

By: Solomons

H.B. No. 3245

A BILL TO BE ENTITLED

AN ACT

relating to consumer protections within the electricity markets.

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

SECTION 1. Section 39.101(h), Utilities Code, is amended to read as follows:

(h) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not disconnect service to a residential customer during an extreme weather emergency or on a weekend day. The entity providing service shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills. For purposes of this subsection, "extreme weather emergency" means a period when: the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports; or a day for which the National Weather Service forecasts that the heat index will reach or exceed 100 degrees Fahrenheit in any part of a county in the relevant service territory; or a period when, on any one of the previous two calendar days, the National Weather Service observes a heat index of 101 degrees Fahrenheit or more in any part of a county in the relevant service territory. [~~the National Weather Service issues a heat advisory for any county in~~

1 ~~the relevant service territory, or when such an advisory has been~~
2 ~~issued on any one of the previous two calendar days.]~~

3 SECTION 2. Section 39.151, Utilities Code, is amended by
4 amending Subsection (g), to read as follows:

5 (g) To maintain certification as an independent
6 organization under this section, the organization must operate a
7 regional electrical network that is contained wholly within the
8 borders of the State of Texas. Such an organization's governing
9 body must be composed of persons specified by this section and
10 selected in accordance with formal bylaws or protocols of the
11 organization. The bylaws or protocols must be approved by the
12 commission and must reflect the input of the commission. The
13 bylaws must ~~[specify the process by which appropriate stakeholders~~
14 ~~elect members and, for unaffiliated members,~~] prescribe the
15 professional qualifications necessary for selection as a member of
16 the organization and~~[.---T]~~ the bylaws must require the use of a
17 professional search firm to identify candidates for membership of
18 unaffiliated members. The process must allow for commission input
19 in identifying candidates. The governing body must be composed of:

20 (1) the ~~[chairman]~~ three sitting commissioners of the
21 commission as ~~[an]~~ ex officio nonvoting members;

22 (2) the counsellor as an ex officio voting member
23 representing residential and small commercial consumer interests;

24 (3) the chief executive officer of the independent
25 organization as an ex officio voting member;

26 (4) ~~[six market participants elected by their~~
27 ~~respective market segments to serve one-year terms, with:~~

1 ~~[(A) one representing independent generators,~~
2 ~~[(B) one representing investor-owned utilities,~~
3 ~~[(C) one representing power marketers,~~
4 ~~[(D) one representing retail electric providers,~~
5 ~~[(E) one representing municipally owned~~
6 ~~utilities, and~~
7 ~~[(F) one representing electric cooperatives,~~
8 ~~[(5)]~~ one member representing industrial consumer
9 interests and elected by the industrial consumer market segment to
10 serve a one-year term;
11 (6) one member representing large commercial consumer
12 interests selected in accordance with the bylaws to serve a
13 one-year term; and
14 (7) [~~five~~] nine members unaffiliated with any market
15 segment and selected by the other members of the governing body to
16 serve three-year terms.

17 SECTION 3. Subchapter D, Chapter 39, Utilities Code,
18 Section 39.157 (a) is amended to read as follows:

19 (a) The commission shall monitor market power associated
20 with the generation, transmission, distribution, and sale of
21 electricity in this state. On a finding that market power abuses or
22 other violations of this section are occurring, the commission
23 shall require reasonable mitigation of the market power by ordering
24 the construction of additional transmission or distribution
25 facilities, by seeking an injunction or civil penalties as
26 necessary to eliminate or to remedy the market power abuse or
27 violation as authorized by Chapter 15, by imposing an

1 administrative penalty as authorized by Chapter 15, or by
2 suspending, revoking, or amending a certificate or registration as
3 authorized by Section 39.356. Section 15.024(c) does not apply to
4 an administrative penalty imposed under this section. For purposes
5 of this subchapter, market power abuses are practices by persons
6 possessing market power that are unreasonably discriminatory or
7 tend to unreasonably restrict, impair, or reduce the level of
8 competition, including practices that tie unregulated products or
9 services to regulated products or services or unreasonably
10 discriminate in the provision of regulated services. For purposes
11 of this section, "market power abuses" include predatory pricing,
12 withholding of production, precluding entry, and collusion. A
13 violation of the code of conduct provided by Subsection (d) that
14 materially impairs the ability of a person to compete in a
15 competitive market shall be deemed to be an abuse of market power.
16 The possession of a high market share in a market open to
17 competition may not, of itself, be deemed to be an abuse of market
18 power; however, this sentence shall not affect the application of
19 state and federal antitrust laws. The possession of a low market
20 share within the power region may not, by itself, be deemed as a
21 sufficient condition to preclude a finding that an investor owner
22 generator engaged in an abuse of market power.

