

By: Ellis

S.B. No. 1865

A BILL TO BE ENTITLED

AN ACT

relating to the provider of last resort.

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

SECTION 1. Section 39.106, Utilities Code, is amended by amending Subsections (b), (c), and (g) and adding Subsections (h) and (i) to read as follows:

(b) A provider of last resort shall offer a ~~[standard]~~ retail service package approved by the commission for each class of customers designated by the commission. Except as provided by Subsections (g) and (h), the commission shall ensure that:

(1) the price of service from a provider of last resort reflects the market price of providing short-term service; and

(2) for residential and small commercial customers, the computation of price for service from a provider of last resort does not include a multiplier of more than 120 percent of the marginal clearing price of energy in the power region [at a fixed, nondiscountable rate approved by the commission].

(c) In the territory for which it is the provider of last resort, a [A] provider of last resort shall provide, without interruption, the [standard] retail service package approved by the commission at the price prescribed by Subsection (b) or (g) to a [any requesting] customer of a retail electric provider declared to be in default under commission rules. If a customer receiving service from the provider of last resort under this subsection does

1 not switch to another electric service plan before the 60th day
2 after the date on which the default is declared, the provider may
3 switch the customer to a month-to-month service plan that is at
4 least as favorable to the customer as a month-to-month service plan
5 the provider offers to new or renewing customers with similar
6 electric service demands. The plan to which the customer is
7 switched must comply with the commission's consumer protection
8 rules. After a switch is completed under this subsection, the
9 customer is not considered to be a customer of a [in the territory
10 for which it is the] provider of last resort.

11 (g) This subsection applies only if the independent
12 organization certified under Section 39.151 imposes a fee under
13 Section 39.151(d-1)(7). The commission shall establish a mechanism
14 by which a residential or small commercial customer of a provider of
15 last resort is charged by the provider of last resort a price for a
16 commission-approved retail service package that is not higher than
17 the average price of residential plans with monthly terms offered
18 on the Internet website at <http://www.powertochoose.com> on the date
19 the customer begins service with the provider of last resort. The
20 commission by rule shall provide that a provider of last resort may
21 not require a residential or small commercial customer receiving
22 provider of last resort services to pay a deposit as a condition of
23 receiving those services at the price prescribed by this
24 subsection. The independent organization shall use the proceeds of
25 the fee imposed under Section 39.151(d-1)(7) to compensate a
26 provider of last resort for the difference between the price for the
27 retail package approved by the commission for provider of last

1 resort services provided to residential and small commercial
2 customers and the price computed in accordance with commission
3 rules that would reasonably compensate a provider of last resort
4 under the then current market conditions, considering the
5 short-term and volatile nature of provider of last resort services.
6 The independent organization shall also use the proceeds of the fee
7 imposed under Section 39.151(d-1)(7) to compensate a provider of
8 last resort for bad debt related to providing provider of last
9 resort services [~~In the event that a retail electric provider fails~~
10 ~~to serve any or all of its customers, the provider of last resort~~
11 ~~shall offer that customer the standard retail service package for~~
12 ~~that customer class with no interruption of service to any~~
13 ~~customer~~].

14 (h) Notwithstanding Subsection (g), in determining the
15 price that would reasonably compensate a provider of last resort
16 under Subsection (g), the commission, until December 31, 2010,
17 shall use the price for provider of last resort services that was in
18 effect January 1, 2009.

19 (i) For purposes of this section, "small commercial
20 customer" means a commercial customer that has a peak demand of less
21 than 50 kilowatt hours during any 12-month period.

22 SECTION 2. Section 39.151(d-1), Utilities Code, is amended
23 to read as follows:

24 (d-1) The commission may:

25 (1) require an independent organization to provide
26 reports and information relating to the independent organization's
27 performance of the functions prescribed by this section and

1 relating to the organization's revenues, expenses, and other
2 financial matters;

3 (2) prescribe a system of accounts for an independent
4 organization;

5 (3) conduct audits of an independent organization's
6 performance of the functions prescribed by this section or relating
7 to its revenues, expenses, and other financial matters and may
8 require an independent organization to conduct such an audit;

9 (4) inspect an independent organization's facilities,
10 records, and accounts during reasonable hours and after reasonable
11 notice to the independent organization;

12 (5) assess administrative penalties against an
13 independent organization that violates this title or a rule or
14 order adopted by the commission and, at the request of the
15 commission, the attorney general may apply for a court order to
16 require an independent organization to comply with commission rules
17 and orders in the manner provided by Chapter 15; ~~and~~

18 (6) resolve disputes between an affected person and an
19 independent organization and adopt procedures for the efficient
20 resolution of such disputes; and

21 (7) authorize an independent organization certified
22 under this section to assess a fee against each resource or load in
23 the retail electric competitive market in an amount reasonably
24 necessary to fund the compensation for provider of last resort
25 services to residential and small commercial customers as provided
26 by Section 39.106(g).

27 SECTION 3. 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, 2009.