

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Gattis

H.B. No. 3309

A BILL TO BE ENTITLED

AN ACT

relating to consolidation of certain proceedings on an application for a certificate of convenience and necessity.

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) unless the transmission line would be constructed by more than one transmission service provider.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2009.

**ADOPTED**

MAY 27 2009

*Atty. Gen. Spaw*  
Secretary of the Senate

By: Gattis/Ogden

H.B. No. 3309

Substitute the following for H.B. No. 3309:

By: [Signature]

C.S. H.B. No. 3309

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1 39.904(g)(2).

2 SECTION 2. This Act takes effect immediately if it  
3 receives a vote of two-thirds of all the members elected to each  
4 house, as provided by Section 39, Article III, Texas  
5 Constitution. If this Act does not receive the vote necessary  
6 for immediate effect, this Act takes effect September 1, 2009.

# ADOPTED

MAY 27 2009

*Letty Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Williams

Amend C.S.H.B. No. 3309 by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 36.209, Utilities Code, is amended to read as follows:

(a) This section applies only to an electric utility that operates solely outside of ERCOT in areas of this state included in the Southeastern Electric Reliability Council, the Southwest Power Pool, or the Western Electricity Coordinating Council and that owns or operates transmission facilities.

SECTION \_\_\_\_\_. Section 39.452, Utilities Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) [~~Notwithstanding Subsection (a), except for adjustments authorized by Sections 36.203, 39.454, 39.455, and 39.456, and except for proceedings and cost recovery mechanisms authorized by Sections 39.458-39.463, a person may not file a proceeding to change, alter, or revoke any rate offered or charged by an electric utility subject to this subchapter before June 30, 2007, with an effective date no earlier than June 30, 2008. As part of a Subchapter C, Chapter 36, rate proceeding, the~~] An electric utility subject to this subchapter shall propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation. The commission shall approve, reject, or modify the proposed tariff not later than September 1, 2010. The tariffs subject to this subsection may not be considered to offer a discounted rate or rates under Section 36.007, and the utility's

rates shall be set, in the proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the implementation of the tariff. The commission shall ensure that a competitive generation tariff shall not be implemented in a manner that harms the sustainability or competitiveness of manufacturers that choose not to take advantage of competitive generation. Pursuant to the competitive generation tariff, an electric utility subject to this subsection shall purchase competitive generation service, selected by the customer, and provide the generation at retail to the customer. An electric utility subject to this subsection shall provide and price retail transmission service, including necessary ancillary services, to retail customers who choose to take advantage of the competitive generation tariff at a rate that is unbundled from the utility's cost of service. Such customers shall not be considered wholesale transmission customers. Notwithstanding any other provision of this chapter, the commission may not issue a decision relating to a competitive generation tariff that is contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction.

(i) Notwithstanding any other provision of this chapter, if the commission has not approved the transition to competition plan under this section before January 1, 2009, an electric utility subject to this subchapter shall cease all activities relating to the transition to competition under this section. The commission may, on its own motion or the motion of any affected person, initiate a proceeding under Section 39.152 to certify a power region to which the utility belongs as a qualified power region when the conditions supporting such a proceeding exist. The

commission may not approve a plan under Subsection (g) until the expiration of four years from the time that the commission certifies a power region under Subsection (f).

SECTION \_\_\_\_\_. Not later than the 90th day after the effective date of this Act, an electric utility operating in the Southeastern Electric Reliability Council that is subject to traditional cost of service rate regulation and on the effective date of this Act has a transition to competition plan on file with the Public Utility Commission of Texas shall:

- (1) withdraw the plan from the commission; and
- (2) cease all activities related to the plan.

# ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. \_\_\_\_\_

*Leta Spaul*  
Secretary of the Senate

2

*Stephen E. Ogden*  
BY: \_\_\_\_\_

1 Amend Floor Amendment No. 1 (by Sen. Williams) to  
2 C.S.H.B. No. 3309 by adding appropriately numbered SECTIONS to  
3 read as follows and renumbering subsequent SECTIONS  
4 appropriately:

5 SECTION \_\_. Subchapter D, Chapter 38, Utilities Code, is  
6 amended by adding Section 38.073 to read as follows:

7 Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY.

8 (a) On a declaration of a natural disaster or other emergency  
9 by the governor, the commission may require an electric utility,  
10 municipally owned utility, electric cooperative, qualifying  
11 facility, power generation company, exempt wholesale generator,  
12 or power marketer to sell electricity to an electric utility,  
13 municipally owned utility, or electric cooperative that is  
14 unable to supply power to meet customer demand due to the  
15 natural disaster or other emergency. Any plant, property,  
16 equipment, or other items used to receive or deliver electricity  
17 under this subsection are used and useful in delivering service  
18 to the public, and the commission shall allow timely recovery  
19 for the costs of those items. The commission may order an  
20 electric utility, municipally owned utility, or electric  
21 cooperative to provide interconnection service to another  
22 electric utility, municipally owned utility, or electric  
23 cooperative to facilitate a sale of electricity under this  
24 section. If the commission does not order the sale of  
25 electricity during a declared emergency as described by this  
26 subsection, the commission shall promptly submit to the  
27 legislature a report describing the reasons why the commission  
28 did not make that order.

