

By: Fraser

S.B. No. 1748

Substitute the following for S.B. No. 1748:

By: King of Parker

C.S.S.B. No. 1748

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the development and provision of broadband over  
3 electric delivery systems and the development of enhanced electric  
4 delivery systems.

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

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

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

10 SUBCHAPTER A. GENERAL PROVISIONS

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

18 (b) The Legislature finds that access to broadband services  
19 is important to this state. BPL deployment in Texas has the  
20 potential to extend broadband service to customers where broadband  
21 access is currently not available and may provide an additional  
22 option for existing broadband consumers in Texas, resulting in a  
23 more competitive market for broadband services. The Legislature  
24 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 by permitting affiliates of the  
6 electric utility, or permitting unaffiliated entities to own and/or  
7 operate all or a portion of such BPL systems. The purpose of this  
8 chapter is to provide the appropriate framework to support the  
9 deployment of BPL.

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

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

19 (b) If there is a conflict between the specific provisions  
20 of this chapter and any other provisions 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 implement BPL, to provide broadband  
24 services, or to allow others to install BPL facilities or use the  
25 electric utility's 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 operator" means an entity that operates a BPL  
8 system on the electric power lines and related facilities of an  
9 electric utility.

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

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

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

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

27          (8) "Electric utility" shall include an electric

1 utility and a transmission and distribution utility as defined in  
2 Section 31.002(6) or (19) of this title.

3 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

4 Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. An affiliate  
5 of an electric utility or a person unaffiliated with an electric  
6 utility may own, construct, maintain, and operate a BPL system and  
7 provide BPL services on an electric utility's electric delivery  
8 system consistent with the requirements of this chapter. Nothing  
9 in this chapter shall prohibit an entity defined in Section  
10 11.003(9) of this title from providing BPL service or owning and  
11 operating a BPL system. Nothing in this chapter shall prohibit an  
12 electric utility from providing construction or maintenance  
13 services to a BPL operator or BPL ISP provided that the costs of  
14 these services are properly accounted for between the electric  
15 utility and the BPL operator or BPL ISP.

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

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

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

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

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

27 Sec. 43.053. FEES AND CHARGES.

1       (a) An electric utility that allows an affiliate or an  
2 unaffiliated entity to own a BPL system on the electric utility's  
3 electric delivery system shall charge the owner of the BPL system  
4 for the use of the electric utility's electric delivery system.

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

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

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

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

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

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

26       Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION  
27 REQUIRED. Because BPL systems provide benefits to electric

1 delivery systems, the installation of a BPL system on an electric  
2 delivery system shall not require the electric utility or the owner  
3 of the BPL system or an entity defined in Section 11.003(9) of this  
4 title to obtain or expand easements or other rights of way for the  
5 BPL system or to give additional consideration as a result of the  
6 installation or the operation of a BPL system. For purposes of this  
7 section, installation of a BPL system shall be deemed to be  
8 consistent with installation of an electric delivery system.

9 Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.

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

20 SUBCHAPTER C. IMPLEMENTATION OF A BPL SYSTEM BY AN

21 ELECTRIC UTILITY

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

27 (b) The installation, operation, and use of a BPL system and

1 the provision of BPL services shall not be regulated by the state, a  
2 municipality, or local government other than as provided for in  
3 this Chapter.

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

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

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

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

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

27 (e) The state, a municipality, or a local government may not

1 impose any charge on the provision of BPL services that is greater  
2 than the lowest charge that entity imposes on other providers of  
3 Internet services in its respective jurisdiction.

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

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

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

25 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

26 Sec. 43.151. AFFILIATES OF AN ELECTRIC UTILITY. (a)  
27 Subject to the limitations of this Chapter, an electric utility may



1 have a full or partial ownership interest in a BPL operator or a BPL  
2 ISP. Whether a BPL operator or a BPL ISP is an affiliate of the  
3 electric utility shall be determined under Section 11.003(2) or  
4 Section 11.006.

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

8 Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators  
9 shall comply with all applicable federal laws, including those  
10 protecting licensed spectrum users from interference by BPL  
11 systems. The operator of a radio frequency device shall be required  
12 to cease operating the device upon notification by a Federal  
13 Communications Commission representative that the device is  
14 causing harmful interference. Operation shall not resume until the  
15 condition causing the harmful interference has been corrected.

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

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

24 (b) Notwithstanding subsection (a), the governing body of a  
25 municipality shall not have jurisdiction over the BPL system, BPL  
26 services, or the rates, operations, or services of the electric  
27 utility or transmission and distribution utility to the extent that

1 such rates, operations, or services are related, in whole or in  
2 part, to the construction, maintenance or operation of a BPL system  
3 used to provide BPL services to affiliated or unaffiliated  
4 entities.

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