

1-1 By: Gallego, et al. (Senate Sponsor - Fraser) H.B. No. 1243
1-2 (In the Senate - Received from the House May 18, 2009;
1-3 May 21, 2009, read first time and referred to Committee on Business
1-4 and Commerce; May 23, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1243 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to net metering for retail electric service customers and
1-11 compensation for excess electricity generated by a retail electric
1-12 customer's on-site generator.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 31.002(6), Utilities Code, is amended to
1-15 read as follows:

1-16 (6) "Electric utility" means a person or river
1-17 authority that owns or operates for compensation in this state
1-18 equipment or facilities to produce, generate, transmit,
1-19 distribute, sell, or furnish electricity in this state. The term
1-20 includes a lessee, trustee, or receiver of an electric utility and a
1-21 recreational vehicle park owner who does not comply with Subchapter
1-22 C, Chapter 184, with regard to the metered sale of electricity at
1-23 the recreational vehicle park. The term does not include:

1-24 (A) a municipal corporation;
1-25 (B) a qualifying facility;
1-26 (C) a power generation company;
1-27 (D) an exempt wholesale generator;
1-28 (E) a power marketer;
1-29 (F) a corporation described by Section 32.053 to
1-30 the extent the corporation sells electricity exclusively at
1-31 wholesale and not to the ultimate consumer;
1-32 (G) an electric cooperative;
1-33 (H) a retail electric provider;
1-34 (I) this state or an agency of this state; ~~or~~
1-35 (J) a person not otherwise an electric utility

1-36 who:

1-37 (i) furnishes an electric service or
1-38 commodity only to itself, its employees, or its tenants as an
1-39 incident of employment or tenancy, if that service or commodity is
1-40 not resold to or used by others;

1-41 (ii) owns or operates in this state
1-42 equipment or facilities to produce, generate, transmit,
1-43 distribute, sell, or furnish electric energy to an electric
1-44 utility, if the equipment or facilities are used primarily to
1-45 produce and generate electric energy for consumption by that
1-46 person; or

1-47 (iii) owns or operates in this state a
1-48 recreational vehicle park that provides metered electric service in
1-49 accordance with Subchapter C, Chapter 184; or

1-50 (K) a distributed renewable generation owner, as
1-51 defined by Section 39.916.

1-52 SECTION 2. Section 39.002, Utilities Code, is amended to
1-53 read as follows:

1-54 Sec. 39.002. APPLICABILITY. Except as provided by this
1-55 section, this [This] chapter, other than Sections 39.155,
1-56 39.157(e), 39.203, 39.903, 39.904, 39.9051, 39.9052, and
1-57 39.914(e), does not apply to a municipally owned utility or to an
1-58 electric cooperative. Sections 39.157(e), 39.203, and 39.904[
1-59 however,] apply only to a municipally owned utility or an electric
1-60 cooperative that is offering customer choice. Section 39.916
1-61 applies to an electric cooperative. Section 39.9161 applies to a
1-62 municipally owned utility. If there is a conflict between the
1-63 specific provisions of this chapter and any other provisions of

2-1 this title, except for Chapters 40 and 41, the provisions of this
2-2 chapter control.

2-3 SECTION 3. The heading to Section 39.916, Utilities Code,
2-4 is amended to read as follows:

2-5 Sec. 39.916. [~~INTERCONNECTION OF~~] DISTRIBUTED RENEWABLE
2-6 GENERATION.

2-7 SECTION 4. Section 39.916, Utilities Code, is amended by
2-8 amending Subsections (a), (b), (c), (e), (f), (h), and (j) and
2-9 adding Subsections (d-1), (k), (l), (m), (n), (o), (p), and (r) to
2-10 read as follows:

2-11 (a) In this section:

2-12 (1) "Distributed renewable generation" means electric
2-13 generation with a capacity of not more than 2,000 kilowatts
2-14 provided by a renewable energy technology, as defined by Section
2-15 39.904, that is installed on a retail electric customer's side of
2-16 the meter.

2-17 (2) "Distributed renewable generation owner" means:
2-18 (A) the owner of distributed renewable
2-19 generation;

2-20 (B) a retail electric customer who contracts with
2-21 another person to finance, install, or maintain distributed
2-22 renewable generation on the customer's side of the meter,
2-23 regardless of whether the customer takes ownership of the installed
2-24 distributed renewable generation; or

2-25 (C) a person who by contract is assigned
2-26 ownership rights to distributed renewable generation located at the
2-27 premises of a customer on the customer's side of the meter.

