

SUBJECT: Allowing electric utilities to provide middle mile broadband services

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

WITNESSES: For — Ken Perdew, AEP Texas; JJ McGrath, Texoma Communications, LLC dba TekWav; (*Registered, but did not testify*: Isaac Albarado, AEP Texas; Scott Hutchinson, Association of Electric Companies of Texas AECT; Kara Mayfield, Association of Rural Communities in Texas; Dale Peddy, Entergy Texas; Beth Cubriel, Eric Rachal and MxToolbox; Tom Oney, Lower Colorado River Authority (LCRA); Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Katie Coleman, Texas Association of Manufacturers; Jennifer Bergland, Texas Computer Education Association; Charlie Leal, Texas Farm Bureau; Monty Wynn, Texas Municipal League; Thomas Parkinson)

Against — None

On — Walt Baum, Texas Cable Association; (*Registered, but did not testify*: Thomas Gleeson, Public Utility Commission of Texas)

DIGEST: CSHB 3853 would allow electric utilities to provide middle mile broadband systems on their electric delivery systems and lease excess fiber capacity to internet service providers.

Authorization. CSHB 3853 would allow an electric utility to own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service.

An electric utility could determine on a nondiscriminatory basis which internet service providers could have access to excess fiber capacity on the electric delivery system and provide access points to allow connection.

The utility could provide access to excess fiber capacity on the utility's middle mile broadband system only on reasonable and nondiscriminatory terms and conditions.

Definitions. "Broadband service" would mean retail internet service provided by a commercial internet service provider with the capability of providing a download speed of at least 25 megabits per second and an upload speed of at least three megabits per second.

"Middle mile broadband service" would mean the provision of excess fiber capacity on an electric utility's electric delivery system to an internet service provider for broadband service. The term would not include provision of internet service to end-use customers on a retail basis.

Participation by electric utility. An electric utility could install and operate a middle mile broadband system on any part of its electric delivery system but could not construct new electric delivery facilities for the purpose of middle mile service.

A utility that owned and operated a middle mile broadband system could lease excess fiber capacity on its electric delivery system to an internet service provider on a wholesale basis. A utility could not provide internet service to end-use customers on a retail basis.

The bill would prohibit the Public Utilities Commission (PUC) or a state or local government or other regulatory or governmental authority from:

- requiring an electric utility to install a middle mile system or offer middle mile services;
- requiring an electric utility to allow others to install a middle mile system on its electric delivery system; or
- prohibiting an electric utility from installing a middle mile system or offering middle mile services.

A municipality or local government that was already collecting a charge or fee from a utility for the use of the public rights-of-way for the delivery

of electricity could not require a franchise or an additional charge, fee, or tax for use of the rights-of-way for a middle mile broadband system.

The state or a municipality could impose a charge on the provision of middle mile service, but the charge could not be greater than the lowest charge imposed on other providers of broadband service for use of the public rights-of-way.

The installation, operation, and use of a middle mile broadband system, the provision of middle mile broadband service, and the lease of excess fiber capacity could not be regulated by any state agency, municipality, or local government other than as provided by the bill.

Charges. An electric utility could lease excess fiber capacity to an internet service provider on a wholesale basis and would have to charge for all costs associated with the use of the system. The rates, terms, and conditions of a lease would have to be nondiscriminatory. The utility could not lease excess fiber capacity to an affiliated internet service provider.

Commission review of middle mile plan. A utility that planned a project to deploy middle mile broadband would have to submit to PUC a written plan that included:

- the route of the infrastructure proposed for the project;
- the number of fiber strands and any facilities that would be used;
- the location of the infrastructure that would be used;
- the capacity or number of fiber strands and any facilities that would be available to lease;
- the name of at least one internet service provider that had committed to leasing access to the constructed assets;
- an estimate of potential broadband customers that would be served;
- the estimated cost of the project;
- the proposed schedule of construction;
- the method of attachment and connection of the middle mile broadband assets by the provider to the system;

- testimony, exhibits, or other evidence that demonstrated the project would allow for the provision and maintenance of adequate, efficient, safe, reliable, and reasonably priced service, and
- any other information relevant or required by PUC.

PUC, after notice and hearing if required, would have to approve the plan if it would allow for the provision and maintenance of adequate, efficient, safe, reliable, and reasonably priced middle mile broadband service.

