87R11028 CXP-F

By:  Thierry H.B. No. 3470

A BILL TO BE ENTITLED

AN ACT

relating to electricity service in this state; imposing administrative penalties.

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

SECTION 1.  Section 15.023, Utilities Code, is amended by amending Subsections (b), (c), and (d) and adding Subsections (b-1) and (b-2) to read as follows:

(b)  Except as provided by Subsection (b-1), the [~~The~~] penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b-1)  The penalty for a violation of a reliability standard adopted by the independent organization certified under Section 39.151 or of a commission rule relating to reliability in the wholesale electric market may be in an amount not to exceed $100,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b-2)  If a person pays a penalty to a federal authority for a violation of a reliability standard that is the same or substantially the same as a reliability standard adopted by the independent organization certified under Section 39.151:

(1)  the commission may not assess an administrative penalty for the same instance or circumstance for which the person paid the federal penalty; and

(2)  the commission shall refund the full amount of an administrative penalty that the commission assessed against the person before the date the person paid the federal penalty, if the commission assessed the penalty for the same instance or circumstance for which the person paid the federal penalty.

(c)  The commission by rule shall establish a classification system for violations described by Subsection (b) and a separate classification system for violations described by Subsection (b-1). Each system must include [~~that includes~~] a range of administrative penalties that may be assessed for each class of violation, based on:

(1)  the seriousness of the violation, including:

(A)  the nature, circumstances, extent, and gravity of a prohibited act; and

(B)  the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2)  the economic harm to property or the environment caused by the violation;

(3)  the history of previous violations;

(4)  the amount necessary to deter future violations;

(5)  efforts to correct the violation; and

(6)  any other matter that justice may require.

(d)  The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system. This subsection does not apply to the classification system established under Subsection (c) for a violation described by Subsection (b-1).

SECTION 2.  Section 15.104(a), Utilities Code, is amended to read as follows:

(a)  The commission on its own motion may issue a cease and desist order:

(1)  after providing notice and an opportunity for a hearing if practicable or without notice or opportunity for a hearing; and

(2)  if the commission determines that the conduct of a person:

(A)  poses a threat to continuous and adequate electric service;

(B)  is fraudulent;

(C)  is hazardous;

(D) [~~(C)~~]  creates an immediate danger to the public safety; or

(E) [~~(D)~~]  is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.

SECTION 3.  Subchapter D, Chapter 15, Utilities Code, is amended by adding Section 15.108 to read as follows:

Sec. 15.108.  ADMINISTRATIVE PENALTY. The commission may impose an administrative penalty under Subchapter B against a person who violates an order issued under this subchapter.

SECTION 4.  Section 31.003, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c)  A report issued under this section before September 1, 2023, must include a summary of the information required by Section 39.926 to be provided on the Internet website found at http://www.puc.state.tx.us. This subsection expires September 1, 2023.

SECTION 5.  Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002.  APPLICABILITY. This chapter, other than Sections 39.1516, 39.155, 39.157(e), 39.203, 39.904, 39.9051, 39.9052, [~~and~~] 39.914(e), and 39.9161, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 6.  Section 39.151, Utilities Code, is amended by amending Subsections (d-1), (d-2), (d-3), and (e) and adding Subsections (g-2) and (g-3) to read as follows:

(d-1)  The commission shall require an independent organization certified by the commission under this section to annually submit to the commission for review and approval the organization's entire proposed annual budget. The commission [~~shall review the proposed budgets either annually or biennially and~~] may approve, disapprove, or modify any item included in the [~~a~~] proposed budget. The commission by rule shall establish the type of information or documents needed to effectively evaluate the proposed budget and reasonable dates for the submission of that information or those documents. The commission shall establish a procedure to provide public notice of and public participation in the budget review process.

(d-2)  An [~~Except as otherwise agreed to by the commission and an~~] independent organization certified by the commission under this section[~~, the organization~~] must submit to the commission for review and approval proposals for obtaining debt financing or for refinancing existing debt. The commission may approve, disapprove, or modify a proposal.

(d-3)  An independent organization certified by the commission under this section shall develop proposed performance measures to track the organization's operations. The independent organization must submit the proposed performance measures to the commission for review and approval. The commission shall annually review the organization's performance as part of the budget review process under Subsection (d-1). The commission shall prepare an annual [~~a~~] report [~~at the time the commission approves the organization's budget~~] detailing the organization's performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

(e)  After approving the budget of an independent organization under Subsection (d-1), the commission shall authorize the organization to charge to wholesale buyers and sellers a system administration fee, within a range determined by the commission, that is reasonable and competitively neutral to fund the independent organization's approved budget. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the reasonableness and neutrality of the fee or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate the fee. The commission shall require the independent organization to closely match actual revenues generated by the fee [~~and other sources of revenue~~] with revenue necessary to fund the budget and make quarterly fee adjustments[~~, taking into account the effect of a fee change on market participants and consumers,~~] to ensure that the budget year does not end with surplus or insufficient funds. The commission shall require the organization to submit to the commission quarterly[~~, on a schedule determined by the commission,~~] reports that compare actual expenditures with budgeted expenditures.

(g-2)  To maintain certification as an independent organization under this section, the organization's governing body must establish and implement a formal process for adopting new protocols or revisions to existing protocols. The process must require that:

(1)  a majority of the organization's governing body initiate the creation or revision of protocols; and

(2)  the organization's staff develop the new or revised protocols and submit the protocols to the governing body for adoption.

