

By: King

S.B. No. 1075

A BILL TO BE ENTITLED

AN ACT

relating to facilities and construction machinery used to respond to power outages.

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

SECTION 1. Section 39.918, Utilities Code, is amended to read as follows:

Sec. 39.918. UTILITY FACILITIES FOR RESPONDING TO SIGNIFICANT ~~[POWER RESTORATION AFTER WIDESPREAD]~~ POWER OUTAGE. (a) In this section, "significant ~~["widespread]~~ power outage" means an event that ~~[results in]~~:

(1) results in a loss of electric power that:

(A) affects a significant number of distribution customers of a transmission and distribution utility~~[+]~~ and ~~[(B)]~~ has lasted or is expected to last for at least six ~~[eight]~~ hours;

(B) affects distribution customers of a transmission and distribution utility in an area for which the governor has issued a disaster or emergency declaration;

(C) affects distribution customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted or is expected to last for at least 12 hours; or

(D) creates ~~[and~~ ~~[(2)]~~ a risk to public health or safety because it

1 affects a critical infrastructure facility that serves the public  
2 such as a hospital, health care facility, law enforcement facility,  
3 fire station, or water or wastewater facility; or

4 (2) causes the independent system operator to order a  
5 transmission and distribution utility to shed load.

6 (a-1) The Texas Division of Emergency Management, the  
7 independent organization certified under Section 39.151 for the  
8 ERCOT power region, or the executive director of the commission may  
9 determine that a power outage other than an outage described by  
10 Subsection (a) is a significant power outage for the purposes of  
11 this section.

12 (a-2) A transmission and distribution utility is entitled  
13 to determine whether a loss of electric power described by  
14 Subsection (a)(1)(C) creates a risk to public health or safety for  
15 the purposes of determining whether the loss event is a significant  
16 power outage.

17 (b) Notwithstanding any other provision of this subtitle, a  
18 transmission and distribution utility may:

19 (1) lease and operate facilities that provide  
20 temporary emergency electric energy to aid in restoring power to  
21 the utility's distribution customers during a significant  
22 ~~[widespread] power outage [in which:~~

23 ~~[(A) the independent system operator has ordered~~  
24 ~~the utility to shed load; or~~

25 ~~[(B) the utility's distribution facilities are~~  
26 ~~not being fully served by the bulk power system under normal~~  
27 ~~operations]; and~~

1           (2) procure, own, and operate, or enter into a  
2 cooperative agreement with other transmission and distribution  
3 utilities to procure, own, and operate jointly, transmission and  
4 distribution facilities that have a lead time of at least six months  
5 and would aid in restoring power to the utility's distribution  
6 customers following a significant ~~[widespread]~~ power outage.

7           **(b-1)** In this section, long lead time facilities described  
8 by Subsection (b) may not be electric energy storage equipment or  
9 facilities described by ~~[under]~~ Chapter [35](#)~~[, Utilities Code]~~.

10          **(b-2)** An affiliate of a transmission and distribution  
11 utility:

12           **(1)** may own temporary emergency electric energy  
13 facilities described by Subsection (b)(1);

14           **(2)** may lease to the utility temporary emergency  
15 electric energy facilities described by Subsection (b)(1) if the  
16 costs of the lease comply with the requirements of Section [36.058](#);

17           **(3)** is not considered to be a power generation company  
18 for the purposes of this title or the commission's rules based  
19 solely on the ownership of and leasing to the utility temporary  
20 emergency electric energy facilities described by Subsection  
21 (b)(1);

22           **(4)** is considered to be a competitive affiliate for  
23 the purposes of this title and the commission's rules if the  
24 affiliate engages in the business of owning and leasing to  
25 unaffiliated third parties temporary emergency electric energy  
26 facilities described by Subsection (b)(1); and

27           **(5)** is considered to be a competitive affiliate only

1 for the purposes of Section 36.058 if:

2 (A) the affiliate engages solely in the business  
3 of owning and leasing to the utility temporary emergency electric  
4 energy facilities described by Subsection (b)(1); and

5 (B) the utility demonstrates that the cost of  
6 leasing temporary emergency electric energy facilities described  
7 by Subsection (b)(1) from the affiliate provides benefits to  
8 ratepayers equal to or greater than would have been achieved by  
9 leasing the facilities from an unaffiliated third party.

