

BILL ANALYSIS

Senate Research Center
88R22057 DIO-F

C.S.S.B. 1212
By: Johnson
Business & Commerce
4/11/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Distributed energy resources (DERs) are starting to gain popularity throughout Texas. Since DERs include a wide range of technologies, it is important that regulators and legislators come to an agreement concerning the definition of DERs, the services they provide, the appropriate cost allocation for their interconnection, and their operation in the competitive electric market.

S.B. 1212 provides a clear definition of DERs and the services they provide. S.B. 1212 defines DERs as a source of not more than 10 MW of electricity connected at a voltage at less than 60 kV. This definition provides additional clarity about which facilities must register as a power generation company or a retail electric provider. This determination would be based on the service they provide to the grid and to consumers. Additionally, the bill requires the Public Utility Commission of Texas to develop rules related to the cost of integrating and interconnecting DERs. S.B. 1212 prevents unclear and contrasting definitions of distributed energy resources that would disrupt a smooth incorporation of these technologies. The framework created by S.B. 1212 serves a consumer protection purpose by preventing fraudulent or deceptive practices. This bill preserves utilities' statutory authority to maintain grid reliability, while reliably serving customers.

S.B. 1212 comprehensively deals with the integration of DERs into our energy grid to reap the benefits of these new technologies without sacrificing grid stability or consumer safety. This bill will allow for DER owners to benefit themselves and the state without navigating difficult regulatory barriers, while providing consistency for grid regulators seeking to evaluate and track this growing repository of energy in the state.

Key Provisions:

- Adds the definition of aggregated distributed energy resource, distributed energy resource, and power generation company to Section 31.002, Utilities Code.
- Adds requirements to be considered a distributed energy resource to Section 39.3515, Utilities Code.
- Adds the requirements for a distributed energy resource interconnected to a transmission and distributed utility's distribution system in the ERCOT power region to Section 39.701, Utilities Code.
- Section 39.702, Utilities Code, lays out integration and cost recovery for the ERCOT power region.

Committee Substitute:

- Revises the definition of "aggregated distributed energy resources" to allow for an individual resource to be larger than 1 MW.
- Revises the definition of "power generation company" to include those that are otherwise part of a municipally owned utility or electric cooperative.

- Includes municipally owned utilities and electric cooperatives as part of the overall distributed energy sources framework.
- Removes the 10 MW limitation to encompass all distributed energy resources, including energy storage resources that are greater than 10 MW.
- Adds language that utilities are not "obligated" to interconnect a DER equal to or greater than 10 MW. This is done for operational safety and reliability concerns.
- Adds "including, but not limited to" to the list of DER resources to ensure that the list does not preclude any technology, either present or future.
- Provides that, in addition to load serving entities, other entities certified by the PUC may facilitate the registration of aggregated distributed energy resources.
- Clarifies that the status quo remains for exempted distributed energy resource facilities, including solar power on schools and rooftop solar.
- Incorporates customer protection proposals to provide greater opportunity for recourse.

C.S.S.B. 1212 amends current law relating to the interconnection and integration of distributed energy resources.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTIONS 2 (Section 39.3515, Utilities Code) and 3 (Section 39.702, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.002, Utilities Code, by adding Subdivisions (2-a) and (4-c) and amending Subdivision (10), to define "aggregated distributed energy resource" and "distributed energy resource" and to redefine "power generation company."

SECTION 2. Amends Subchapter H, Chapter 39, Utilities Code, by adding Section 39.3515, as follows:

Sec. 39.3515. REGISTRATION OF DISTRIBUTED ENERGY RESOURCES. (a) Authorizes an owner or operator of a distributed energy resource to provide energy or ancillary services in the wholesale market in the Electric Reliability Council of Texas (ERCOT) power region through generating electricity and providing that electricity onto a distribution system only if:

(1) the owner or operator is registered with the Public Utility Commission of Texas (PUC) as a power generation company under Section 39.351 (Registration of Power Generation Companies) and authorized by the independent organization certified under Section 39.151 (Essential Organizations) for the ERCOT power region; or

(2) the distributed energy resource is part of an aggregated distributed energy resource and:

(A) is included in the registration of a power generation company under Section 39.351 and the independent organization certified under Section 39.151 for the ERCOT power region; and

(B) has complied with the interconnection requirements of the interconnecting transmission and distribution utility, municipally owned utility, or electric cooperative.

(b) Authorizes the PUC to establish simplified filing requirements to facilitate the registration of aggregated distributed energy resources. Requires that the filing requirements require the registrant to disclose the name of the power generation company that operates the aggregated distributed energy resource.

(c) Provides that a facility described by Section 39.914 (Credit for Surplus Solar Generation by Public Schools) or 39.916 (Interconnection of Distributed Renewable Generation) is not considered to be a distributed energy resource unless the facility is interconnected and operated in parallel with the distribution system, and either:

(1) electricity from the facility provides energy or ancillary services in the wholesale market in the ERCOT power region in a manner described by this section; or

(2) at the time the facility is installed, the estimated annual amount of electricity to be produced by the facility is more than the retail electric customer's estimated annual electricity consumption.

