility service
17 capacity.

18 (c) A customer may request interconnection by filing an
19 application for interconnection with the transmission and
20 distribution utility, electric cooperative, or electric
21 utility. Procedures of a transmission and distribution utility,
22 electric cooperative, or electric utility for the submission and
23 processing of a customer's application for interconnection shall be
24 consistent with rules adopted by the commission regarding
25 interconnection.

26 (d-1) If, at the time distributed renewable generation is
27 installed on a retail electric customer's side of the meter, the

1 estimated annual amount of electric energy to be produced by the
2 distributed renewable generation is less than or equal to the
3 customer's estimated annual electric energy consumption, the
4 commission may not consider the distributed renewable generation
5 owner to be a power generation company or require the distributed
6 renewable generation owner to register as a power generation
7 company.

8 (e) A transmission and distribution utility, electric
9 cooperative, electric utility, or retail electric provider may not
10 require a distributed renewable generation owner whose distributed
11 renewable generation meets the standards established by rule under
12 Subsection (d) to purchase an amount, type, or classification of
13 liability insurance the distributed renewable generation owner
14 would not have in the absence of the distributed renewable
15 generation.

16 (f) A transmission and distribution utility, electric
17 cooperative, or electric utility shall make available to a
18 distributed renewable generation owner for purposes of this section
19 metering required for services provided under this section,
20 including separate meters that measure the load and generator
21 output or a single meter capable of measuring in-flow and out-flow
22 at the point of common coupling meter point. The distributed
23 renewable generation owner must pay the differential cost of the
24 metering unless the meters are provided at no additional cost.
25 Except as provided by this section, Section 39.107 applies to
26 metering under this section.

27 (h) On the request of a distributed renewable generation

1 owner and in accordance with this section, an ~~[An]~~ electric
2 utility, electric cooperative, or retail electric provider shall
3 ~~[may]~~ contract with a distributed renewable generation owner so
4 that:

5 (1) surplus electricity produced by distributed
6 renewable generation is made available for sale to the transmission
7 grid and distribution system; and

8 (2) the fair market ~~[net]~~ value of that surplus
9 electricity is credited to the distributed renewable generation
10 owner.

11 (j) For a distributed renewable generation owner who
12 chooses to sell the owner's surplus electricity in an area ~~[owners~~
13 ~~in areas]~~ in which customer choice has been introduced, the
14 distributed renewable generation owner must sell the owner's
15 surplus electricity produced to the retail electric provider that
16 serves the ~~[distributed renewable generation]~~ owner's load. For a
17 distributed renewable generation owner who chooses to sell the
18 owner's surplus electricity in an area in which customer choice has
19 not been introduced, the owner must sell the owner's surplus
20 electricity to the electric utility or electric cooperative that
21 serves the owner's load at a value that is greater than or equal to
22 the avoided cost of the electric utility or electric cooperative,
23 as determined in accordance with commission rules, and, for an
24 electric cooperative, that is at least 4.5 cents per kilowatt hour
25 regardless of the electric cooperative's avoided cost. A
26 distributed generation owner who chooses to sell the owner's
27 surplus electricity in an area in which customer choice has been

1 introduced must sell the owner's surplus electricity at a fair
2 market value, determined in accordance with this section, [~~agreed~~
3 ~~to between the distributed renewable generation owner and the~~
4 ~~provider that serves the owner's load which may include, but is not~~
5 ~~limited to, an agreed value based on the clearing price of energy at~~
6 ~~the time of day that the electricity is made available to the grid]~~
7 or the owner's surplus electricity may be exchanged for [it may be]
8 a credit applied at a fair market value, determined in accordance
9 with this section, to an account during a billing period that may be
10 carried over to subsequent billing periods until the credit has
11 been redeemed. The independent organization identified in Section
12 39.151 shall develop procedures so that the amount of electricity
13 purchased from a distributed renewable generation owner under this
14 section is accounted for in settling the total load served by the
15 provider that serves that owner's load [~~by January 1, 2009~~]. A
16 distributed renewable generation owner requesting [~~not~~] metering
17 services for purposes of this section must have metering devices
18 capable of providing measurements consistent with the independent
19 organization's settlement requirements.

