

1-1 By: King S.B. No. 1075  
 1-2 (In the Senate - Filed February 21, 2023; March 3, 2023,  
 1-3 read first time and referred to Committee on Business & Commerce;  
 1-4 April 20, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 11, Nays 0; April 20, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1075 By: King

1-21 A BILL TO BE ENTITLED  
 1-22 AN ACT

1-23 relating to facilities and construction machinery used to respond  
 1-24 to power outages.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 39.918, Utilities Code, is amended to  
 1-27 read as follows:

1-28 Sec. 39.918. UTILITY FACILITIES FOR RESPONDING TO  
 1-29 SIGNIFICANT ~~[POWER RESTORATION AFTER WIDESPREAD]~~ POWER  
 1-30 OUTAGE. (a) In this section, "significant ~~["widespread]~~ power  
 1-31 outage" means an event that ~~[results in]:~~

1-32 (1) results in a loss of electric power that:

1-33 (A) affects a significant number of distribution  
 1-34 customers of a transmission and distribution utility~~[-]~~ and  
 1-35 ~~[(B)]~~ has lasted or is expected to last for at  
 1-36 least six ~~[eight]~~ hours;

1-37 (B) affects distribution customers of a  
 1-38 transmission and distribution utility in an area for which the  
 1-39 governor has issued a disaster or emergency declaration;

1-40 (C) affects distribution customers served by a  
 1-41 radial transmission or distribution facility, creates a risk to  
 1-42 public health or safety, and has lasted or is expected to last for  
 1-43 at least 12 hours; or

1-44 (D) creates ~~[and~~  
 1-45 ~~[(2)]~~ a risk to public health or safety because it  
 1-46 affects a critical infrastructure facility that serves the public  
 1-47 such as a hospital, health care facility, law enforcement facility,  
 1-48 fire station, or water or wastewater facility; or

1-49 (2) causes the independent system operator to order a  
 1-50 transmission and distribution utility to shed load.

1-51 (a-1) The Texas Division of Emergency Management, the  
 1-52 independent organization certified under Section 39.151 for the  
 1-53 ERCOT power region, or the executive director of the commission may  
 1-54 determine that a power outage other than an outage described by  
 1-55 Subsection (a) is a significant power outage for the purposes of  
 1-56 this section.

1-57 (a-2) A transmission and distribution utility is entitled  
 1-58 to determine whether a loss of electric power described by  
 1-59 Subsection (a)(1)(C) creates a risk to public health or safety for  
 1-60 the purposes of determining whether the loss event is a significant

2-1 power outage.

2-2 (b) Notwithstanding any other provision of this subtitle, a  
2-3 transmission and distribution utility may:

2-4 (1) lease or own and operate facilities that provide  
2-5 temporary emergency electric energy to aid in restoring power to  
2-6 the utility's distribution customers during a significant  
2-7 ~~[widespread]~~ power outage ~~[in which:~~

2-8 ~~[(A) the independent system operator has ordered~~  
2-9 ~~the utility to shed load, or~~

2-10 ~~[(B) the utility's distribution facilities are~~  
2-11 ~~not being fully served by the bulk power system under normal~~  
2-12 ~~operations]; and~~

2-13 (2) procure, own, and operate, or enter into a  
2-14 cooperative agreement with other transmission and distribution  
2-15 utilities to procure, own, and operate jointly, transmission and  
2-16 distribution facilities that have a lead time of at least six months  
2-17 and would aid in restoring power to the utility's distribution  
2-18 customers following a significant ~~[widespread]~~ power outage.

2-19 (b-1) In this section, long lead time facilities described  
2-20 by Subsection (b) may not be electric energy storage equipment or  
2-21 facilities described by ~~[under]~~ Chapter 35~~[, Utilities Code]~~.

2-22 (c) A transmission and distribution utility that ~~[leases~~  
2-23 ~~and]~~ operates a facility ~~[facilities]~~ under Subsection (b)(1) may  
2-24 not sell electric energy or ancillary services from the facility  
2-25 ~~[those facilities]~~. As soon as reasonably practicable after the  
2-26 utility deploys the facility, the utility shall provide written  
2-27 notice to the commission and a written market notice to advise  
2-28 competitive market participants of the details of the deployment.  
2-29 Not later than the fifth business day after the date the deployment  
2-30 ends, the utility shall file a report, in a form approved by the  
2-31 commission, providing the details of the deployment, including the  
2-32 start and end times of the deployment, the number of kilowatts or  
2-33 megawatts deployed, the number of facilities used, the locations of  
2-34 the facilities, and any other information required by the  
2-35 commission.

2-36 (d) A facility ~~[Facilities]~~ described by Subsection (b)(1):

2-37 (1) must be operated in isolation from the bulk power  
2-38 system; and

2-39 (2) may not be included in independent system  
2-40 operator:

2-41 (A) locational marginal pricing calculations;

2-42 (B) pricing; or

2-43 (C) reliability models.

