

By: Burnam

H.B. No. 3090

A BILL TO BE ENTITLED

AN ACT

relating to the formation and certification of a new municipally owned electric utility.

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

SECTION 1. Subchapter C, Chapter 37, Utilities Code, is amended by adding Section 37.103 to read as follows:

Sec. 37.103. FORMATION AND SPECIAL CERTIFICATION OF MUNICIPALLY OWNED UTILITY. (a) Notwithstanding any other law, the governing body of a municipality may acquire the infrastructure necessary for the municipality to offer and provide retail electric service and related services in the corporate limits and the extraterritorial jurisdiction of the municipality, regardless of whether the corporate limits or extraterritorial jurisdiction is in an existing certificated service area of a holder of a certificate of convenience and necessity issued under this chapter or is in an area in which customer choice is available as provided by Chapter 39.

(b) To acquire the necessary infrastructure to offer and provide electric service and related services, a municipality may exercise the right of eminent domain and may secure the financing necessary to acquire assets using any money available to the municipality, including bonds supported by a pledge of ad valorem taxes, sales and use taxes, or any other municipal revenue.

(c) Before or after a municipality acquires infrastructure

1 necessary to offer and provide retail electric service and related
2 services, the governing body of the municipality may apply to the
3 commission for a special certificate of convenience and necessity
4 for the municipality to provide retail electric service and related
5 services to customers residing in the corporate limits or
6 extraterritorial jurisdiction of the municipality. The
7 application may be supported by evidence related to the
8 infrastructure owned by the municipality or by a plan that
9 describes the manner in which the municipality will acquire
10 existing infrastructure.

11 (d) Notwithstanding Section 37.056, after notice and
12 hearing the commission shall grant the special certificate if the
13 municipality demonstrates that:

14 (1) the municipality can provide service with
15 infrastructure that:

16 (A) the municipality owns; or

17 (B) the municipality can acquire in accordance
18 with the plan presented with the application; and

19 (2) electric service provided by the municipality in
20 the municipality's corporate limits and extraterritorial
21 jurisdiction would be reliable and will serve the public
22 convenience and safety.

23 (e) Notwithstanding Sections 37.059 and 37.060, on issuing
24 a special certificate to a municipality under this section, the
25 commission shall revoke a certificate of convenience and necessity
26 held by any other certificate holder to the extent that the existing
27 certificate covers any part of the area for which the municipality

1 is granted a special certificate under this section.

2 (f) Except as provided by Section 39.002, Chapter 39 does
3 not apply to a municipally owned utility that receives a special
4 certificate under this section.

5 (g) The commission by rule shall provide standards and a
6 mechanism under which a municipality that receives a special
7 certificate under this section shall compensate the holder of a
8 certificate of convenience and necessity if any part of the
9 holder's certificate is revoked under Subsection (e) for losses
10 that result from the revocation.

11 SECTION 2. The Public Utility Commission of Texas shall
12 adopt rules as are necessary to begin accepting applications for
13 special certificates of convenience and necessity under Section
14 37.103, Utilities Code, as added by this Act, on or before January
15 1, 2010.

16 SECTION 3. This Act takes effect September 1, 2009.