

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1748
By: Fraser
Business & Commerce
4/21/2005
Committee Report (Substituted)

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.

C.S.S.B. 1748 allows electric utilities, municipally owned utilities, electric cooperatives, and transmission and distribution utilities to implement BPL. C.S.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. C.S.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 whether or not the utility is offering customer choice under Chapter 39 (Restructuring of Electric Utility Industry).

(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 to construct or permit others to construct a BPL system, to implement BPL, to provide broadband services, or to allow others to use its facilities for the provisions of 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 electric utility applications," "electric delivery system," and "electric utility."

[Reserves Sections 43.004-43.050 for expansion.]

SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. Authorizes an electric utility to allow another person, including an affiliate of the electric utility, to own, construct, maintain, and operate a BPL system on its electric delivery system consistent with the requirements of this chapter.

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

(b) Requires the BPL operator to determine what BPL Internet service providers are authorized to have access to broadband capacity on the BPL system. Requires the BPL operator for that specific system to determine what Internet service providers are required to have access to the BPL system.

Sec. 43.053. FEES AND CHARGES. (a) Requires an electric utility that allows an affiliate 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.

(b) Authorizes an electric utility to 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) 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 installed BPL system.

(d) Prohibits an electric utility from charging or paying certain amounts to an affiliated entity, notwithstanding Subsections (a)-(c). Prohibits an affiliate of an electric utility from discriminating 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 PAYMENTS REQUIRED. Prohibits the installation of a BPL system on an electric delivery system, because BPL systems provide benefits to electric delivery systems, from requiring the electric utility or the owner of the BPL system to obtain or expand easements or other rights-of-way for the BPL system or to give additional consideration for the placement of its BPL system. Requires installation of a BPL system, for the purposes of this section, to be deemed to be consistent with installation of an electric delivery system.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. Requires an electric 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 electric 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.

[Reserves Sections 43.056-43.100 for expansion.]

SUBCHAPTER C. IMPLEMENTATION OF A BPL SYSTEM BY AN ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY AN ELECTRIC UTILITY. (a) Authorizes an electric utility, 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) or any state or local government or regulatory or quasi-government or quasi-regulatory authority from setting forth certain requirements or prohibitions regarding an electric 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 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 any entity for use of a municipal street, alley, or public way for a BPL system or for the provision of BPL services.

(e) Prohibits the state, a municipality, or local government from imposing any charge on the provision of BPL services that is greater than the lowest charge the state, the municipality, or the local government imposes on other providers of Internet services.

Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Requires the provision of BPL utility applications and other BPL services consumed by the utility, where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a), to be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36, in accordance with the standards prescribed in that chapter.

(b) Authorizes the commission, in any proceeding under Chapter 36, to determine the just and reasonable charges for access to the space occupied by the BPL system and the use of other utility facilities by the BPL system.

[Reserves Sections 43.103-43.150 for expansion.]

SUBCHAPTER D. MISCELLANEOUS PROVISION

Sec. 43.151. AFFILIATES OF AN ELECTRIC UTILITY. (a) Authorizes an electric 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 electric 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. COMPLIANCE WITH FEDERAL LAW. Requires BPL operators to comply with all applicable federal laws, including laws protecting licensed spectrum users from interference by BPL systems.

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.