

BILL ANALYSIS

Senate Research Center

S.B. 1938
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As Filed

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 PUC maintains its current jurisdiction over transmission rates borne by Texas customers rather than having a federal rate.

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

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

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 a person, that wants to obtain or amend a certificate to submit an application to 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 PUC for a preliminary order under this section.

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

(c) Requires PUC to give the certificate on presentation of evidence satisfactory to 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 Subsection (e), as follows:

(e) Authorizes a certificate for a new transmission facility that directly interconnects with an existing electric utility facility to only be granted to the owner of that existing facility. Requires that one or both of those utilities, if a new transmission facility will directly interconnect with facilities owned by different electric utilities, be certificated to construct the new facility.

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

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. Deletes existing text authorizing PUC to grant a new certificate for a new transmission facility to a qualified applicant that meets the requirements of this subchapter. Makes no further changes to this section.

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

Sec. 37.151. PROVISION OF SERVICE. Deletes existing text referring to a certificate holder 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 a transmission system serving the ERCOT power region solely for the transmission of electricity).

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

(a) Authorizes an electric utility to sell, assign, or lease a certificate or a right obtained under a certificate if the purchaser, assignee, or lease was previously certificated by PUC to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool. Authorizes 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 PUC before closing certain transactions) through (o) (relating to authorizing PUC 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, rather than authorizing an electric utility to sell, assign, or lease a certificate or a right obtained under a certificate if PUC determines that the purchaser, assignee, or leaser 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 PUC to make certain findings in relation to an application), Utilities Code.

Repealer: Section 37.051(f) (relating to requiring 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.