2-44 (e) A transmission and distribution utility that ~~[leases~~  
2-45 ~~and]~~ operates a facility ~~[facilities]~~ under Subsection (b)(1) shall  
2-46 ensure, to the extent reasonably practicable, that retail customer  
2-47 usage during operation of the facility ~~[those facilities]~~ is  
2-48 adjusted out of the usage reported for billing purposes by the  
2-49 retail customer's retail electric provider.

2-50 (f) A transmission and distribution utility that decides to  
2-51 lease a facility under Subsection (b)(1) shall, when reasonably  
2-52 practicable, solicit ~~[use a]~~ competitive bids and consider any bids  
2-53 received before leasing the facility ~~[bidding process to lease~~  
2-54 ~~facilities under Subsection (b)(1)]~~.

2-55 (g) A transmission and distribution utility that leases or  
2-56 owns and operates facilities under Subsection (b)(1) or that  
2-57 procures, owns, and operates facilities under Subsection (b)(2)  
2-58 shall include in the utility's emergency operations plan filed with  
2-59 the commission, as described by Section 186.007, a detailed plan on  
2-60 the utility's use of those facilities.

2-61 (h) The commission shall allow ~~[permit]~~:

2-62 (1) a transmission and distribution utility that  
2-63 leases or owns and operates facilities under Subsection (b)(1) to  
2-64 recover the reasonable and necessary costs of leasing or owning and  
2-65 operating the facilities, including the present value of future  
2-66 payments required under a ~~[the]~~ lease, using the rate of return on  
2-67 investment established in the commission's final order in the  
2-68 utility's most recent base rate proceeding; and

2-69 (2) a transmission and distribution utility that

3-1 procures, owns, and operates facilities under Subsection (b)(2) to  
 3-2 recover the reasonable and necessary costs of procuring, owning,  
 3-3 and operating the facilities, using the rate of return on  
 3-4 investment established in the commission's final order in the  
 3-5 utility's most recent base rate proceeding.

3-6 (i) The commission shall authorize a transmission and  
 3-7 distribution utility to defer for recovery in a future ratemaking  
 3-8 proceeding the incremental operations and maintenance expenses and  
 3-9 the return, not otherwise recovered in a rate proceeding,  
 3-10 associated with the leasing, ~~or~~ procurement, ownership, and  
 3-11 operation of the facilities.

3-12 (j) A transmission and distribution utility may request  
 3-13 recovery of the reasonable and necessary costs of leasing, ~~or~~  
 3-14 procuring, owning, or ~~and~~ operating facilities under this  
 3-15 section, including any deferred expenses, through a proceeding  
 3-16 under Section 36.210 or in another ratemaking proceeding. The  
 3-17 commission may review costs recovered through a proceeding under  
 3-18 Section 36.210 in the following base rate proceeding and order  
 3-19 refunds to customers if appropriate.

3-20 (k) A transmission and distribution utility requesting cost  
 3-21 recovery under Subsection (j) is entitled to select whether the  
 3-22 costs are considered to be distribution substation equipment costs  
 3-23 or distribution transformer costs unless the commission has found  
 3-24 in a previous base rate proceeding for the utility that temporary  
 3-25 emergency electric energy costs should be categorized in a  
 3-26 different manner. The costs may not be considered transmission  
 3-27 costs. A lease under Subsection (b)(1) must be treated as a capital  
 3-28 lease or finance lease for ratemaking purposes.

3-29 (l) The fact that the commission has not previously approved  
 3-30 a facility operated under this section or a cost of leasing,  
 3-31 procuring, owning, or operating a facility under this section is  
 3-32 not grounds for dismissal of the facility or the cost from a  
 3-33 proceeding under Section 36.210 or another ratemaking proceeding.

3-34 (m) The total capacity of facilities a transmission and  
 3-35 distribution utility leases or owns and operates under Subsection  
 3-36 (b)(1) may not exceed three percent of the utility's historical  
 3-37 peak load. Each transmission and distribution utility that leases  
 3-38 or owns and operates a facility under Subsection (b)(1) shall:

3-39 (1) assess every four years the total capacity of  
 3-40 facilities needed to aid in restoring power during a significant  
 3-41 power outage, considering:

3-42 (A) the presence and frequency of extreme weather  
 3-43 conditions, including hurricanes, tornadoes, high winds,  
 3-44 lightning, flooding, icing, and freezes, in all or a portion of the  
 3-45 utility's certificated service area;

3-46 (B) the utility's current and planned system  
 3-47 hardening efforts;

3-48 (C) the utility's current and planned vegetation  
 3-49 management efforts;

3-50 (D) the utility's current and planned  
 3-51 expenditures on traditional distribution facilities;

3-52 (E) the utility's current and planned  
 3-53 expenditures on automation of its distribution system;

3-54 (F) the utility's allocated load shed obligation  
 3-55 based on historical seasonal peak demand, as determined by the  
 3-56 independent system operator;

3-57 (G) the presence or number of communities that  
 3-58 are remotely located or served radially in the utility's  
 3-59 certificated service area;

3-60 (H) the number or location of critical  
 3-61 infrastructure facilities that serve the public such as hospitals,  
 3-62 health care facilities, law enforcement facilities, fire stations,  
 3-63 and water or wastewater facilities in the utility's certificated  
 3-64 service area;

3-65 (I) the utility's emergency operations plan  
 3-66 filed with the commission; and

3-67 (J) other engineering or operational needs; and

3-68 (2) submit to the commission the assessment under  
 3-69 Subdivision (1) for review.