29 (b) If an entity receives electricity under Subsection

1 (a), the receiving entity shall reimburse the supplying entity  
2 for the actual cost of providing the electricity. The entity  
3 receiving the electricity is responsible for any transmission  
4 and distribution service charges specifically incurred in  
5 relation to providing the electricity.

6 (c) An entity that pays for electricity received under  
7 Subsection (b) and that is regulated by the commission may fully  
8 recover the cost of the electricity in a timely manner by:

9 (1) including the cost in the entity's fuel cost  
10 under Section 36.203; or

11 (2) notwithstanding Section 36.201, imposing a  
12 different surcharge.

13 SECTION \_\_. (a) Not later than November 1, 2009, the  
14 Public Utility Commission of Texas shall conduct and complete a  
15 study to evaluate:

16 (1) the locations in this state that are most likely  
17 to experience a natural disaster or other emergency;

18 (2) the ability of each entity described by  
19 Subsection (a), Section 38.073, Utilities Code, as added by this  
20 Act, to comply with that section in the event of a natural  
21 disaster or other emergency;

22 (3) any steps an entity described by Subsection (a),  
23 Section 38.073, Utilities Code, as added by this Act, should  
24 take to prepare to comply with that section; and

25 (4) the potential for distributed generation,  
26 including renewable power with battery backup and combined heat  
27 and power systems, to strengthen reliability of electric service  
28 during a natural disaster or other emergency.

29 (b) An entity described by Subsection (a), Section 38.073,  
30 Utilities Code, as added by this Act, shall comply with any  
31 order issued by the Public Utility Commission of Texas under

1 that subsection while the study required by Subsection (a) of  
2 this section is conducted.

3 (c) The Public Utility Commission of Texas shall prepare a  
4 report based on the study conducted under Subsection (a) of this  
5 section. The report must include any recommendations the  
6 commission considers advisable in relation to the implementation  
7 of and compliance with Section 38.073, Utilities Code, as added  
8 by this Act. The commission may include the report in the  
9 report required by Section 31.003, Utilities Code.

ADOPTED

FLOOR AMENDMENT NO. 3

MAY 27 2009 BY: FRASER

*Antony Spaw*  
Secretary of the Senate

1 Amend C.S.H.B. 3309 (committee ~~printing~~ version) by adding  
2 the following appropriately numbers new SECTIONS and renumber  
3 the subsequent SECTIONS accordingly:

4 "SECTION \_\_. Section 39.107(h), Utilities Code, is amended  
5 to read as follows:

6 (h) The commission shall establish a nonbypassable  
7 surcharge for an electric utility or transmission and  
8 distribution utility to use to recover reasonable and necessary  
9 costs incurred in deploying advanced metering and meter  
10 information networks to residential customers and nonresidential  
11 customers other than those required by the independent system  
12 operator to have an interval data recorder meter. The  
13 commission shall ensure that the nonbypassable surcharge  
14 reflects a deployment of advanced meters that is no more than  
15 one-third of the utility's total meters over each calendar year  
16 and shall ensure that the nonbypassable surcharge does not  
17 result in the utility recovering more than its actual, fully  
18 allocated meter and meter information network costs. The  
19 expenses must be allocated to the customer classes receiving the  
20 services, based on the electric utility's most recently approved  
21 tariffs. An electric utility or transmission and distribution  
22 utility that deploys advanced metering and meter information  
23 networks shall, to the extent practicable, obtain grants, loans,  
24 and loan guarantees available from the federal government  
25 specifically for that purpose, and other available revenue that  
26 would reduce the utility's cost of deployment. The commission  
27 shall reflect the revenue obtained when establishing the amount  
28 of a surcharge under this subsection and may reduce the amount  
29 of a surcharge approved before the utility received the revenue,

1 if necessary.

2 SECTION \_\_. Section 39.904, Utilities Code, is amended by  
3 adding Subsection (h-1) to read as follows:

4 (h-1) An electric utility, transmission and distribution  
5 utility, or river authority that has been designated by the  
6 commission to construct transmission capacity under Subsection  
7 (g) shall, to the extent practicable, obtain grants, loans, and  
8 loan guarantees available from the federal government  
9 specifically for that purpose, and other available revenue to  
10 reduce the utility's or authority's cost of construction. The  
11 commission shall reflect the revenue obtained when establishing  
12 or modifying the rates of the utility or authority and may  
13 propose a rate reduction under Subchapter D, Chapter 36, if  
14 necessary."