2-28 (3) "Interconnection" means the right of a distributed
2-29 renewable generation owner to physically connect distributed
2-30 renewable generation to an electricity distribution system, and the
2-31 technical requirements, rules, or processes for the connection.

2-32 (b) A transmission and distribution utility, electric
2-33 cooperative, or electric utility shall allow interconnection if:

2-34 (1) the distributed renewable generation to be
2-35 interconnected has a five-year warranty against breakdown or undue
2-36 degradation; and

2-37 (2) the rated capacity of the distributed renewable
2-38 generation does not exceed the transmission and distribution
2-39 utility, electric cooperative, or electric utility service
2-40 capacity.

2-41 (c) A customer may request interconnection by filing an
2-42 application for interconnection with the transmission and
2-43 distribution utility, electric cooperative, or electric
2-44 utility. Procedures of a transmission and distribution utility,
2-45 electric cooperative, or electric utility for the submission and
2-46 processing of a customer's application for interconnection shall be
2-47 consistent with rules adopted by the commission regarding
2-48 interconnection.

2-49 (d-1) If, at the time distributed renewable generation is
2-50 installed on a retail electric customer's side of the meter, the
2-51 estimated annual amount of electric energy to be produced by the
2-52 distributed renewable generation is less than or equal to the
2-53 customer's estimated annual electric energy consumption, the
2-54 commission may not consider the distributed renewable generation
2-55 owner to be a power generation company or require the distributed
2-56 renewable generation owner to register as a power generation
2-57 company.

2-58 (e) A transmission and distribution utility, electric
2-59 cooperative, electric utility, or retail electric provider may not
2-60 require a distributed renewable generation owner whose distributed
2-61 renewable generation meets the standards established by rule under
2-62 Subsection (d) to purchase an amount, type, or classification of
2-63 liability insurance the distributed renewable generation owner
2-64 would not have in the absence of the distributed renewable
2-65 generation.

2-66 (f) A transmission and distribution utility, electric
2-67 cooperative, or electric utility shall make available to a
2-68 distributed renewable generation owner for purposes of this section
2-69 metering required for services provided under this section,

3-1 including separate meters that measure the load and generator
 3-2 output or a single meter capable of measuring in-flow and out-flow
 3-3 at the point of common coupling meter point. The distributed
 3-4 renewable generation owner must pay the differential cost of the
 3-5 metering unless the meters are provided at no additional cost.
 3-6 Except as provided by this section, Section 39.107 applies to
 3-7 metering under this section.

3-8 (h) On the request of a distributed renewable generation
 3-9 owner and in accordance with this section, an ~~[An]~~ electric
 3-10 utility, electric cooperative, or retail electric provider shall
 3-11 ~~[may]~~ contract with a distributed renewable generation owner so
 3-12 that:

3-13 (1) surplus electricity produced by distributed
 3-14 renewable generation is made available for sale to the transmission
 3-15 grid and distribution system; and

3-16 (2) the fair market ~~[net]~~ value of that surplus
 3-17 electricity is credited to the distributed renewable generation
 3-18 owner.

3-19 (j) For a distributed renewable generation owner who
 3-20 chooses to sell the owner's surplus electricity in an area ~~[owners~~
 3-21 ~~in areas]~~ in which customer choice has been introduced, the
 3-22 distributed renewable generation owner must sell the owner's
 3-23 surplus electricity produced to the retail electric provider that
 3-24 serves the ~~[distributed renewable generation]~~ owner's load. For a
 3-25 distributed renewable generation owner who chooses to sell the
 3-26 owner's surplus electricity in an area in which customer choice has
 3-27 not been introduced, the owner must sell the owner's surplus
 3-28 electricity to the electric utility or electric cooperative that
 3-29 serves the owner's load at a value that is greater than or equal to
 3-30 the avoided cost of the electric utility or electric cooperative,
 3-31 as determined in accordance with commission rules. A distributed
 3-32 generation owner who chooses to sell the owner's surplus
 3-33 electricity in an area in which customer choice has been introduced
 3-34 must sell the owner's surplus electricity at a fair market value,
 3-35 determined in accordance with this section, ~~[agreed to between the~~
 3-36 ~~distributed renewable generation owner and the provider that serves~~
 3-37 ~~the owner's load which may include, but is not limited to, an agreed~~
 3-38 ~~value based on the clearing price of energy at the time of day that~~
 3-39 ~~the electricity is made available to the grid]~~ or the owner's
 3-40 surplus electricity may be exchanged for ~~[it may be]~~ a credit
 3-41 applied at a fair market value, determined in accordance with this
 3-42 section, to an account during a billing period that may be carried
 3-43 over to subsequent billing periods until the credit has been
 3-44 redeemed. The independent organization identified in Section
 3-45 39.151 shall develop procedures so that the amount of electricity
 3-46 purchased from a distributed renewable generation owner under this
 3-47 section is accounted for in settling the total load served by the
 3-48 provider that serves that owner's load ~~[by January 1, 2009]~~. A
 3-49 distributed renewable generation owner requesting ~~[net]~~ metering
 3-50 services for purposes of this section must have metering devices
 3-51 capable of providing measurements consistent with the independent
 3-52 organization's settlement requirements.