PUC would have to approve, modify, or reject a plan no later than 181 days after it was submitted. An approved plan could be updated or amended subject to PUC approval.

Easements or considerations. The installation of a middle mile broadband system on an electric delivery system would not require the utility to obtain, modify, or expand easements or other rights-of-way.

No later than 60 days before a utility began construction in an easement or other property right of fiber optic cables and other facilities for providing middle mile broadband service, the utility would have to provide written notice to the owners of the affected property. The notice would have to be sent by first class mail and state whether any new cables would be located above or below ground.

No later than 60 days after the notice was mailed, a property owner entitled to the notice could submit a written protest of the intended use of the easement or property right. Upon receiving a timely written protest, an electric utility could not use the easement or property right for middle mile broadband service unless the protestor later agreed to it or if the use was authorized by law. If a property owner failed to submit a timely written protest, the utility could proceed without modifying or expanding the easement.

These provisions would not apply to an existing easement that permitted the installation of a third-party middle mile broadband system on an electric delivery system.

Reliability of electric systems. An electric utility that installed and operated a middle mile broadband system would have to employ all reasonable measures to ensure that the operation of the system did not interfere with or diminish the reliability of the electric delivery system. If a disruption occurred, the utility would be governed by the terms and conditions of the retail electric delivery service tariff.

An electric utility could take all necessary actions regarding its middle mile broadband system to address emergency circumstances that could pose health, safety, or reliability concerns. At all times, the provision of broadband service would be secondary to the reliable provision of electric delivery services.

A utility would not be liable to any person, including an internet service provider, for any direct, indirect, or consequential damages or interruption of middle mile broadband service caused in whole or in part by force majeure or the utility's provision of electric delivery services.

Cost recovery. Where a utility installed a middle mile broadband system, the utility's investment in that system would be eligible for inclusion in the utility's invested capital, and any fees or operating expenses that were reasonable and necessary would be eligible for inclusion as operating expenses for purposes of rate proceedings.

PUC could allow a utility to recover investment in a middle mile broadband system outside of a comprehensive base rate proceeding.

In a rate proceeding, revenue received by a utility from an internet service provider for the use of a middle mile system would have to be applied as a revenue credit to customers in proportion to the customers' funding of the underlying infrastructure.

Compliance with federal law. An electric utility that owned and operated a middle mile broadband system would have to comply with all applicable federal laws.

BPL removed. The bill would remove provisions of law providing for broadband over power lines (BPL) services.

Applicability. If there was a conflict between the provisions of the bill and any other provisions of the law, CSHB 3853 would control.

Except as otherwise provided, no provision of the bill would impose an obligation on an electric utility to construct or operate a middle mile system, provide middle mile service, or allow others to install facilities for the provision of broadband service.

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, 2021.

**SUPPORTERS
SAY:**

CSHB 3853 would allow electric utilities to partner with internet service providers to deliver broadband service in the "middle mile" in unserved areas of the state.

Many areas in Texas currently lack access to high speed, affordable, and reliable internet, which has become vital for work, school, and personal and health needs. However, internet service providers often cannot afford the high cost of building broadband infrastructure in less populous areas. The bill would allow utilities to provide middle mile broadband services on their existing electric delivery systems by leasing excess fiber capacity to internet providers, closing the gap in broadband services.

CSHB 3853 would provide for fair practices by both electric utilities and internet service providers. The bill would limit the middle mile broadband program to only leasing out excess capacity and protect providers against discrimination from utilities.

In addition, the bill would require electric utilities to notify property owners with affected easements before beginning a middle mile project. Landowners would have the right to object to the project and could seek

additional considerations from the utility. This would preserve property rights while allowing utilities to provide essential broadband services.

Under the bill, the Public Utilities Commission could evaluate which investments were reasonable and useful for utility customers. Customers also could receive credit for lease payments in proportion to the capital investment they paid in the underlying facilities. The bill would allow timely recovery of a utility's investment without shifting risk or high costs to the utility's customers.

CRITICS
SAY:

No concerns identified.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$2.4 million to general revenue related funds through fiscal 2023, and about \$1.2 million annually thereafter, for additional Public Utilities Commission staff and equipment.