Floor Amendment

4

**ADOPTED**

MAY 27 2009

By:

Fraser

Amend C.S.H.B.

3309

*Atty Gen*  
Secretary of the Senate

inserting

the following

appropriately numbered SECTIONS and re-numbering the subsequent SECTIONS accordingly:

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

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

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

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

(2) the applicant has the resources and ability to comply with commission rules, requirements of the independent organization certified under Section 39.151 for the ERCOT power

region, and requirements of the National Electric Reliability Council applicable to the provisions of transmission service; and

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

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

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

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

SECTION \_\_. Subsection (a), Section 37.053, Utilities Code, is amended to read as follows:

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

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

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

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

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

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. The commission may grant a certificate for a new transmission facility to a qualified applicant that meets the requirements of this subchapter. The commission must approve or deny an application for a certificate for a new transmission facility not later than the first anniversary of the date the application is filed. If the commission does not approve or

S.B. No. 1913  
deny the application on or before that date, a party may seek a writ of mandamus in a district court of Travis County to compel the commission to decide on the application.

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

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

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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3309** by Gattis (Relating to consolidation of certain proceedings on an application for a certificate of convenience and necessity.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Public Utility Commission (PUC) to consolidate the proceedings 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 that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. The bill would exempt a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone from this requirement. The PUC may need to conduct a rulemaking in order to conform existing rules to the provisions of the bill.

The bill would amend the Utilities Code to subject electric utilities operating in areas in Texas in the Southeastern Electric Reliability Council (SERC) to the provisions in Section 36.209 that allow a utility to recover certain transmission costs on an annual basis through a competitive generation tariff. The bill would require the Public Utility Commission (PUC) to ensure that a competitive generation tariff is not implemented in a manner that harms the sustainability or competitiveness of manufacturers that choose not to take advantage of competitive generation. The bill would prohibit the PUC from issuing a decision relating to a competitive generation tariff that is contrary to an applicable decision, rule, or policy statement of a federal regulatory agency having jurisdiction.

The bill would require an electric utility operating in SERC that has a transition to competition plan on file with the PUC to withdraw its plan.

The bill would authorize the Public Utility Commission (PUC) to require an electric utility, municipally owned utility, electric cooperative, qualifying facility, power generation company, exempt wholesale generator, power marketer, or retail electric provider to sell electricity and provide interconnection service to another electric utility, municipally owned utility, electric cooperative, or retail electric provider that is unable to supply power to meet customer demand due to a natural disaster or other emergency. The bill would require the PUC to submit to the legislature a report describing the reasons that it did not issue an order in the case that the commission does not order the sale of electricity during a declared emergency.

The bill would require to the extent practicable an electric utility or transmission and distribution utility that deploys advanced metering and meter information networks, or an electric utility, transmission and distribution utility, or river authority designated by the Public Utility Commission to construct transmission capacity, to obtain and utilize funds, including grants, loans, and loan guarantees, made available by the federal government, to lower costs of deployment or construction. The bill would require the Public Utility Commission to reflect the funds obtained when establishing a surcharge or modifying rates. The bill would authorize the PUC to reduce the amount of a surcharge or propose a rate reduction.



The bill would authorize the Public Utility Commission (PUC) to grant a certificate to a person operating a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity. The bill would establish the eligibility requirements for the certification. The bill would also exempt a person granted a certificate under Section 37.051(d) from serving every customer in a certified area and from providing continuous and adequate service in that area.

The bill would require the PUC to conduct rulemakings to align existing rules with the provisions of the bill. The PUC anticipates any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

#### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** JOB, ES, JRO, KJG



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3309** by Gattis (Relating to consolidation of certain proceedings on an application for a certificate of convenience and necessity. ), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Public Utility Commission (PUC) to consolidate the proceedings 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 that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. The bill would exempt a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone from this requirement. The PUC may need to conduct a rulemaking in order to conform existing rules to the provisions of the bill.

The PUC anticipates any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** JOB, ES, JRO, KJG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

May 18, 2009

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3309** by Gattis (Relating to consolidation of certain proceedings on an application for a certificate of convenience and necessity.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Public Utility Commission (PUC) to consolidate the proceedings 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 that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. The bill would exempt a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone from this requirement, unless the transmission line would be constructed by more than one transmission service provider. The PUC may need to conduct a rulemaking in order to conform existing rules to the bill's provisions.

The PUC anticipates any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** JOB, JRO, ES, KJG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 30, 2009**

**TO:** Honorable Burt R. Solomons, Chair, House Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3309** by Gattis (Relating to consolidation of certain proceedings on an application for a certificate of convenience and necessity.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Public Utility Commission (PUC) to consolidate the proceedings 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 that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. The PUC may need to conduct a rulemaking in order to conform existing rules to the bill's provisions.

The PUC anticipates any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** JOB, KJG, ES

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