

By: Fraser, et al.

S.B. No. 482

Substitute the following for S.B. No. 482:

By: King of Parker

C.S.S.B. No. 482

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to competition and customer choice in the retail electric  
3 power market; providing an administrative penalty.

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

5 SECTION 1. Sections 17.157(a) and (b), Utilities Code, are  
6 amended to read as follows:

7 (a) The commission may investigate or resolve disputes  
8 between a residential retail customer and a billing utility,  
9 service provider, telecommunications utility, retail electric  
10 provider, or electric utility.

11 (b) In exercising its authority under Subsection (a), the  
12 commission may:

13 (1) order a billing utility, service provider, retail  
14 electric provider, or electric utility to produce information or  
15 records;

16 (2) require that all contracts, bills, and other  
17 communications from a billing utility, service provider, retail  
18 electric provider, or electric utility display a working toll-free  
19 telephone number that residential customers may call with  
20 complaints and inquiries;

21 (3) require a billing utility, service provider,  
22 retail electric provider, or electric utility to refund or credit  
23 overcharges or unauthorized charges with interest if the billing  
24 utility, service provider, retail electric provider, or electric

1 utility has failed to comply with commission rules or a contract  
2 with the residential customer;

3 (4) order appropriate relief to ensure that a  
4 residential customer's choice of a telecommunications service  
5 provider, a retail electric provider, or an electric utility that  
6 encompasses a geographic area in which more than one provider has  
7 been certificated is honored;

8 (5) require the continuation of service to a  
9 residential [~~or small commercial~~] customer while a dispute is  
10 pending regarding charges the customer has alleged were  
11 unauthorized; and

12 (6) investigate an alleged violation.

13 SECTION 2. Section 39.051, Utilities Code, is amended by  
14 adding Subsection (h) to read as follows:

15 (h) On or before January 1, 2008, an electric utility and  
16 the competitive affiliates of the utility created in accordance  
17 with Subsection (b) and owned by a common holding company each  
18 shall:

19 (1) have a name and logo that is distinct from the name  
20 and logo of each of the other entities owned by the common holding  
21 company and distinct from the name and logo of the common holding  
22 company;

23 (2) have its board of directors composed exclusively  
24 of individuals who are not members of the board of directors of any  
25 of the other entities owned by the common holding company and are  
26 not members of the board of the common holding company;

27 (3) have a chief executive officer who is the chief

1 executive officer only of that entity;

2 (4) have its headquarters located in a building  
3 separate and apart from the building or buildings in which the  
4 headquarters of any of the other entities owned by the common  
5 holding company is located or in which the headquarters of the  
6 common holding company is located;

7 (5) maintain an arm's-length relationship with the  
8 other entities owned by the common holding company;

9 (6) enter into transactions with another entity owned  
10 by the common holding company only on a commercially reasonable  
11 basis and only as approved by a majority of the directors of its  
12 governing board of directors;

13 (7) prepare its separate annual financial statement in  
14 accordance with generally accepted accounting principles showing  
15 its assets and liabilities as separate and distinct from the assets  
16 of the other entities owned by the common holding company; and

17 (8) ensure that the commission has complete access to  
18 all of the entity's books and records pertaining to transactions  
19 between the entity and another entity owned by the common holding  
20 company.

21 SECTION 3. Section 39.101, Utilities Code, is amended by  
22 adding Subsection (i) to read as follows:

23 (i) A retail electric provider may not state or imply that  
24 it can provide a level of reliability of electric service or  
25 preferential treatment in the restoration of service following an  
26 outage that is better than another provider can provide. A retail  
27 electric provider may make claims regarding the provider's customer

1 service reliability. The commission may impose an administrative  
2 penalty for a violation of this subsection in accordance with  
3 Section 15.024. A violation of this subsection shall be included in  
4 the highest class of violations in the classification system  
5 established by the commission under Section 15.023.

6 SECTION 4. Subchapter C, Chapter 39, Utilities Code, is  
7 amended by adding Section 39.110 to read as follows:

8 Sec. 39.110. PROMOTION OF RESIDENTIAL CUSTOMER CHOICE. (a)  
9 A reference in this section to "retail electric provider" includes:

10 (1) a successor in interest to the retail electric  
11 provider; and

12 (2) a provider that was an affiliate of the retail  
13 electric provider on December 31, 2006.

14 (b) The purpose of this section is to promote customer  
15 choice for residential customers by imposing a charge on certain  
16 retail electric providers to provide an additional incentive for  
17 them to compete for residential customers.

18 (c) This section applies only to a retail electric provider  
19 with more than 250,000 residential customers in this state that on  
20 December 31, 2006, was required to offer service to residential  
21 customers at the price to beat in accordance with Section 39.202.  
22 This section does not apply to a retail electric provider at any  
23 time after the retail electric provider has not been assessed a  
24 charge under Subsection (d) for two consecutive years.

25 (d) The commission annually shall impose a charge on a  
26 retail electric provider if the gross number of residential  
27 customers the provider gained during a calendar year, as measured

1 by move-in and switch transactions processed by the independent  
2 organization, in areas where customer choice is available outside  
3 the transmission and distribution utility service territory in  
4 which it was required to offer the price to beat was less than the  
5 following customer target number:

6 (1) for a retail electric provider with one million or  
7 more residential customers in this state on December 31, 2006, a  
8 gain of 90,000 residential customers; and

9 (2) for a retail electric provider with fewer than one  
10 million residential customers in this state on December 31, 2006, a  
11 gain of 45,000 residential customers.

12 (e) The annual charge the commission shall impose under  
13 Subsection (d) is computed by multiplying the difference between  
14 the applicable target number of residential customers gained as  
15 provided by Subsection (d)(1) or (2) and the gross number of  
16 residential customers that the retail electric provider actually  
17 gained during the relevant calendar year by:

18 (1) \$100 on December 31, 2007;

19 (2) \$200 on December 31, 2008; and

20 (3) \$300 on December 31, 2009.

21 (f) Money collected from the charge assessed under this  
22 section may be appropriated only for programs devised and directed  
23 by the commission as provided by this subsection. If  
24 appropriations from the system benefit fund are sufficient to  
25 assist low-income electric customers by providing the 10 percent  
26 reduced rate prescribed by Section 39.903(h), the money collected  
27 from the charges under Subsection (d) may be used only for a

1 residential customer education program under Section 39.903,  
2 including the provision of call center services when the commission  
3 conducts a customer education program under Section 39.2021(e). If  
4 appropriations from the system benefit fund are not sufficient to  
5 assist low-income electric customers by providing the 10 percent  
6 reduced rate prescribed by Section 39.903(h), the money collected  
7 from the charges under Subsection (d) may be appropriated only for  
8 the following purposes, in the following order of priority:

9 (1) to assist low-income electric customers by  
10 providing the 10 percent reduced rate prescribed by Section  
11 39.903(h); and

12 (2) for a residential customer education program under  
13 Section 39.903, including the provision of call center services  
14 when the commission conducts a customer education program under  
15 Section 39.2021(e), using money remaining after the reduced rate  
16 prescribed by Section 39.903(h) has been fully implemented.

17 (g) The commission may adopt rules as necessary or  
18 appropriate to carry out this section.

19 (h) This section expires March 31, 2010.

20 SECTION 5. Subchapter E, Chapter 39, Utilities Code, is  
21 amended by adding Section 39.2021 to read as follows:

22 Sec. 39.2021. ASSISTANCE IN CUSTOMER CHOICE. (a) In this  
23 section, "residential customers under a price to beat tariff on  
24 December 31, 2006" includes:

25 (1) residential customers served at the price to beat  
26 on that date;

27 (2) residential customers who received discounts off

1 of the price to beat on that date in the form of reduced rates, bill  
2 credits, or customer appreciation bonuses without affirmatively  
3 choosing an electric service plan other than the price to beat; and

4 (3) any other residential customers who as of December  
5 31, 2006, had not affirmatively chosen an electric service plan.

6 (b) This section applies only to:

7 (1) a retail electric provider that served residential  
8 customers under a price to beat tariff on December 31, 2006; and

9 (2) the residential customers under a price to beat  
10 tariff on December 31, 2006, served by the retail electric  
11 provider.

12 (c) Until March 1, 2008, a retail electric provider shall  
13 assist the provider's residential customers who have not  
14 affirmatively chosen an electric service plan in choosing an  
15 alternative electric service plan offered by the retail electric  
16 provider.

17 (d) After March 1, 2008, a retail electric provider may  
18 provide to the provider's residential customers who have not  
19 affirmatively chosen an electric service plan offered by the  
20 provider a ballot that describes the alternative electric service  
21 plans the provider offers to residential customers and that allows  
22 the customer to affirmatively choose a particular alternative  
23 electric service plan. If a residential customer does not  
24 affirmatively choose an alternative electric service plan under the  
25 balloting process, the provider shall, after giving the customer at  
26 least 45 days' notice, modify the terms of service for the customer  
27 to conform to the terms of service for an alternative electric

1 service plan offered to residential customers that does not include  
2 a termination fee. The notice may be included with the ballot  
3 provided under this subsection.

4 (e) If a retail electric provider did not provide ballots to  
5 its residential customers under Subsection (d) or if the provider  
6 paid a charge imposed under Section 39.110(d) for the calendar year  
7 2007, on or before May 1, 2008, the provider shall release to the  
8 commission the names and addresses of its residential customers who  
9 have not affirmatively chosen an alternative electric service plan.  
10 The commission may use this customer information to conduct a  
11 customer education program under Section 39.903 to inform those  
12 residential customers of the availability of an alternative  
13 electric service plan offered by that provider or of alternative  
14 retail electric providers from whom the customers may receive  
15 service.

16 (f) For purposes of this section, a residential customer is  
17 not considered to have affirmatively chosen an electric service  
18 plan offered by a retail electric provider if electric service is  
19 provided under a plan that is initiated through negative option  
20 marketing.

21 (g) A retail electric provider shall include on a ballot  
22 provided under Subsection (d) the following statement: "You may  
23 obtain important information that will allow you to compare the  
24 products offered on this ballot with other retail electric services  
25 by contacting the Public Utility Commission of Texas or by viewing  
26 the Internet site at <http://www.powertochoose.com>."

27 SECTION 6. Section 39.902, Utilities Code, is amended by



1 amending Subsection (c) and adding Subsection (d) to read as  
2 follows:

3 (c) After the opening of the retail electric market, the  
4 commission shall conduct ongoing customer education designed to  
5 help customers make informed choices of electric services and  
6 retail electric providers. As part of ongoing education, the  
7 commission may provide customers information concerning prices  
8 available in the marketplace, savings available to customers by  
9 switching retail electric providers or service plans, and  
10 information concerning specific retail electric providers,  
11 including instances of complaints against them and records relating  
12 to quality of customer service.

13 (d) The commission may require a transmission and  
14 distribution utility to issue public service announcements that  
15 inform customers that service reliability and the restoration of  
16 electric service following an outage is not contingent on the  
17 customer's receiving service from a particular retail electric  
18 provider.

19 SECTION 7. The change in law made to Section 17.157(a),  
20 Utilities Code, by this Act does not apply to a dispute for which a  
21 final administrative order is entered on or before the effective  
22 date of this Act.

23 SECTION 8. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2007.