

By: King

S.B. No. 1075

A BILL TO BE ENTITLED

AN ACT

relating to facilities and construction machinery used to respond to power outages.

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

SECTION 1. Section 39.918, Utilities Code, is amended to read as follows:

Sec. 39.918. UTILITY FACILITIES FOR RESPONDING TO SIGNIFICANT [~~POWER RESTORATION AFTER WIDESPREAD~~] POWER OUTAGE. (a) In this section, "significant [~~"widespread~~] power outage" means an event that [~~results in~~]:

(1) results in a loss of electric power that:

(A) affects a significant number of distribution customers of a transmission and distribution utility, creates a risk to public health or safety, [~~+~~] and

[~~(B)~~] has lasted or is expected to last for at least six [~~eight~~] hours;

(B) affects distribution customers of a transmission and distribution utility in an area for which the governor has issued a disaster or emergency declaration;

(C) affects customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted or is expected to last for at least twelve hours; or

(D) creates [~~and~~]

1 ~~[(2)]~~ a risk to public health or safety because it
2 affects a critical infrastructure facility, hospital, health care
3 facility, law enforcement facility, fire station, or water or
4 wastewater facility; or

5 (2) causes the independent system operator to order a
6 transmission and distribution utility to shed load.

7 (a-1) The Texas Division of Emergency Management, the
8 independent organization certified under Section 39.151 for the
9 ERCOT power region, or the executive director of the commission may
10 determine that a power outage other than an outage described by
11 Subsection (a) is a significant power outage for the purposes of
12 this section.

13 (b) Notwithstanding any other provision of this subtitle, a
14 transmission and distribution utility may:

15 (1) lease or own and operate facilities that provide
16 temporary emergency electric energy to aid in providing power to
17 the utility's distribution customers when a significant power
18 outage is imminent or restoring power to the utility's distribution
19 customers during a significant [widespread] power outage [in which:

20 ~~[(A) the independent system operator has ordered~~
21 ~~the utility to shed load; or~~

22 ~~[(B) the utility's distribution facilities are~~
23 ~~not being fully served by the bulk power system under normal~~
24 ~~operations]; and~~

25 (2) procure, own, and operate, or enter into a
26 cooperative agreement with other transmission and distribution
27 utilities to procure, own, and operate jointly, transmission and

1 distribution facilities that have a lead time of at least six months
2 and would aid in restoring power to the utility's distribution
3 customers following a significant [~~widespread~~] power outage.

4 (b-1) In this section, long lead time facilities described
5 by Subsection (b) may not be electric energy storage equipment or
6 facilities described by [~~under~~] Chapter 35[~~, Utilities Code~~].

7 (c) A transmission and distribution utility that [~~leases~~
8 ~~and~~] operates a facility [~~facilities~~] under Subsection (b)(1) may
9 not sell electric energy or ancillary services from the facility
10 [~~those facilities~~].

11 (d) A facility [~~Facilities~~] described by Subsection (b)(1):

12 (1) must be operated in isolation from the bulk power
13 system; and

14 (2) may not be included in independent system
15 operator:

16 (A) locational marginal pricing calculations;

17 (B) pricing; or

18 (C) reliability models.

19 (e) A transmission and distribution utility that [~~leases~~
20 ~~and~~] operates a facility [~~facilities~~] under Subsection (b)(1) shall
21 ensure, to the extent reasonably practicable, that retail customer
22 usage during operation of the facility [~~those facilities~~] is
23 adjusted out of the usage reported for billing purposes by the
24 retail customer's retail electric provider.

25 (f) A transmission and distribution utility shall, when
26 reasonably practicable, use a competitive bidding process to lease
27 a facility [~~facilities~~] under Subsection (b)(1).

1 (g) A transmission and distribution utility that leases or
2 owns and operates facilities under Subsection (b)(1) or that
3 procures, owns, and operates facilities under Subsection (b)(2)
4 shall include in the utility's emergency operations plan filed with
5 the commission, as described by Section 186.007, a detailed plan on
6 the utility's use of those facilities.