23 SECTION 4. Subchapter D, Chapter 39, Utilities Code,
24 Section 39.157 (a) is amended to read as follows:

25 (a) The commission shall monitor market power associated
26 with the generation, transmission, distribution, and sale of
27 electricity in this state. On a finding that market power abuses or

1 other violations of this section are occurring, the commission
2 shall require reasonable mitigation of the market power by ordering
3 the construction of additional transmission or distribution
4 facilities, by seeking an injunction or civil penalties as
5 necessary to eliminate or to remedy the market power abuse or
6 violation as authorized by Chapter 15, by imposing an
7 administrative penalty as authorized by Chapter 15, or by
8 suspending, revoking, or amending a certificate or registration as
9 authorized by Section 39.356. The commission shall permit affected
10 customers, including political subdivisions, retail electric
11 providers and commercial power users to participate in enforcement
12 proceedings alleging market power abuses or manipulation of the
13 wholesale market. The commission shall order refunds be made to end
14 users adversely impacted by findings of market power abuse or
15 manipulation of the wholesale market. Notwithstanding any action
16 or inaction by the commission on an allegation of market power abuse
17 or manipulation of the wholesale market, private parties may seek
18 remedies in any appropriate forum. The Filed Rate Doctrine shall
19 not be a defense in any private party suit that alleges market power
20 abuse or manipulation of the wholesale market. Section 15.024(c)
21 does not apply to an administrative penalty imposed under this
22 section. For purposes of this subchapter, market power abuses are
23 practices by persons possessing market power that are unreasonably
24 discriminatory or tend to unreasonably restrict, impair, or reduce
25 the level of competition, including practices that tie unregulated
26 products or services to regulated products or services or
27 unreasonably discriminate in the provision of regulated services.

1 For purposes of this section, "market power abuses" include
2 predatory pricing, withholding of production, precluding entry,
3 and collusion. A violation of the code of conduct provided by
4 Subsection (d) that materially impairs the ability of a person to
5 compete in a competitive market shall be deemed to be an abuse of
6 market power. The possession of a high market share in a market
7 open to competition may not, of itself, be deemed to be an abuse of
8 market power; however, this sentence shall not affect the
9 application of state and federal antitrust laws.

10 SECTION 5. Sections 37.051(a), 37.053(a), 37.055, 37.057,
11 and 37.151, Utilities Code, are amended to read as follows:

12 Sec. 37.051. CERTIFICATE REQUIRED. (a) An person
13 [~~electric utility~~] may not directly or indirectly provide service
14 to the public under a franchise or permit unless the person
15 [~~utility~~] first obtains from the commission a certificate that
16 states that the public convenience and necessity requires or will
17 require the installation, operation, or extension of the service.

18 (d) A certificate may be granted to a person under this
19 subsection for a facility used solely for the transmission of
20 electricity.

21 Sec. 37.053. APPLICATION FOR CERTIFICATE. (a) A person
22 [~~An electric utility~~] that wants to obtain or amend a certificate
23 must submit an application to the commission.

24 Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) a person
25 [~~An electric utility~~] that wants to exercise a right or privilege
26 under a franchise or permit that the person [~~utility~~] anticipates
27 obtaining but has not been granted may apply to the commission for a

1 preliminary order under this section.

2 (b) The commission may issue a preliminary order declaring
3 that the commission, on application and under commission rules,
4 will grant the requested certificate on terms the commission
5 designates, after the person [~~electric utility~~] obtains the
6 franchise or permit.

7 (c) The commission shall grant the certificate on
8 presentation of evidence satisfactory to the commission that the
9 person [~~electric utility~~] has obtained the franchise or permit.

10 Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION
11 FACILITY. The commission may grant a certificate for a new
12 transmission facility to any qualified applicant that meets the
13 requirements of this subchapter. The commission must approve or
14 deny an application for a certificate for a new transmission
15 facility not later than the first anniversary of the date the
16 application is filed. If the commission does not approve or deny
17 the application on or before that date, a party may seek a writ of
18 mandamus in a district court of Travis County to compel the
19 commission to decide on the application.

20 Sec. 37.151. PROVISION OF SERVICE. Except as provided by
21 this section, Section 37.152, and Section 37.153, a certificate
22 holder, other than those granted a certificate pursuant to Section
23 37.051(d), shall:

24 (1) serve every consumer in the utility's certificated
25 area; and

26 (2) provide continuous and adequate service in that
27 area.

1 SECTION 6. Subchapter Z, Chapter 39, Utilities Code, is
2 amended by adding Section 39.925 to read as follows:

3 Sec. 39.925. NODAL IMPLEMENTATION. An independent
4 organization under this section shall not allow any charges or
5 costs associated with a nodal wholesale market design or its
6 implementation to be passed to the retail customers. The wholesale
7 companies may recover the nodal wholesale market design and
8 implementation costs only from costs savings realized from the
9 nodal system. The commission is authorized and directed to monitor
10 the nodal wholesale market system and an independent organization
11 under this section shall insure that all monetary and other
12 material information is shared with the commission. The commission
13 shall determine when costs recovery is complete. After cost
14 recovery is complete, any future monetary savings realized by the
15 wholesale companies as a result of the nodal wholesale market
16 design must be passed to the retail customers as determined by the
17 commission. The commission shall enforce this section with civil
18 penalties.

