

By: Goldman, Reynolds

H.B. No. 3916

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the interconnection and operation of certain  
3 distributed electric generation facilities for the food supply  
4 chain.

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

6 SECTION 1. It is the intent of the legislature in enacting  
7 Section 35.037, Utilities Code, to allow grocers the ability to  
8 deploy back-up generation in the ERCOT power region in areas that  
9 have not implemented retail customer choice.

10 SECTION 2. Subchapter B, Chapter 35, Utilities Code, is  
11 amended by adding Section 35.037 to read as follows:

12 Sec. 35.037. INTERCONNECTION AND OPERATION OF CERTAIN  
13 DISTRIBUTED GENERATION FACILITIES FOR FOOD SUPPLY CHAIN. (a) In  
14 this section:

15 (1) "Customer" means a retail electric customer:

16 (A) with a distributed generation facility  
17 installed on the retail electric customer's side of the meter; and

18 (B) that has a primary purpose of or derives a  
19 material source of revenue from:

20 (i) retail grocery sales; or

21 (ii) food manufacturing or distribution for  
22 retail grocery sales.

23 (2) "Distributed generation facility" means a  
24 facility installed on the customer's side of the meter but

1 separately metered from the customer:

2 (A) with a nameplate capacity of at least 250  
3 kilowatts and not more than 10 megawatts;

4 (B) that is capable of generating and providing  
5 backup or supplementary power to the customer's premises; and

6 (C) that is owned or operated by a person  
7 registered as a power generation company in accordance with Section  
8 39.351.

9 (b) This section only applies in the ERCOT power region in  
10 areas where retail customer choice has not been implemented.

11 (c) A person who owns or operates a distributed generation  
12 facility served by a municipally owned utility or electric  
13 cooperative in the ERCOT power region may sell electric power  
14 generated by the distributed generation facility at wholesale,  
15 including the provision of ancillary services.

16 (d) A person who owns or operates a distributed generation  
17 facility may sell electric power generated by the distributed  
18 generation facility at wholesale to a municipally owned utility or  
19 electric cooperative certificated for retail service to the area  
20 where the distributed generation facility is located or to a  
21 related generation and transmission electric cooperative. The  
22 municipally owned utility or electric cooperative shall purchase  
23 the quantity of electric power generated by the distributed  
24 generation facility needed to satisfy the full electric  
25 requirements of the customer on whose side of the meter the  
26 distributed generation facility is installed and operated at a  
27 wholesale price agreed to by the customer and shall resell that

1 quantity of power at retail to the customer at the rate applicable  
2 to the customer for retail service, which must include all amounts  
3 paid for the wholesale electric power, during:

4 (1) an emergency declared by the independent  
5 organization certified under Section 39.151 for the ERCOT power  
6 region that creates the potential for interruption of service to  
7 the customer;

8 (2) any service interruption at the customer's  
9 premises;

10 (3) construction on the customer's premises that  
11 creates the potential for interruption of service to the customer;

12 (4) maintenance and testing of the distributed  
13 generation facility; and

14 (5) additional times mutually agreed on by the owner  
15 or operator of the distributed generation facility and the  
16 municipally owned utility or electric cooperative.

17 (e) The customer shall provide written notice as soon as  
18 reasonably practicable to the municipally owned utility or electric  
19 cooperative of a circumstance described by Subsection (d)(3) or  
20 (4).

21 (f) In addition to a sale authorized under Subsection (d),  
22 on request by an owner or operator of a distributed generation  
23 facility, the municipally owned utility or electric cooperative  
24 shall provide wholesale transmission service to the distributed  
25 generation facility owner in the same manner as to other power  
26 generation companies for the sale of power from the distributed  
27 generation facility at wholesale, including for the provision of

1 ancillary services, in the ERCOT market. The distributed generation  
2 facility owner shall comply with all applicable commission rules  
3 and protocols and with governing documents of the independent  
4 organization certified under Section 39.151 for the ERCOT power  
5 region. This subsection does not require a municipally owned  
6 utility or electric cooperative to transmit electricity to a retail  
7 point of delivery in the certificated service area of the  
8 municipally owned utility or electric cooperative.

9 (g) In addition to a sale authorized under Subsection (d) or  
10 (f), a municipally owned utility or electric cooperative or related  
11 generation and transmission electric cooperative may purchase  
12 electric power provided by the owner or operator of the distributed  
13 generation facility at wholesale at a mutually agreed on price. The  
14 price may be based wholly or partly on the ERCOT market clearing  
15 price of energy at the time of day and at the location at which the  
16 electric power is made available.

