

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

CHAPTER 37. CERTIFICATES OF CONVENIENCE AND NECESSITY

SUBCHAPTER A. DEFINITIONS

Sec. 37.001. DEFINITIONS. In this chapter:

(1) "Certificate" means a certificate of convenience and necessity.

(2) "Electric utility" includes an electric cooperative.

(3) "Retail electric utility" means a person, political subdivision, electric cooperative, or agency that operates, maintains, or controls in this state a facility to provide retail electric utility service. The term does not include a corporation described by Section 32.053 to the extent that the corporation sells electricity exclusively at wholesale and not to the ultimate consumer. A qualifying cogenerator that sells electric energy at retail to the sole purchaser of the cogenerator's thermal output under Sections 35.061 and 36.007 is not for that reason considered to be a retail electric utility. The owner or operator of a qualifying cogeneration facility who was issued the necessary environmental permits from the Texas Natural Resource Conservation Commission after January 1, 1998, and who commenced construction of such qualifying facility before July 1, 1998, may provide electricity to the purchasers of the thermal output of that qualifying facility and shall not for that reason be considered an electric utility or a retail electric utility, provided that the purchasers of the thermal output are owners of manufacturing or process operation facilities that are located on a site entirely owned before September, 1987, by one owner who retained ownership after September, 1987, of some portion of the facilities and that those facilities now share some integrated operations, such as the provision of services and raw materials. A person who is an electric generation equipment lessor or operator is not for that reason considered to be a retail

electric utility. A person who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code, is not for that reason considered to be a retail electric utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 29, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 255 (H.B. 1572), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 389 (S.B. 1202), Sec. 3, eff. September 1, 2021.

Sec. 37.002. CHARGING SERVICE. The commission may by rule exempt from the definition of "retail electric utility" under Section 37.001 a provider who owns or operates equipment used solely to provide electricity charging service for a mode of transportation.

Added by Acts 2021, 87th Leg., R.S., Ch. 389 (S.B. 1202), Sec. 4, eff. September 1, 2021.

SUBCHAPTER B. CERTIFICATE OF CONVENIENCE AND NECESSITY

Sec. 37.051. CERTIFICATE REQUIRED. (a) An electric utility may not directly or indirectly provide service to the public under a franchise or permit unless the utility 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.

(b) Except as otherwise provided by this chapter, a retail electric utility may not furnish or make available retail electric utility service to an area in which retail electric utility service is being lawfully furnished by another retail electric utility unless the utility first obtains a certificate that includes the area in which the consuming facility is located.

(c) Notwithstanding any other provision of this chapter, including Subsection (a), an electric cooperative is not required

to obtain a certificate of public convenience and necessity for the construction, installation, operation, or extension of any generating facilities or necessary interconnection facilities.

(c-1) Notwithstanding any other provision of this title except Section 11.009, and except as provided by Subsection (c-2), a person, including an electric utility or municipally owned utility, may not interconnect a facility to the ERCOT transmission grid that enables additional power to be imported into or exported out of the ERCOT power grid unless the person obtains a certificate from the commission stating that public convenience and necessity requires or will require the interconnection. The person must apply for the certificate not later than the 180th day before the date the person seeks any order from the Federal Energy Regulatory Commission related to the interconnection. The commission shall apply Section 37.056 in considering an application under this subsection. In addition, the commission must determine that the application is consistent with the public interest before granting the certificate. The commission may adopt rules necessary to implement this subsection. This subsection does not apply to a facility that is in service on December 31, 2014.

(c-2) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (c-1) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act (16 U.S.C. Sections 824i, 824j, and 824k). In approving the application, the commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

(c-3) Nothing in Subsection (c-1) or (c-2) is intended to restrict the authority of the commission or the independent organization certified under Section 39.151 for the ERCOT power region to adopt rules or protocols of general applicability.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 44 (S.B.

1938), Sec. 8, eff. May 16, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 8, eff. May 16, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 8, eff. May 16, 2019.

(g) A municipally owned utility or a municipal power agency created under Chapter 163 may not directly or indirectly construct, install, or extend a transmission facility outside of the municipal boundaries of the municipality that owns the municipally owned utility, or the power agency's boundaries, which for the purposes of this subsection consist of the municipal boundaries of the participating public entities, unless the municipally owned utility or power agency first obtains from the commission, through the application process provided by Section 37.053, a certificate that states that the public convenience and necessity requires or will require the transmission facility. Section 37.056 applies to an application under this subsection. This subsection does not apply to a transmission facility placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, a municipally owned utility was contractually obligated to purchase at least 190 megawatts of capacity.

