

By: Anderson

H.B. No. 3853

A BILL TO BE ENTITLED

AN ACT

relating to middle mile broadband service provided by an electric utility.

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

SECTION 1. Chapter 43, Utilities Code, is amended to read as follows:

CHAPTER 43. PROVISION [USE] OF MIDDLE MILE [ELECTRIC DELIVERY SYSTEM FOR ACCESS TO] BROADBAND SERVICE BY ELECTRIC UTILITIES [AND OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) 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 [~~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. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers~~].

(b) [~~The legislature finds that access to quality, high speed broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service~~

1 ~~to customers where broadband access is currently not available and~~
2 ~~may provide an additional option for existing broadband consumers~~
3 ~~in Texas, resulting in a more competitive market for broadband~~
4 ~~services.]~~ The legislature [~~further~~] finds that broadband [BPL]
5 development in Texas depends on [~~is fully dependent upon~~] the
6 participation of electric utilities in this state that own and
7 operate [~~power lines and related~~] facilities that are necessary for
8 the full deployment of broadband service throughout this state
9 [~~construction of BPL systems and the provision of BPL services~~].

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

14 (d) The [~~(c) Consistent with the goal of increasing options~~
15 ~~for telecommunications in this state, the~~] legislature finds that
16 it is in the public interest to encourage the deployment of
17 broadband service [BPL] by permitting electric utilities to own or
18 operate facilities providing middle mile broadband service
19 [~~affiliates of the electric utility, or permitting unaffiliated~~
20 ~~entities, to own or operate all or a portion of such BPL systems~~].
21 The purpose of this chapter is to provide the appropriate framework
22 to support the deployment of those facilities [BPL].

23 (e) [(d)] The legislature finds that an electric utility
24 may choose to implement middle mile broadband service [BPL] under
25 the procedures set forth in this chapter, but is not required to do
26 so. The electric utility shall have the right to decide, in its
27 sole discretion, whether to implement middle mile broadband service

1 [BPL] and may not be penalized for deciding to implement or not to
2 implement that service [BPL].

3 Sec. 43.002. APPLICABILITY. (a) This chapter applies to an
4 electric utility whether or not the electric utility is offering
5 customer choice under Chapter 39.

6 (b) If there is a conflict between the specific provisions
7 of this chapter and any other provisions of this title, the
8 provisions of this chapter control.

9 (c) No provision of this title imposes [~~shall impose~~] an
10 obligation on an electric utility to [~~implement BPL, to~~] provide
11 broadband service [~~services,~~] or to allow others to install [BPL]
12 facilities or use the electric utility's facilities for the
13 provision of broadband service [~~services~~].

14 Sec. 43.003. DEFINITIONS. In this chapter:

15 (1) "Broadband service" means Internet service with
16 the capability of providing a download speed of 25 megabits per
17 second or faster and an upload speed of 3 megabits per second or
18 faster [~~"BPL," "broadband over power lines," and "BPL services"~~
19 ~~mean the provision of broadband services over electric power lines~~
20 ~~and related facilities, whether above ground or in underground~~
21 ~~conduit~~].

22 (2) "Middle mile broadband service" means the
23 provision of broadband service to an Internet service provider on a
24 wholesale basis. The term does not include provision of Internet
25 service to end-use customers on a retail basis [~~"BPL access" means~~
26 ~~the ability to access broadband services via a BPL operator or BPL~~
27 ~~Internet service provider~~].

1 (3) "Internet [~~"BPL operator"~~ means an entity that
2 owns or operates a BPL system on the electric power lines and
3 related facilities of an electric utility.

4 [~~(4)~~ "BPL Internet] service provider" means [~~and "BPL~~
5 ~~ISP" mean~~] an entity that provides Internet services to others on a
6 wholesale basis or to end-use customers on a retail basis.

7 (4) [~~(5)~~ "BPL system" means the materials, equipment,
8 and other facilities installed on electric utility property to
9 facilitate the provision of BPL services.

10 [~~(6)~~ "BPL electric utility applications" means
11 services and technologies that are used and useful and designed to
12 improve the operational performance and service reliability of an
13 electric utility including, but not limited to, automated meter
14 reading, real time system monitoring and meter control, remote
15 service control, outage detection and restoration, predictive
16 maintenance and diagnostics, and monitoring and enhancement of
17 power quality.

18 [~~(7)~~] "Electric delivery system" means the power lines
19 and related transmission and distribution facilities used by an
20 electric utility to deliver electric energy.

21 (5) [~~(8)~~] "Electric utility" includes [~~shall include~~]
22 an electric utility and a transmission and distribution utility as
23 defined in Section 31.002(6) or (19).

