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S.B. No. 2130

A BILL TO BE ENTITLED

AN ACT

relating to providers 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 (e), and adding Subsections (b-1), (b-2), (b-3), (c-1), (c-2), (c-3), (e-1), (e-2), (e-3), (e-4), (e-5), (e-6), and (h) to read as follows:

(b) A provider of last resort shall offer a standard retail service package for each class of customers designated by the commission. A standard retail service package is limited to:

(1) basic electric service;

(2) customer access to a call center for inquiries regarding the service;

(3) standard retail billing performed by the provider or an agent; and

(4) benefits for low-income customers provided under Section 39.903 [at a fixed, nondiscountable rate approved by the commission].

(b-1) A provider of last resort shall provide billing and collection services for a retail electric provider that has defaulted on payments to the servicer of a transition bond or payments to a transmission and distribution utility.

(b-2) A provider of last resort shall include in each billing statement sent to a residential customer:

1 (1) a notice that informs the customer that other
2 competitive products or services may be available from the provider
3 or from another competitive retail electric provider;

4 (2) contact information for the provider; and

5 (3) a message from the commission that:

6 (A) is in the form of a bill insert with "A
7 Message from the Public Utility Commission" as a header;

8 (B) addresses the reason the customer has been
9 transitioned to a provider of last resort;

10 (C) explains the continuity of service purpose
11 for the transition and the temporary nature of the service as
12 emergency service; and

13 (D) directs the customer to information
14 available on the www.powertochoose.org Internet website or at a
15 toll-free number established for that purpose.

16 (b-3) A provider of last resort shall:

17 (1) charge the provider's customers a market-based,
18 month-to-month rate identical to the rate charged to the provider's
19 new and existing customers in the same customer class; and

20 (2) post the provider's standard retail service
21 package on the commission's Internet website or provide a
22 description of the service and rate plan to the commission and
23 ERCOT.

24 (c) A provider of last resort shall provide the standard
25 retail service package to:

26 (1) any requesting customer in the territory for which
27 it is the provider of last resort; and

1 (2) each customer assigned to the provider of last
2 resort during a mass transition of customers.

3 (c-1) A provider of last resort may charge customers
4 assigned to the provider in a mass transition of customers a rate
5 that is lower than the emergency rate as determined on the date of
6 the transition, if the lower rate is applied to all transitioned
7 customers. A provider of last resort may market to customers
8 assigned to the provider pursuant to a mass transition on a
9 nondiscriminatory basis the same competitive products the provider
10 offers to the provider's similarly situated nontransitioned
11 customers. Marketing made to a transitioned customer under this
12 subsection must inform the customer that the customer has the right
13 to switch the customer's service to a different retail electric
14 provider, or accept from the provider of last resort a competitive
15 product other than the standard retail service package, if the
16 provider offers such a competitive product. A customer may agree to
17 a long-term contract for nonemergency service with the provider of
18 last resort. A customer who has enrolled in a nonemergency product
19 or service with a provider of last resort is not subsequently
20 considered a transitioned customer.

21 (c-2) When a customer is transitioned to emergency service,
22 ERCOT, the provider of last resort, and the transitioning retail
23 electric provider shall notify the customer. The notice must be
24 given not later than the second day after the date ERCOT and the
25 transitioning retail electric provider become aware that the
26 customer will be transitioned and customer contact information is
27 available. If the customer cannot be reached during that time,

1 notice must be given as soon as practicable. ERCOT shall notify
2 transitioned customers by all reasonable means, including a
3 postcard containing the official commission seal with language and
4 format approved by the commission, an automated phone call, or an
5 automated electronic mail. ERCOT shall study the effectiveness of
6 each method of notification and report the results to the
7 commission. The notice must include:

8 (1) the reason for the transition;

9 (2) a telephone number for the transitioning retail
10 electric provider;

11 (3) a statement informing the customer that the
12 customer will receive a separate notice from the provider of last
13 resort that will disclose the date the provider will begin
14 providing service to the customer; and

15 (4) if applicable:

16 (A) the customer's deposit plus accrued
17 interest; or

18 (B) a statement that the deposit will be returned
19 within seven days of the transition.

20 (c-3) If a customer does not elect to change service from
21 the emergency service of a provider of last resort to a competitive
22 product or service, the provider may switch the customer's service
23 to the provider's regularly offered product. The provider shall
24 send the customer a notice that:

25 (1) describes the rate, terms, and conditions of the
26 service to which the customer will be switched;

27 (2) informs the customer that other competitive

1 products or services may be available from the provider or from a
2 retail electric provider affiliated with the provider;

3 (3) specifies the deposit requirements of the service
4 to which the customer will be switched;

5 (4) states that other providers may also require a
6 deposit; and

7 (5) states where the customer may find additional
8 information about the offerings of other providers.

