

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

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

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

12 (1) the seriousness of the violation, including:

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

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

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

19 (3) the history of previous violations;

20 (4) the amount necessary to deter future violations;

21 (5) efforts to correct the violation; and

22 (6) any other matter that justice may require.

23 (d) The classification system established under Subsection
24 (c) shall provide that a penalty in an amount that exceeds \$5,000
25 may be assessed only if the violation is included in the highest
26 class of violations in the classification system. This subsection
27 does not apply to the classification system established under

1 Subsection (c) for a violation described by Subsection (b-1).

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

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

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

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

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

13 (B) is fraudulent;

14 (C) is hazardous;

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

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

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

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

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

1 (c) A report issued under this section before September 1,
2 2023, must include a summary of the information required by Section
3 39.926 to be provided on the Internet website found at
4 <http://www.puc.state.tx.us>. This subsection expires September 1,
5 2023.

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

8 Sec. 39.002. APPLICABILITY. This chapter, other than
9 Sections 39.1516, 39.155, 39.157(e), 39.203, 39.904, 39.9051,
10 39.9052, ~~and~~ 39.914(e), and 39.9161, does not apply to a
11 municipally owned utility or an electric cooperative. Sections
12 39.157(e), 39.203, and 39.904, however, apply only to a municipally
13 owned utility or an electric cooperative that is offering customer
14 choice. If there is a conflict between the specific provisions of
15 this chapter and any other provisions of this title, except for
16 Chapters 40 and 41, the provisions of this chapter control.

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

20 (d-1) The commission shall require an independent
21 organization certified by the commission under this section to
22 annually submit to the commission for review and approval the
23 organization's entire proposed annual budget. The commission
24 ~~[shall review the proposed budgets either annually or biennially~~
25 ~~and]~~ may approve, disapprove, or modify any item included in the ~~[a]~~
26 proposed budget. The commission by rule shall establish the type of
27 information or documents needed to effectively evaluate the

1 proposed budget and reasonable dates for the submission of that
2 information or those documents. The commission shall establish a
3 procedure to provide public notice of and public participation in
4 the budget review process.

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

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

23 (e) After approving the budget of an independent
24 organization under Subsection (d-1), the commission shall
25 authorize the organization to charge to wholesale buyers and
26 sellers a system administration fee, within a range determined by
27 the commission, that is reasonable and competitively neutral to

1 fund the independent organization's approved budget. The
2 commission shall investigate the organization's cost efficiencies,
3 salaries and benefits, and use of debt financing and may require the
4 organization to provide any information needed to effectively
5 evaluate the reasonableness and neutrality of the fee or to
6 evaluate the effectiveness or efficiency of the organization. The
7 commission shall work with the organization to establish the detail
8 of information, both current and historical, and the time frames
9 the commission needs to effectively evaluate the fee. The
10 commission shall require the independent organization to closely
11 match actual revenues generated by the fee [~~and other sources of~~
12 ~~revenue~~] with revenue necessary to fund the budget and make
13 quarterly fee adjustments [~~, taking into account the effect of a fee~~
14 ~~change on market participants and consumers,~~] to ensure that the
15 budget year does not end with surplus or insufficient funds. The
16 commission shall require the organization to submit to the
17 commission quarterly [~~, on a schedule determined by the commission,~~]
18 reports that compare actual expenditures with budgeted
19 expenditures.

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

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

27 (2) the organization's staff develop the new or

1 revised protocols and submit the protocols to the governing body
2 for adoption.

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

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

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

1 from inorganic sources.

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

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

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

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

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

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

22 (j) A [~~For~~] distributed renewable generation owner that
23 sells surplus electricity [~~owners~~] in an area [~~areas~~] in which
24 customer choice has been introduced [~~, the distributed renewable~~
25 ~~generation owner~~] must sell the [~~owner's surplus~~] electricity
26 [~~produced~~] to the retail electric provider that serves the
27 [~~distributed renewable generation owner's~~] load of the retail

1 electric customer for whom the distributed renewable generation is
2 installed at a value agreed to by [~~between~~] the distributed
3 renewable generation owner and the provider. The value [~~that serves~~
4 ~~the owner's load which~~] may include, but is not limited to, an
5 agreed value based on the clearing price of energy at the time of
6 day that the electricity is made available to the grid or the value
7 [~~it~~] may be a monetary credit applied to an account during a billing
8 period that may be carried over to subsequent billing periods until
9 the credit has been redeemed.

10 (j-1) The independent organization identified in Section
11 39.151 shall develop procedures so that the amount of electricity
12 purchased from a distributed renewable generation owner under this
13 section in an area in which customer choice has been introduced is
14 accounted for in settling the total load served by the provider that
15 serves the [~~that owner's~~] load of the retail electric customer for
16 whom the distributed renewable generation is installed [~~by January~~
17 ~~1, 2009~~]. A distributed renewable generation owner requesting net
18 metering services for purposes of this section must have metering
19 devices capable of providing measurements consistent with the
20 independent organization's settlement requirements.

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

1 accordance with commission rules.

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

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

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

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

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

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

19 SECTION 11. Subchapter 7, Chapter 39, Utilities Code, is
20 amended by adding Section 39.9161 to read as follows:

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

27 (b) The governing body of a municipally owned utility or

1 board of directors of an electric cooperative shall provide
2 oversight and adopt rates, rules, and procedures to allow
3 interconnection and payment for surplus electricity on or before
4 the 120th day after the date the governing body or board receives a
5 bona fide request for interconnection.

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

13 (d) An electric cooperative shall allow interconnection if:

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

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

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

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

1 absence of the distributed renewable generation.

2 SECTION 12. Subchapter 2, Chapter 39, Utilities Code, is
3 amended by adding Section 39.918 to read as follows:

4 Sec. 39.918. INFORMATION ON INTERNET REGARDING PURCHASE OF
5 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION.

6 On an Internet website administered by the commission, the
7 commission shall provide for access to easily comparable
8 information regarding retail electric providers' offers to
9 residential distributed renewable generation owners for their
10 surplus electricity.

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

12 SECTION 14. The changes in law made by this Act to Section
13 15.023, Utilities Code, apply only to a violation that occurs on or
14 after the effective date of this Act. For purposes of this section,
15 a violation occurs before the effective date of this Act if any
16 element of the violation occurs before that date. A violation that
17 occurs before the effective date of this Act is covered by the law
18 in effect on the date the violation occurred, and the former law is
19 continued in effect for that purpose.

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