24 SUBCHAPTER B. DEVELOPMENT OF MIDDLE MILE BROADBAND [~~BPL~~] SYSTEMS

25 Sec. 43.051. AUTHORIZATION FOR MIDDLE MILE BROADBAND [~~BPL~~]
26 SYSTEM. (a) An [~~affiliate of an~~] electric utility [~~or a person~~
27 ~~unaffiliated with an electric utility~~] may own, construct,

1 maintain, and operate fiber optic cables and other facilities for
 2 providing middle mile broadband service [~~a BPL system and provide~~
 3 ~~BPL services on an electric utility's electric delivery system~~]
 4 consistent with the requirements of this chapter. Nothing in this
 5 chapter prohibits [~~shall prohibit~~] an entity defined in Section
 6 11.003(9) from providing broadband [~~BPL~~] service or owning and
 7 operating a broadband [~~BPL~~] system.

8 (b) The electric utility may determine which Internet
 9 service providers may have access to broadband capacity on the
 10 electric utility's middle mile broadband system and provide access
 11 points to allow connection between the electric utility's broadband
 12 system and the Internet service provider systems of those Internet
 13 service providers. [~~Nothing in this chapter shall prohibit an~~
 14 ~~electric utility from providing construction or maintenance~~
 15 ~~services to a BPL operator or BPL ISP provided that the costs of~~
 16 ~~these services are properly accounted for between the electric~~
 17 ~~utility and the BPL operator or BPL ISP.]~~

18 Sec. 43.052. [~~OWNERSHIP AND OPERATION OF BPL SYSTEM.~~ (a)
 19 ~~An electric utility may elect to:~~

20 [~~(1) allow an affiliate to own or operate a BPL system~~
 21 ~~on the utility's electric delivery system;~~

22 [~~(2) allow an unaffiliated entity to own or operate a~~
 23 ~~BPL system on the electric utility's electric delivery system; or~~

24 [~~(3) allow an affiliate or unaffiliated entity to~~
 25 ~~provide Internet service over a BPL system.~~

26 [~~(b) The BPL operator and the electric utility shall~~
 27 ~~determine what BPL Internet service providers may have access to~~

1 ~~broadband capacity on the BPL system.~~

2 ~~[Sec. 43.053. FEES AND] CHARGES. [(a)] An electric utility~~
3 ~~that owns and operates a middle mile broadband system may lease~~
4 ~~capacity on the system to an Internet service provider on a~~
5 ~~wholesale basis and [allows an affiliate or an unaffiliated entity~~
6 ~~to own a BPL system on the electric utility's electric delivery~~
7 ~~system] shall charge the Internet service provider ~~[owner of the~~
8 ~~BPL system]~~ for the use of the electric utility's ~~[electric~~
9 ~~delivery]~~ system.~~

10 ~~[(b) An electric utility may pay a BPL owner, a BPL~~
11 ~~operator, or a BPL ISP for the use of the BPL system required to~~
12 ~~operate BPL utility applications.~~

13 ~~[(c) If all or part of a BPL system is installed on poles or~~
14 ~~other structures of a telecommunications utility as that term is~~
15 ~~defined in Section 51.002, the owner of the BPL system shall be~~
16 ~~required to pay the telecommunications utility an annual fee~~
17 ~~consistent with the usual and customary charges for access to the~~
18 ~~space occupied by that portion of the BPL system so installed.~~

19 ~~[(d) Notwithstanding Subsections (a)-(c):~~

20 ~~[(1) an electric utility may not charge an affiliate~~
21 ~~under this section an amount less than the electric utility would~~
22 ~~charge an unaffiliated entity for the same item or class of items,~~

23 ~~[(2) an electric utility may not pay an affiliate~~
24 ~~under this section an amount more than the affiliate would charge an~~
25 ~~unaffiliated entity for the same item or class of items, and~~

26 ~~[(3) an electric utility or an affiliate of an~~
27 ~~electric utility may not discriminate against a retail electric~~

1 ~~provider that is not affiliated with the utility in the terms or~~
2 ~~availability of BPL services.]~~

3 Sec. 43.053 [~~43.054~~]. NO ADDITIONAL EASEMENTS OR
4 CONSIDERATION REQUIRED. Because broadband [~~BPL~~] systems provide
5 benefits to electric delivery systems, the installation of a middle
6 mile broadband [~~BPL~~] system on an electric delivery system does
7 [~~shall~~] not require the electric utility [~~or the owner of the BPL~~
8 ~~system~~] or an entity defined in Section 11.003(9) to obtain,
9 modify, or expand easements or other rights-of-way for the middle
10 mile broadband [~~BPL~~] system or to give additional consideration as
11 a result of the installation or the operation of a middle mile
12 broadband [~~BPL~~] system on the electric delivery system of the
13 electric utility or entity. [~~For purposes of this section,~~
14 ~~installation of a BPL system shall be deemed to be consistent with~~
15 ~~installation of an electric delivery system.~~]

