

Amend CSHB 789 on page 1, line 13, by adding new SECTION 1 and SECTION 2 to read as follows and renumber subsequent sections accordingly:

"SECTION 1. Subtitle B, Title 2, of the Utilities Code is amended by adding Chapter 43 to read as follows:

CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR  
ACCESS TO BROADBAND AND OTHER ENHANCED SERVICES,  
INCLUDING COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) The Legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) The Legislature finds that access to broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services. The Legislature further finds that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

(c) Consistent with the goal of increasing options for telecommunications in this state, the Legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities to own and/or operate all or a portion of such BPL systems. The purpose of this chapter is to provide the appropriate framework to support the deployment of BPL.

(d) The Legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this section, but is not required to do so. The electric utility shall have the right to decide, in its sole discretion, whether to

implement BPL and may not be penalized for deciding to implement or not to implement BPL.

Sec. 43.002. APPLICABILITY. (a) This chapter applies to an electric utility whether or not the electric utility is offering customer choice under Chapter 39 of this subtitle.

(b) If there is a conflict between the specific provisions of this chapter and any other provisions of this title, the provisions of this chapter control.

(c) No provision of this title shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.

Sec. 43.003. DEFINITIONS. In this chapter:

(1) "BPL," "broadband over power lines," and "BPL services" mean the provision of broadband services over electric power lines and related facilities, whether above ground or in underground conduit.

(2) "BPL access" means the ability to access broadband services via a BPL operator or BPL Internet service provider.

(3) "BPL operator" means an entity that owns or operates a BPL system on the electric power lines and related facilities of an electric utility.

(4) "BPL Internet service provider" and "BPL ISP" mean an entity that provides Internet services to others on a wholesale basis or to end-use customers on a retail basis.

(5) "BPL system" means the materials, equipment, and other facilities installed on electric utility property to facilitate the provision of BPL services.

(6) "BPL electric utility applications" means services and technologies that are used and useful and designed to improve the operational performance and service reliability of an electric utility including, but not limited to, automated meter reading, real time system monitoring and meter control, remote service control, outage detection and restoration, predictive maintenance and diagnostics, and monitoring and enhancement of power quality.

(7) "Electric delivery system" means the power lines and related transmission and distribution facilities used by an electric utility to deliver electric energy.

(8) "Electric utility" shall include an electric utility and a transmission and distribution utility as defined in Section 31.002(6) or (19) of this title.

#### SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. An affiliate of an electric utility or a person unaffiliated with an electric utility may own, construct, maintain, and operate a BPL system and provide BPL services on an electric utility's electric delivery system consistent with the requirements of this chapter. Nothing in this chapter shall prohibit an entity defined in Section 11.003(9) of this title from providing BPL service or owning and operating a BPL system. Nothing in this chapter shall prohibit an electric utility from providing construction or maintenance services to a BPL operator or BPL ISP provided that the costs of these services are properly accounted for between the electric utility and the BPL operator or BPL ISP.

Sec. 43.052. OWNERSHIP AND OPERATION OF A BPL SYSTEM. (a) An electric utility may elect to:

(1) allow an affiliate to own or operate a BPL system on the utility's electric delivery system;

(2) allow an unaffiliated entity to own or operate a BPL system on the electric utility's electric delivery system; or

(3) allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

(b) The BPL operator and the electric utility shall determine what BPL Internet service providers may have access to broadband capacity on the BPL system.

Sec. 43.053. FEES AND CHARGES. (a) An electric utility that allows an affiliate or an unaffiliated entity to own a BPL system on the electric utility's electric delivery system shall charge the owner of the BPL system for the use of the electric utility's electric delivery system.

(b) An electric utility may pay a BPL owner, a BPL operator, or a BPL ISP for the use of the BPL system required to operate BPL

utility applications.

(c) If all or part of a BPL system is installed on poles or other structures of a telecommunications utility as that term is defined in Section 51.002, the owner of the BPL system shall be required to pay the telecommunications utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the BPL system so installed.