20 (k) In areas in which customer choice has been introduced,
21 the commission by rule shall provide a methodology for determining
22 a fair market value price for surplus electricity generated by
23 distributed renewable generation that provides a monthly or longer
24 periodic proxy for the market clearing price. The methodology must
25 not allow the aggregate fair market value of surplus electricity in
26 any billing period to be less than zero. The commission shall
27 review the methodology periodically. The commission shall post on

1 its Internet website the fair market value prices derived from the
2 methodology provided under this subsection.

3 (l) In an area in which customer choice has been introduced,
4 a retail electric provider shall pay a distributed renewable
5 generation owner for surplus electricity generated by the owner's
6 distributed renewable generation the local market clearing price
7 for energy at the time of day the surplus electricity is made
8 available to the grid or a price that is not less than the fair
9 market value price determined in accordance with the methodology
10 provided under Subsection (k).

11 (m) In areas in which customer choice has been introduced, a
12 distributed renewable generation owner is qualified to be paid for
13 surplus electricity under Subsection (h), (j), (k), or (l) only if:

14 (1) the owner's distributed renewable generation is:
15 (A) rated to produce an amount of electricity
16 that is less than or equal to the amount of electricity the retail
17 electric customer for whom the distributed renewable generation is
18 installed is reasonably expected to consume; and

19 (B) installed on the customer's side of the meter
20 for a residential retail electric customer or a retail electric
21 customer who is a public school or a church; and

22 (2) the generating capacity of the distributed
23 renewable generation does not exceed:

24 (A) 10 kilowatts for a residential retail
25 electric customer;

26 (B) 150 kilowatts for a church retail electric
27 customer; or

1 (C) 250 kilowatts for a public school retail
2 electric customer.

3 (n) A distributed renewable generation owner who does not
4 meet the qualifications prescribed by Subsection (m) will be paid
5 for the owner's surplus electricity or will have the owner's surplus
6 electricity exchanged for a credit to the owner's electric service
7 account at a value to which the owner and the provider that serves
8 the owner's load agree.

9 (o) The commission by rule may establish standards
10 distributed renewable generation must meet to be eligible for
11 compensation under this section, including interconnection
12 standards and standards for the generating equipment. The
13 standards must be designed so that small-scale distributed
14 renewable generation at residential addresses is eligible for
15 compensation.

16 (p) The commission by rule shall require an electric
17 utility, retail electric provider, or electric cooperative that
18 purchases surplus electricity from distributed renewable
19 generation to include on each bill or separate statement to the
20 distributed renewable generation owner line items to inform the
21 owner of:

22 (1) the amount of surplus electricity from the
23 distributed renewable generation, in terms of kilowatt hours;

24 (2) the price credited to or the payment made to the
25 owner for each kilowatt hour; and

26 (3) the amount of any credit for surplus electricity
27 applied or carried forward from the previous billing period.

1 (r) Until the commission provides the methodology under
2 Subsection (k) for determining a fair market value price in an area
3 open to competition, a retail electric provider shall pay a price
4 for surplus electricity that is not less than five cents per
5 kilowatt hour for electricity generated by a solar energy
6 technology or not less than four cents per kilowatt hour for
7 electricity generated by another renewable energy technology.

8 SECTION 5. Subchapter Z, Chapter 39, Utilities Code, is
9 amended by adding Section 39.9161 to read as follows:

10 Sec. 39.9161. DISTRIBUTED RENEWABLE GENERATION WITHIN
11 MUNICIPALLY OWNED UTILITIES. (a) In this section "distributed
12 renewable generation," "distributed renewable generation owner,"
13 and "interconnection" have the meanings assigned by Section 39.916.

14 (b) It is the goal of the legislature that municipally owned
15 utilities shall allow interconnection and net metering by
16 distributed renewable generation owners.

17 (c) A municipally owned utility shall provide its customers
18 access to the interconnection and net metering of distributed
19 renewable generation.

20 (d) The governing body of a municipally owned utility shall
21 provide oversight and adopt rates, rules, and procedures to allow
22 interconnection and provide net metering consistent with the goals
23 of Section 39.916. This section does not prevent the governing body
24 of a municipally owned utility from adopting rates, rules, and
25 procedures for interconnection and net metering that are more
26 favorable to a distributed renewable generation owner than those
27 established by Section 39.916 or rules of the commission.

1 (e) If a municipally owned utility implements customer
2 choice under Chapter 40, the commission:

3 (1) has jurisdiction over the municipally owned
4 utility's distributed renewable generation interconnection and net
5 metering; and

6 (2) by rule shall establish minimum standards and
7 procedures for interconnection and net metering by the municipally
8 owned utility.

