

BILL ANALYSIS

Senate Research Center

S.B. 1938
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1938 will codify the existing process in Texas for determining the proper party to construct critical energy infrastructure, maintain Texas rate jurisdiction over transmission in the non-ERCOT areas of Texas, and clean-up statutory remnants of the Competitive Renewable Energy Zone (CREZ) buildout.

Today in Texas, the entity that owns the endpoint of an existing transmission line is the entity that has the right to build any new facility that may be interconnected, an established process embodied in ERCOT Protocol. There has been some ambiguity because of statutory exceptions that were included in the Utilities Code to allow outside utilities to construct transmission as a part of the CREZ buildout, which was all brand new transmission in areas of West Texas that were not certificated by the Public Utility Commission of Texas (PUC).

Electric utilities in Texas have established geographic footprints, and this bill would ensure the geographic continuity of the system in a way that further facilitates reliability.

Passage of this bill will protect the integrity of the electric transmission infrastructure and the way it is developed and built today. Additionally, in the non-ERCOT areas of the state served by utilities engaged in interstate commerce, this legislation will ensure that the PUC maintains its current jurisdiction over transmission rates borne by Texas customers rather than having a federal rate. (Original Author's/Sponsor's Statement of Intent)

S.B. 1938 amends current law relating to certificates of convenience and necessity for the construction of facilities for the transmission of electricity.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 4 (Section 37.056, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.051(a), Utilities Code, as follows:

(a) Prohibits an electric utility, rather than an electric utility or other person, from directly or indirectly providing service to the public under a franchise or permit unless the utility, rather than the utility or other person, first obtains from the Public Utility Commission of Texas (PUC) a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.

SECTION 2. Amends Section 37.053(a), Utilities Code, to require an electric utility, rather than an electric utility or other person, that wants to obtain or amend a certificate to submit an application to the PUC.

SECTION 3. Amends Section 37.055, Utilities Code, as follows:

Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) Authorizes an electric utility, rather than an electric utility or other person, that wants to exercise a right or

privilege under a franchise or permit that the utility, rather than the utility or other person, anticipates obtaining but has not been granted to apply to the PUC for a preliminary order under this section.

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

(c) Requires the PUC to give the certificate on presentation of evidence satisfactory to the PUC that the electric utility, rather than the electric utility or other person, has obtained the franchise or permit.

SECTION 4. Amends Section 37.056, Utilities Code, by adding Subsections (e), (f), (g), (h), and (i), as follows:

(e) Authorizes a certificate to build, own, or operate a new transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility to be granted only to the owner of that existing facility. Requires each entity, if a new transmission facility will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, to build, own, or operate the facility in separate and discrete equal parts unless they agree otherwise.

(f) Requires the entity with a load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility at the load-serving station, notwithstanding Subsection (e), if a new transmission line, whether single or double circuit, will create the first interconnection between a load-serving station and an existing transmission facility, to be certificated to build, own, or operate the new transmission line and the load-serving station. Requires the owner of the existing transmission facility to be certificated to build, own, or operate the station or tap at the existing transmission facility to provide the interconnection, unless after a reasonable period of time the owner of the existing transmission facility is unwilling to build, and then the entity with the load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility is authorized to be certificated to build the interconnection facility.

(g) Authorizes an electric utility or municipally owned utility that is authorized to build, own, or operate a new transmission facility under Subsection (e) or (f), notwithstanding any other provision of this section, to designate another electric utility that is currently certificated by the PUC within the same electric power region, coordinating council, independent system operator, or power pool or a municipally owned utility to build, own, or operate a portion or all of such new transmission facility, subject to any requirements adopted by PUC rule.

(h) Requires the division of any required certification of facilities described in this section to apply unless each entity agrees otherwise. Provides that nothing in this section is intended to require a certificate for facilities that the PUC has determined by rule do not require certification to build, own, or operate.

(i) Authorizes an electric cooperative, notwithstanding any other provision of this section, to be certificated to build, own, or operate a new facility in place of any other electric cooperative if both cooperatives agree.

SECTION 5. Amends Section 37.057, Utilities Code, as follows:

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. Deletes existing text authorizing the PUC to grant a certificate for a new transmission facility to a qualified applicant that meets the requirements of this subchapter (Certificate of Convenience and Necessity).

SECTION 6. Amends Section 37.151, Utilities Code, as follows:

Sec. 37.151. PROVISION OF SERVICE. Requires a certificate holder, except as provided by Sections 37.152 (Grounds For Reduction of Service) and 37.153 (Required Refusal of Service), rather than requiring a certificate holder other than one granted a certificate under Section 37.051(d) (relating to authorizing a certificate to be granted to an electric utility or other person for a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity), except as provided by this section, Section 37.152, and Section 37.153, to take certain action.

SECTION 7. Amends Section 37.154(a), Utilities Code, as follows:

(a) Authorizes an electric utility or municipally owned utility to sell, assign, or lease a certificate or a right obtained under a certificate if the purchaser, assignee, or lessee is already certificated by the PUC to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool, or if the purchaser, assignee, or lessee is an electric cooperative or municipally owned utility, rather than authorizing an electric utility to sell, assign, or lease a certificate or a right obtained under a certificate if the PUC determines that the purchaser, assignee, or lessee can provide adequate service. Authorizes the PUC, as part of the transaction subject to Sections 39.262(l) (relating to requiring an electric utility or transmission and distribution facility to report to and obtain approval from the PUC before closing certain transactions) through (o) (relating to authorizing the PUC to enforce certain agreements and to reasonably interpret and enforce certain conditions) and 39.915 (Consideration and Approval of Certain Transactions), to approve of a sale, assignment, or lease to an entity that has not been previously certificated if the approval will not diminish the retail rate jurisdiction of this state. Provides that any purchase, assignment, or lease under this section requires that the PUC determine that the purchaser, assignee, or lessee can provide adequate service.

SECTION 8. Repealer: Section 37.051(d) (relating to authorizing a certificate to be granted to an electric utility or other person for a facility used as part of a transmission system serving the ERCOT power region solely for transmission of electricity), Utilities Code.

Repealer: Section 37.051(e) (relating to requiring the PUC to make certain findings in relation to an application), Utilities Code.

Repealer: Section 37.051(f) (relating to requiring the PUC to consider certain requirements to have been met by an electric utility company or other person under certain conditions), Utilities Code.

SECTION 9. Effective date: upon passage or September 1, 2019.