(d) Requires the PUC by rule to authorize the registrations described by Subsection (a) and adopt procedures for the creation of aggregated distributed energy resources.

SECTION 3. Amends Chapter 39, Utilities Code, by adding Subchapter O, as follows:

SUBCHAPTER O. INTERCONNECTION OF DISTRIBUTED ENERGY RESOURCES

Sec. 39.701. METERING EQUIPMENT AND INFORMATION. Provides that an interconnecting transmission and distribution utility, municipally owned utility, or electric cooperative is not required to provide an owner or operator of a distributed energy resource access to the utility's meter equipment if access to essential metering information is made available by the utility or the cooperative.

Sec. 39.702. INTEGRATION AND COST RECOVERY. (a) Requires the PUC by rule to establish for the ERCOT power region:

(1) requirements for the dispatchability, reliability, and other characteristics of each type or classification of distributed energy resource;

(2) appropriate disclosure requirements and other customer protections for residential and small commercial customers of providers of aggregated distributed energy services;

(3) information an owner or operator of a distributed energy resource is required to provide to the interconnecting transmission and distribution utility, municipally owned utility, or electric cooperative to ensure the resource will not adversely affect the transmission or distribution system;

(4) interconnection guidelines that address:

(A) the determination of whether a given interconnection or combination of interconnections would exceed a transmission and distribution utility's, municipally owned utility's, or electric cooperatives system capacity in a particular location;

(B) considerations for feeder locations related to distributed energy resources;

(C) considerations of the size or capacity of a distributed energy resource;

(D) the assessment by the interconnecting transmission and distribution utility, municipally owned utility, or electric cooperative of potential adverse impacts to other customers in the area of the distributed energy resource; and

(E) other operating parameters necessary for the transmission and distribution utility's, municipally owned utility's, or electric cooperative's reliable operation of its transmission and distribution system;

(5) a methodology for the appropriate allocation and recovery of the transmission and distribution utility's, municipally owned utility's, or electric cooperative's costs to interconnect a distributed energy resource; and

(6) requirements for the independent organization certified under Section 39.151 for the ERCOT power region to report to the PUC periodically the categories and generation levels of distributed energy resources allowed to participate in the ERCOT wholesale market, the categories and megawatt levels of aggregated distributed energy resources allowed to participate in the ERCOT wholesale market, performance metrics for distributed energy resources allowed to participate in the ERCOT wholesale market, and other information the PUC may require.

(b) Requires the PUC to authorize a transmission and distribution utility and, as applicable, a municipally owned utility or electric cooperative, to:

(1) defer for recovery in a later ratemaking proceeding the incremental operations and maintenance expenses, or other expenses, and the return, not otherwise recovered in a rate proceeding, associated with the installation, modification, upgrade, or maintenance of its transmission or distribution facilities required by an interconnection with a distributed energy source; and

(2) request recovery of the costs associated with an interconnection with a distributed energy resource, including any deferred expenses, through a proceeding under Section 35.004 (Provision of Transmission Service) or 36.210 (Periodic Rate Adjustments) or in another ratemaking proceeding regardless of whether the utility first requested recovery in a base-rate proceeding.

(c) Provides that facilities required by an interconnection with a distributed energy resource are considered used and useful in providing service to the public and are prudent and includable in the rate base, regardless of the extent of the actual use of the facilities.

(d) Provides that this subchapter does not:

(1) require or authorize a distribution service provider to procure distributed energy resource services to enable the operation of the distribution system;

(2) require a distribution service provider to disclose to any third party, except as required by the independent system operator, the provider's system planning information, studies, models, critical infrastructure information, or other confidential information;

(3) diminish a distribution service provider's rights or obligations to own or operate its distribution system and provide electric delivery service to retail customers in the utility's certificated service area;

(4) obligate a distribution service provider to interconnect a distributed energy resource with a capacity equal to or greater than 10 megawatts; or

(5) prohibit an interconnecting distribution service provider from shedding a distributed energy resource, or otherwise obligate an interconnecting distribution service provider to provide preferential treatment to feeders with distributed energy resources, to meet its load shedding obligations during an involuntary load shedding event initiated by the independent system operator or a planned or unplanned outage of the distribution system.

Sec. 39.703. LIABILITY. Provides that an interconnecting transmission and distribution utility, municipally owned utility, electric cooperative, or retail electric provider providing service to a distributed energy resource to which this subchapter applies is not liable for:

(1) a violation of reliability or service metrics caused by distributed energy resource operations that violate its interconnection agreement; or

(2) a distributed energy resource's inability or failure to provide services that violate its interconnection agreement or a penalty for such inability or failure.

