

By: Davis

S.B. No. 2588

A BILL TO BE ENTITLED

AN ACT

relating to certain protections for customers in the restructured electric services market.

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

SECTION 1. Section 39.101, Utilities Code, is amended by amending Subsection (h) 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]~~:

(1) 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 of the next 24 hours according to the nearest National Weather Service reports; ~~[or]~~

(2) a day for which the National Weather Service forecasts that the ~~[issues a]~~ heat index will reach or exceed 105 degrees Fahrenheit in ~~[advisory for]~~ any part of a county in the relevant service territory; ~~[7]~~ or

1 (3) a period when, [such an advisory has been issued]
2 on any one of the previous two calendar days, the National Weather
3 Service observes a heat index of 105 degrees Fahrenheit or more in
4 any part of a county in the relevant service territory.

5 SECTION 2. Section 39.151(c), Utilities Code, is amended to
6 read as follows:

7 (c) The commission shall certify an independent
8 organization or organizations to perform the functions prescribed
9 by this section. The commission shall apply the provisions of this
10 section and Sections 39.1511, 39.1512, ~~[and]~~ 39.1515, and 39.1516
11 so as to avoid conflict with a ruling of a federal regulatory body.

12 SECTION 3. Subchapter D, Chapter 39, Utilities Code, is
13 amended by adding Section 39.1516 to read as follows:

14 Sec. 39.1516. RETAIL ELECTRIC MARKET MONITOR. (a) An
15 independent organization certified under Section 39.151 shall
16 contract with an entity selected by the commission to act as the
17 commission's retail electric market monitor to detect and prevent
18 market manipulation strategies, unfair, misleading, or deceptive
19 practices and to recommend measures to enhance the efficiency of
20 the retail market.

21 (b) The independent organization shall provide to the
22 personnel of the retail market monitor:

23 (1) full access to the organization's records that
24 concern operations, settlement, and reliability of the retail
25 market; and

26 (2) other support and cooperation the commission
27 determines is necessary for the retail market monitor to perform

1 the retail market monitor's functions.

2 (c) The independent organization shall use money from the
3 rate authorized by Section 39.151(e) to pay for the retail market
4 monitor's activities.

5 (d) The commission is responsible for ensuring that the
6 retail market monitor has the resources, expertise, and authority
7 necessary to monitor the retail electric market effectively and
8 shall adopt rules and perform oversight of the retail market
9 monitor as necessary. The retail market monitor shall operate
10 under the supervision and oversight of the commission. The
11 commission shall retain all enforcement authority conferred under
12 this title, and this section may not be construed to confer
13 enforcement authority on the retail market monitor or to authorize
14 the commission to delegate the commission's enforcement authority
15 to the retail market monitor. The commission by rule shall define:

16 (1) the retail market monitor's monitoring
17 responsibilities, including reporting obligations and limitations;

18 (2) the standards for funding the retail market
19 monitor, including staffing requirements;

20 (3) qualifications for personnel of the retail market
21 monitor; and

22 (4) ethical standards for the retail market monitor
23 and the personnel of the retail market monitor.

24 (e) In adopting rules governing the standards for funding
25 the retail market monitor, the commission shall consult with a
26 subcommittee of the independent organization's governing body to
27 receive information on how money is or should be spent for market

1 monitoring functions. Rules governing ethical standards must
2 include provisions designed to ensure that the personnel of the
3 retail market monitor are professionally and financially
4 independent from market participants. The commission shall develop
5 and implement policies that clearly separate the policymaking
6 responsibilities of the commission and the monitoring, analysis,
7 and reporting responsibilities of the retail market monitor.

8 (f) The retail market monitor immediately shall report
9 directly to the commission any potential market manipulations and
10 any discovered or potential violations of commission rules or rules
11 of the independent organization.

12 (g) The personnel of the retail market monitor may
13 communicate with commission staff on any matter without
14 restriction.

15 (h) The retail market monitor annually shall submit to the
16 commission and the independent organization a report that
17 identifies market design flaws and recommends methods to correct
18 the flaws. The commission and the independent organization shall
19 review the report and evaluate whether changes to rules of the
20 commission or the independent organization should be made.

21 SECTION 4. Section 39.157, Utilities Code, is amended by
22 amending Subsection (a) and adding Subsection (a-1) to read as
23 follows:

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

1 the commission shall require reasonable mitigation of the market
2 power by one or any combination of the following:

3 (1) ordering the construction of additional
4 transmission or distribution facilities;

5 (2) [~~, by~~] seeking an injunction or civil penalties as
6 necessary to eliminate or to remedy the market power abuse or
7 violation as authorized by Chapter 15;

8 (3) [~~, by~~] imposing an administrative penalty as
9 authorized by Chapter 15;

10 (4) ordering refunds to affected parties pursuant to
11 Section 17.157;

12 (5) with regard to the wholesale market, ordering
13 refunds to affected parties in a manner established by the
14 commission; or

15 (6) [~~, or by~~] suspending, revoking, or amending a
16 certificate or registration as authorized by Section 39.356.

17 (a-1) The commission shall permit the office, in exercising
18 its powers to represent residential and small commercial consumers,
19 to participate in enforcement proceedings to seek refunds for
20 alleged market power abuses or manipulation of the wholesale
21 market. Section 15.024(c) does not apply to an administrative
22 penalty imposed under this section. For purposes of this
23 subchapter, market power abuses are practices by persons possessing
24 market power that are unreasonably discriminatory or tend to
25 unreasonably restrict, impair, or reduce the level of competition,
26 including practices that tie unregulated products or services to
27 regulated products or services or unreasonably discriminate in the

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

10 SECTION 5. Subchapter D, Chapter 39, Utilities Code, is
11 amended by adding Section 39.1575 to read as follows:

12 Sec. 39.1575. INVESTIGATORY AUTHORITY OVER RETAIL PRICES.

13 (a) The commission shall investigate whether a retail electric
14 provider is abusing market power or engaging in unfair, misleading,
15 or deceptive practices. Retail electric providers shall cooperate
16 with the commission in any investigation and shall provide
17 information requested.

18 (b) The commission may assess administrative penalties
19 under Section 15.023 for any violation discovered under this
20 section.

21 SECTION 6. Subchapter Z, Chapter 39, Utilities Code, is
22 amended by adding Sections 39.928 and 39.929 to read as follows:

23 Sec. 39.928. COST OF NODAL MARKET IMPLEMENTATION. An
24 independent organization certified under Section 39.151 may not
25 pass through to a retail customer or retail electric provider a cost
26 or charge associated with nodal wholesale market design
27 implementation.

1 Sec. 39.929. PUBLICATION OF NATURAL GAS FUEL AND ELECTRIC
2 ENERGY PRICING INFORMATION. (a) The commission shall publish on
3 the Internet websites <http://www.puc.state.tx.us> and
4 <http://www.powertochoose.org> charts or provide a link that
5 compares the prices of:

- 6 (1) natural gas;
7 (2) real-time or balancing electric energy; and
8 (3) retail electricity.

9 (b) The commission shall provide that the charts be updated
10 at least once each business day that the commission's offices are
11 open.

12 SECTION 7. The Public Utility Commission of Texas shall
13 adopt rules to implement the changes in law made by this Act as
14 quickly as practicable.

15 SECTION 8. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2009.