3-53 (k) In areas in which customer choice has been introduced,
 3-54 the commission by rule shall provide a methodology for determining
 3-55 a fair market value price for surplus electricity generated by
 3-56 distributed renewable generation that provides a proxy for the
 3-57 market clearing price. The commission shall review the methodology
 3-58 periodically. The commission shall post on its Internet website
 3-59 the fair market value prices derived from the methodology provided
 3-60 under this subsection.

3-61 (l) In an area in which customer choice has been introduced,
 3-62 a retail electric provider shall pay a distributed renewable
 3-63 generation owner for surplus electricity generated by the owner's
 3-64 distributed renewable generation the local market clearing price
 3-65 for energy at the time of day the surplus electricity is made
 3-66 available to the grid or a price that is not less than the fair
 3-67 market value price determined in accordance with the methodology
 3-68 provided under Subsection (k).

3-69 (m) In areas in which customer choice has been introduced, a

4-1 distributed renewable generation owner is qualified to be paid for
4-2 surplus electricity under Subsection (h), (j), (k), or (l) only if:

4-3 (1) the owner's distributed renewable generation is:

4-4 (A) rated to produce an amount of electricity
4-5 that is less than or equal to the amount of electricity the retail
4-6 electric customer for whom the distributed renewable generation is
4-7 installed is reasonably expected to consume; and

4-8 (B) installed on the customer's side of the meter
4-9 for a residential retail electric customer or a retail electric
4-10 customer who is a public school or a church; and

4-11 (2) the generating capacity of the distributed
4-12 renewable generation does not exceed:

4-13 (A) 10 kilowatts for a residential retail
4-14 electric customer;

4-15 (B) 150 kilowatts for a church retail electric
4-16 customer; or

4-17 (C) 250 kilowatts for a public school retail
4-18 electric customer.

4-19 (n) A distributed renewable generation owner who does not
4-20 meet the qualifications prescribed by Subsection (m) will be paid
4-21 for the owner's surplus electricity or will have the owner's surplus
4-22 electricity exchanged for a credit to the owner's electric service
4-23 account at a value to which the owner and the provider that serves
4-24 the owner's load agree.

4-25 (o) The commission by rule may establish standards
4-26 distributed renewable generation must meet to be eligible for
4-27 compensation under this section, including interconnection
4-28 standards and standards for the generating equipment. The
4-29 standards must be designed so that small-scale distributed
4-30 renewable generation at residential addresses is eligible for
4-31 compensation.

4-32 (p) The commission by rule shall require an electric
4-33 utility, retail electric provider, or electric cooperative that
4-34 purchases surplus electricity from distributed renewable
4-35 generation to include on each bill or separate statement to the
4-36 distributed renewable generation owner line items to inform the
4-37 owner of:

4-38 (1) the amount of surplus electricity from the
4-39 distributed renewable generation, in terms of kilowatt hours;

4-40 (2) the price credited to or the payment made to the
4-41 owner for each kilowatt hour; and

4-42 (3) the amount of any credit for surplus electricity
4-43 applied or carried forward from the previous billing period.

4-44 (r) Until the commission provides the methodology under
4-45 Subsection (k) for determining a fair market value price in an area
4-46 open to competition, a retail electric provider shall pay a price
4-47 for surplus electricity that is not less than five cents per
4-48 kilowatt hour for electricity generated by a solar energy
4-49 technology or not less than four cents per kilowatt hour for
4-50 electricity generated by another renewable energy technology.

4-51 SECTION 5. Subchapter Z, Chapter 39, Utilities Code, is
4-52 amended by adding Section 39.9161 to read as follows:

4-53 Sec. 39.9161. DISTRIBUTED RENEWABLE GENERATION WITHIN
4-54 MUNICIPALLY OWNED UTILITIES. (a) In this section "distributed
4-55 renewable generation," "distributed renewable generation owner,"
4-56 and "interconnection" have the meanings assigned by Section 39.916.

