

## BILL ANALYSIS

Senate Research Center

S.B. 1748  
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### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, broadband over power lines (BPL) is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL can also be used to enhance existing electric delivery systems, which can result in improved customer service and reliability for electric customers. BPL development is dependent upon the participation of electric utilities and the owners and operators of the power lines.

As proposed, S.B. 1748 allows electric utilities, municipally owned utilities, electric cooperatives, and transmission and distribution utilities to implement BPL. S.B. 1748 authorizes a utility to choose between different forms of ownership and operating models, requires the utility to charge a fee for access to the electric delivery system, and ensures that BPL does not interfere with system reliability. The bill authorizes a utility to elect to recover its investment from ratepayers or to freeze its rates. Finally, S.B. 1748 provides certain requirements for affiliate transactions.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 2, Utilities Code, by adding Chapter 43, as follows:

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

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. Sets forth legislative findings regarding broadband over power lines (BPL).

Sec. 43.002. APPLICABILITY. (a) Provides that this chapter applies to an electric utility, a municipally owned utility, an electric cooperative, or a transmission and distribution utility that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, whether or not the utility, municipally owned utility, or electric cooperative is offering customer choice under Chapter 39 (Restructuring of Electric Utility Industry), 40 (Competition for Municipally Owned Utilities and River Authorities), or 41 (Electric Cooperatives and Competition) of this subtitle.

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

(c) Requires no provision of this title to impose an obligation on an electric utility or transmission and distribution utility to implement BPL or to provide broadband services.

Sec. 43.003. DEFINITIONS. Defines "BPL," "broadband over power lines," "BPL services," "BPL access," "BPL customer," "BPL operator," "BPL Internet service

provider," "BPL ISP," "BPL system," "BPL utility applications," "electric cooperative," "electric delivery system," "electric utility," "municipally owned utility," "transmission and distribution utility," and "utility."

#### SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. Authorizes a utility to own, construct, maintain, and operate a BPL system and to provide BPL services or to allow others to do so on its electric delivery system consistent with the requirements of this chapter.

Sec. 43.052. OWNERSHIP AND OPERATION OF A BPL SYSTEM. (a) Authorizes a utility to elect to take certain actions regarding the operation of a BPL system on its electric delivery system.

(b) Authorizes a utility to act as a BPL operator regardless of who owns the BPL system or systems on a utility's electric delivery system. Authorizes a utility to allow one or more affiliated or unaffiliated entities to act as BPL operators if the utility owns the BPL system or systems on its electric delivery system.

(c) Requires the BPL operator to determine what BPL Internet service providers are authorized to have access to broadband capacity on the BPL system except that if the BPL operator is not the utility, the utility and the BPL operator for that specific system are required to determine what Internet service providers are required to have access to the BPL system.

Sec. 43.053. FEES AND CHARGES. (a) Requires a utility that elects to own a BPL system as utility property to charge a BPL operator for the use of its BPL system.

(b) Requires a utility that acts as a BPL operator to charge a BPL ISP for the use of the BPL system.

(c) Requires a utility that allows an affiliated entity or an unaffiliated entity to own a BPL system on the utility's electric delivery system to charge the owner of the BPL system for the use of the utility's electric delivery system.

(d) Authorizes a utility that allows an affiliated entity or an unaffiliated entity to own a BPL system on the utility's electric delivery system to pay the owner of the BPL system for the right to be the BPL operator.

(e) Authorizes a utility to pay a BPL owner or a BPL operator for the use of the BPL system required to operate BPL utility applications.

(f) Requires the owner of the BPL system, if all or part of a BPL system is installed on poles or other structures of a telecommunications utility, 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.

(g) Prohibits a utility from charging or paying certain amounts to an affiliated entity, notwithstanding Subsections (a)-(f).

Sec. 43.054. NO ADDITIONAL EASEMENTS OR PAYMENTS REQUIRED. Prohibits the installation of a BPL system on an electric delivery system from requiring the utility or the owner of the BPL system to obtain easements or other right of way for the BPL system or from making payments for easements in addition to payments made by the utility for the placement of its electric delivery system.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. Requires a utility that allows the installation and operation of a BPL system on its electric delivery system to employ 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. Requires the utility, should a disruption in the provision of electric service occur, to be governed by the terms and conditions of the retail electric delivery service tariff. Requires the provision of broadband services to be secondary to the reliable provision of electric delivery services at all times.

#### SUBCHAPTER C. IMPLEMENTATION OF A BPL SYSTEM BY A UTILITY

Sec. 43.101. PARTICIPATION BY A UTILITY. (a) Authorizes a utility, either on its own, through an affiliate, or through an unaffiliated entity, to 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) Prohibits the installation, operation, and use of a BPL system and the provision of BPL services from being regulated by the state, a municipality, or local government other than as provided for in this chapter.

(c) Prohibits the Public Utility Commission of Texas (commission) and any state or local government or regulatory or quasi-government or quasi-regulatory authority from setting forth certain requirements or prohibitions regarding a utility and the installation of a BPL system.