7 (h) The commission shall allow [~~permit~~]:

8 (1) a transmission and distribution utility that
9 leases or owns and operates facilities under Subsection (b)(1) to
10 recover the reasonable and necessary costs of leasing or owning and
11 operating the facilities, including the present value of future
12 payments required under a [~~the~~] lease, using the rate of return on
13 investment established in the commission's final order in the
14 utility's most recent base rate proceeding; and

15 (2) a transmission and distribution utility that
16 procures, owns, and operates facilities under Subsection (b)(2) to
17 recover the reasonable and necessary costs of procuring, owning,
18 and operating the facilities, using the rate of return on
19 investment established in the commission's final order in the
20 utility's most recent base rate proceeding.

21 (i) The commission shall authorize a transmission and
22 distribution utility to defer for recovery in a future ratemaking
23 proceeding the incremental operations and maintenance expenses and
24 the return, not otherwise recovered in a rate proceeding,
25 associated with the leasing, [~~or~~] procurement, ownership, and
26 operation of the facilities.

27 (j) A transmission and distribution utility may request

1 recovery of the reasonable and necessary costs of leasing, ~~[or]~~
2 procuring, owning, or ~~[and]~~ operating facilities under this
3 section, including any deferred expenses, through an expedited
4 periodic rate adjustment ~~[a]~~ proceeding under Section 36.210 or in
5 another ratemaking proceeding. The commission may review costs
6 recovered through a periodic rate adjustment in the following base
7 rate proceeding and order refunds to customers if appropriate.

8 (k) A transmission and distribution utility requesting cost
9 recovery under Subsection (j) is entitled to select whether the
10 costs are considered to be distribution substation equipment costs
11 or distribution transformer costs unless the commission has found
12 in a previous base rate proceeding for the utility that temporary
13 emergency electric energy costs should be categorized in a
14 different manner. A lease under Subsection (b)(1) must be treated
15 as a capital lease or finance lease for ratemaking purposes.

16 (l) The fact that the commission has not previously approved
17 a facility operated under this section or a cost of leasing,
18 procuring, owning, or operating a facility under this section is
19 not grounds for dismissal of the facility or the cost from a
20 proceeding under Section 36.210 or another ratemaking proceeding.

21 (m) If the capacity of facilities a transmission and
22 distribution utility operates under Subsection (b)(1) is less than
23 or equal to three percent of the utility's historical peak load, the
24 commission shall find that:

25 (1) the facilities are used and useful to the utility
26 in providing service; and

27 (2) the costs of leasing or owning and operating the

1 facilities are prudent, reasonable, and necessary.

2 [~~(k) This section expires September 1, 2029.~~]

3 SECTION 2. Section 502.146(b), Transportation Code, is
4 amended to read as follows:

5 (b) An owner is not required to register a vehicle that is
6 used only temporarily on the highways if the vehicle is:

7 (1) a farm trailer or farm semitrailer with a gross
8 weight of more than 4,000 pounds but not more than 34,000 pounds
9 that is used exclusively:

10 (A) to transport seasonally harvested
11 agricultural products or livestock from the place of production to
12 the place of processing, market, or storage;

13 (B) to transport farm supplies from the place of
14 loading to the farm; or

15 (C) for the purpose of participating in equine
16 activities or attending livestock shows, as defined by Section
17 87.001, Civil Practice and Remedies Code;

18 (2) machinery used exclusively for the purpose of
19 drilling water wells;

20 (3) oil well servicing or drilling machinery and if at
21 the time of obtaining the license plates, the applicant submits
22 proof that the applicant has a permit under Section 623.142; or

23 (4) construction machinery, including construction
24 machinery that is:

25 (A) owned by a transmission and distribution
26 utility as defined by Section 31.002, Utilities Code; and

27 (B) used to maintain or repair electrical lines

1 or substations in response to a power outage.

2 SECTION 3. The changes in law made by this Act apply only to
3 a proceeding before the Public Utility Commission of Texas, or
4 other regulatory authority described by Section 11.003, Utilities
5 Code, that commences on or after the effective date of this Act. A
6 proceeding before the Public Utility Commission of Texas or other
7 regulatory authority described by Section 11.003, Utilities Code,
8 that commenced before the effective date of this Act is governed by
9 the law in effect on the date the proceeding commenced, and that law
10 is continued in effect for that purpose.

11 SECTION 4. To the extent of any conflict, this Act prevails
12 over another Act of the 88th Legislature, Regular Session, 2023,
13 relating to nonsubstantive additions to and corrections in enacted
14 codes.

15 SECTION 5. This Act takes effect September 1, 2023.