



# SIERRA CLUB

## LONE STAR CHAPTER

April 11, 2023

To: The Honorable Dr. Charles Schwertner  
Members, Committee on Business and Commerce  
From: Cyrus Reed, Conservation Director, Lone Star Chapter Sierra Club, 512-888-9411  
Re: SB 1075 by King

**SB 1075 is a significant change in law, allowing wires companies to own generation and charge it to ratepayers with very little input from the ratepayers themselves**

The Sierra Club is opposed to SB 1075 by King as filed as well as the committee substitute. While we share Senator King's concern about assuring that our grid is resilient and we do not suffer outages, and that utilities have tools to help restore power, the bill would create what we view as a significant and dangerous precedent - the idea that utilities in the competitive market would own distributed generation and charge that ownership to ratepayers.

Recent decisions by the PUCT have seen the PUCT already move in a direction in which certain assets and contracts are being paid for by customers, and SB 1075 continues in the trend. It is a significant departure from other legislation, such as legislation by Senator Hancock and Rep. Holland from last session that allowed contracts for storage as a reliability service, but did not allow ownership of storage and recovery of that ownership by the TDU.

**Very broad definition of significant power outage**

The bill includes several ways in which an event could be declared a power outage. Indeed one definition is simply that ERCOT determines orders "a transmission and distribution utility to shed load," which occurs anytime ERCOT orders TDUs to utilize their load management programs, while the bill in section (a-1) also allows several entities including TDEM, ERCOT or the PUCT to declare an event as a "significant power outage." Even more broadly, (a-2) allows the TDU itself to determine whether "a loss of electric power" creates a risk to health or safety. *Thus, the bill is written in a way that up to five or six types of situations could lead to a declaration*

*of a significant event meaning that TDUs would be authorized to put certain investments into their rates.*

Indeed in the very next section - (b) - the situation that could allow such an investment are made even broader since the utility could "own or lease" facilities that provide energy "when the utility anticipates that a significant power outage is imminent." In other words, there seems to be very little guardrails in the bill on when the utility could own and operate these mobile generation facilities.

Again, we view this as a significant issue that SB 1075 would allow ownership of this generation,

### **Three percent raises serious air quality concerns**

The bill would allow utilities to lease or own mobile generation up to three percent of their peak load. Many of the leading utilities in Texas happen to correspond to areas already facing significant air quality issues. Indeed, both the Dallas-Fort Worth and Houston-Galveston-Brazoria airsheds currently fail to meet both the 2008 and 2015 ozone NAAQS as determined by the US EPA. Under SB 1075, utilities could lease or own enough machinery and mobile generators to meet up to three percent of peak load. It is important to note that peak load in the ONCOR and Centerpoint Energy areas is significant, and owning and operating gas or diesel emergency generation equipment - particularly in the hot summer when ozone levels peak - could add to the air pollution burden in areas already facing public health and ozone compliance concerns.

It is also worth noting that the bill appears to prejudge and statutorily declare that such facilities are "used and useful" and the investment - up to three percent of peak - are "prudent, reasonable, necessary and recoverable."

SB 1075 tips the scales of ratemaking toward utilities for the recovery of costs related to emergency power generation and restoration in a way that will drive utilities to seek to own equipment. It is worth noting that technology is changing and the types of mobile generators that might make sense may eventually be replaced with new technologies that are cleaner including technologies using electricity and batteries, fuel cells and hydrogen. Encouraging utilities to own often dirty mobile generators for up to three percent of their peak demand is not in the interests of ratepayers or the airshed.

Sierra Club is not opposed to utilities being able to invest in resiliency and power restoration efforts, but SB 1075 tips the scale toward utilities and away from ratepayer rights, and discourages innovation.