

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Rural Texans with no or slow Internet connections lack equitable access to online education, telemedicine, agriculture, and business technologies as experienced in more densely populated regions of Texas. This has been made even more critical during the COVID-19 pandemic. Unfortunately, outsized capital and construction costs have limited the expansion of broadband access to sparsely populated areas through traditional delivery methods.

In order to meet the increasing demand for two-way flows of data and energy along the utility infrastructure, many Texas utilities have deployed fiber-optic communications technology across the existing electric infrastructure for their own internal purposes. As utilities continue to install fiber across their existing utility network, the opportunity to combine efforts with initiatives to expand rural broadband is now present. The fiber infrastructure used for broadband Internet is divided into three categories: first mile – the local Internet service provider's (ISP) in-town assets; middle mile – the backbone of the broadband fiber system; and last mile – connections to schools, medical offices, businesses, and homes.

The purpose of this bill is to allow electric utilities the ability to partner with ISPs who agree to lease capacity on existing middle mile fiber or future fiber expansion. With oversight by the Public Utility Commission of Texas (PUC), electric utilities would develop and lease middle mile fiber assets. The PUC will determine the terms, conditions, and pricing for middle mile assets through rulemaking, with guidance from the legislature. Electric utilities will continue to utilize the same cost recovery mechanisms used today when building out their internal fiber network. Electric utilities will determine the method of attachment and connection to transmission, distribution, and fiber assets.

As proposed, S.B. 1650 amends current law relating to middle mile broadband service provided by an electric utility.

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 Chapter 43, Utilities Code, as follows:

CHAPTER 43. New heading: PROVISION OF MIDDLE MILE BROADBAND SERVICE BY
ELECTRIC UTILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) Provides that the legislature finds that access to quality, high-speed broadband Internet service is important to this state, is a necessary prerequisite for enabling economic development and improving education, health care, public safety, and government services in this state, and provides other benefits to its citizens. Deletes existing text providing that the legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that

offers a means of providing broadband services to reach homes and businesses and that BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) Provides that the legislature finds that broadband development, rather than further finds that BPL development, in Texas depends on the participation of electric utilities in this state that own and operate facilities that are necessary for the full deployment of broadband service throughout this state, rather than is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services. Deletes existing text providing that the legislature finds that access to quality, high speed broadband services is important to this state and providing that BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services.

(c) Provides that the legislature finds that electric utilities have existing infrastructure in place throughout this state and that their existing and new infrastructure could be used to provide middle mile broadband service.

(d) Creates this subsection from existing text. Provides that the legislature finds that it is in the public interest to encourage the deployment of broadband service by permitting electric utilities to own or operate facilities providing middle mile broadband service. Provides that the purpose of Chapter 43 is to provide the appropriate framework to support the deployment of those facilities. Deletes existing text providing that, consistent with the goal of increasing options for telecommunications in this state, the legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities, to own or operate all or a portion of such BPL systems. Makes a conforming and a nonsubstantive change.

(e) Creates this subsection from existing text. Provides that the legislature finds that an electric utility may choose to implement middle mile broadband service, rather than BPL, under the procedures set forth in Chapter 43, but is not required to do so. Provides that the electric utility is required to have the right to decide, in its sole discretion, whether to implement middle mile broadband service, rather than BPL, and is prohibited from being penalized for deciding to implement or not to implement that service, rather than BPL. Makes a nonsubstantive change.

Sec. 43.002. APPLICABILITY. (a) and (b) Makes no changes to these subsections.

(c) Provides that no provision of Title 2 (Public Utility Regulatory Act) imposes an obligation on an electric utility to provide broadband service, rather than to implement BPL to provide broadband services, or to allow others to install facilities or use the electric utility's facilities for the provision of broadband service. Makes conforming changes.

Sec. 43.003. DEFINITIONS. Defines "broadband service," "middle mile broadband service," and "Internet service provider." Deletes existing text defining "BPL," "broadband over power lines," "BPL services," "BPL access," "BPL operator," "BPL Internet service provider," "BPL ISP," "BPL system," and "BPL electric utility applications." Makes nonsubstantive changes.

SUBCHAPTER B. New heading: DEVELOPMENT OF MIDDLE MILE BROADBAND SYSTEMS

Sec. 43.051. New heading: AUTHORIZATION FOR MIDDLE MILE BROADBAND SYSTEM. (a) Creates this subsection from existing text. Authorizes an electric utility to

own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service consistent with the requirements of Chapter 43. Provides that nothing in Chapter 43 prohibits an entity defined in Section 11.003(9) (relating to the definition of "electric cooperative") from providing broadband service or owning and operating a broadband system. Deletes existing text authorizing an affiliate of an electric utility or a person unaffiliated with an electric utility to own, construct, maintain, and operate a BPL system and provide BPL services on an electric utility's electric delivery system consistent with the requirements of this chapter. Makes conforming changes.

(b) Authorizes the electric utility to determine which Internet service providers (ISPs) are authorized to have access to broadband capacity on the electric utility's middle mile broadband system and provide access points to allow connection between the electric utility's broadband system and the ISP systems of those ISPs. Deletes existing text requiring that nothing in Chapter 43 prohibits an electric utility from providing construction or maintenance services to a BPL operator or BPL ISP provided that the costs of these services are properly accounted for between the electric utility and the BPL operator or BPL ISP.

