

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas


May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

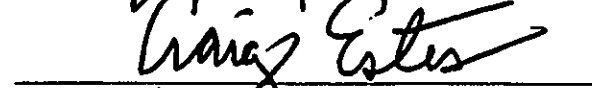
Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

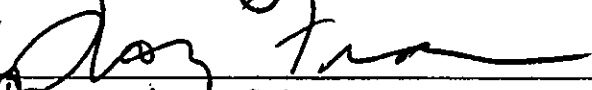
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H. B. 3309 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



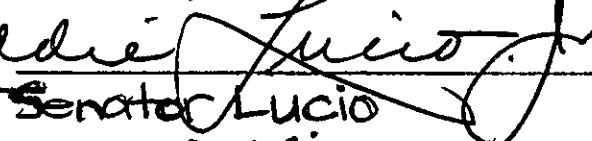
Senator Owen, Chair



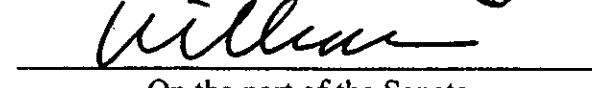
Senator Estes



Senator Fraser



Senator Lucio




On the part of the Senate
Senator Williams



Representative Gattis, Chair




Representative Kolkhorst



Representative Hamilton



Representative Ritter



On the part of the House
Representative Lucio, III

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3309

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0541 to read as follows:

Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The commission shall consolidate the proceeding on an application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line with the proceeding on another application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line if it is apparent from the applications or a motion to intervene in either proceeding that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. This section does not apply to a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone as part of a plan developed by the commission under Section 39.904(g)(2).

SECTION 2. Section 37.051, Utilities Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) 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

1 permit unless the utility or other person first obtains from the
2 commission a certificate that states that the public convenience
3 and necessity requires or will require the installation, operation,
4 or extension of the service.

5 (d) A certificate may be granted to an electric utility or
6 other person under this section for a facility used as part of the
7 transmission system serving the ERCOT power region solely for the
8 transmission of electricity.

9 (e) The commission may consider an application filed by a
10 person not currently certificated as an electric utility for a
11 certificate of convenience and necessity to construct transmission
12 capacity that serves the ERCOT power region. Before granting a
13 certificate under this section, the commission must find, after
14 notice and hearing, that:

15 (1) the applicant has the technical ability, financial
16 ability, and sufficient resources in this state to own, operate,
17 and maintain reliable transmission facilities;

18 (2) the applicant has the resources and ability to
19 comply with commission rules, requirements of the independent
20 organization certified under Section 39.151 for the ERCOT power
21 region, and requirements of the National Electric Reliability
22 Council applicable to the provisions of transmission service; and

23 (3) for an application filed by a person that is not an
24 electric utility, granting the application will not adversely
25 affect wholesale transmission rates, as compared to the rates
26 projected to be charged if an existing electric utility were to
27 build the transmission facility.

1 (f) The commission shall consider the requirements of
2 Subsection (e) to have been met by an electric utility or other
3 person that:

4 (1) is selected by the commission as a transmission
5 provider under a plan adopted by the commission under Section
6 39.904 not later than September 1, 2009; and

7 (2) before the certificate is issued, provides to the
8 commission a detailed plan regarding the offices, personnel, and
9 other resources the electric utility or other person will have in
10 this state to ensure provision of continuous and adequate
11 transmission service.

12 SECTION 3. Section 37.053(a), Utilities Code, is amended to
13 read as follows:

14 (a) An electric utility or other person that wants to obtain
15 or amend a certificate must submit an application to the
16 commission.

17 SECTION 4. Sections 37.055, 37.057, and 37.151, Utilities
18 Code, are amended to read as follows:

19 Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) An
20 electric utility or other person that wants to exercise a right or
21 privilege under a franchise or permit that the utility or other
22 person anticipates obtaining but has not been granted may apply to
23 the commission for a preliminary order under this section.

24 (b) The commission may issue a preliminary order declaring
25 that the commission, on application and under commission rules,
26 will grant the requested certificate on terms the commission
27 designates, after the electric utility or other person obtains the

1 franchise or permit.

