

SUBJECT: Amending certification process for certain electric transmission facilities

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland,
Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

WITNESSES: For — Lino Mendiola, Entergy Texas, Inc., El Paso Electric Company, Xcel Energy; Tom Oney, Lower Colorado River Authority Transmission Services Corporation; Jaren Taylor, Oncor Electric, CenterPoint Energy, AEP Texas, Texas New Mexico Power; Tony Clark, Oncor, CenterPoint Energy, AEP Texas, Texas New Mexico Power Company, Xcel Energy, Entergy; Katie Coleman, Texas Association of Manufacturers; *(Registered, but did not testify: Isaac Albarado, AEP Texas; Jeff Bonham, CenterPoint Energy, Inc.; Daniel Womack, Dow; Patrick Reinhart, El Paso Electric Co.; Chance Sampson, Entergy Texas, Inc.; James Mathis, Occidental Petroleum; Walt Jordan, Oncor; Paul Schulze, Sharyland Utilities, L.P.; Mia Hutchens, Texas Association of Business; Austin McCarty, Texas Chemical Council; Roy Jackson, TNMP; Damon Withrow, Xcel Energy, Southwestern Public Service Co.)*

Against — Trent Carlson, GridLiance; Aundrea Williams, Lonestar Transmission, LLC; Lawrence Willick, LS Power Development, LLC; Josiah Neeley, R Street Institute; *(Registered, but did not testify: Calvin Crowder, GridLiance)*

On — Ryan Thomas, East Texas Electric Cooperative, Inc.; Carl Galant, Texas Electric Cooperatives; *(Registered, but did not testify: Kathi Calvert, Houston County Electric Cooperative Inc; Mark Tamplin, Jasper Newton Electric Cooperative; Cyrus Reed, Lone Star Chapter Sierra Club; Kathy Wood, Panola-Harrison Electric Cooperative, Inc; DeAnn Walker, Public Utility Commission of Texas; Rhett Reid, Rusk County Electric*

Cooperative; Doug Turk, Sam Houston Electric Cooperative; Russell T. “Russ” Keene, Texas Public Power Association; Robert Walker, Upshur Rural Electric Cooperative; Cliff Campbell and Debbie Robinson, Wood County Electric Cooperative)

BACKGROUND: Utilities Code sec. 37.051 prohibits an electric utility or other person from providing service to the public under a franchise or permit unless the utility or person obtained from the Public Utility Commission (PUC) a certificate of public convenience and necessity. An electric cooperative is not required to obtain a certificate for the construction, operation, or extension of any generating facilities or interconnection facilities.

Sec. 37.051(d) allows a certificate to be granted to an electric utility or other person for a facility used as part of the transmission system serving the ERCOT power region solely for transmission of electricity. Sec. 37.051(e) allows PUC to consider an application for a certificate to construct transmission capacity that serves the ERCOT power region. Before granting a certificate, PUC must make certain findings.

DIGEST: CSHB 3995 would amend provisions regarding the requirement, division, and transfer of a certificate of convenience and necessity for electric utilities, municipally owned utilities, and electric cooperatives providing certain services under jurisdiction of the Public Utility Commission (PUC).

Certification for new transmission interconnections. The bill would specify that a certificate to build, own, or operate a new transmission facility that interconnected with an existing utility facility could be granted only to the owner of the existing facility.

If the new transmission facility interconnected with facilities owned by different utilities, each entity would have to be certified to build, own, or operate the new facility in separate and discrete equal parts, unless they agreed otherwise.

Notwithstanding the above provisions, if a new transmission line would

create the first interconnection between a load-serving station and an existing transmission facility, the entity with a load-serving responsibility or cooperative that had a member with such responsibility would have to be certified to build, own, or operate the new line and station.

The owner of the existing facility would have to be certified to build, own, or operate the station or tap at the existing transmission facility to provide the interconnection, unless the owner was unwilling to build. In that case, the entity or cooperative with load-serving responsibility could be certified.