Sec. 43.052. New heading: CHARGES. Creates this section from existing text of Section 43.053 and redesignates it as Section 43.052. Authorizes an electric utility that owns and operates a middle mile broadband system to lease capacity on the system to an ISP on a wholesale basis and requires the electric utility to charge the ISP for the use of the electric utility's system.

Deletes existing text of Section 43.052 authorizing electric utilities to elect to allow certain entities to operate a BPL system or Internet service of a BPL system and requiring the BPL operator and the electric utility to determine what BPL IPS is authorized to have access to broadband capacity on the BPL system.

Deletes existing text of redesignated Section 43.053 relating to authorizing an electric utility to pay a BPL owner, operator, or ISP for the use of the BPL system required to operate BPL utility applications.

Deletes existing text requiring that the owner of a BPL system, if all or part of the BPL system is installed on poles or other structures of a telecommunications utility as that term is defined in Section 51.002, be required to pay the telecommunications utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the BPL system so installed.

Deletes existing text providing that, notwithstanding certain subsections of this section, an electric utility is prohibited from charging an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items; providing that an electric utility is prohibited from paying an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items; and providing that an electric utility or an affiliate of an electric utility is prohibited from discriminating against a retail electric provider that is not affiliated with the utility in the terms or availability of BPL services.

Sec. 43.053. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. Creates this section from existing text of Section 43.054 and redesignates it as Section 43.053. Provides that because broadband systems provide benefits to electric delivery systems, the installation of a middle mile broadband system on an electric delivery system does not require the electric utility or an entity defined in Section 11.003(9), rather than shall not require the electric utility or the owner of the BPL system or an entity defined in Section 11.003(9), to obtain, modify, or expand easements or other rights-of-way for the middle mile broadband system or to give additional consideration as a result of the installation or the operation of a middle mile broadband system on the electric delivery system of the electric utility or entity. Deletes existing text providing that for purposes of this section, installation of a BPL system is required to be deemed to be consistent with installation of an electric delivery system. Makes conforming changes.

Sec. 43.054. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. Creates this section from existing text of Section 43.055 and redesignates it as 43.054. Requires an electric utility that installs and operates a middle mile broadband system, rather than that allows the installation and operation of a BPL system on its electric delivery system, to employ all reasonable measures to ensure that the operation of the middle mile broadband system does not interfere with or diminish the reliability of the utility's electric delivery system. Provides that if a disruption in the provision of electric service occurs, the electric utility is governed by the terms and conditions of the retail electric delivery service tariff. Authorizes the electric utility to take all necessary actions regarding its middle mile broadband system to address emergency circumstances that may pose health, safety, or reliability concerns. Provides that at all times, the provision of broadband service is secondary to the reliable provision of electric delivery services. Provides that an electric utility is not liable to any person, including an ISP, for any direct, indirect, or consequential damages, including loss of business, loss of profits or revenue, or loss of production capacity caused by a fluctuation, disruption, or interruption of middle mile broadband service that is caused in whole or in part by:

- (1) force majeure; or
- (2) the electric utility's provision of electric delivery services, including actions taken by the electric utility to ensure the reliability of the electric delivery system and actions taken in response to address emergency circumstances that may pose health, safety, or reliability concerns.

Makes conforming and nonsubstantive changes.

SUBCHAPTER C. New heading: IMPLEMENTATION OF MIDDLE MILE BROADBAND SYSTEM BY ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) Authorizes an electric utility to install and operate a middle mile broadband system on any part of its electric delivery system. Deletes existing text authorizing an electric utility, through an affiliate or through an unaffiliated entity, to elect to install and operate a BPL system on some or all of its electric delivery system in any part or all of its certificated service area.

(b) Provides that the installation, operation, and use of a middle mile broadband system and the provision of middle mile broadband service may not be, rather than BPL services shall not be, regulated by any state agency, a municipality, or local government other than as provided by Chapter 43. Makes conforming and nonsubstantive changes.

(c) Provides that an electric utility that owns and operates a middle mile broadband system is authorized to lease capacity on the system to an ISP on a wholesale basis, and is prohibited from providing Internet service to end-use customers on a retail basis.

(d) Creates this subsection from existing text. Prohibits the Public Utility Commission of Texas (PUC) or a state or local government or a regulatory or quasi-governmental or a quasi-regulatory authority from:

(1) requiring an electric utility, rather than an electric utility either through an affiliate or an unaffiliated entity, to install a middle mile broadband system or offer middle mile broadband service on the utility's electric delivery system, rather than BPL services in all or any part of the electric utility's certificated service area;

(2) requiring an electric utility to allow others to install a middle mile broadband system on the utility's electric delivery system, rather than a

BPL system on the utility's electric delivery system in any part or all of the electric utility's certificated service area; or

(3) prohibiting an electric utility from installing a middle mile broadband system or offering middle mile broadband service on the utility's electric delivery system, rather than prohibiting an electric utility from having an affiliate or unaffiliated entity install a BPL system or offering BPL services in any part or all of the electric utility's certificated service area.