(h) The commission shall adopt rules as necessary to provide exemptions to the application of Subsection (g) that are similar to the exemptions to the application of this section to an electric utility, including exemptions for:

(1) upgrades to an existing transmission line that do not require any additional land, right-of-way, easement, or other property not owned by the municipally owned utility; and

(2) the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021.

(i) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (g) for a facility that is to be constructed under

an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act (16 U.S.C. Sections 824i, 824j, and 824k). In approving the application, the commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 30, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1162 (S.B. 776), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1275 (S.B. 933), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 1, eff. May 16, 2019.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 8, eff. May 16, 2019.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see H.B. 3092, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 37.052. EXCEPTIONS TO CERTIFICATE REQUIREMENT FOR SERVICE EXTENSION. (a) An electric utility is not required to obtain a certificate for an:

(1) extension into territory that is:

(A) contiguous to the territory the electric utility serves;

(B) not receiving similar service from another electric utility; and

(C) not in another electric utility's certificated area;

(2) extension in or to territory the utility serves or is authorized to serve under a certificate; or

(3) operation, extension, or service in progress on September 1, 1975.

(b) An extension allowed under Subsection (a) is limited to a device used:

(1) to interconnect existing facilities; or

(2) solely to transmit electric utility services from an existing facility to a customer of retail electric utility service.

(c) An electric utility is not required to amend the utility's certificate of public convenience and necessity to construct a transmission line that connects the utility's existing transmission facilities to a substation or metering point if:

(1) the transmission line does not exceed:

(A) three miles in length, if the line connects to a load-serving substation or metering point; or

(B) two miles in length, if the line connects to a generation substation or metering point;

(2) each landowner whose property would be directly affected by the transmission line, as provided by commission rules, provides written consent for the transmission line; and

(3) all rights-of-way necessary for construction of the transmission line have been purchased.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 876 (S.B. [1281](#)), Sec. 1, eff. September 1, 2021.

Sec. 37.0521. EXCEPTION FOR RETAIL SALES BY CERTAIN QUALIFYING COGENERATORS. (a) Notwithstanding Section [37.001](#)(3), a qualifying cogenerator may sell electric energy at retail to more than one purchaser of the cogenerator's thermal output.

(b) Selling electric energy at retail to more than one purchaser does not, as a result of that sale, subject a qualifying cogenerator to regulation as:

(1) a retail electric provider or power generation

company; or

(2) a retail electric utility under Chapter 37.

(c) This section does not apply to sales in an area:

(1) in which customer choice has not been adopted and where a municipally owned utility or an electric cooperative is certificated to provide retail electric utility service; or

(2) that is served by an electric utility that operates solely outside of ERCOT.

Added by Acts 2013, 83rd Leg., R.S., Ch. 979 (H.B. 2049), Sec. 2, eff. September 1, 2013.

Sec. 37.053. APPLICATION FOR CERTIFICATE. (a) An electric utility that wants to obtain or amend a certificate must submit an application to the commission.

(b) The applicant shall file with the commission evidence the commission requires to show the applicant has received the consent, franchise, or permit required by the proper municipal or other public authority.

(c) The commission may not require the applicant to designate a preferred route for a proposed transmission line facility.

(d) For transmission facilities ordered or approved by the commission under Chapter 37 or 39, the rights extended to an electric corporation under Section 181.004 include all public land, except land owned by the state, on which the commission has approved the construction of the line. This subsection does not limit a municipality's rights or an electric utility's obligations under Chapter 33. Nothing in this subsection shall be interpreted to prevent a public entity from expressing a route preference in a proceeding under this chapter.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 949 (H.B. 971), Sec. 1, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 2, eff.

May 16, 2019.

Sec. 37.054. NOTICE AND HEARING ON APPLICATION. (a) When an application for a certificate is filed, the commission shall:

(1) give notice of the application to interested parties and to the office; and

(2) if requested:

(A) set a time and place for a hearing; and

(B) give notice of the hearing.

(b) A person or electric cooperative interested in the application may intervene at the hearing.

(c) In addition to any notice provided under Subsection (a), the commission shall require the applicant to provide written notice of each substation proposed to be authorized by a certificate of convenience and necessity to each owner of:

(1) property adjacent to the property on which the substation will be located; and

(2) property located directly across a highway, road, or street that is adjacent to the property on which the substation will be located.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 31, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 416 (S.B. 855), Sec. 2, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 1053 (S.B. 365), Sec. 1, eff. September 1, 2023.

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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 410 (H.B. 1500), Sec. 11, eff. September 1, 2023.