SECTION 4. (a) Provides that this section takes effect only if the Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Amends Subchapter Z, Chapter 39, Utilities Code, by adding Section 39.9166, as follows:

Sec. 39.9166. DISTRIBUTED ENERGY RESOURCES. (a) Entitles a customer who purchases or leases a distributed energy resource or enters into a power purchase agreement for a distributed energy resource in the ERCOT power region to the information and disclosures required under Chapter 115, Business and Commerce Code, and to protection from fraudulent, unfair, misleading, or deceptive practices.

(b) Authorizes an owner or operator of a distributed energy resource to provide energy or ancillary services in the wholesale market in the ERCOT power region through generating electricity and providing that electricity onto a distribution system in an area in which customer choice has been introduced in the manner provided by this section.

(c) Requires a person who owns or operates a distributed energy resource in an area in which customer choice has been introduced and is part of an aggregated distributed energy resource, or has not individually registered with the PUC as its own power generation company, to sell the surplus electricity that is produced by the distributed energy resource and not consumed by the owner's premise to the retail electric provider that serves the premise's load at a value agreed to between the distributed energy resource owner and the retail electric provider that serves the premise's load. Authorizes the value to be an agreed value based on the clearing price of energy or ancillary service at the time of day that the electricity is made available to the grid.

(d) Provides that a person who operates an aggregated distributed energy resource in an area which customer choice has been introduced is subject

to customer protection rules established by the PUC under Chapter 17 (Customer Protection) and Chapter 39 (Restructuring of Electric Utility Industry).

(e) Authorizes a retail electric provider to direct the offering or dispatch of aggregated distributed energy resources for which the retail electric provider facilitated aggregation.

(f) Requires the independent organization certified under Section 39.151 for the ERCOT power region to adopt procedures to ensure that the amount of electricity purchased from a distributed energy resource owner under this section is accounted for when settling the total load served by the retail electric provider that serves that premise owner's load.

(g) Requires a distributed energy resource owner that requests net metering services for purposes of this section to have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(h) Authorizes a transmission and distribution utility, municipally owned utility, or electric cooperative to provide to customers educational information regarding the technical requirements for the interconnection of distributed energy resources to the distribution system. Provides that the provision of information under this subsection is not considered a competitive energy service.

(i) Provides that this section does not apply to a purchase or agreement entered into under Section 39.914 or 39.916.

SECTION 5. (a) Provides that this section takes effect only if the Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Amends Subchapter Z, Chapter 39, Utilities Code, by adding Section 39.9166, as follows:

Sec. 39.9166. DISTRIBUTED ENERGY RESOURCES. (a) Entitles a customer who purchases or leases a distributed energy resource or enters into a power purchase agreement for a distributed energy resource in the ERCOT power region to the information and disclosures required under Chapter 113 (Prohibition on Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure), Business and Commerce Code, as added by Chapter 561 (S.B. 398), Acts of the 87th Legislature, Regular Session, 2021, and to protection from fraudulent, unfair, misleading, or deceptive practices.

(b) Authorizes an owner or operator of a distributed energy resource to provide energy or ancillary services in the wholesale market in the ERCOT power region through generating electricity and providing that electricity onto a distribution system in an area in which customer choice has been introduced in the manner provided by this section.

(c) Requires a person who owns or operates a distributed energy resource in an area in which customer choice has been introduced and is part of an aggregated distributed energy resource, or has not individually registered with the PUC as its own power generation company, to sell the surplus electricity that is produced by the distributed energy resource and not consumed by the owner's premise to the retail electric provider that serves the premise's load at a value agreed to between the distributed energy resource owner and the retail electric provider that serves the premise's load. Authorizes the value to be an agreed value based on the clearing

price of energy or ancillary service at the time of day that the electricity is made available to the grid.

(d) Provides that a person who owns or operates an aggregated distributed energy resource in an area which customer choice has been introduced is subject to customer protection rules established by the PUC under Chapter 17 and this chapter.

(e) Authorizes a retail electric provider to direct the offering or dispatch of aggregated distributed energy resources for which the retail electric provider facilitated aggregation.

(f) Requires the independent organization certified under Section 39.151 for the ERCOT power region to adopt procedures to ensure that the amount of electricity purchased from a distributed energy resource owner under this section is accounted for when settling the total load served by the retail electric provider that serves that premise owner's load.

(g) Requires a distributed energy resource owner that requests net metering services for purposes of this section to have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(h) Authorizes the transmission and distribution utility, municipally owned utility, or electric cooperative to provide to customers educational information regarding the technical requirements for the interconnection of distributed energy resources to the distribution system. Provides that the provision of information under this subsection is not considered a competitive energy service.

(i) Provides that this section does not apply to a purchase or agreement entered into under Section 39.914 or 39.916.

SECTION 6. Requires the PUC, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 7. Effective date: upon passage or September 1, 2023.