9 (e) Not later than July 10 of each even-numbered year, each
10 retail electric provider shall provide to the commission
11 information necessary to establish the retail electric provider's
12 eligibility to serve as a provider of last resort for the biennium
13 beginning January 1 of the following year. A determination
14 regarding eligibility is not considered confidential information.
15 Information supplied under this subsection must include, for each
16 service area served by the retail electric provider:

17 (1) information on the classes of customers served by
18 the retail electric provider;

19 (2) the retail electric provider's retail sales in
20 megawatt hours for each transitional customer class for the
21 12-month period ending March 31 of the current year according to
22 information provided by ERCOT;

23 (3) the retail electric provider's retail sales in
24 megawatt hours for each customer class for the 12-month period
25 ending March 31 of the current year according to information
26 provided by ERCOT; and

27 (4) information regarding the retail electric

1 provider's technical and financial ability to provide service to
2 additional customers in the event of a mass transition of customers
3 to the retail electric provider [~~The commission shall determine the~~
4 ~~procedures and criteria, which may include the solicitation of~~
5 ~~bids, for designating a provider or providers of last resort. The~~
6 ~~commission may redesignate the provider of last resort according to~~
7 ~~a schedule it considers appropriate~~].

8 (e-1) Based on the information provided to the commission
9 under Subsection (e), the commission shall designate each retail
10 electric provider that is eligible to be a provider of last resort,
11 and may require any retail electric provider that is determined to
12 be eligible to serve as a provider of last resort in an area of this
13 state where customer choice is in effect. The commission may not
14 require a retail electric provider to serve as a provider of last
15 resort in the service area of a municipally owned utility or
16 electric cooperative unless the electric cooperative has delegated
17 its emergency service area authority to the commission. On a
18 request by an eligible retail electric provider and a showing that
19 the retail electric provider will not be able to maintain its
20 financial integrity if it is required to serve customers under this
21 section, the commission may relieve the retail electric provider of
22 its obligations under this section.

23 (e-2) A retail electric provider may volunteer to be a
24 provider of last resort by submitting a request to the commission
25 with the information required by Subsection (e). A request under
26 this subsection must:

27 (1) be submitted to the commission not earlier than

1 July 10, and not later than July 31 of each even-numbered year;

2 (2) include the name of the retail electric provider;

3 (3) include the name and contact information of a
4 person to serve as the retail electric provider's point of contact;

5 (4) state which customer classes the retail electric
6 provider is willing to serve within each emergency service area;

7 (5) state, by customer class, the number of customers
8 the retail electric provider is willing to serve during a mass
9 transition;

10 (6) state the maximum load that the retail electric
11 provider is willing to serve for customers who at the time of the
12 transition to emergency service had a peak demand in the previous
13 12-month period of at least one megawatt; and

14 (7) include information regarding the retail electric
15 provider's technical and financial condition sufficient to
16 demonstrate that the retail electric provider is capable of serving
17 a mass transition of customers without experiencing technical or
18 financial distress.

19 (e-3) A retail electric provider is eligible to be a
20 voluntary provider of last resort if it meets the requirements of
21 Subsections (e) and (e-2). The commission shall publish a list of
22 all eligible voluntary providers of last resort and post the names
23 on the commission's Internet website. A voluntary provider of last
24 resort may file a request with the commission at any time to be
25 removed from the list or to modify the number of customers or load
26 the provider is willing to serve.

27 (e-4) If a voluntary provider of last resort requests under

1 Subsection (e-3) to increase the number of customers or load the
2 provider is willing to serve, the provider shall provide
3 documentation to demonstrate that it is capable of serving the
4 additional customers or load. If the commission staff determines
5 that the provider is not capable of serving the additional
6 customers or load, the provider, not later than the fifth business
7 day after the date the determination is made, may file additional
8 documentation regarding the provider's technical and financial
9 ability to serve the additional customers or load. The commission
10 staff shall reassess the provider's application and notify the
11 provider of the status of the provider's request not later than the
12 10th business day after the date the additional documentation is
13 received. A review by the commission staff is not a contested case.
14 The provider may appeal the staff's decision by requesting a
15 contested case proceeding.

16 (e-5) If a voluntary provider of last resort requests under
17 Subsection (e-3) to decrease the number of customers or load it is
18 willing to serve, the commission shall grant the provider's request
19 not later than the fifth business day after the date the request is
20 submitted. The provider shall continue to serve customers acquired
21 due to any mass transition occurring before that date.

22 (e-6) If the commission staff determines that a retail
23 electric provider is not eligible to be a voluntary provider of last
24 resort, the retail electric provider, not later than the fifth
25 business day after the date the determination is made, may file
26 additional documentation regarding the retail electric provider's
27 technical and financial ability to be a provider of last resort.

1 The commission staff shall reassess the retail electric provider's
2 application and notify the retail electric provider of any change
3 in eligibility status not later than the 10th business day after the
4 date the additional documentation is received. A review by
5 commission staff is not a contested case. The provider may appeal
6 the staff's decision by requesting a contested case proceeding.

7 (h) When transferring customers to a provider of last
8 resort, ERCOT shall first transfer customers to retail electric
9 providers that have volunteered to serve additional customers or
10 load under Subsection (e-2), but may not transfer a number of
11 customers or amount of load that exceeds the number or amount each
12 provider has offered to serve.

13 SECTION 2. Sections 39.106(f) and (g), Utilities Code, are
14 repealed.

15 SECTION 3. This Act takes effect September 1, 2009.