Makes conforming and nonsubstantive changes.

(e) and (f) Creates these subsections from existing text to make conforming and nonsubstantive changes.

Sec. 43.102. COMMISSION REVIEW OF UTILITY MIDDLE MILE PLAN. (a) Requires an electric utility that plans a project to deploy middle mile broadband to submit to the PUC a written plan that includes:

(1) the route of the middle mile broadband infrastructure proposed for the project;

(2) the number of fiber strands and any other facilities that would be used in connection with the project and dedicated to serve as the middle mile;

(3) the location of the electric utility's infrastructure that will be used in connection with the project;

(4) the capacity or number of fiber strands and any other facilities of the middle mile that will be available to lease to ISPs and other third parties on completion of the project;

(5) the name of at least one ISP that has committed to leasing access to the middle mile broadband assets constructed as part of the project;

(6) an estimate of potential broadband customers that would be served by the middle mile infrastructure;

(7) the estimated cost of the project, including engineering costs, construction costs, permitting costs, right-of-way costs, and a reasonable allowance for funds used during construction;

(8) the proposed schedule of construction for the project;

(9) the method of attachment and connection of the middle mile broadband assets to the electric utility's infrastructure;

(10) testimony, exhibits, or other evidence that demonstrates the project will allow for the provision and maintenance of adequate, efficient, safe, reliable, and reasonably priced middle mile broadband service; and

(11) any other information that the applicant considers relevant or that the PUC requires.

(b) Requires the PUC, after notice and hearing if required by the PUC, to approve the plan if the PUC finds that the plan will allow for the provision and maintenance of adequate, efficient, safe, reliable, and reasonably priced middle mile broadband service.

(c) Requires the PUC, if the PUC approves a plan under this section, to issue a finding for the electric utility that the middle mile broadband facilities subject to

the plan are used and useful to the electric utility, the costs associated with the middle mile broadband facilities are reasonable, and the middle mile broadband facilities are prudent and includable in the electric utility's rate base, regardless of the extent of the electric utility's actual use of the middle mile broadband facilities.

(d) Requires the PUC to approve, modify, or reject a plan submitted to the PUC under this section not later than the 181st day after the date the plan is submitted under Subsection (a).

(e) Authorizes an approved plan to be updated or amended subject to the PUC approval in accordance with this section.

Sec. 43.103. New heading: COST RECOVERY FOR DEPLOYMENT OF MIDDLE MILE BROADBAND FACILITIES. (a) Creates this section from existing text of Section 43.102 and redesignates it as 43.103. Provides that where an electric utility installs a middle mile broadband system under Section 43.051, the electric utility's investment in that middle mile broadband system is eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary are eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36 (Rates). Authorizes an electric utility to recover, on a periodic basis, the invested capital and any fees or operating expenses associated with the middle mile broadband system. Requires the PUC, in approving a tariff or rate schedule that includes the recovery of invested capital and any fees or operating expenses associated with the middle mile broadband system, to use the return on investment used in the final order that established the electric utility's latest effective base rates.

Deletes existing text providing that where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a) (relating to authorizing an electric utility to elect to allow an affiliated or unaffiliated entity to operate or provide certain BPL or Internet services), the electric utility's investment in that BPL system to directly support the BPL electric utility applications and other BPL services consumed by the electric utility that are used and useful in providing electric utility service are required to be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary are required to be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. Deletes existing text requiring that the invested capital and expenses described in this section be allocated to the customer classes directly receiving the services.

(b) Requires that all revenue received by an electric utility from an ISP for the use of a middle mile broadband system, in a proceeding under Chapter 36, be applied as a revenue credit. Deletes existing text requiring that in any proceeding under Chapter 36, just and reasonable charges for the use of the electric utility's electric delivery system by a BPL owner or operator be limited to the usual and customary pole attachment charges paid to the electric utility for comparable space by cable television operators.

Deletes existing text prohibiting the revenues of an affiliated BPL operator or an affiliated BPL ISP from being deemed the revenues of an electric utility for purposes of setting rates under Chapter 36.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. New heading: COMPLIANCE WITH FEDERAL LAW. Transfers existing text from Section 43.152 to Section 43.151. Requires that an electric utility that owns and operates a middle mile broadband system comply with all applicable federal laws. Deletes existing text of Section 43.151 authorizing an electric utility, subject to the limitations of Chapter 43, to have a full or partial ownership interest in a BPL operator or a BPL ISP and providing that whether a BPL operator or a BPL ISP is an affiliate of the electric utility shall be determined under certain sections. Deletes existing text of

redesignated Section 43.152 providing that neither a BPL operator nor a BPL ISP shall be considered a "competitive affiliate" of an electric utility as that term is defined under a certain section. Deletes existing text of redesignated Section 43.152 relating to BPL operators complying with federal laws and certain federal agencies and state entities.

SECTION 2. Repealer: Section 33.001(b) (relating to prohibiting a governing body of a municipality to have jurisdiction over certain BPL services), Utilities Code.

SECTION 3. Effective date: upon passage or September 1, 2021.