Sec. 37.055. REQUEST FOR PRELIMINARY ORDER. (a) An electric utility that wants to exercise a right or privilege under a franchise or permit that the utility 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 obtains the franchise or permit.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 4, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 3, eff. May 16, 2019.

Sec. 37.056. GRANT OR DENIAL OF CERTIFICATE. (a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

(1) grant the certificate as requested;

(2) grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or

(3) refuse to grant the certificate.

(c) The commission shall grant each certificate on a

nondiscriminatory basis after considering:

(1) the adequacy of existing service;

(2) the need for additional service;

(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4) other factors, such as:

(A) community values;

(B) recreational and park areas;

(C) historical and aesthetic values;

(D) environmental integrity;

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted, including any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside the ERCOT power region; and

(F) the need for extending transmission service where existing or projected electrical loads will be underserved, including where:

(i) the existing transmission service is unreasonably remote;

(ii) the available capacity is unreasonably limited at transmission or distribution voltage level; or

(iii) the electrical load cannot be interconnected in a timely manner.

(c-1) In considering the need for additional service under Subsection (c)(2) for a reliability transmission project that serves the ERCOT power region or under Subsection (c)(4)(F), the commission must consider the historical load, forecasted load growth, and additional load currently seeking interconnection, including load for which the electric utility has yet to sign an interconnection agreement, as determined by the electric utility with the responsibility for serving the load.

(d) The commission by rule shall establish criteria, in addition to the criteria described by Subsection (c), for granting a certificate for a transmission project that serves the ERCOT power region and that is not necessary to meet state or federal

reliability standards. The criteria must include a comparison of the estimated cost of the transmission project for consumers and the estimated congestion cost savings for consumers that may result from the transmission project, considering both current and future expected congestion levels and the transmission project's ability to reduce those congestion levels. The commission shall include with its decision on an application for a certificate to which this subsection applies findings on the criteria.

(e) A certificate to build, own, or operate a new transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility may be granted only to the owner of that existing facility. If a new transmission facility will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity shall be certificated to build, own, or operate the new facility in separate and discrete equal parts unless they agree otherwise.

(f) Notwithstanding Subsection (e), if a new transmission line, whether single or double circuit, will create the first interconnection between a load-serving station and an existing transmission facility, the entity with a load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility at the load-serving station shall be certificated to build, own, or operate the new transmission line and the load-serving station. The owner of the existing transmission facility shall be certificated to build, own, or operate the station or tap at the existing transmission facility to provide the interconnection, unless after a reasonable period of time the owner of the existing transmission facility is unwilling to build, and then the entity with the load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility may be certificated to build the interconnection facility.

(g) Notwithstanding any other provision of this section, an electric utility or municipally owned utility that is authorized to build, own, or operate a new transmission facility under Subsection (e) or (f) may designate another electric utility that is currently

certificated by the commission within the same electric power region, coordinating council, independent system operator, or power pool or a municipally owned utility to build, own, or operate a portion or all of such new transmission facility, subject to any requirements adopted by the commission by rule.

(h) The division of any required certification of facilities described in this section shall apply unless each entity agrees otherwise. Nothing in this section is intended to require a certificate for facilities that the commission has determined by rule do not require certification to build, own, or operate.

(i) Notwithstanding any other provision of this section, an electric cooperative may be certificated to build, own, or operate a new facility in place of any other electric cooperative if both cooperatives agree.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 295, Sec. 2, eff. June 18, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 949 (H.B. [971](#)), Sec. 2(a), eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. [1938](#)), Sec. 4, eff. May 16, 2019.

Acts 2021, 87th Leg., R.S., Ch. 198 (H.B. [1510](#)), Sec. 3, eff. June 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 876 (S.B. [1281](#)), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 410 (H.B. [1500](#)), Sec. 12, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 892 (H.B. [5066](#)), Sec. 1, eff. June 13, 2023.

Sec. 37.057. DEADLINE FOR APPLICATION FOR NEW TRANSMISSION FACILITY. The commission must approve or deny an application for a certificate for a new transmission facility not later than the 180th day after 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. [3309](#)), Sec. 4, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. [1938](#)), Sec. 5, eff. May 16, 2019.

Acts 2023, 88th Leg., R.S., Ch. 348 (S.B. [1076](#)), Sec. 1, eff. June 2, 2023.

Acts 2023, 88th Leg., R.S., Ch. 892 (H.B. [5066](#)), Sec. 2, eff. June 13, 2023.

Sec. 37.058. CERTIFICATE AND DETERMINATION ISSUED TO CERTAIN NON-ERCOT UTILITIES FOR GENERATING FACILITY. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility may file with the commission a request that the commission:

(1) grant a certificate for an electric generating facility;

(2) make a public interest determination for the purchase of an existing electric generating facility under Section [14.101](#); or

(3) both grant a certificate and make a determination.

