

AN ACT

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

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

SECTION 1. Section 37.051(a), Utilities Code, is amended 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.

SECTION 2. Section 37.053(a), 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 3. Section 37.055, Utilities Code, is 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.

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

6 (c) The commission shall grant the certificate on  
7 presentation of evidence satisfactory to the commission that the  
8 electric utility [~~or other person~~] has obtained the franchise or  
9 permit.

10 SECTION 4. Section 37.056, Utilities Code, is amended by  
11 adding Subsections (e), (f), (g), (h), and (i) to read as follows:

12 (e) A certificate to build, own, or operate a new  
13 transmission facility that directly interconnects with an existing  
14 electric utility facility or municipally owned utility facility may  
15 be granted only to the owner of that existing facility. If a new  
16 transmission facility will directly interconnect with facilities  
17 owned by different electric utilities or municipally owned  
18 utilities, each entity shall be certificated to build, own, or  
19 operate the new facility in separate and discrete equal parts  
20 unless they agree otherwise.

21 (f) Notwithstanding Subsection (e), if a new transmission  
22 line, whether single or double circuit, will create the first  
23 interconnection between a load-serving station and an existing  
24 transmission facility, the entity with a load-serving  
25 responsibility or an electric cooperative that has a member with a  
26 load-serving responsibility at the load-serving station shall be  
27 certificated to build, own, or operate the new transmission line

1 and the load-serving station. The owner of the existing  
2 transmission facility shall be certificated to build, own, or  
3 operate the station or tap at the existing transmission facility to  
4 provide the interconnection, unless after a reasonable period of  
5 time the owner of the existing transmission facility is unwilling  
6 to build, and then the entity with the load-serving responsibility  
7 or an electric cooperative that has a member with a load-serving  
8 responsibility may be certificated to build the interconnection  
9 facility.

10 (g) Notwithstanding any other provision of this section, an  
11 electric utility or municipally owned utility that is authorized to  
12 build, own, or operate a new transmission facility under Subsection  
13 (e) or (f) may designate another electric utility that is currently  
14 certificated by the commission within the same electric power  
15 region, coordinating council, independent system operator, or  
16 power pool or a municipally owned utility to build, own, or operate  
17 a portion or all of such new transmission facility, subject to any  
18 requirements adopted by the commission by rule.

19 (h) The division of any required certification of  
20 facilities described in this section shall apply unless each entity  
21 agrees otherwise. Nothing in this section is intended to require a  
22 certificate for facilities that the commission has determined by  
23 rule do not require certification to build, own, or operate.

24 (i) Notwithstanding any other provision of this section, an  
25 electric cooperative may be certificated to build, own, or operate  
26 a new facility in place of any other electric cooperative if both  
27 cooperatives agree.

1 SECTION 5. Section 37.057, Utilities Code, is amended to  
2 read as follows:

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

13 SECTION 6. Section 37.151, Utilities Code, is amended to  
14 read as follows:

15 Sec. 37.151. PROVISION OF SERVICE. Except as provided by  
16 Sections ~~[this section, Section]~~ 37.152~~[7]~~ and ~~[Section]~~ 37.153, a  
17 certificate holder~~[, other than one granted a certificate under~~  
18 ~~Section 37.051(d),]~~ shall:

- 19 (1) serve every consumer in the utility's certificated  
20 area; and  
21 (2) provide continuous and adequate service in that  
22 area.

23 SECTION 7. Section 37.154(a), Utilities Code, is amended to  
24 read as follows:

25 (a) An electric utility or municipally owned utility may  
26 sell, assign, or lease a certificate or a right obtained under a  
27 certificate if ~~[the commission determines that]~~ the purchaser,

1 assignee, or lessee is already certificated by the commission to  
2 provide electric service within the same electric power region,  
3 coordinating council, independent system operator, or power pool,  
4 or if the purchaser, assignee, or lessee is an electric cooperative  
5 or municipally owned utility [~~can provide adequate service~~]. As  
6 part of a transaction subject to Sections 39.262(1)-(o) and 39.915,  
7 the commission may approve a sale, assignment, or lease to an entity  
8 that has not been previously certificated if the approval will not  
9 diminish the retail rate jurisdiction of this state. Any purchase,  
10 assignment, or lease under this section requires that the  
11 commission determine that the purchaser, assignee, or lessee can  
12 provide adequate service.

13 SECTION 8. Sections 37.051(d), (e), and (f), Utilities  
14 Code, are repealed.

15 SECTION 9. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2019.

S.B. No. 1938

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1938 passed the Senate on April 17, 2019, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1938 passed the House on May 7, 2019, by the following vote: Yeas 141, Nays 5, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor