

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 444  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the electric market in this state is governed through provisions enacted by S.B.7, 76th Legislature, 1999, but all price controls for residential electric rates expired on January 1, 2007, and many barriers prevent Texas citizens from switching electric companies, including the Public Utility Commission's (PUC) authorization to allow electric companies to charge security deposits equivalent to 80 days worth of electricity. Residential electric rates in Texas are among the highest in the country with deregulated rates having risen 70 to 100 percent over the past five years. High rates and high temperatures this past summer forced PUC to impose a moratorium on electric disconnections for the medically vulnerable. Furthermore, funding for the low-income discount afforded by the System Benefit Fund has been shut off, yet Texans in the deregulated market still pay an average of 65 cents per month into the fund.

As proposed, S.B. 444 allows customers in the deregulated electric market to switch electric companies without being charged excessive or hidden fees. Furthermore, customer protection is ensured by restoring the System Benefit Fund for seniors and low-income families, instituting a moratorium on disconnecting certain persons during extreme weather, creating standard offer rates, authorizing the attorney general to prosecute companies engaged in "market manipulation," and increasing customers' choice of electric providers. Finally, the bill provides a market-driven Texas Energy Plan and encourages energy conservation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 5 (Section 39.1013, Utilities Code), SECTION 6 (Section 39.110, Utilities Code), and SECTION 9 (Section 39.903, Utilities Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 15, Utilities Code, by adding Section 15.0295, as follows:

Sec. 15.0295. CIVIL PENALTY FOR VIOLATION OF SECTION 39.157. (a) Establishes that a person who violates Section 39.157 (regarding electricity market power abuse), or a rule adopted or order issued under that section, is subject to a civil penalty of a certain amount.

(b) Requires the attorney general or the appropriate district or county attorney, at the request of the Public Utility Commission of Texas (PUC), to institute and conduct a suit to recover the penalty.

(c) Authorizes the attorney general, district attorney, and county attorney to institute and conduct a suit on its own initiative, but requires the district or county attorney to provide a notice of the suit, if they initiate it, to PUC and the attorney general.

(d) Authorizes the attorney general to intervene in the suit if brought forth by the district or county attorney and assume primary responsibility in certain instances.

(e) Requires certain individuals and entities to provide all relevant information related to the alleged violation to whomever initiates or has primary responsibility in the suit.

(f) Authorizes the attorney general or district or county attorney to recover certain reasonable expenses in obtaining a civil penalty.

(g) Requires the court, by order, to provide for a penalty under this section to be paid to the consumers who incurred economic damage as a result of the violation so that each identifiable consumer is paid a certain amount, notwithstanding Section 15.033 (Costs and Attorney's Fees).

SECTION 2. Amends Section 17.008, Utilities Code, by amending Subsection (h) and adding Subsections (h-1) and (h-2), as follows:

(h) Prohibits a retail electric provider (provider) from requiring a person applying for residential electric service to provide a security deposit or advance payment as a condition of service if certain conditions apply. Deletes existing text providing that this section does not limit a provider's authority to require a deposit or advance payment as a condition of service.

(h-1) Prohibits a provider that is authorized to require a security deposit or advance payment under Subsection (h) from requiring a payment exceeding a certain amount.

(h-2) Requires a provider or electric utility (utility) that holds a security deposit or advance payment from a residential customer to transfer the deposit or payment to the new provider when the service is switched or transferred, notwithstanding Subsection (h).

SECTION 3. Amends Section 39.101(h), Utilities Code, by requiring an entity that provides retail electric service to offer a customer a deferred payment plan providing for a period of not less than five months for a customer to pay deferred amounts, rather than generally working with customers to establish a pay schedule for deferred bills, when paying bills that are due during an extreme weather emergency. Redefines "extreme weather emergency."

SECTION 4. Amends Section 39.101, Utilities Code, by adding Subsection (i), to prohibit certain entities that provide retail electric service from disconnecting service to certain residential customers who are at a higher risk of heat-related illness during the period of July 1st through September 30th. Requires the entity to defer payment in such situations until after September 30th and to offer a deferred payment plan that may be renegotiated one time during the deferment period at the initiation of the customer. Sets forth specific criteria for a residential customer to be considered at a higher risk of heart-related illness.

SECTION 5. Amends Subchapter C, Chapter 39, Utilities Code, by adding Sections 39.1013 and 39.1015, as follows:

Sec. 39.1013. STANDARD SERVICE AGREEMENT. Requires PUC, by rule, to prescribe the form of a term of service document or other document that serves as a contract to provide retail electric service to a residential customer or that prescribes the terms of that service contract. Sets forth certain requirements for PUC to follow in adopting rules for such documents.

Sec. 39.1015. CANCELLATION OR TERMINATION FEES. Prohibits a provider from charging a residential customer who requests cancellation or termination of retail electric service provided on a month-to-month basis a fee relating to the cancellation or termination. Prohibits such a fee provided to a residential customer under a term contract from exceeding \$100.

SECTION 6. Amends Subchapter C, Chapter 39, Utilities Code, by adding Section 39.110, as follows:

Sec. 39.110. RETAIL ELECTRIC ENERGY EFFICIENCY PROGRAMS. (a) Sets forth the affiliated retail electric providers (affiliated providers) to which this section applies.

(b) Requires an affiliated provider, in accordance with the provider's least-cost procurement plan under Section 39.2024, to provide energy efficiency programs that offer in a nondiscriminatory manner a variety of choices to all classes of customers to which this section applies.

(c) Authorizes an affiliated provider to provide an energy efficiency program directly to customers or to contract with another person to provide a program.

(d) Requires PUC to adopt rules as necessary to implement this section that at least require a program administered under this section to supplement and not supplant energy efficiency incentive programs administered by electric utilities under Section 39.905 (Goal for Energy Efficiency).

SECTION 7. (a) Amends Subchapter E, Chapter 39, Utilities Code, by adding Sections 39.2023 and 39.2024, as follows:

Sec. 39.2023. STANDARD OFFER SERVICE. (a) Sets forth the affiliated providers to which this section applies.

(b) Requires PUC to require an affiliated provider to offer a standard retail service package (package) to residential customers of the affiliated transmission and distribution utility.

(c) Requires PUC to set the price for the package at a certain amount.

(d) Authorizes PUC, on its motion or on the motion of the affiliated provider, the office, or an affected person, at any time, to review and adjust the affiliated provider's standard offer service price to ensure that the price accurately reflects the cost of providing electricity to residential customers and include an appropriate retail margin.

(e) Requires PUC to determine the applicability of this section to each affiliated provider at least once each state fiscal year.

Sec. 39.2024. LEAST-COST PROCUREMENT. (a) Requires an affiliated provider required to provide a standard offer service under Section 39.2023 to use a least-cost procurement planning process to systematically evaluate all available options to ensure that the provider meets its customer's needs.

(b) Requires an affiliated provider to comply with the provider's approved least-cost procurement plan (plan) in procuring resources to meet the provider's standard offer service obligation.

(c) Requires each affiliated provider in this state, every three years, to file with PUC a plan providing certain information that systematically evaluates all available supply options during the next 10-year period.

(d) Authorizes PUC, on its own motion or on the motion of certain persons or entities, to convene a public hearing, of which any interested person may intervene at, regarding the adequacy and merits of the plan.

(e) Requires PUC to issue an interim order regarding the status of the plan by the 180th day after the date the affiliated provider submits the plan. Authorizes PUC to extend this deadline up to 30 days for extenuating circumstances.

(f) Authorizes PUC, on its own motion or on the motion of certain persons or entities, to periodically review an approved plan to determine whether the plan should be modified because of changed market conditions.

(b) Requires PUC to make the determination required by Section 39.2023(e), Utilities Code, as added by this section, by the 30th day after this Act takes effect for each affiliated provider in this state.

(c) Requires PUC to set the initial standard offer service price for each affiliated provider that PUC determines is subject to Section 39.2023, Utilities Code, as added by this section, by the 60th day after this Act takes effect. Sets forth requirements for setting and adjusting this price.

(d) Requires PUC to adopt a staggered schedule for the submission of plans by affiliated providers under Section 39.2024, Utilities Code, as added by this section, by October 1, 2007.

SECTION 8. Amends Section 39.352(g), Utilities Code, to increase, from five to 25, the percent of the provider's total load in megawatt hours in this state that must consist of residential customers if the provider serves an aggregate load in excess of 300 megawatts within this state. Provides that this requirement applies to an affiliated provider only with respect to load served outside of the affiliated transmission and distribution utility's certificated, rather than electric utility's, service area. Makes conforming changes. Deletes the exception to meeting the requirements of this subsection if the provider or affiliated provider pays a certain amount into the system benefit fund. Deletes the provision that this subsection applies for 36 months after retail competition begins.

SECTION 9. (a) Amends Sections 39.903(a), (b), (d), (e), and (h), Utilities Code, as follows:

(a) Requires PUC to adopt and enforce rules requiring utilities to establish a system benefit fund (fund) as a trust fund outside of the state treasury to be used only for the purposes of this section. Requires PUC to provide for the fund to be held by a financial institution eligible to be a depository for state funds under Chapter 404 (State Treasury Operations of Comptroller), Government Code. Deletes existing text that provides that the fund is an account in the general revenue fund and authorizes the money in the account to be appropriated. Deletes existing text that provides that Section 403.095 (Use of Dedicated Revenue), Government Code, does not apply to the fund. Makes a nonsubstantive change.

(b) Requires a utility to remit the fees to the fund in accordance with procedures approved by PUC. Makes a nonsubstantive change.

(d) Requires PUC, by rule, to adopt review procedures as PUC determines is necessary to ensure the fund is funded and disbursements are properly made. Authorizes PUC to allow for the fund to be operated by a contractor. Authorizes PUC to require a utility or provider to provide information, not subject to disclosure under Chapter 552 (Public Information), Government Code, as necessary to assess contributions to and disbursements from the fund. Requires PUC to provide for efficient disbursements from the fund to prevent unnecessary cash-flow problems. Deletes existing text requiring PUC to report to the electric utility restructuring oversight committee if the fund fee is insufficient to fund the purposes set forth in Subsection (c) to the extent required by this section.

(e) Authorizes money in the fund to be used, rather than appropriated to provide funding, solely for certain purposes. Makes a nonsubstantive change.

(h) Authorizes PUC to reduce the rate reduction for the package to less than 10 percent only if both, rather than either, the fee for the fund is set at 65 cents per megawatt hour and PUC determines that money in the fund, rather than appropriations, is insufficient to fund the 10 percent rate reduction.

(b) Requires PUC to adopt rules under Section 39.903, Utilities Code, as amended by this section, as soon as is practicable. Requires fees for the fund collected under Section 39.903, Utilities Code, before the effective date of this section be remitted to the comptroller of public accounts for deposit in the general revenue fund. Requires fees for the fund collected under Section 39.903, Utilities Code, after the effective date of this section be to remitted to PUC no later than 31 days after the fees are collected until PUC adopts rules governing the remittance of fees. Requires PUC to hold these fees in trust until the fund is established and then transfer those fees to the fund on the date it is established.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2007.