

AN ACT

relating to certain resources and facilities for distributed generation.

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

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. SALES AND LEASING OF DISTRIBUTED RENEWABLE GENERATION RESOURCES

Sec. 113.001. DEFINITIONS. In this chapter:

(1) "Distributed renewable generation" has the meaning assigned by Section 39.916, Utilities Code.

(2) "Small commercial customer" has the meaning assigned by Section 39.202(o), Utilities Code.

Sec. 113.002. APPLICABILITY. (a) This chapter applies to a seller or lessor of distributed renewable generation resources.

(b) This chapter does not apply to:

(1) a transaction involving the sale or transfer of the real property on which a distributed renewable generation resource is located;

(2) a person, including a person acting through the person's officers, employees, brokers, or agents, who markets, sells, solicits, negotiates, or enters into an agreement for the sale or financing of a distributed renewable generation resource as part of a transaction involving the sale or transfer of the real

1 property on which the distributed renewable generation resource is
2 or will be affixed; or

3 (3) a third party that enters into an agreement for the
4 financing of a distributed renewable generation resource.

5 Sec. 113.003. LEASE, SALES, AND INSTALLATION DISCLOSURES.

6 A seller or lessor who enters into a purchase, lease, or power
7 purchase agreement with a residential or small commercial customer
8 for the operation of a distributed renewable generation resource
9 shall provide to the customer in writing:

10 (1) contact information of the salesperson and
11 installer of the generation resource;

12 (2) a description of all equipment to be installed;

13 (3) the cost of all equipment to be installed;

14 (4) a detailed accounting of fees associated with the
15 installation or operation of the generation resource;

16 (5) representations, if any, made as part of the
17 agreement regarding the expected operational performance and
18 financial performance of the generation resource; and

19 (6) all applicable warranties.

20 Sec. 113.004. ADDITIONAL DISCLOSURES FOR LEASE AGREEMENTS.

21 In addition to the disclosures required under Section 113.003, a
22 lessor shall provide to a leasing residential or small commercial
23 customer in writing:

24 (1) the term and rate of the lease, including any
25 payment escalators or other terms that affect the customer's
26 payments; and

27 (2) a statement of whether the lease and any

1 applicable warranty or maintenance agreement is transferable to a
2 subsequent purchaser of the property where the distributed
3 renewable generation resource is installed.

4 Sec. 113.005. DISCLOSURES FOR POWER PURCHASE AGREEMENTS. A
5 residential or small commercial customer who enters into a power
6 purchase agreement is entitled to receive in writing:

7 (1) the disclosures required under Sections
8 113.003(1), (2), (5), and (6);

9 (2) the term and rate of the power purchase agreement,
10 including any payment escalators or other terms that affect the
11 customer's payments; and

12 (3) whether the power purchase agreement and any
13 applicable warranty or maintenance agreement is transferable to a
14 subsequent purchaser of the property where the distributed
15 renewable generation resource is installed.

16 SECTION 2. Chapter 229, Local Government Code, is amended
17 by adding Subchapter C to read as follows:

18 SUBCHAPTER C. REGULATION OF SOLAR ENERGY DEVICES

19 Sec. 229.101. REGULATION OF SOLAR ENERGY DEVICES. (a) In
20 this section:

21 (1) "Municipally owned utility" has the meaning
22 assigned by Section 11.003, Utilities Code.

23 (2) "Small commercial customer" has the meaning
24 assigned by Section 39.202(o), Utilities Code.

25 (3) "Solar energy device" has the meaning assigned by
26 Section 171.107, Tax Code.

27 (b) A municipality may not prohibit or restrict the

1 installation of a solar energy device by a residential or small
2 commercial customer except to the extent:

3 (1) a property owner's association may prohibit the
4 installation under Sections 202.010(d)(1) through (7), Property
5 Code; or

6 (2) the interconnection guidelines and
7 interconnection agreement of a municipally owned utility serving
8 the customer's service area, the rules of the Public Utility
9 Commission of Texas, or the protocols of an independent
10 organization certified under Section 39.151, Utilities Code, limit
11 the installation of solar energy devices due to reliability, power
12 quality, or safety of the distribution system.

13 SECTION 3. Subchapter B, Chapter 35, Utilities Code, is
14 amended by adding Section 35.037 to read as follows:

15 Sec. 35.037. INTERCONNECTION AND OPERATION OF CERTAIN
16 DISTRIBUTED GENERATION FACILITIES FOR FOOD SUPPLY CHAIN. (a) In
17 this section:

18 (1) "Customer" means a retail electric customer:
19 (A) with a distributed generation facility
20 installed on the retail electric customer's side of the meter; and
21 (B) that has a primary purpose of or derives a
22 material source of revenue from:

23 (i) retail grocery sales; or
24 (ii) food manufacturing or distribution for
25 retail grocery sales.

26 (2) "Distributed generation facility" means a
27 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, subject to the
16 limitations of this section.

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

1 wholesale price agreed to by the customer and shall resell that
2 quantity of power at retail to the customer at the rate applicable
3 to the customer for retail service, which must at minimum include
4 all amounts paid for the wholesale electric power, during:

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

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

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

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

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

18 (e) The customer shall provide written notice as soon as
19 reasonably practicable to the municipally owned utility or electric
20 cooperative of a circumstance described by Subsection (d)(3) or
21 (4).

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

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

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

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

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

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

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

23 (1) the period may be extended by written agreement
24 between the parties; or

25 (2) the period may be extended after a good faith
26 showing by the municipally owned utility or electric cooperative
27 that the interconnection requires improvements, upgrades, or

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

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

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

1 generation facility may contract with a third party provider to
2 obtain the services.

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

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

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

19 (2) 300 megawatts, adjusted annually by the percentage
20 of total system load growth in the ERCOT power region beginning in
21 2022.

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

1 threshold.

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

12 SECTION 4. It is the intent of the legislature in enacting
13 Section 35.037, Utilities Code, to allow grocers the ability to
14 deploy back-up generation in the ERCOT power region in areas that
15 have not implemented retail customer choice.

16 SECTION 5. The changes in law made by this Act apply only to
17 an agreement governing the sale or lease of distributed renewable
18 generation, as defined by Section 39.916, Utilities Code, or a
19 power purchase agreement entered into on or after the effective
20 date of this Act. An agreement entered into before the effective
21 date of this Act is governed by the law as it existed immediately
22 before the effective date of this Act, and that law is continued in
23 effect for that purpose.

24 SECTION 6. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 398 passed the Senate on April 9, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 28, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 398 passed the House, with amendment, on May 25, 2021, by the following vote: Yeas 126, Nays 16, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor