

AN ACT

relating to certificates of convenience and necessity for the construction of transmission facilities.

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

SECTION 1. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0541 to read as follows:

Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The commission shall consolidate the proceeding on an application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line with the proceeding on another application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line if it is apparent from the applications or a motion to intervene in either proceeding that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. This section does not apply to a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone as part of a plan developed by the commission under Section 39.904(g)(2).

SECTION 2. Section 37.051, Utilities Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

(a) An electric utility or other person may not directly or indirectly provide service to the public under a franchise or

1 permit unless the utility or other person first obtains from the  
2 commission a certificate that states that the public convenience  
3 and necessity requires or will require the installation, operation,  
4 or extension of the service.

5 (d) A certificate may be granted to an electric utility or  
6 other person under this section for a facility used as part of the  
7 transmission system serving the ERCOT power region solely for the  
8 transmission of electricity.

9 (e) The commission may consider an application filed by a  
10 person not currently certificated as an electric utility for a  
11 certificate of convenience and necessity to construct transmission  
12 capacity that serves the ERCOT power region. Before granting a  
13 certificate under this section, the commission must find, after  
14 notice and hearing, that:

15 (1) the applicant has the technical ability, financial  
16 ability, and sufficient resources in this state to own, operate,  
17 and maintain reliable transmission facilities;

18 (2) the applicant has the resources and ability to  
19 comply with commission rules, requirements of the independent  
20 organization certified under Section 39.151 for the ERCOT power  
21 region, and requirements of the National Electric Reliability  
22 Council applicable to the provisions of transmission service; and

23 (3) for an application filed by a person that is not an  
24 electric utility, granting the application will not adversely  
25 affect wholesale transmission rates, as compared to the rates  
26 projected to be charged if an existing electric utility were to  
27 build the transmission facility.

1       (f) The commission shall consider the requirements of  
2 Subsection (e) to have been met by an electric utility or other  
3 person that:

4           (1) is selected by the commission as a transmission  
5 provider under a plan adopted by the commission under Section  
6 39.904 not later than September 1, 2009; and

7           (2) before the certificate is issued, provides to the  
8 commission a detailed plan regarding the offices, personnel, and  
9 other resources the electric utility or other person will have in  
10 this state to ensure provision of continuous and adequate  
11 transmission service.

12       SECTION 3. Section 37.053(a), Utilities Code, is amended to  
13 read as follows:

14       (a) An electric utility or other person that wants to obtain  
15 or amend a certificate must submit an application to the  
16 commission.

17       SECTION 4. Sections 37.055, 37.057, and 37.151, Utilities  
18 Code, are amended to read as follows:

19       Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) An  
20 electric utility or other person that wants to exercise a right or  
21 privilege under a franchise or permit that the utility or other  
22 person anticipates obtaining but has not been granted may apply to  
23 the commission for a preliminary order under this section.

24       (b) The commission may issue a preliminary order declaring  
25 that the commission, on application and under commission rules,  
26 will grant the requested certificate on terms the commission  
27 designates, after the electric utility or other person obtains the

1 franchise or permit.

2 (c) The commission shall grant the certificate on  
3 presentation of evidence satisfactory to the commission that the  
4 electric utility or other person has obtained the franchise or  
5 permit.

6 Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION  
7 FACILITY. The commission may grant a certificate for a new  
8 transmission facility to a qualified applicant that meets the  
9 requirements of this subchapter. The commission must approve or  
10 deny an application for a certificate for a new transmission  
11 facility not later than the first anniversary of the date the  
12 application is filed. If the commission does not approve or deny  
13 the application on or before that date, a party may seek a writ of  
14 mandamus in a district court of Travis County to compel the  
15 commission to decide on the application.

16 Sec. 37.151. PROVISION OF SERVICE. Except as provided by  
17 this section, Section 37.152, and Section 37.153, a certificate  
18 holder, other than one granted a certificate under Section  
19 37.051(d), shall:

20 (1) serve every consumer in the utility's certificated  
21 area; and

22 (2) provide continuous and adequate service in that  
23 area.

24 SECTION 5. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

H.B. No. 3309

1 Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3309 was passed by the House on April 24, 2009, by the following vote: Yeas 138, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3309 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3309 on May 31, 2009, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

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Chief Clerk of the House

H.B. No. 3309

I certify that H.B. No. 3309 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3309 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor