

By: Schwertner

S.B. No. 1095

A BILL TO BE ENTITLED

AN ACT

relating to the recovery of fuel and purchased power costs by electric utilities.

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

SECTION 1. Section 36.203, Utilities Code, is amended to read as follows:

Sec. 36.203. FUEL AND PURCHASED POWER COST RECOVERY; ADJUSTMENT OF FUEL FACTOR. (a) Section 36.201 does not prohibit the commission from reviewing and providing for adjustments of an electric ~~[a]~~ utility's fuel factor.

(b) The commission by rule shall implement procedures that provide for the timely adjustment of an electric ~~[a]~~ utility's fuel factor~~[, with or without a hearing]~~. The rules must ensure that:

(1) the utility collects as contemporaneously as reasonably possible the electric fuel and purchased power costs that the utility incurs; and

(2) the utility's under-collected or over-collected balance of electric fuel and purchased power costs is collected from or refunded to customers through adjustment of the utility's fuel factor not later than the 90th day after the date the balance is accrued.

(c) Notwithstanding Subsection (b), on a finding that an electric utility has an under-collected balance that is the result of extraordinary electric fuel and purchased power costs that are

1 unlikely to continue, the commission by order may direct the
2 utility to adjust the utility's fuel factor to defer recovery to
3 take place over a period not to exceed two years, with the utility
4 receiving on the balance during the recovery period a return set at
5 the utility's most recently established weighted average cost of
6 capital set in a base rate case.

7 (d) The commission is not required to hold a hearing on the
8 adjustment of an electric utility's fuel factor under this section.
9 If the commission holds a hearing, the commission may consider at
10 the hearing any evidence that is appropriate and in the public
11 interest.

12 (e) A customer of the electric utility, a municipality with
13 original jurisdiction over the utility, or the office may protest a
14 fuel factor established under this section. The sole issue that may
15 be considered on a protest is whether the factor reasonably
16 reflects costs the electric utility has incurred or will incur so
17 that the utility is not substantially over-collecting or
18 under-collecting the utility's reasonably stated fuel and
19 purchased power costs on an ongoing basis, including the true-up of
20 any over- or under-collected balance. The prudence of the costs may
21 be considered only in a fuel reconciliation proceeding under
22 Subsection (f). If the commission finds that the electric utility
23 is substantially over-collecting or under-collecting the utility's
24 reasonably stated fuel and purchased power costs on an ongoing
25 basis, the commission shall order the utility to modify the
26 utility's fuel factor to more accurately reflect the utility's
27 costs and attempt to remedy any over-collected or under-collected

position before the 90th day after the date the commission issues the order.

(f) An electric utility shall apply to reconcile the utility's electric fuel and purchased power costs at least once every two years. The application must be made not later than the 180th day after the last day of the period to be reconciled. The commission may by rule establish the calendar year timing of the reconciliation period for each electric utility subject to this section to facilitate efficient work by the commission. To the extent a reconciliation results in a change to the electric utility's under-collected or over-collected fuel balance, that change must be incorporated into the utility's fuel factor to eliminate any resulting under-collected or over-collected balance in commensurate increments over a three-month period. The commission may extend the three-month period for a reasonable time if the electric utility demonstrates that the change in the fuel balance will impact the financial integrity of the utility.

(g) The rules adopted under this section ~~[procedures]~~ must require that~~+~~

~~[(1)]~~ the findings required by Section [36.058](#) regarding fuel transactions with affiliated interests be ~~[are]~~ made in a fuel reconciliation proceeding or in a rate case filed under Subchapter C or D~~+~~ ~~and~~

~~[(2) an affected party receive notice and have the opportunity to request a hearing before the commission].~~

(h) ~~[(c) The commission may adjust a utility's fuel factor without a hearing if the commission determines that a hearing is not~~

1 ~~necessary. If the commission holds a hearing, the commission may~~
2 ~~consider at the hearing any evidence that is appropriate and in the~~
3 ~~public interest.~~

4 ~~[(d) The commission shall render a timely decision~~
5 ~~approving, disapproving, or modifying the adjustment to the~~
6 ~~utility's fuel factor.~~

7 ~~[(e) The commission by rule shall provide for the~~
8 ~~reconciliation of a utility's fuel costs on a timely basis.~~

9 ~~[(f)]~~ A proceeding under this section is not a rate case
10 under Subchapter C.

11 SECTION 2. An electric utility shall, the first time the
12 utility applies to reconcile the utility's fuel costs and purchased
13 power costs under Section 36.203(f), Utilities Code, as added by
14 this Act, after the Public Utility Commission of Texas adopts the
15 rules required to implement that subsection, include in the
16 application any previous periods that have not been addressed in a
17 prior reconciliation proceeding.

18 SECTION 3. This Act takes effect September 1, 2023.