9 (f) A municipally owned utility that had retail sales of
10 500,000 megawatt hours or greater in 2008 shall file its
11 interconnection and net metering rates, rules, and procedures with
12 the State Energy Conservation Office not later than January 1,
13 2010, and shall make timely updates to the utility's filed rates,
14 rules, and procedures.

15 (g) A municipally owned utility that has adopted rules and
16 procedures related to interconnection and net metering shall make
17 available, on a publicly accessible Internet website or at the
18 customary location for publicly posted notices:

19 (1) information on the purchase price offered per
20 kilowatt hour for surplus electricity produced by distributed
21 renewable generation; and

22 (2) information instructing customers with
23 distributed renewable generation how to request and obtain the
24 purchase rates offered.

25 (h) The governing body of a municipally owned utility that
26 had retail sales of less than 500,000 megawatt hours in 2008 shall
27 provide oversight and adopt rules and procedures related to

1 interconnection and net metering of distributed renewable
2 generation systems sized with a generating capacity deemed
3 appropriate by the municipally owned utility on or before the 120th
4 day after the date the governing body receives a bona fide request
5 for interconnection.

6 SECTION 6. Subchapter Z, Chapter 39, Utilities Code, is
7 amended by adding Section 39.926 to read as follows:

8 Sec. 39.926. INFORMATION ON INTERNET REGARDING PURCHASE OF
9 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION.

10 (a) On the Internet website found at <http://www.powertochoose.org>,
11 the commission shall provide for access to easily comparable
12 information regarding retail electric providers' offers to
13 residential distributed renewable generation owners for their
14 surplus electricity, including information regarding their
15 contract terms, for each retail electric provider using that
16 website.

17 (b) On the Internet website found at
18 <http://www.powertochoose.org>, the commission shall provide for
19 access to easily comparable information regarding offers of
20 renewable energy credit marketers to residential distributed
21 renewable generation owners, for each renewable energy credit
22 marketer using that website.

23 (c) The commission by rule shall require electric
24 utilities, electric cooperatives, and retail electric providers to
25 provide on publicly accessible Internet websites information on
26 purchase price offers per kilowatt hour for surplus electricity
27 produced by residential distributed renewable generation and

1 information instructing customers with distributed renewable
2 generation on how to request and obtain the purchase rates offered.

3 SECTION 7. Not later than January 1, 2010, the Public
4 Utility Commission of Texas shall provide the methodology for
5 determining a fair market value price for surplus electricity
6 generated by distributed renewable generation, as required by
7 Section 39.916(k), Utilities Code, as added by this Act.

8 SECTION 8. (a) Section 39.916, Utilities Code, as amended
9 by this Act, expires September 2, 2011.

10 (b) The Public Utility Commission of Texas shall conduct a
11 study to determine the effect of the pricing methodology the
12 commission provides under Section 39.916(k), Utilities Code, as
13 added by this Act, and shall report its findings and
14 recommendations to the 82nd Legislature not later than January 15,
15 2011. The study must include assessments of:

16 (1) the development of the market in ERCOT for the sale
17 of surplus electricity, including the prices that retail electric
18 providers and electric utilities, municipal electric utilities,
19 and electric cooperatives in areas in which customer choice has not
20 been introduced pay for surplus electricity, and the amount of
21 surplus electricity such entities have purchased;

22 (2) the rate of adoption by customers in this state of
23 distributed renewable generation, including generation by solar
24 and other on-site renewable technologies, including a comparison of
25 adoption rates in this state compared to the adoption rates in other
26 states, the extent to which adoption rates vary by retail market
27 structure, the amount of direct installation incentives, the

1 pricing for purchasing of surplus electricity, and the extent to
2 which adoption rates are affected by the cost of other electric
3 supplies;

4 (3) a comparison of the default fair market value
5 price for surplus electricity to:

6 (A) the local market clearing prices of energy at
7 the time of day surplus electricity has been made available to the
8 grid; and

9 (B) the avoided costs of electric utilities as
10 determined in accordance with commission rules; and

11 (4) the extent to which electric service customers
12 with distributed renewable generation help avoid transmission and
13 distribution upgrades and reduce pollution, including an
14 estimation of the value of those benefits regionally.

15 (c) The study report must include any recommendations for
16 improvements in policies necessary to appropriately encourage the
17 development of distributed renewable generation technologies on
18 customer premises.

19 SECTION 9. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2009.