10 (c) A transmission and distribution utility that ~~[leases~~  
11 ~~and]~~ operates a facility ~~[facilities]~~ under Subsection (b)(1) may  
12 not sell electric energy or ancillary services from the facility  
13 ~~[those facilities]~~. As soon as reasonably practicable after the  
14 utility deploys the facility, the utility shall provide written  
15 notice to the commission and a written market notice to advise  
16 competitive market participants of the details of the deployment.  
17 Not later than the fifth business day after the date the deployment  
18 ends, the utility shall file a report, in a form approved by the  
19 commission, providing the details of the deployment, including the  
20 start and end times of the deployment, the number of kilowatts or  
21 megawatts deployed, the number of facilities used, the locations of  
22 the facilities, and any other information required by the  
23 commission.

24 (d) A facility ~~[Facilities]~~ described by Subsection (b)(1):

25 (1) must be operated in isolation from the bulk power  
26 system; and

27 (2) may not be included in independent system

operator:

(A) locational marginal pricing calculations;

(B) pricing; or

(C) reliability models.

(e) A transmission and distribution utility that ~~[leases and]~~ operates a facility ~~[facilities]~~ under Subsection (b)(1) shall ensure, to the extent reasonably practicable, that retail customer usage during operation of the facility ~~[those facilities]~~ is adjusted out of the usage reported for billing purposes by the retail customer's retail electric provider.

(f) A transmission and distribution utility that decides to lease a facility under Subsection (b)(1) shall, when reasonably practicable, solicit ~~[use a]~~ competitive bids and consider any bids received before leasing the facility ~~[bidding process to lease facilities under Subsection (b)(1)]~~.

(g) A transmission and distribution utility that leases and operates facilities under Subsection (b)(1) or that procures, owns, and operates facilities under Subsection (b)(2) shall include in the utility's emergency operations plan filed with the commission, as described by Section 186.007, a detailed plan on the utility's use of those facilities.

(h) The commission shall allow ~~[permit]~~:

(1) a transmission and distribution utility that leases and operates facilities under Subsection (b)(1) to recover the reasonable and necessary costs of leasing and operating the facilities, including the present value of future payments required under a ~~[the]~~ lease, using the rate of return on investment

1 established in the commission's final order in the utility's most  
2 recent base rate proceeding; and

3 (2) a transmission and distribution utility that  
4 procures, owns, and operates facilities under Subsection (b)(2) to  
5 recover the reasonable and necessary costs of procuring, owning,  
6 and operating the facilities, using the rate of return on  
7 investment established in the commission's final order in the  
8 utility's most recent base rate proceeding.

9 (i) The commission shall authorize a transmission and  
10 distribution utility to defer for recovery in a future ratemaking  
11 proceeding the incremental operations and maintenance expenses and  
12 the return, not otherwise recovered in a rate proceeding,  
13 associated with the leasing or procurement, ownership, and  
14 operation of the facilities.

15 (j) A transmission and distribution utility may request  
16 recovery of the reasonable and necessary costs of leasing or  
17 procuring, owning, and operating facilities under this section,  
18 including any deferred expenses, through a proceeding under Section  
19 36.210 or in another ratemaking proceeding. The commission may  
20 review costs recovered through a proceeding under Section 36.210 in  
21 the following base rate proceeding and order refunds to customers  
22 if appropriate.

23 (k) A transmission and distribution utility requesting cost  
24 recovery under Subsection (j) is entitled to select whether the  
25 costs are considered to be distribution substation equipment costs  
26 or distribution transformer costs unless the commission has found  
27 in a previous base rate proceeding for the utility that temporary

emergency electric energy costs should be categorized in a different manner. The costs may not be treated as transmission costs. A lease under Subsection (b)(1) must be treated as a capital lease or finance lease for ratemaking purposes.

(1) The fact that the commission has not previously approved a facility operated under this section or a cost of leasing, procuring, owning, or operating a facility under this section is not grounds for dismissal of the facility or the cost from a proceeding under Section 36.210 or another ratemaking proceeding.