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

21 Sec. 39.926. Electricity providers shall provide a real
22 time quote from the NYMEX for the Henry Hub spot gas price. The
23 quote shall be placed prominently on the electricity provider's
24 homepage. A graph showing the daily gas price for the previous five
25 years shall also be provided with a comparison of electricity
26 prices charged by the provider. This real time quote shall
27 establish the rate to be charged by electricity providers and will

1 enforce direct pass through of non-bypassable charges (both up and
2 down) to the consumer.

3 SECTION 8. Section 39.107(h), Utilities Code, is amended to
4 read as follows:

5 (h) The commission shall establish a non-bypassable
6 surcharge for an electric utility or transmission and distribution
7 utility to use to recover reasonable and necessary costs incurred
8 in deploying advanced metering and meter information networks to
9 residential customers and nonresidential customers other than
10 those required by the independent system operator to have an
11 interval data recorder meter. The commission shall ensure that the
12 nonbypassable surcharge reflects a deployment of advanced meters
13 that is no more than one-third of the utility's total meters over
14 each calendar year and shall ensure that the nonbypassable
15 surcharge does not result in the utility recovering more than its
16 actual, fully allocated meter and meter information network costs.
17 The expenses must be allocated to the customer classes receiving
18 the services, based on the electric utility's most recently
19 approved tariffs. An electric utility or transmission and
20 distribution utility that deploys advanced meter and meter
21 information networks shall seek to obtain and utilize funds,
22 including grants, loans, and loan guarantees, made available by the
23 federal government if such funds would lower the overall cost of
24 deployment. The commission shall reflect the funds obtained by the
25 electric utility or transmission and distribution utility when
26 establishing the surcharge required by this subsection, including
27 timely ordering reductions to surcharges approved prior to the

1 receipt of the funds.

2 SECTION 9. Section 39.904, Utilities Code, is amended by
3 adding Subsection (h-1) to read as follows:

4 (h-1) An electric utility, transmission and distribution
5 utility, or river authority that has been designated by the
6 commission to construct transmission capacity pursuant to
7 Subsection (g) shall seek to obtain and utilize funds, including
8 grants, loans, and loan guarantees, made available by the federal
9 government if such funds would lower the overall cost of
10 construction. The commission shall reflect the funds obtained by
11 the electric utility, transmission and distribution utility, or
12 river authority when establishing or modifying the rates of the
13 electric utility or transmission and distribution utility,
14 including timely ordering reductions to rates approved prior to the
15 receipt of the funds.

16 SECTION 10. Subchapter C, Chapter 39, Utilities Code, is
17 amended by adding Section 39.107(i) to read as follows:

18 (i) Electric providers shall state per unit cost of smart
19 meters for residential and business on billing statements and the
20 company website. Customers shall only be charged for the actual
21 cost of a smart meter. The actual cost of the meter is the amount
22 the provider paid to the manufacturer. Consumers shall have the
23 option of making either a one time payment for the full cost of the
24 meter or a recurring monthly fee. Providers must file with the PUC
25 a payment schedule for smart meters which clearly states the cost,
26 proposed monthly fee, and date certain when smart meter fee ends.
27 Providers charging more than the actual price the provider paid are

1 subject to fines and license revocation.

2 SECTION 11. Subchapter E, Chapter 12, Utilities Code, is
3 amended by adding Section 12.204 to read as follows:

4 Sec. 12.204. INTERNET FOR HEARINGS AND MEETINGS. The
5 commission shall make publicly accessible without charge live
6 Internet video of all public hearings and meetings of the
7 commission for viewing from the Internet website found at
8 <http://www.puc.state.tx.us>.

9 SECTION 12. Section 39.1511, Utilities Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) The commission shall ensure that an independent
12 organization certified under this section makes publicly
13 accessible without charge live Internet video of all public
14 hearings and meetings subject to this section for viewing from an
15 Internet website.

16 SECTION 13. The change in law made by this Act applies to a
17 hearing or meeting held on or after the effective date of this Act.
18 A hearing or meeting held before the effective date of this Act is
19 governed by the law as it existed immediately before that date, and
20 that law is continued in effect for that purpose.

21 SECTION 14. An independent organization certified by the
22 commission before September 1, 2009, shall modify the
23 organization's governing body to comply with Section 39.151(g),
24 Utilities Code, as amended by this Act no later than September 1,
25 2010. On or after September 1, 2010, the commission may decertify
26 an independent organization whose governing body does not comply
27 with Section 39.151(g), Utilities Code, as amended by this Act.

1 SECTION 15. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2009.