(g-3)  The governing body of an independent organization certified by the commission under this section shall, in accordance with formal bylaws or protocols adopted by the organization and approved by the commission, establish and maintain an advisory committee whose membership is broadly representative of the organization's members to assist the organization's governing body and staff in developing or revising protocols or in performing the organization's other duties and functions. This subsection does not prohibit the governing body of the organization from appointing one or more additional committees or subcommittees to assist the organization's governing body and staff in performing the organization's duties and functions.

SECTION 7.  Section 39.904(d), Utilities Code, is amended to read as follows:

(d)  In this section, "renewable energy technology" means any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, [~~or~~] on biomass or biomass-based waste products, or on gasified waste, including landfill gas. A renewable energy technology does not rely solely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

SECTION 8.  The heading to Section 39.916, Utilities Code, is amended to read as follows:

Sec. 39.916.  [~~INTERCONNECTION OF~~] DISTRIBUTED RENEWABLE GENERATION.

SECTION 9.  Section 39.916(a), Utilities Code, is amended by adding Subdivision (4) to read as follows:

(4)  "Surplus electricity" means electricity generated by distributed renewable generation that is not consumed at the place the distributed renewable generation is installed and that flows onto the electric distribution system.

SECTION 10.  Section 39.916, Utilities Code, is amended by adding Subsections (i), (j-1), (j-2), (j-3), (j-4), (j-5), and (l) and amending Subsection (j) to read as follows:

(i)  A distributed renewable generation owner may sell surplus electricity to a retail electric provider or electric utility under this section only if the owner's distributed renewable generation is rated to produce an amount of electricity that is less than or equal to the amount of electricity that the retail electric customer for whom the distributed renewable generation is installed is reasonably expected to consume annually.

(j)  A [~~For~~] distributed renewable generation owner that sells surplus electricity [~~owners~~] in an area [~~areas~~] in which customer choice has been introduced [~~, the distributed renewable generation owner~~] must sell the [~~owner's surplus~~] electricity [~~produced~~] to the retail electric provider that serves the [~~distributed renewable generation owner's~~] load of the retail electric customer for whom the distributed renewable generation is installed at a value agreed to by [~~between~~] the distributed renewable generation owner and the provider. The value [~~that serves the owner's load which~~] may include, but is not limited to, an agreed value based on the clearing price of energy at the time of day that the electricity is made available to the grid or the value [~~it~~] may be a monetary credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed.

(j-1)  The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a distributed renewable generation owner under this section in an area in which customer choice has been introduced is accounted for in settling the total load served by the provider that serves the [~~that owner's~~] load of the retail electric customer for whom the distributed renewable generation is installed [~~by January 1, 2009~~]. A distributed renewable generation owner requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(j-2)  A distributed renewable generation owner that sells surplus electricity in an area in which customer choice has not been introduced must sell the electricity to the electric utility that serves the load of the retail electric customer for whom the distributed renewable generation is installed. The electric utility shall purchase the surplus electricity at a value that is equal to the avoided cost of the electric utility, as determined in accordance with commission rules.

(j-3)  An electric utility that purchases surplus electricity under this section shall:

(1)  make a payment to the seller at least once each quarter; or

(2)  apply a monetary credit to the seller's account and allow the credit balance to be carried forward onto the seller's next monthly bill for not more than 12 months.

(j-4)  An electric utility that purchases surplus electricity under this section shall inform the distributed renewable generation owner of the amount of surplus electricity purchased from the owner in kilowatt hours during the owner's most recent billing cycle and the price paid for the electricity.

(j-5)  A distributed renewable generation owner may file a written complaint with the commission relating to a violation of Subsection (j-2), (j-3), or (j-4).

(l)  This section does not apply to a municipally owned utility or electric cooperative.

SECTION 11.  Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9161 to read as follows:

Sec. 39.9161.  DISTRIBUTED RENEWABLE GENERATION WITH MUNICIPALLY OWNED UTILITIES OR ELECTRIC COOPERATIVES. (a) A municipally owned utility or electric cooperative shall provide the utility's or cooperative's customers access to interconnection of distributed renewable generation and payment for surplus electricity produced.

(b)  The governing body of a municipally owned utility or board of directors of an electric cooperative shall provide oversight and adopt rates, rules, and procedures to allow interconnection and payment for surplus electricity on or before the 120th day after the date the governing body or board receives a bona fide request for interconnection.

(c)  A municipally owned utility or electric cooperative that had retail sales of 500,000 megawatt hours or more in 2010 shall file the utility's or cooperative's interconnection and surplus electricity rates, rules, and procedures with the State Energy Conservation Office not later than January 1, 2022, and shall make timely updates to the filed rates, rules, and procedures.

(d)  An electric cooperative shall allow interconnection if:

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

(2)  the rated capacity of the distributed renewable generation does not exceed the electric cooperative service capacity; and

(3)  the distributed renewable generation meets other technical requirements for interconnection that are consistent with commission rules.

(e)  An electric cooperative may not require a distributed renewable generation owner whose distributed renewable generation meets the standards established under Subsection (d) to purchase an amount, type, or classification of liability insurance the distributed renewable generation owner would not have in the absence of the distributed renewable generation.

SECTION 12.  Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.918 to read as follows:

Sec. 39.918.  INFORMATION ON INTERNET REGARDING PURCHASE OF SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION. On an Internet website administered by the commission, the commission shall provide for access to easily comparable information regarding retail electric providers' offers to residential distributed renewable generation owners for their surplus electricity.

SECTION 13.  Section 39.916(h), Utilities Code, is repealed.

SECTION 14.  The changes in law made by this Act to Section 15.023, Utilities Code, apply only to a violation that occurs on or after the effective date of this Act. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date. A violation that occurs before the effective date of this Act is covered by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 15.  This Act takes effect September 1, 2021.