(m) Each transmission and distribution utility that leases and operates a facility under Subsection (b)(1) shall:

(1) assess every four years the total capacity of facilities needed to aid in restoring power during a significant power outage, considering:

(A) the presence and frequency of extreme weather conditions, including hurricanes, tornadoes, high winds, lightning, flooding, icing, and freezes, in all or a portion of the utility's certificated service area;

(B) the utility's current and planned system hardening efforts;

(C) the utility's current and planned vegetation management efforts;

(D) the utility's current and planned expenditures on traditional distribution facilities;

(E) the utility's current and planned expenditures on automation of its distribution system;

(F) the utility's allocated load shed obligation

1 based on historical seasonal peak demand, as determined by the  
2 independent system operator;

3 (G) the presence or number of communities that  
4 are remotely located or served radially in the utility's  
5 certificated service area;

6 (H) the number or location of critical  
7 infrastructure facilities that serve the public such as hospitals,  
8 health care facilities, law enforcement facilities, fire stations,  
9 and water or wastewater facilities in the utility's certificated  
10 service area;

11 (I) the utility's emergency operations plan  
12 filed with the commission; and

13 (J) other engineering or operational needs; and

14 (2) submit to the commission the assessment under  
15 Subdivision (1) for review.

16 (n) The commission may:

17 (1) establish the capacity of facilities that may be  
18 operated by a transmission and distribution utility in aid of  
19 restoration for each type or category of significant power outage;

20 (2) establish reasonable conditions on the operation  
21 and use of facilities, including duration times and prioritizing  
22 use to serve critical infrastructure facilities that serve the  
23 public such as hospitals, health care facilities, law enforcement  
24 facilities, fire stations, and water or wastewater facilities; and

25 (3) require compliance with applicable law, including  
26 any rule or order of the commission.

27 (o) Notwithstanding Subsections (m) and (n), a transmission

and distribution utility may:

(1) provide facilities to or use facilities from other entities as part of a mutual assistance agreement during a significant power outage; and

(2) lease facilities on a short-term basis in response to a significant power outage if:

(A) the significant power outage constitutes an emergency and the utility determines that additional facilities are necessary;

(B) the term of the lease is only for the duration of that emergency;

(C) the utility notifies the commission of the lease not later than the 30th day after the date of the lease agreement; and

(D) the commission reviews the costs incurred by the utility in a proceeding under Section 36.210 or in another ratemaking proceeding.

~~[(k) This section expires September 1, 2029.]~~

SECTION 2. Section 502.146(b), Transportation Code, is amended to read as follows:

(b) An owner is not required to register a vehicle that is used only temporarily on the highways if the vehicle is:

(1) a farm trailer or farm semitrailer with a gross weight of more than 4,000 pounds but not more than 34,000 pounds that is used exclusively:

(A) to transport seasonally harvested agricultural products or livestock from the place of production to

the place of processing, market, or storage;

(B) to transport farm supplies from the place of loading to the farm; or

(C) for the purpose of participating in equine activities or attending livestock shows, as defined by Section 87.001, Civil Practice and Remedies Code;

(2) machinery used exclusively for the purpose of drilling water wells;

(3) oil well servicing or drilling machinery and if at the time of obtaining the license plates, the applicant submits proof that the applicant has a permit under Section 623.142; or

(4) construction machinery, including construction machinery that is:

(A) owned by a transmission and distribution utility as defined by Section 31.002, Utilities Code; and

(B) used to maintain or repair electrical lines or substations in response to a power outage.

SECTION 3. (a) The changes in law made in Section 1 of this Act apply only to a proceeding before the Public Utility Commission of Texas or other regulatory authority described by Section 11.003, Utilities Code, that commences on or after the effective date of this Act. A proceeding before the Public Utility Commission of Texas or other regulatory authority described by Section 11.003, Utilities Code, that commenced before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and that law is continued in effect for that purpose.

(b) The changes in law made in Section 1 of this Act apply

1 only to a contract or lease entered into or facilities procured on  
2 or after the effective date of this Act.

3       SECTION 4. To the extent of any conflict, this Act prevails  
4 over another Act of the 88th Legislature, Regular Session, 2023,  
5 relating to nonsubstantive additions to and corrections in enacted  
6 codes.

7       SECTION 5. This Act takes effect September 1, 2023.