Designation of other facilities. The bill would allow an electric utility or municipally owned utility authorized to build, own, or operate a new transmission facility to designate a municipally owned utility or another certified utility within the same electric power region, coordinating council, independent system operator, or power pool to build, own, or operate the facility, subject to PUC rules.

The division of any required certification of facilities would apply, unless each entity agreed otherwise. The bill would not intend to require a certificate for facilities that PUC had determined did not require certification.

Certificate transfer. The bill would authorize an electric utility or a municipally owned utility to sell, assign, or lease a certificate or right obtained under a certificate if the purchaser was:

- already certified by PUC to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool; or
- an electric cooperative or municipally owned utility.

PUC could authorize the transfer of a certificate or right if it would not diminish the state's retail rate jurisdiction and the purchaser could provide adequate service.

Cooperative agreements. Notwithstanding other provisions of the bill, The bill would allow an electric cooperative to be certified to build, own, or operate a new facility in place of any other electric cooperative if both entities agreed, subject to PUC rule.

Persons required to have certification. The bill would remove the prohibition on a person who was not an electric utility from providing service under a franchise or permit without obtaining a certificate.

Repealed provisions. The bill would repeal Utilities Code sec. 37.051(d), (e), and (f), relating to the authorization of a certificate for a facility used as part of the transmission system serving the ERCOT power region and the required PUC findings before granting such a certificate.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 3995 would help ensure regulatory certainty for transmission projects in the state and would maintain the status quo for the jurisdiction of the Public Utility Commission (PUC) over transmission rates and reliability. Texans currently benefit from one of the most competitive and successful electric markets in the world. However, a recent final rule issued by the Federal Energy Regulatory Commission (FERC) could open up the state to federal regulation by ceding jurisdiction over electric transmission facilities to FERC.

The rule would regulate how transmission lines could be built and bring into question the reliability of services, as they would no longer be under the jurisdiction of PUC. Areas outside the ERCOT power grid could see increases in rates, as FERC is more lenient in allowing utilities to receive higher returns on equity. This means customers in East Texas or parts of the Panhandle could see increased costs. The bill also would ensure the electric cooperatives could continue to make agreements to build, own, or operate transmission facilities to best serve their communities.

CSHB 3995 would follow the trend of other states in passing legislation to maintain state oversight over their own grid. Concerns that the bill would close off the transmission markets to competition are misplaced since there is no real competition for transmission. It is not realistic to have several different transmission lines and poles installed, competing for customers. Transmission always has been regulated under PUC to efficiently bring electricity to customers. Certain reports of cost-savings from competitive bidding for transmission projects are effectively speculative. Because none of the projects started since the FERC rule was issued have finished construction, information on potential cost savings is not based on evidence.

OPPONENTS
SAY:

CSHB 3995 could reverse the current trend in the electric market toward competitive bidding for transmission projects. After a recent FERC rule was published, several projects were started nationwide, including one in Texas. The electric company that ultimately won the bid for the transmission project in the state offered significant cost savings that could benefit customers in the area. Passage of this bill could prevent the project from going forward, ending the potential for lower rates for customers.

Since opening up the electric market, Texas has twice the energy production of any state and the ERCOT grid is considered a model for other states and countries. It is now time to open up transmission regulations to allow incumbent utilities to bring jobs and innovation into the state. A study published by the Brattle Group in 2018 showed that utilities could save up to \$8 billion nationwide by opening up transmission projects to competition, and costs were reduced when an independent company won a bid for a transmission project. The bill could end the potential for competition by codifying the current process of transmission regulation.

OTHER
OPPONENTS
SAY:

CSHB 3995 would subject to PUC rules an agreement made between electric cooperatives that would allow one cooperative to build, own, or operate a new facility in place of another. This could open the door to unnecessary rulemaking and could conflict with provisions of the Public Utility Regulatory Act, which provides for limited PUC jurisdiction over

electric cooperatives.