(d) Prohibits a municipality or local government, if the municipality or local government is already collecting a charge or fee from the electric utility, electric cooperative, or transmission and distribution utility for the use of a municipal street, alley, or public way for the delivery of electricity to retail electric customers, from requiring a franchise or an amendment to a franchise and from imposing or collecting a charge, fee, or tax from a BPL operator, an electric utility, an electric cooperative, a transmission and distribution utility, an affiliate of an electric utility, or an unaffiliated entity operating a BPL system on a utility's electric delivery system for a franchise to use a municipal street, alley, or public way for a BPL system or for the provision of BPL services.

(e) Authorizes the state, a municipality, or local government, notwithstanding Subsection (d) of this section, to impose reasonable charges, other than charges for the use of streets, alleys, an public ways, on the provision of retail BPL Internet services that are no greater than the charges the state, the municipality, or the local government impose on other providers of Internet services.

Sec. 43.102. INCENTIVES AND COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Requires a utility that owns or allows another entity to own a BPL system installed on its electric delivery system to make an election under this section or under Section 43.103.

(b) Requires a utility's investment in a BPL system, which is incurred to support, in whole or in part, the provision of BPL utility applications and other BPL services consumed by the utility, where a utility owns or permits the installation of a BPL system on its electric delivery system under Section 43.052(a)(1)-(4), to be deemed used and useful in providing service and included in the utility's invested capital at original cost, and requires any fees or operating expenses related to that BPL system to be deemed reasonable and necessary operating expenses for the purposes of any rate proceeding under Chapter 36 (Rates).

(c) Requires fees paid by a utility that has elected to neither own nor operate a BPL system to an affiliated or unaffiliated entity for the use of BPL utility applications, to be deemed reasonable and necessary operating expenses for the purposes of any rate proceeding under Chapter 36 (Rates).

(d) Requires 40 percent of the revenues received by a utility owning or operating a BPL system or providing BPL services, or allowing the provision of BPL services, in any rate proceeding under Chapter 36, to be considered revenue to the

utility and applied to reduce the total revenue requirement of the utility. Prohibits the remaining 60 percent of the revenues received by the utility from being considered in determining a revenue requirement or rates for the utility, to encourage the utility to develop and deploy BPL systems, but requires them to be wholly outside the jurisdiction of any regulatory authority.

(e) Requires the utility, in any rate proceeding under Chapter 36 (Rates), to demonstrate that any affiliated BPL operator or BPL ISP is paying just and reasonable compensation to the utility. Requires just and reasonable compensation, for an affiliated BPL operator, to be the usual and customary charges for access to the space occupied by the BPL system. Requires just and reasonable compensation, for an affiliated BPL ISP, to be the usual and customary charges that are paid by other Internet service providers for equivalent broadband capacity. Authorizes the commission to reduce the utility's total revenue requirement by an amount equal to the difference between the amount actually paid to the utility and the amount that would be just and reasonable only upon finding that the compensation paid to the utility by an affiliated BPL operator or an affiliated BPL ISP is not just and reasonable.

(f) Requires, in any rate proceeding, costs that are incurred to support, in whole or in part, the provision of BPL utility applications and other BPL services consumed by the utility to be borne by the utility. Requires incremental costs that are incurred solely to support the provision of BPL services to affiliated or unaffiliated third parties to be borne by the BPL operator.

Sec. 43.103. ALTERNATIVE INCENTIVE MECHANISM. (a) Authorizes a utility that installs or allows the installation of a BPL system on its electric delivery system to elect to provide electric transmission and distribution delivery services under the terms and condition and at the rates it had in effect on July 1, 2005. Requires the utility to notify the commission of its election on or before December 31, 2005, and provides that it thereafter shall not be subject to the other provisions of Subchapters C and D of Chapter 36 (Rates) until September 1, 2009, and is prohibited from being permitted to include its investment in the BPL system in rates or otherwise seeking to change its rates except as permitted by this section.

(b) Authorizes an electric utility or transmission and distribution utility making the election under Subsection (a) to seek an increase in its electric rates or in its transmission and distribution delivery rates for reasons of force majeure. Defines "force majeure." Provides that the term "force majeure" does not include any changes in general economic conditions such as inflation, interest rates, or other factors of general application.

(c) Requires the commission to allow a utility that has made the election under Subsection (a) to make certain adjustments during the period ending September 1, 2009.

#### SUBCHAPTER D. MISCELLANEOUS PROVISION

Sec. 43.151. AFFILIATES OF A UTILITY. (a) Authorizes a utility to have a full or partial ownership interest in a BPL operator or a BPL ISP. Requires whether a BPL operator or a BPL ISP is an affiliate of the utility to be determined under Section 11.003(2) (definition of "affiliate") and Section 11.006 (Person Determined to be Affiliate).

(b) Prohibits a BPL operator and a BPL ISP from being considered a "competitive affiliate" of a utility.

Sec. 43.152. NO CROSS-SUBSIDIZATION. Prohibits a utility that provides BPL services to BPL customers from cross-subsidizing its BPL services with utility revenues. Provides that contracts and ownership arrangements that are permitted by this chapter do not constitute cross-subsidization for purposes of this section.

SECTION 2. Amends Section 33.001, Utilities Code, as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) Creates this subsection from existing text.

(b) Prohibits the governing body of a municipality, notwithstanding Subsection (a), from having jurisdiction over the BPL system, 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 ownership, construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

SECTION 3. Effective date: upon passage or September 1, 2005.