- 4-1           (n) The commission:  
4-2           (1) may:  
4-3           (A) notwithstanding the total capacity  
4-4 prescribed by Subsection (m), establish the capacity of facilities  
4-5 that may be operated by a transmission and distribution utility in  
4-6 aid of restoration for each type or category of significant power  
4-7 outage, with the total capacity equal to or greater than three  
4-8 percent of the utility's historical peak load;  
4-9           (B) establish reasonable conditions on the  
4-10 operation and use of facilities, including duration times and  
4-11 prioritizing use to serve critical infrastructure facilities that  
4-12 serve the public such as hospitals, health care facilities, law  
4-13 enforcement facilities, fire stations, and water or wastewater  
4-14 facilities; and  
4-15           (C) require compliance with applicable law,  
4-16 including any rule or order of the commission; and  
4-17           (2) shall establish a rebuttable presumption that the  
4-18 facilities leased or owned and operated under Subsection (m) are  
4-19 used and useful to the utility in providing service and the  
4-20 utility's costs of leasing or owning and operating the facilities  
4-21 are prudent, reasonable, necessary, and recoverable under Section  
4-22 36.210 or in another ratemaking proceeding.  
4-23           (o) Notwithstanding Subsections (m) and (n), a transmission  
4-24 and distribution utility may:  
4-25           (1) provide facilities to or use facilities from other  
4-26 entities as part of a mutual assistance agreement during a  
4-27 significant power outage; and  
4-28           (2) lease facilities on a short-term basis in response  
4-29 to a significant power outage if:  
4-30           (A) the significant power outage constitutes an  
4-31 emergency and the utility determines that additional facilities are  
4-32 necessary;  
4-33           (B) the term of the lease is only for the duration  
4-34 of that emergency;  
4-35           (C) the utility notifies the commission of the  
4-36 lease not later than the 30th day after the date of the lease  
4-37 agreement; and  
4-38           (D) the commission reviews the costs incurred by  
4-39 the utility in a proceeding under Section 36.210 or in another  
4-40 ratemaking proceeding.  
4-41           ~~[(k) This section expires September 1, 2029.]~~  
4-42           SECTION 2. Section 502.146(b), Transportation Code, is  
4-43 amended to read as follows:  
4-44           (b) An owner is not required to register a vehicle that is  
4-45 used only temporarily on the highways if the vehicle is:  
4-46           (1) a farm trailer or farm semitrailer with a gross  
4-47 weight of more than 4,000 pounds but not more than 34,000 pounds  
4-48 that is used exclusively:  
4-49           (A) to transport seasonally harvested  
4-50 agricultural products or livestock from the place of production to  
4-51 the place of processing, market, or storage;  
4-52           (B) to transport farm supplies from the place of  
4-53 loading to the farm; or  
4-54           (C) for the purpose of participating in equine  
4-55 activities or attending livestock shows, as defined by Section  
4-56 87.001, Civil Practice and Remedies Code;  
4-57           (2) machinery used exclusively for the purpose of  
4-58 drilling water wells;  
4-59           (3) oil well servicing or drilling machinery and if at  
4-60 the time of obtaining the license plates, the applicant submits  
4-61 proof that the applicant has a permit under Section 623.142; or  
4-62           (4) construction machinery, including construction  
4-63 machinery that is:  
4-64           (A) owned by a transmission and distribution  
4-65 utility as defined by Section 31.002, Utilities Code; and  
4-66           (B) used to maintain or repair electrical lines  
4-67 or substations in response to a power outage.  
4-68           SECTION 3. (a) The changes in law made in Section 1 of this  
4-69 Act apply only to a proceeding before the Public Utility Commission

5-1 of Texas or other regulatory authority described by Section 11.003,  
5-2 Utilities Code, that commences on or after the effective date of  
5-3 this Act. A proceeding before the Public Utility Commission of  
5-4 Texas or other regulatory authority described by Section 11.003,  
5-5 Utilities Code, that commenced before the effective date of this  
5-6 Act is governed by the law in effect on the date the proceeding  
5-7 commenced, and that law is continued in effect for that purpose.

5-8 (b) The changes in law made in Section 1 of this Act apply  
5-9 only to a contract or lease entered into or facilities procured on  
5-10 or after the effective date of this Act.

5-11 SECTION 4. To the extent of any conflict, this Act prevails  
5-12 over another Act of the 88th Legislature, Regular Session, 2023,  
5-13 relating to nonsubstantive additions to and corrections in enacted  
5-14 codes.

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

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