17 (h) A municipally owned utility or electric cooperative  
18 shall make available a standard interconnection application and  
19 agreement for distributed generation facilities that is  
20 substantially similar to the commission's distributed generation  
21 interconnection agreement form and consistent with this section to  
22 facilitate the connection of distributed generation facilities. A  
23 municipally owned utility or electric cooperative shall allow  
24 interconnection of a distributed generation facility and provide to  
25 a distributed generation facility on a nondiscriminatory basis  
26 wholesale transmission service, including at distribution voltage,  
27 in the same manner as for other power generation companies to

1 transmit to the ERCOT power grid the electric power generated by the  
2 distributed generation facility. A municipally owned utility or  
3 electric cooperative may recover from the owner or operator of the  
4 distributed generation facility all reasonable costs necessary for  
5 and directly attributable to the interconnection of the facility,  
6 including the reasonable costs of necessary system upgrades and  
7 improvements directly attributable to the distributed generation  
8 facility.

9 (i) Not later than the 30th day after the date a complete  
10 application for interconnection of a distributed generation  
11 facility is received, the municipally owned utility or electric  
12 cooperative shall provide the applicant with a written good faith  
13 cost estimate for interconnection-related costs. The municipally  
14 owned utility or electric cooperative may not incur any  
15 interconnection-related costs without entering into a written  
16 agreement for the payment of those costs by the applicant.

17 (j) The process to interconnect a distributed generation  
18 facility must be completed not later than the 240th day after the  
19 date the municipally owned utility or electric cooperative receives  
20 payment of all estimated costs to complete the interconnection,  
21 except that:

22 (1) the period may be extended by written agreement  
23 between the parties; and

24 (2) the period may be extended after a good faith  
25 showing by the municipally owned utility or electric cooperative  
26 that the interconnection requires improvements, upgrades, or  
27 construction of new facilities that cannot reasonably be completed

1 within that period, in which case the period may be extended for a  
2 time not to exceed the time necessary for the improvements,  
3 upgrades, or construction of new facilities to be completed.

4 (k) A municipally owned utility or electric cooperative  
5 shall charge the owner or operator of a distributed generation  
6 facility rates on a reasonable and nondiscriminatory basis for  
7 providing wholesale transmission service to the distributed  
8 generation facility owner in the same manner as for other power  
9 generation companies to transmit to the ERCOT power grid the  
10 electric power generated by the distributed generation facility in  
11 accordance with a tariff filed by the municipally owned utility or  
12 electric cooperative with the commission.

13 (l) The owner or operator of the distributed generation  
14 facility shall contract with the municipally owned utility or  
15 electric cooperative or the municipally owned utility's or electric  
16 cooperative's designee for any scheduling, settlement,  
17 communication, telemetry, or other services required to  
18 participate in the ERCOT wholesale market, but only to the extent  
19 that the utility, cooperative, or designee offers the services on a  
20 nondiscriminatory basis and at a commercially reasonable cost. If  
21 the municipally owned utility or electric cooperative or the  
22 municipally owned utility's or electric cooperative's designee does  
23 not offer or declines to offer the services, or fails to do so on a  
24 nondiscriminatory basis and at a commercially reasonable cost as  
25 determined by quotes from at least three third parties providing  
26 the same services, the owner or operator of the distributed  
27 generation facility may contract with a third party provider to

1 obtain the services.

2 (m) A distributed generation facility must comply with  
3 emissions limitations established by the Texas Commission on  
4 Environmental Quality for a standard emissions permit for an  
5 electric generation facility unit installed after January 1, 1995.

6 (n) A municipally owned utility or electric cooperative is  
7 not required to interconnect a distributed generation facility  
8 under this section if, on the date the utility or cooperative  
9 receives an application for interconnection of the facility, the  
10 municipally owned utility or electric cooperative has  
11 interconnected distributed generation facilities with an aggregate  
12 capacity that equals the lesser amount of:

13 (1) 5 percent of the municipally owned utility's or  
14 electric cooperative's average of the 15-minute summer peak load  
15 coincident with the independent system operator's 15-minute summer  
16 peak load in each of the months of June, July, August, and  
17 September; or

18 (2) 300 megawatts, adjusted annually by the percentage  
19 of total system load growth in the ERCOT power region beginning in  
20 2022.

21 (o) A municipally owned utility or electric cooperative  
22 that, on the date the utility or cooperative receives an  
23 application for interconnection of a distributed generation  
24 facility, has interconnected distributed generation facilities  
25 with an aggregate capacity less than the threshold described by  
26 Subsection (n) is required to increase that capacity only up to that  
27 threshold.

1       (p) This section is not intended to change registration  
2 standards or other qualifications required by the independent  
3 organization certified under Section 39.151 for the ERCOT power  
4 region related to the participation of distributed generation  
5 facilities in the wholesale market. This section is not intended to  
6 allow distributed generation facilities to participate in a manner  
7 that is not technically feasible or that is otherwise in conflict  
8 with wholesale rules and requirements adopted by the independent  
9 organization certified under Section 39.151 for the ERCOT power  
10 region.

11       SECTION 3. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2021.