16 Sec. 43.054 [~~43.055~~]. RELIABILITY OF ELECTRIC SYSTEMS
17 MAINTAINED. An electric utility that installs [~~allows the~~
18 ~~installation~~] and operates [~~operation of~~] a middle mile broadband
19 [~~BPL~~] system [~~on its electric delivery system~~] shall employ all
20 reasonable measures to ensure that the operation of the middle mile
21 broadband [~~BPL~~] system does not interfere with or diminish the
22 reliability of the utility's electric delivery system. If [~~Should~~]
23 a disruption in the provision of electric service occurs [~~occur~~],
24 the electric utility is [~~shall be~~] governed by the terms and
25 conditions of the retail electric delivery service tariff. The
26 electric utility may take all necessary actions regarding its
27 middle mile broadband system to address emergency circumstances

1 that may pose health, safety, or reliability concerns. At all
2 times, the provision of broadband service is [~~services shall be~~]
3 secondary to the reliable provision of electric delivery services.
4 An electric utility is not liable to any person, including an
5 Internet service provider, for any direct, indirect, or
6 consequential damages, including loss of business, loss of profits
7 or revenue, or loss of production capacity caused by a fluctuation,
8 disruption, or interruption of middle mile broadband service that
9 is caused in whole or in part by:

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

16 SUBCHAPTER C. IMPLEMENTATION OF MIDDLE MILE BROADBAND [~~BPL~~] SYSTEM
17 BY ELECTRIC UTILITY

18 Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An
19 electric utility[~~, through an affiliate or through an unaffiliated~~
20 ~~entity,~~] may [~~elect to~~] install and operate a middle mile broadband
21 [~~BPL~~] system on any part of its electric delivery system [~~some or~~
22 ~~all of its electric delivery system in any part or all of its~~
23 ~~certificated service area~~].

24 (b) The installation, operation, and use of a middle mile
25 broadband [~~BPL~~] system and the provision of middle mile broadband
26 service may [~~BPL services shall~~] not be regulated by any state
27 agency, a municipality, or local government other than as provided

1 by [~~for in~~] this chapter.

2 (c) An electric utility that owns and operates a middle mile
3 broadband system:

4 (1) may lease capacity on the system to an Internet
5 service provider on a wholesale basis; and

6 (2) may not provide Internet service to end-use
7 customers on a retail basis.

8 (d) [~~(c)~~] The commission or a state or local government or a
9 regulatory or quasi-governmental or a quasi-regulatory authority
10 may not:

11 (1) require an electric utility[~~, either through an~~
12 ~~affiliate or an unaffiliated entity,~~] to install a middle mile
13 broadband [BPL] system [~~on its power lines~~] or offer middle mile
14 broadband service on the utility's electric delivery system [~~BPL~~
15 ~~services in all or any part of the electric utility's certificated~~
16 ~~service area~~];

17 (2) require an electric utility to allow others to
18 install a middle mile broadband [BPL] system on the utility's
19 electric delivery system [~~in any part or all of the electric~~
20 ~~utility's certificated service area~~]; or

21 (3) prohibit an electric utility from installing a
22 middle mile broadband system or offering middle mile broadband
23 service on the utility's electric delivery system [~~having an~~
24 ~~affiliate or unaffiliated entity install a BPL system or offering~~
25 ~~BPL services in any part or all of the electric utility's~~
26 ~~certificated service area~~].

27 (e) [~~(d)~~] If a municipality or local government is already

1 collecting a charge or fee from the electric utility for the use of
2 the public rights-of-way for the delivery of electricity to retail
3 electric customers, the municipality or local government may not
4 require [~~is prohibited from requiring~~] a franchise or an amendment
5 to a franchise or require an additional [~~from requiring a~~] charge,
6 fee, or tax from the electric utility [~~any entity~~] for use of the
7 public rights-of-way for a middle mile broadband [~~BPL~~] system.

8 (f) [~~(e)~~] The state or a municipality may impose a charge on
9 the provision of middle mile broadband service [~~BPL services~~], but
10 the charge may not be greater than the lowest charge that the state
11 or municipality imposes on other providers of broadband service
12 [~~services~~] for use of the public rights-of-way in its respective
13 jurisdiction.

14 Sec. 43.102. COMMISSION REVIEW OF UTILITY MIDDLE MILE PLAN.

15 (a) An electric utility that plans a project to deploy middle mile
16 broadband shall submit to the commission a written plan that
17 includes:

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

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

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

25 (4) the capacity or number of fiber strands and any
26 other facilities of the middle mile that will be available to lease
27 to Internet service providers and other third parties on completion

1 of the project;

2 (5) the name of at least one Internet service provider
3 that has committed to leasing access to the middle mile broadband
4 assets constructed as part of the project;

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

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

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

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

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

20 (11) any other information that the applicant
21 considers relevant or that the commission requires.

