

1-1 By: Fraser S.B. No. 1748
1-2 (In the Senate - Filed March 11, 2005; March 30, 2005, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 25, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 25, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1748 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the development and provision of broadband over
1-11 electric delivery systems and the development of enhanced electric
1-12 delivery systems.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle B, Title 2, Utilities Code, is amended
1-15 by adding Chapter 43 to read as follows:

1-16 CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR ACCESS TO BROADBAND
1-17 AND OTHER ENHANCED SERVICES

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature
1-20 finds that broadband over power lines, also known as BPL, is an
1-21 emerging technology platform that offers a means of providing
1-22 broadband services to reach homes and businesses. BPL services can
1-23 also be used to enhance existing electric delivery systems, which
1-24 can result in improved customer service and reliability for
1-25 electric customers.

1-26 (b) The legislature finds that access to broadband services
1-27 is important to this state. BPL deployment in Texas has the
1-28 potential to extend broadband service to customers where broadband
1-29 access is currently not available and may provide an additional
1-30 option for existing broadband consumers in Texas, resulting in a
1-31 more competitive market for broadband services. The legislature
1-32 further finds that BPL development in Texas is fully dependent upon
1-33 the participation of electric utilities in this state that own and
1-34 operate power lines and related facilities that are necessary for
1-35 the construction of BPL systems and the provision of BPL services.

1-36 (c) The legislature finds that it is in the public interest
1-37 to encourage the deployment of BPL and to encourage each electric
1-38 utility to construct, maintain, and operate BPL systems, either by
1-39 permitting affiliates of the utility or unaffiliated entities to
1-40 own or operate all or a portion of such BPL systems. The purpose of
1-41 this chapter is to provide regulatory certainty for utilities to
1-42 support the deployment of BPL.

1-43 (d) The legislature finds that an electric utility may
1-44 choose to implement BPL but is not required to do so. The electric
1-45 utility shall have the right to decide, in its sole discretion,
1-46 whether to implement BPL and may not be penalized for deciding to
1-47 implement or not to implement BPL.

1-48 Sec. 43.002. APPLICABILITY. (a) This chapter applies to
1-49 an electric utility whether or not the utility is offering customer
1-50 choice under Chapter 39.

1-51 (b) If there is a conflict between the specific provisions
1-52 of this chapter and any other provision of this title, the
1-53 provisions of this chapter control.

1-54 (c) No provision of this title shall impose an obligation on
1-55 an electric utility to construct or permit others to construct a BPL
1-56 system, to implement BPL, to provide broadband services, or to
1-57 allow others to use its facilities for the provision of broadband
1-58 services.

1-59 Sec. 43.003. DEFINITIONS. In this chapter:

1-60 (1) "BPL," "broadband over power lines," and "BPL
1-61 services" mean the provision of broadband services over electric
1-62 power lines and related facilities, whether above ground or in
1-63 underground conduit.

2-1 (2) "BPL access" means the ability to access broadband
2-2 services via a BPL operator or BPL Internet service provider.

2-3 (3) "BPL customer" means an end-use customer who
2-4 receives BPL services from a BPL operator or a BPL Internet service
2-5 provider.

2-6 (4) "BPL operator" means an entity that operates a BPL
2-7 system on the electric power lines and related facilities of an
2-8 electric utility.

2-9 (5) "BPL Internet service provider" and "BPL ISP" mean
2-10 an entity that provides Internet services to others on a wholesale
2-11 basis or to end-use customers on a retail basis.

2-12 (6) "BPL system" means the materials, equipment, and
2-13 other facilities installed on electric utility property to
2-14 facilitate the provision of BPL services.

2-15 (7) "BPL electric utility applications" means
2-16 technologies that are designed to improve the operational
2-17 performance and service reliability of an electric utility,
2-18 including automated meter reading, real-time system monitoring and
2-19 meter control, remote service control, outage detection and
2-20 restoration, predictive maintenance and diagnostics, and
2-21 monitoring and enhancement of power quality.

2-22 (8) "Electric delivery system" means the power lines
2-23 and related transmission and distribution facilities used by an
2-24 electric utility to deliver electric energy.

2-25 (9) "Electric utility" shall include an electric
2-26 utility and a transmission and distribution utility as defined in
2-27 Section 31.002 (6) or (19).

2-28 [Sections 43.004-43.050 reserved for expansion]

2-29 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

2-30 Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. An electric
2-31 utility may allow another person, including an affiliate of the
2-32 electric utility, to own, construct, maintain, and operate a BPL
2-33 system and provide BPL services on its electric delivery system
2-34 consistent with the requirements of this chapter.

2-35 Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM.

2-36 (a) An electric utility may elect to:

2-37 (1) allow an affiliate to own or operate a BPL system
2-38 on the utility's electric delivery system; or

2-39 (2) allow an unaffiliated entity to own or operate a
2-40 BPL system on the electric utility's electric delivery system.

2-41 (b) The BPL operator shall determine what BPL Internet
2-42 service providers may have access to broadband capacity on the BPL
2-43 system. The BPL operator for that specific system shall determine
2-44 what Internet service providers shall have access to the BPL
2-45 system.

2-46 Sec. 43.053. FEES AND CHARGES. (a) An electric utility
2-47 that allows an affiliate or an unaffiliated entity to own a BPL
2-48 system on the electric utility's electric delivery system shall
2-49 charge the owner of the BPL system for the use of the electric
2-50 utility's electric delivery system.

2-51 (b) An electric utility may pay a BPL owner, a BPL operator,
2-52 or a BPL ISP for the use of the BPL system required to operate BPL
2-53 utility applications.

2-54 (c) If all or part of a BPL system is installed on poles or
2-55 other structures of a telecommunications utility, as that term is
2-56 defined in Section 51.002, the owner of the BPL system shall be
2-57 required to pay the telecommunications utility an annual fee
2-58 consistent with the usual and customary charges for access to the
2-59 space occupied by that portion of the installed BPL system.

2-60 (d) Notwithstanding Subsections (a)-(c):

2-61 (1) an electric utility may not charge an affiliate
2-62 under this section an amount less than the utility would charge an
2-63 unaffiliated entity for the same item or class of items;

2-64 (2) an electric utility may not pay an affiliate under
2-65 this section an amount more than the affiliate would charge an
2-66 unaffiliated entity for the same item or class of items; and

2-67 (3) an affiliate of an electric utility may not
2-68 discriminate against a retail electric provider that is not
2-69 affiliated with the utility in the terms or availability of BPL

3-1 services.

3-2 Sec. 43.054. NO ADDITIONAL EASEMENTS OR PAYMENTS REQUIRED.
 3-3 Because BPL systems provide benefits to electric delivery systems,
 3-4 the installation of a BPL system on an electric delivery system
 3-5 shall not require the electric utility or the owner of the BPL
 3-6 system to obtain or expand easements or other rights-of-way for the
 3-7 BPL system or to give additional consideration for the placement of
 3-8 its BPL system. For purposes of this section, installation of a BPL
 3-9 system shall be deemed to be consistent with installation of an
 3-10 electric delivery system.

3-11 Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.
 3-12 An electric utility that allows the installation and operation of a
 3-13 BPL system on its electric delivery system shall employ reasonable
 3-14 measures to ensure that the operation of the BPL system does not
 3-15 interfere with or diminish the reliability of the utility's
 3-16 electric delivery system. Should a disruption in the provision of
 3-17 electric service occur, the electric utility shall be governed by
 3-18 the terms and conditions of the retail electric delivery service
 3-19 tariff. At all times, the provision of broadband services shall be
 3-20 secondary to the reliable provision of electric delivery services.

3-21 [Sections 43.056-43.100 reserved for expansion]

3-22 SUBCHAPTER C. IMPLEMENTATION OF A BPL SYSTEM BY AN ELECTRIC UTILITY

3-23 Sec. 43.101. PARTICIPATION BY AN ELECTRIC UTILITY. (a) An
 3-24 electric utility, either through an affiliate or through an
 3-25 unaffiliated entity, may elect to install and operate a BPL system
 3-26 on some or all of its electric delivery system in any part or all of
 3-27 its certificated service area.

3-28 (b) The installation, operation, and use of a BPL system and
 3-29 the provision of BPL services shall not be regulated by the state, a
 3-30 municipality, or local government other than as provided for in
 3-31 this chapter.

3-32 (c) The commission or any state or local government or
 3-33 regulatory or quasi-government or quasi-regulatory authority may
 3-34 not:

3-35 (1) require an electric utility to install a BPL
 3-36 system on its power lines or offer BPL services in all or any part of
 3-37 the electric utility's certificated service area, either directly
 3-38 or indirectly through an affiliate or unaffiliated entity;

3-39 (2) require an electric utility to allow others to
 3-40 install a BPL system on the electric utility's electric delivery
 3-41 system in any part or all of the electric utility's certificated
 3-42 service area; or

3-43 (3) prohibit an electric utility from installing a BPL
 3-44 system or offering BPL services in any part or all of the electric
 3-45 utility's certificated service area, either through an affiliate or
 3-46 unaffiliated entity.

3-47 (d) If a municipality or local government is already
 3-48 collecting a charge or fee from the electric utility for the use of
 3-49 a municipal street, alley, or public way for the delivery of
 3-50 electricity to retail electric customers, the municipality or local
 3-51 government is prohibited from requiring a franchise or an amendment
 3-52 to a franchise and is prohibited from imposing or collecting a
 3-53 charge, fee, or tax from any entity for use of a municipal street,
 3-54 alley, or public way for a BPL system or for the provision of BPL
 3-55 services.

3-56 (e) The state, a municipality, or a local government may not
 3-57 impose any charge on the provision of BPL services that is greater
 3-58 than the lowest charge the state, the municipality, or the local
 3-59 government imposes on other providers of Internet services.

3-60 Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND
 3-61 UTILITY APPLICATIONS. (a) Where an electric utility permits the
 3-62 installation of a BPL system on its electric delivery system under
 3-63 Section 43.052(a), the provision of BPL utility applications and
 3-64 other BPL services consumed by the electric utility shall be
 3-65 eligible for inclusion as operating expenses for purposes of any
 3-66 proceeding under Chapter 36, in accordance with the standards
 3-67 prescribed in that chapter.

3-68 (b) In any proceeding under Chapter 36, the commission may
 3-69 determine the just and reasonable charges for access to the space

4-1 occupied by the BPL system and the use of other utility facilities
4-2 by the BPL system.

4-3 [Sections 43.103-43.150 reserved for expansion]

4-4 SUBCHAPTER D. MISCELLANEOUS PROVISION

4-5 Sec. 43.151. AFFILIATES OF AN ELECTRIC UTILITY. (a) An
4-6 electric utility may have a full or partial ownership interest in a
4-7 BPL operator or a BPL ISP. Whether a BPL operator or a BPL ISP is an
4-8 affiliate of the electric utility shall be determined under
4-9 Sections 11.003(2) and 11.006.

4-10 (b) A BPL operator or a BPL ISP shall not be considered a
4-11 "competitive affiliate" of a utility as that term is defined in
4-12 Section 39.157.

4-13 Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators
4-14 are required to comply with all applicable federal laws, including
4-15 laws protecting licensed spectrum users from interference by BPL
4-16 systems.

4-17 SECTION 2. Section 33.001, Utilities Code, is amended to
4-18 read as follows:

4-19 Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair,
4-20 just, and reasonable rates and adequate and efficient services, the
4-21 governing body of a municipality has exclusive original
4-22 jurisdiction over the rates, operations, and services of an
4-23 electric utility in areas in the municipality, subject to the
4-24 limitations imposed by this title.

4-25 (b) Notwithstanding Subsection (a), the governing body of a
4-26 municipality shall not have jurisdiction over the BPL system, BPL
4-27 services, or the rates, operations, or services of the electric
4-28 utility or transmission and distribution utility to the extent that
4-29 such rates, operations, or services are related, in whole or in
4-30 part, to the ownership, construction, maintenance, or operation of
4-31 a BPL system used to provide BPL services to affiliated or
4-32 unaffiliated entities.

4-33 SECTION 3. This Act takes effect immediately if it receives
4-34 a vote of two-thirds of all the members elected to each house, as
4-35 provided by Section 39, Article III, Texas Constitution. If this
4-36 Act does not receive the vote necessary for immediate effect, this
4-37 Act takes effect September 1, 2005.

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