

By: Fraser

S.B. No. 1748

A BILL TO BE ENTITLED

AN ACT

relating to the development and provision of broadband over electric delivery systems and the development of enhanced electric delivery systems.

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

SECTION 1. Subtitle B, Title 2, 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

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 customer 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

1 the participation of electric utilities in this state that own and
2 operate power lines and related facilities that are necessary for
3 the construction of BPL systems and the provision of BPL services.

4 (c) The legislature finds that it is in the public interest
5 to encourage the deployment of BPL and to encourage each electric
6 utility to construct, maintain, and operate BPL systems, either by
7 permitting affiliates of the utility or unaffiliated entities to
8 own or operate all or a portion of such BPL systems. The purpose of
9 this chapter is to provide regulatory certainty for utilities to
10 support the deployment of BPL.

11 (d) The legislature finds that an electric utility may
12 choose to implement BPL but is not required to do so. The electric
13 utility shall have the right to decide, in its sole discretion,
14 whether to implement BPL and may not be penalized for deciding to
15 implement or not to implement BPL.

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

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

22 (c) No provision of this title shall impose an obligation on
23 an electric utility to construct or permit others to construct a BPL
24 system, to implement BPL, to provide broadband services, or to
25 allow others to use its facilities for the provision of broadband
26 services.

27 Sec. 43.003. DEFINITIONS. In this chapter:

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

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

7 (3) "BPL customer" means an end-use customer who
8 receives BPL services from a BPL operator or a BPL Internet service
9 provider.

10 (4) "BPL operator" means an entity that operates a BPL
11 system on the electric power lines and related facilities of an
12 electric utility.

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

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

19 (7) "BPL electric utility applications" means
20 technologies that are designed to improve the operational
21 performance and service reliability of an electric utility,
22 including automated meter reading, real-time system monitoring and
23 meter control, remote service control, outage detection and
24 restoration, predictive maintenance and diagnostics, and
25 monitoring and enhancement of power quality.

26 (8) "Electric delivery system" means the power lines
27 and related transmission and distribution facilities used by an

1 electric utility to deliver electric energy.

2 (9) "Electric utility" shall include an electric
3 utility and a transmission and distribution utility as defined in
4 Section 31.002(6) or (19).

5 [Sections 43.004-43.050 reserved for expansion]

6 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

7 Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. An electric
8 utility may allow another person, including an affiliate of the
9 electric utility, to own, construct, maintain, and operate a BPL
10 system and provide BPL services on its electric delivery system
11 consistent with the requirements of this chapter.

12 Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM.

13 (a) An electric utility may elect to:

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

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

18 (b) The BPL operator shall determine what BPL Internet
19 service providers may have access to broadband capacity on the BPL
20 system. The BPL operator for that specific system shall determine
21 what Internet service providers shall have access to the BPL
22 system.

23 (c) Nothing in this chapter shall prohibit an entity defined
24 in Section 11.003(9) from providing BPL service or owning and
25 operating a BPL system.

26 Sec. 43.053. FEES AND CHARGES. (a) An electric utility
27 that allows an affiliate or an unaffiliated entity to own a BPL

1 system on the electric utility's electric delivery system shall
2 charge the owner of the BPL system for the use of the electric
3 utility's electric delivery system.

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

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

13 (d) Notwithstanding Subsections (a)-(c):

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

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

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

24 Sec. 43.054. NO ADDITIONAL EASEMENTS OR PAYMENTS REQUIRED.
25 Because BPL systems provide benefits to electric delivery systems,
26 the installation of a BPL system on an electric delivery system
27 shall not require the electric utility or the owner of the BPL

1 system or an entity defined in Section 11.003(9) to obtain or expand
2 easements or other rights-of-way for the BPL system or to give
3 additional consideration for the placement of its BPL system. For
4 purposes of this section, installation of a BPL system shall be
5 deemed to be consistent with installation of an electric delivery
6 system.

7 Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.

8 An electric utility that allows the installation and operation of a
9 BPL system on its electric delivery system shall employ reasonable
10 measures to ensure that the operation of the BPL system does not
11 interfere with or diminish the reliability of the utility's
12 electric delivery system. Should a disruption in the provision of
13 electric service occur, the electric utility shall be governed by
14 the terms and conditions of the retail electric delivery service
15 tariff. At all times, the provision of broadband services shall be
16 secondary to the reliable provision of electric delivery services.

17 [Sections 43.056-43.100 reserved for expansion]

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

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

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

1 (c) The commission or any state or local government or
2 regulatory or quasi-government or quasi-regulatory authority may
3 not:

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

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

12 (3) prohibit an electric utility from installing a BPL
13 system or offering BPL services in any part or all of the electric
14 utility's certificated service area, either through an affiliate or
15 unaffiliated entity.

16 (d) If a municipality or local government is already
17 collecting a charge or fee from the electric utility for the use of
18 a municipal street, alley, or public way for the delivery of
19 electricity to retail electric customers, the municipality or local
20 government is prohibited from requiring a franchise or an amendment
21 to a franchise and is prohibited from imposing or collecting a
22 charge, fee, or tax from any entity for use of a municipal street,
23 alley, or public way for a BPL system or for the provision of BPL
24 services.

25 (e) The state, a municipality, or a local government may not
26 impose any charge on the provision of BPL services that is greater
27 than the lowest charge the state, the municipality, or the local

1 government imposes on other providers of Internet services.

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

10 (b) In any proceeding under Chapter 36, the commission may
11 determine the just and reasonable charges for access to the space
12 occupied by the BPL system and the use of other utility facilities
13 by the BPL system.

14 [Sections 43.103-43.150 reserved for expansion]

15 SUBCHAPTER D. MISCELLANEOUS PROVISION

16 Sec. 43.151. AFFILIATES OF AN ELECTRIC UTILITY. (a) An
17 electric utility may have a full or partial ownership interest in a
18 BPL operator or a BPL ISP. Whether a BPL operator or a BPL ISP is an
19 affiliate of the electric utility shall be determined under
20 Sections 11.003(2) and 11.006.

21 (b) A BPL operator or a BPL ISP shall not be considered a
22 "competitive affiliate" of a utility as that term is defined in
23 Section 39.157.

24 Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators
25 are required to comply with all applicable federal laws, including
26 laws protecting licensed spectrum users from interference by BPL
27 systems.

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

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

9 (b) Notwithstanding Subsection (a), the governing body of a
10 municipality shall not have jurisdiction over the BPL system, BPL
11 services, or the rates, operations, or services of the electric
12 utility or transmission and distribution utility to the extent that
13 such rates, operations, or services are related, in whole or in
14 part, to the ownership, construction, maintenance, or operation of
15 a BPL system used to provide BPL services to affiliated or
16 unaffiliated entities.

17 SECTION 3. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2005.