4-57 (b) It is the goal of the legislature that municipally owned
4-58 utilities shall allow interconnection and net metering by
4-59 distributed renewable generation owners.

4-60 (c) A municipally owned utility shall provide its customers
4-61 access to the interconnection and net metering of distributed
4-62 renewable generation.

4-63 (d) The governing body of a municipally owned utility shall
4-64 provide oversight and adopt rates, rules, and procedures to allow
4-65 interconnection and provide net metering consistent with the goals
4-66 of Section 39.916. This section does not prevent the governing body
4-67 of a municipally owned utility from adopting rates, rules, and
4-68 procedures for interconnection and net metering that are more
4-69 favorable to a distributed renewable generation owner than those

5-1 established by Section 39.916 or rules of the commission.

5-2 (e) If a municipally owned utility implements customer
5-3 choice under Chapter 40, the commission:

5-4 (1) has jurisdiction over the municipally owned
5-5 utility's distributed renewable generation interconnection and net
5-6 metering; and

5-7 (2) by rule shall establish minimum standards and
5-8 procedures for interconnection and net metering by the municipally
5-9 owned utility.

5-10 (f) A municipally owned utility that had retail sales of
5-11 500,000 megawatt hours or greater in 2008 shall file its
5-12 interconnection and net metering rates, rules, and procedures with
5-13 the State Energy Conservation Office not later than January 1,
5-14 2010, and shall make timely updates to the utility's filed rates,
5-15 rules, and procedures.

5-16 (g) A municipally owned utility that has adopted rules and
5-17 procedures related to interconnection and net metering shall make
5-18 available, on a publicly accessible Internet website or at the
5-19 customary location for publicly posted notices:

5-20 (1) information on the purchase price offered per
5-21 kilowatt hour for surplus electricity produced by distributed
5-22 renewable generation; and

5-23 (2) information instructing customers with
5-24 distributed renewable generation how to request and obtain the
5-25 purchase rates offered.

5-26 (h) The governing body of a municipally owned utility that
5-27 had retail sales of less than 500,000 megawatt hours in 2008 shall
5-28 provide oversight and adopt rules and procedures related to
5-29 interconnection and net metering of distributed renewable
5-30 generation systems sized with a generating capacity deemed
5-31 appropriate by the municipally owned utility on or before the 120th
5-32 day after the date the governing body receives a bona fide request
5-33 for interconnection.

5-34 SECTION 6. Subchapter Z, Chapter 39, Utilities Code, is
5-35 amended by adding Section 39.926 to read as follows:

5-36 Sec. 39.926. INFORMATION ON INTERNET REGARDING PURCHASE OF
5-37 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION.

5-38 (a) On the Internet website found at <http://www.powertochoose.org>,
5-39 the commission shall provide for access to easily comparable
5-40 information regarding retail electric providers' offers to
5-41 residential distributed renewable generation owners for their
5-42 surplus electricity, including information regarding their
5-43 contract terms, for each retail electric provider using that
5-44 website.

5-45 (b) On the Internet website found at
5-46 <http://www.powertochoose.org>, the commission shall provide for
5-47 access to easily comparable information regarding offers of
5-48 renewable energy credit marketers to residential distributed
5-49 renewable generation owners, for each renewable energy credit
5-50 marketer using that website.

5-51 (c) The commission by rule shall require electric
5-52 utilities, electric cooperatives, and retail electric providers to
5-53 provide on publicly accessible Internet websites information on
5-54 purchase price offers per kilowatt hour for surplus electricity
5-55 produced by residential distributed renewable generation and
5-56 information instructing customers with distributed renewable
5-57 generation on how to request and obtain the purchase rates offered.

5-58 SECTION 7. Not later than January 1, 2010, the Public
5-59 Utility Commission of Texas shall provide the methodology for
5-60 determining a fair market value price for surplus electricity
5-61 generated by distributed renewable generation, as required by
5-62 Section 39.916(k), Utilities Code, as added by this Act.

5-63 SECTION 8. Section 39.916, Utilities Code, as amended by
5-64 this Act, expires September 2, 2011.

5-65 SECTION 9. Section 39.914, Utilities Code, is repealed.

5-66 SECTION 10. This Act takes effect immediately if it
5-67 receives a vote of two-thirds of all the members elected to each
5-68 house, as provided by Section 39, Article III, Texas Constitution.
5-69 If this Act does not receive the vote necessary for immediate

6-1 effect, this Act takes effect September 1, 2009.

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