2 (c) The commission shall grant the certificate on
3 presentation of evidence satisfactory to the commission that the
4 electric utility or other person has obtained the franchise or
5 permit.

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

16 Sec. 37.151. PROVISION OF SERVICE. Except as provided by
17 this section, Section 37.152, and Section 37.153, a certificate
18 holder, other than one granted a certificate under Section
19 37.051(d), shall:

20 (1) serve every consumer in the utility's certificated
21 area; and

22 (2) provide continuous and adequate service in that
23 area.

24 SECTION 5. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

H.B. No. 3309

1 Act takes effect September 1, 2009.

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~No equivalent provision.~~

SECTION __. Subsection (a), Section 36.209, Utilities Code, is amended to read as follows:

Same as House version.

(a) This section applies only to an electric utility that operates solely outside of ERCOT in areas of this state included in the Southeastern Electric Reliability Council, the Southwest Power Pool, or the Western Electricity Coordinating Council and that owns or operates transmission facilities.

~~No equivalent provision.~~

SECTION __. Section 37.051, Utilities Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

SECTION 2. Same as House version.

(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.

(d) A certificate may be granted to an electric utility or other person under this section for a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity.

(e) The commission may consider an application filed by a person not currently certificated as an electric utility for a certificate of convenience and necessity to construct transmission capacity that serves the ERCOT power region. Before granting a certificate under this section, the commission must find, after notice and hearing, that:

(1) the applicant has the technical ability, financial

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

ability, and sufficient resources in this state to own, operate, and maintain reliable transmission facilities;

(2) the applicant has the resources and ability to comply with commission rules, requirements of the independent organization certified under Section 39.151 for the ERCOT power region, and requirements of the National Electric Reliability Council applicable to the provisions of transmission service; and

(3) for an application filed by a person that is not an electric utility, granting the application will not adversely affect wholesale transmission rates, as compared to the rates projected to be charged if an existing electric utility were to build the transmission facility.

(f) The commission shall consider the requirements of Subsection (e) to have been met by an electric utility or other person that:

(1) is selected by the commission as a transmission provider under a plan adopted by the commission under Section 39.904 not later than September 1, 2009; and

(2) before the certificate is issued, provides to the commission a detailed plan regarding the offices, personnel, and other resources the electric utility or other person will have in this state to ensure provision of continuous and adequate transmission service.

No equivalent provision.

SECTION __. Subsection (a), Section 37.053, 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

SECTION 3. Same as Senate version.

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 1. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0541 to read as follows:

Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The commission shall consolidate the proceeding on an application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line with the proceeding on another application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line if it is apparent from the applications or a motion to intervene in either proceeding that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. This section does not apply to a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone as part of a plan developed by the commission under Section 39.904(g)(2) unless the transmission line would be constructed by more than one transmission service provider.

No equivalent provision.

to the commission.

SECTION 1. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0541 to read as follows:

Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The commission shall consolidate the proceeding on an application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line with the proceeding on another application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line if it is apparent from the applications or a motion to intervene in either proceeding that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. This section does not apply to a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone as part of a plan developed by the commission under Section 39.904(g)(2).

SECTION __. Sections 37.055, 37.057, and 37.151, Utilities Code, are 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

SECTION 1. Same as Senate version.

SECTION 4. Same as Senate version except as follows:

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

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

(c) The commission shall grant the certificate on presentation of evidence satisfactory to the commission that the electric utility or other person has obtained the franchise or permit.

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

Sec. 37.151. PROVISION OF SERVICE. Except as provided by this section, Section 37.152, and Section 37.153, a certificate holder, other than those granted a certificate under Section 37.051(d), shall:

(1) serve every consumer in the utility's certificated area;

Sec. 37.151. PROVISION OF SERVICE. Except as provided by this section, Section 37.152, and Section 37.153, a certificate holder, other than one granted a certificate under Section 37.051(d), shall:

(1) serve every consumer in the utility's certificated

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

and
(2) provide continuous and adequate service in that area.

area; and
(2) provide continuous and adequate service in that area.

~~No equivalent provision:~~

SECTION __. Subchapter D, Chapter 38, Utilities Code, is amended by adding Section 38.073 to read as follows:
Sec. 38.073. AUTHORITY OF COMMISSION DURING AN EMERGENCY. (a) On a declaration of a natural disaster or other emergency by the governor, the commission may require an electric utility, municipally owned utility, electric cooperative, qualifying facility, power generation company, exempt wholesale generator, or power marketer to sell electricity to an electric utility, municipally owned utility, or electric cooperative that is unable to supply power to meet customer demand due to the natural disaster or other emergency. Any plant, property, equipment, or other items used to receive or deliver electricity under this subsection are used and useful in delivering service to the public, and the commission shall allow timely recovery for the costs of those items. The commission may order an electric utility, municipally owned utility, or electric cooperative to provide interconnection service to another electric utility, municipally owned utility, or electric cooperative to facilitate a sale of electricity under this section. If the commission does not order the sale of electricity during a declared emergency as described by this subsection, the commission shall promptly submit to the legislature a report describing the reasons why the commission did not make that order.

Same as House version.

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(b) If an entity receives electricity under Subsection (a), the receiving entity shall reimburse the supplying entity for the actual cost of providing the electricity. The entity receiving the electricity is responsible for any transmission and distribution service charges specifically incurred in relation to providing the electricity.

(c) An entity that pays for electricity received under Subsection (b) and that is regulated by the commission may fully recover the cost of the electricity in a timely manner by:

(1) including the cost in the entity's fuel cost under Section 36.203; or

(2) notwithstanding Section 36.201, imposing a different surcharge.

No equivalent provision.

SECTION __. Section 39.107(h), Utilities Code, is amended to read as follows:

(h) The commission shall establish a nonbypassable surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval date recorder meter. The commission shall ensure that the nonbypassable surcharge reflects a deployment of advanced meters that is no more than one-third of the utility's total meters over each calendar year and shall ensure that the nonbypassable surcharge does not result

Same as House version.

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

in the utility recovering more than its actual, fully allocated meter and meter information network costs. The expenses must be allocated to the customer classes receiving the services, based on the electric utility's most recently approved tariffs. An electric utility or transmission and distribution utility that deploys advanced metering and meter information networks shall, to the extent practicable, obtain grants, loans, and loan guarantees available from the federal government specifically for that purpose, and other available revenue that would reduce the utility's cost of deployment. The commission shall reflect the revenue obtained when establishing the amount of a surcharge under this subsection and may reduce the amount of a surcharge approved before the utility received the revenue, if necessary.

No equivalent provision.

SECTION __. Section 39.452, Utilities Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) ~~[Notwithstanding Subsection (a), except for adjustments authorized by Sections 36.203, 39.454, 39.455, and 39.456, and except for proceedings and cost recovery mechanisms authorized by Sections 39.458-39.463, a person may not file a proceeding to change, alter, or revoke any rate offered or charged by an electric utility subject to this subchapter before June 30, 2007, with an effective date no earlier than June 30, 2008. As part of a Subchapter C, Chapter 36, rate proceeding, the]~~

Same as House version.

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

An electric utility subject to this subchapter shall propose a competitive generation tariff to allow eligible customers the ability to contract for competitive generation. The commission shall approve, reject, or modify the proposed tariff not later than September 1, 2010. The tariffs subject to this subsection may not be considered to offer a discounted rate or rates under Section 36.007, and the utility's rates shall be set, in the proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the implementation of the tariff. The commission shall ensure that a competitive generation tariff shall not be implemented in a manner that harms the sustainability or competitiveness of manufacturers that choose not to take advantage of competitive generation. Pursuant to the competitive generation tariff, an electric utility subject to this subsection shall purchase competitive generation service, selected by the customer, and provide the generation at retail to the customer. An electric utility subject to this subsection shall provide and price retail transmission service, including necessary ancillary services, to retail customers who choose to take advantage of the competitive generation tariff at a rate that is unbundled from the utility's cost of service. Such customers shall not be considered wholesale transmission customers. Notwithstanding any other provision of this chapter, the commission may not issue a decision relating to a competitive generation tariff that is contrary to an applicable decision, rule, or policy statement of a federal

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

regulatory agency having jurisdiction.

(i) Notwithstanding any other provision of this chapter, if the commission has not approved the transition to competition plan under this section before January 1, 2009, an electric utility subject to this subchapter shall cease all activities relating to the transition to competition under this section. The commission may, on its own motion or the motion of any affected person, initiate a proceeding under Section 39.152 to certify a power region to which the utility belongs as a qualified power region when the conditions supporting such a proceeding exist. The commission may not approve a plan under Subsection (g) until the expiration of four years from the time that the commission certifies a power region under Subsection (f).

No equivalent provision.

SECTION __. Section 39.904, Utilities Code, is amended by adding Subsection (h-1) to read as follows:
(h-1) An electric utility, transmission and distribution utility, or river authority that has been designated by the commission to construct transmission capacity under Subsection
(g) shall, to the extent practicable, obtain grants, loans, and loan guarantees available from the federal government specifically for that purpose, and other available revenue to reduce the utility's or authority's cost of construction. The
commission shall reflect the revenue obtained when establishing

Same as House version.

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

or modifying the rates of the utility or authority and may propose a rate reduction under Subchapter D, Chapter 36, if necessary.

No equivalent provision.

SECTION __. Not later than the 90th day after the effective date of this Act, an electric utility operating in the Southeastern Electric Reliability Council that is subject to traditional cost of service rate regulation and on the effective date of this Act has a transition to competition plan on file with the Public Utility Commission of Texas shall:

Same as House version.

- (1) withdraw the plan from the commission; and
- (2) cease all activities related to the plan.

No equivalent provision.

SECTION __. (a) Not later than November 1, 2009, the Public Utility Commission of Texas shall conduct and complete a study to evaluate:

Same as House version.

- (1) the locations in this state that are most likely to experience a natural disaster or other emergency;
- (2) the ability of each entity described by Subsection (a), Section 38.073, Utilities Code, as added by this Act, to comply with that section in the event of a natural disaster or other emergency;
- (3) any steps an entity described by Subsection (a), Section 38.073, Utilities Code, as added by this Act, should take to prepare to comply with that section; and
- (4) the potential for distributed generation, including renewable power with battery backup and combined heat and power systems, to strengthen reliability of electric

House Bill 3309
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

service during a natural disaster or other emergency.

(b) An entity described by Subsection (a), Section 38.073, Utilities Code, as added by this Act, shall comply with any order issued by the Public Utility Commission of Texas under that subsection while the study required by Subsection (a) of this section is conducted.

(c) The Public Utility Commission of Texas shall prepare a report based on the study conducted under Subsection (a) of this section. The report must include any recommendations the commission considers advisable in relation to the implementation of and compliance with Section 38.073, Utilities Code, as added by this Act. The commission may include the report in the report required by Section 31.003, Utilities Code.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

SECTION 2. Same as House version.

SECTION 5. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3309** by Gattis (Relating to certificates of convenience and necessity for the construction of transmission facilities.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would require the Public Utility Commission (PUC) to consolidate the proceedings on an application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line with the proceeding on another application to obtain or amend a certificate of convenience and necessity for the construction of a transmission line if it is apparent that the transmission lines that are the subject of the separate proceedings share a common point of interconnection. The bill would exempt a proceeding on an application for a certificate of convenience and necessity for a transmission line to serve a competitive renewable energy zone from this requirement.

The bill would authorize the PUC to grant a certificate to a person operating a facility used as part of the transmission system serving the ERCOT power region solely for the transmission of electricity. The bill would establish the eligibility requirements for the certification. The bill would also exempt a person granted a certificate under Section 37.051(d) from serving every customer in a certified area and from providing continuous and adequate service in that area.

The bill would require the PUC to conduct a rulemaking to conform existing rules to the bill's provisions. The PUC anticipates any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.


Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JOB, ES, JRO, KJG

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3309 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

May 30, 2009
(date)