(d) Notwithstanding Subsections (a) through (c) of this section:

(1) an electric utility may not charge an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items;

(2) an electric utility may not pay an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items; and

(3) An electric utility or an affiliate of an electric utility may not discriminate against a retail electric provider that is not affiliated with the utility in the terms or availability of BPL services.

Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. Because BPL systems provide benefits to electric delivery systems, the installation of a BPL system on an electric delivery system shall not require the electric utility or the owner of the BPL system or an entity defined in Section 11.003(9) of this title to obtain or expand easements or other rights of way for the BPL system or to give additional consideration as a result of the installation or the operation of a BPL system. For purposes of this section, installation of a BPL system shall be deemed to be consistent with installation of an electric delivery system.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. An electric utility that allows the installation and operation of a BPL system on its electric delivery system shall employ all reasonable measures to ensure that the operation of the BPL system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric

delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery services.

SUBCHAPTER C. IMPLEMENTATION OF A BPL SYSTEM

BY AN ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY AN ELECTRIC UTILITY. (a) An electric utility through an affiliate, or through an unaffiliated entity, may elect to install and operate a BPL system on some or all of its electric delivery system in any part or all of its certificated service area.

(b) The installation, operation, and use of a BPL system and the provision of BPL services shall not be regulated by the state, a municipality, or local government other than as provided for in this Chapter.

(c) Neither the commission nor any state or local government or regulatory or quasi-government or quasi-regulatory authority shall:

(1) require an electric utility, either through an affiliate or an unaffiliated entity, to install a BPL system on its power lines or offer BPL services in all or any part of the electric utility's certificated service area;

(2) require an electric utility to allow others to install a BPL system on the utility's electric delivery system in any part or all of the electric utility's certificated service area; or

(3) prohibit an electric utility from having an affiliate or unaffiliated entity install a BPL system or offering BPL services in any part or all of the electric utility's certificated service area.

(d) If a municipality or local government is already collecting a charge or fee from the electric utility for the use of the public rights of way for the delivery of electricity to retail electric customers, the municipality or local government is prohibited from requiring a franchise or an amendment to a franchise or from requiring a charge, fee, or tax from any entity for use of the public rights of way for a BPL system.

(e) The state or a municipality may impose a charge on the

provision of BPL services. However, such charge may not be greater than the lowest charge that the state or municipality imposes on other providers of broadband services for use of the public rights of way in its respective jurisdiction.

Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a)(1)-(3), the electric utility's investment in that BPL system to directly support the BPL electric utility applications and other BPL services consumed by the electric utility that are used and useful in providing electric utility service shall be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary shall be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. The invested capital and expenses described in this section must be allocated to the customer classes directly receiving the services.

(b) In any proceeding under Chapter 36, just and reasonable charges for the use of the electric utility's electric delivery system by a BPL owner or operator shall be limited to the usual and customary pole attachment charges paid to the electric utility for comparable space by cable television operators.

(c) The revenues of an affiliated BPL operator or an affiliated BPL ISP shall not be deemed the revenues of an electric utility for purposes of setting rates under Chapter 36.

#### SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. AFFILIATES OF AN ELECTRIC UTILITY. (a) Subject to the limitations of this Chapter, an electric utility may have a full or partial ownership interest in a BPL operator or a BPL ISP. Whether a BPL operator or a BPL ISP is an affiliate of the electric utility shall be determined under Section 11.003(2) or Section 11.006.

(b) Neither a BPL operator nor a BPL ISP shall be considered a "competitive affiliate" of an electric utility as that term is defined in Section 39.157.

Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators shall comply with all applicable federal laws, including those

protecting licensed spectrum users from interference by BPL systems. The operator of a radio frequency device shall be required to cease operating the device upon notification by a Federal Communications Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected.

SECTION 2. Section 33.001, Utilities Code, is amended to read as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by this title.

(b) Notwithstanding subsection (a), the governing body of a municipality shall not have jurisdiction over the BPL system, BPL services, telecommunications using BPL services, or the rates, operations, or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, in whole or in part, to the construction, maintenance or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities."