SUBJECT: Regulation of broadband over power lines (BPL) systems

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 6 ayes — P. King, Hunter, Baxter, R. Cook, Crabb, Hartnett

0 nays

1 absent — Turner

SENATE VOTE: On final passage, April 29 — 29-0

WITNESSES: For — Michael Jewell, Direct Energy, CPL Retail Energy, WTU Retail Energy; Phillip Oldham, Texas Coalition for Competitive Electricity; Scott Rozzell, Association of Electric Companies of Texas

Against — Monte Akers, Texas Coalition of Cities for Utility Issues; Tom Blackwell; Skip Cameron; Bill Lawless; Eugene Preston (*Registered, but did not testify*: Thomas Brocato, Steering Committee of Cities Served by TXU)

On — Carol Biedrzycki, Texas Ratepayers Organization to Save Energy; Paul Hudson, Julie Parsley, Public Utility Commission

DIGEST: CSHB 1748 would authorize an affiliate of an electric utility to operate a broadband over power lines (BPL) system and provide BPL services on an electric utility's electric delivery system. "Broadband over power lines" would be defined as the provision of broadband services over electric power lines.

A utility could install or operate a BPL system in any part of its certificated service area. BPL services would not be regulated by the state or any local government beyond regulations included in the bill. Neither the Public Utility Commission (PUC) nor a local government could:

- prohibit an affiliate or unaffiliated entity from installing a BPL system; or
- require that a utility install or allow others to install a BPL system.

**Terms of a BPL agreement.** Under the bill, an electric utility could allow an affiliate or an unaffiliated entity to own or operate a BPL system on the utility's electric delivery system or provide Internet service over a BPL system. A utility would have to charge the owner of a BPL system for the use of the utility's electric delivery system and could pay a BPL owner or BPL Internet service provider (ISP) for the use of the BPL system required to operate BPL utility applications. A utility could not charge an affiliate less than it would charge an unaffiliated entity or pay an affiliate more than the affiliate would charge an unaffiliated entity. A utility or an affiliate could not discriminate against an unaffiliated provider with regard to BPL services. If a BPL system were installed on a telecommunication structure, the BPL system owner would pay the telecommunications utility a fee consistent with customary charges for access to that space.

**Reliability.** A utility would have to ensure that operation of a BPL system on its electric delivery system did not interfere with the reliability of its delivery system. Broadband services would be secondary to reliable provision of electric services.

**BPL regulation.** The governing body of a municipality would not have jurisdiction over a BPL system, rates, or services. If a municipality or local government already was collecting a fee from a utility for use of a public way for delivery of electricity to retail electric customers, that governmental entity would be prohibited from requiring a franchise for provision of BPL services. No governmental entity could impose a charge on BPL services greater than the lowest charge imposed on other Internet services in the entity's jurisdiction. Installation of a BPL system on an electric delivery system would not require a utility or BPL system owner to obtain additional easements.

BPL operators would be required to comply with all applicable federal laws, including laws protecting licensed spectrum users from interference. The operator of a radio frequency device would have to cease operating the device upon notification by the Federal Communications Commission that the device caused harmful interference.

**Cost recovery.** An electric utility's investment in a BPL system that directly supported services used by the utility could be included in the utility's invested capital and be included under a rate proceeding under Utilities Code ch. 36, which governs PUC authority to regular electric utility rates. Such expenses would have to be directly allocated to

customers receiving those services. Charges for use of a utility's electric delivery system would be limited to the usual cable television pole attachment charges. The revenues of an affiliated BPL operator or ISP would not be included as revenues of an electric utility under a rate proceeding. A utility could have an ownership interest in a BPL operator or ISP.

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, 2005.

SUPPORTERS SAY:

CSSB 1748 would establish a framework for deployment of BPL technology across Texas. BPL is a potentially revolutionary technology that could expand broadband services to underserved rural areas and provide enhanced electric services to customers throughout the state. Because electric service is ubiquitous, the potential exists for equally expansive broadband service, provided the state establish a framework for deploying BPL technology. BPL also could facilitate technologies to benefit electric utility customers that could help prevent power outages or manage peak demand for electricity.

Recognizing that the FCC has exclusive jurisdiction of radio frequency, CSSB 1748 would establish appropriate measures to prevent interference of BPL services with amateur radio services. The bill would require BPL providers to comply with all applicable federal laws, including the FCC BPL regulations promulgated in October 2004. These regulations established technical guidelines to curtail harmful interference with licensed broadcasters. The bill would require a BPL service to be halted if the FCC found evidence of interference. It would thus be in a provider's interest to ensure that BPL did not cause interference.

The bill would not subject all utility customers to fees to subsidize deployment of BPL, and ratepayers would not be at risk for BPL investments. Cost recovery by utilities would be allowed only for services that directly benefited utility customers, such as enhanced metering capabilities or grid reliability provided through BPL technology.

OPPONENTS SAY:

BPL is an unproven technology that has been shown to cause substantial interference with radio services, particularly amateur radio services. Because power lines are not designed to prevent radiation of radio frequency energy, interference with certain licensed broadcasters is likely.

Studies by the U.S. National Telecommunications and Information Administration have demonstrated interference from BPL systems and have suggested that the recently adopted FCC regulations are insufficient.

Encouraging large-scale BPL deployment would be premature, particularly when other broadband technologies that do not cause interference already are available. Amateur radio operators provide important public safety services such as monitoring weather patterns in conjunction with the National Weather Service, and the Legislature should ensure that services provided by these volunteers were not harmed by BPL.

Art. 3, subsec. 52(a) of the Texas Constitution prohibits the Legislature from authorizing a political subdivision of the state to grant a thing of value to any individual or corporation, and CSSB 1748 likely would violate this constitutional provision. The bill would prohibit a municipality from collecting a fee for use of a public right-of-way for a BPL system when the municipality already was collecting a fee from a utility for use of that right of way. Because a public right-of-way clearly is a thing of value, municipalities would have to be able to collect a fee from a BPL provider for use of that right-of-way to avoid questions about the constitutionality of the bill.

OTHER OPPONENTS SAY:

Rather than relying only upon the FCC to satisfy complaints about interference by a BPL system, the bill should allow some participation of local governments to address disputes. It is possible that any problem stemming from a BPL system could be addressed locally, saving the time and effort to obtain a settlement from the federal government.

NOTES:

The committee substitute added a provision requiring the operator of a radio frequency device to cease operating the device upon notification by the FCC that the device caused harmful interference.