22 (b) The commission, after notice and hearing if required by
23 the commission, shall approve the plan if the commission finds that
24 the plan will allow for the provision and maintenance of adequate,
25 efficient, safe, reliable, and reasonably priced middle mile
26 broadband service.

27 (c) If the commission approves a plan under this section,

1 the commission shall issue a finding for the electric utility that
2 the middle mile broadband facilities subject to the plan are used
3 and useful to the electric utility, the costs associated with the
4 middle mile broadband facilities are reasonable, and the middle
5 mile broadband facilities are prudent and includable in the
6 electric utility's rate base, regardless of the extent of the
7 electric utility's actual use of the middle mile broadband
8 facilities.

9 (d) The commission must approve, modify, or reject a plan
10 submitted to the commission under this section not later than the
11 181st day after the date the plan is submitted under Subsection (a).

12 (e) An approved plan may be updated or amended subject to
13 commission approval in accordance with this section.

14 Sec. 43.103 [~~43.102~~]. COST RECOVERY FOR DEPLOYMENT OF
15 MIDDLE MILE BROADBAND FACILITIES [~~BPL AND UTILITY APPLICATIONS~~].

16 (a) Where an electric utility installs a middle mile broadband
17 system [~~permits the installation of a BPL system on its electric~~
18 ~~delivery system~~] under Section 43.051 [~~43.052(a)~~], the electric
19 utility's investment in that middle mile broadband [~~BPL~~] system is
20 [~~to directly support the BPL electric utility applications and~~
21 ~~other BPL services consumed by the electric utility that are used~~
22 ~~and useful in providing electric utility service shall be] eligible
23 for inclusion in the electric utility's invested capital, and any
24 fees or operating expenses that are reasonable and necessary are
25 [~~shall be~~] eligible for inclusion as operating expenses for
26 purposes of any proceeding under Chapter 36. An electric utility
27 may recover, on a periodic basis, the invested capital and any fees~~

1 or operating expenses associated with the middle mile broadband
2 system. In approving a tariff or rate schedule that includes the
3 recovery of invested capital and any fees or operating expenses
4 associated with the middle mile broadband system, the commission
5 shall use the return on investment used in the final order that
6 established the electric utility's latest effective base rates [~~The~~
7 ~~invested capital and expenses described in this section must be~~
8 ~~allocated to the customer classes directly receiving the services~~].

9 (b) In a [~~any~~] proceeding under Chapter 36, all revenue
10 received by an electric utility from an Internet service provider
11 for the use of a middle mile broadband system must be applied as a
12 revenue credit [~~just and reasonable charges for the use of the~~
13 ~~electric utility's electric delivery system by a BPL owner or~~
14 ~~operator shall be limited to the usual and customary pole~~
15 ~~attachment charges paid to the electric utility for comparable~~
16 ~~space by cable television operators~~].

17 [~~(c) The revenues of an affiliated BPL operator or an~~
18 ~~affiliated BPL ISP shall not be deemed the revenues of an electric~~
19 ~~utility for purposes of setting rates under Chapter 36.~~]

20 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

21 Sec. 43.151. [~~AFFILIATES OF ELECTRIC UTILITY. (a) Subject~~
22 ~~to the limitations of this chapter, an electric utility may have a~~
23 ~~full or partial ownership interest in a BPL operator or a BPL~~
24 ~~ISP. Whether a BPL operator or a BPL ISP is an affiliate of the~~
25 ~~electric utility shall be determined under Section 11.003(2) or~~
26 ~~Section 11.006.~~

27 [~~(b) Neither a BPL operator nor a BPL ISP shall be~~

1 ~~considered a "competitive affiliate" of an electric utility as that~~
2 ~~term is defined in Section 39.157.~~

3 ~~[Sec. 43.152.] COMPLIANCE WITH FEDERAL LAW. An electric~~
4 ~~utility that owns and operates a middle mile broadband system [BPL~~
5 ~~operators] shall comply with all applicable federal laws[~~7~~~~
6 ~~including those protecting licensed spectrum users from~~
7 ~~interference by BPL systems. The operator of a radio frequency~~
8 ~~device shall be required to cease operating the device upon~~
9 ~~notification by a Federal Communications Commission or Public~~
10 ~~Utilities Commission representative that the device is causing~~
11 ~~harmful interference. Operation shall not resume until the~~
12 ~~condition causing the harmful interference has been corrected].~~

13 SECTION 2. Section 33.001(b), Utilities Code, is repealed.

14 SECTION 3. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2021.