(c) Notwithstanding any other law, in a proceeding involving the purchase of an existing electric generating facility, the commission shall issue a final order on a certificate for the facility or making a determination on the facility required by Section [14.101](#), as applicable, not later than the 181st day after the date a request for the certificate or determination is filed with the commission under Subsection (b). For generating facilities granted a certificate under this subsection, notwithstanding Section [36.053](#), the utility's recoverable invested capital included in rates shall be determined by the commission.

(d) Notwithstanding any other law, in a proceeding involving a newly constructed generating facility, the commission shall issue a final order on a certificate for the facility not

later than the 366th day after the date a request for the certificate is filed with the commission under Subsection (b).

(e) Notwithstanding any other provision of this title, an electric utility operating solely outside of the ERCOT power region may, but shall not be required to, obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less.

Added by Acts 2015, 84th Leg., R.S., Ch. 733 (H.B. 1535), Sec. 4, eff. June 17, 2015.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 198 (H.B. 1510), Sec. 4, eff. June 1, 2021.

Sec. 37.059. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The commission may revoke or amend a certificate after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.

(b) The commission may require one or more electric utilities to provide service in an area affected by the revocation or amendment of a certificate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.060. DIVISION OF MULTIPLY CERTIFICATED SERVICE AREAS. (a) This subsection and Subsections (b)-(g) apply only to areas in which each retail electric utility that is authorized to provide retail electric utility service to the area is providing customer choice. For purposes of this subsection, an electric cooperative or a municipally owned electric utility shall be deemed to be providing customer choice if it has approved a resolution adopting customer choice that is effective on January 1, 2002, or effective within 24 months after the date of the resolution adopting customer choice. All other retail electric utilities shall be deemed to be providing customer choice if customer choice will be allowed for customers of the retail electric utility on January 1, 2002. In areas in which each certificated retail electric utility is providing customer choice, the commission, if

requested by a retail electric utility, shall examine all areas within the service area of the retail electric utility making the request that are also certificated to one or more other retail electric utilities and, after notice and hearing, shall amend the retail electric utilities' certificates so that only one retail electric utility is certificated to provide distribution services in any such area. Only retail electric utilities certificated to serve an area on June 1, 1999, may continue to serve the area or portion of the area under an amended certificate issued under this subsection.

(b) This section does not apply in any area in which a municipally owned utility is certificated to provide retail electric utility service if the municipally owned utility serving the area files with the commission by October 1, 2001, a request that areas within the certificated service area of the municipally owned utility remain as presently certificated.

(c) The commission shall enter its order dividing multiply certificated areas within one year of the date a request is received.

(d) In amending certificates under this section, the commission shall take into consideration the factors prescribed by Section 37.056.

(e) Notwithstanding Section 37.059, the commission shall revoke certificates to the extent necessary to achieve the division of retail electric service areas as provided by this section.

(f) Unless otherwise agreed by the affected retail electric utilities, each retail electric utility shall be allowed to continue to provide service to the location of electricity-consuming facilities it is serving on the date an application for division of the affected multiply certificated service areas is filed. No customer located within the affected multiply certificated service areas shall be permitted to switch from one retail electric utility to another while an application for division of the affected multiply certificated service areas is pending.

(g) If on June 1, 1999, retail service is being provided in an area by another retail electric utility with the written consent

of the retail electric utility certificated to serve the area, that consent shall be filed with the commission. On notification of that consent and a request by an affected retail electric utility to amend the relevant certificates, the commission may grant an exception or amend a retail electric utility's certificate. This provision shall not be construed to limit the commission's authority to grant exceptions or to amend a retail electric utility's certificate, upon request and notification, for areas to which retail service is being provided pursuant to written consent granted after June 1, 1999.

(h) The commission may not grant an additional retail electric utility certificate to serve an area if the effect of the grant would cause the area to be multiply certificated unless the commission finds that the certificate holders are not providing service to any part of the area for which a certificate is sought and are not capable of providing adequate service to the area in accordance with applicable standards. However, neither this subsection nor the deadline of June 1, 1999, provided by Subsection (a) shall apply to any application for multiple certification filed with the commission on or before February 1, 1999, and those applications may be processed in accordance with applicable law in effect on the date the application was filed. Applications for multiple certification filed with the commission on or before February 1, 1999, may not be amended to expand the area for which a certificate is sought except for contiguous areas within municipalities that provide consent, as required by Section [37.053\(b\)](#), not later than June 1, 1999.

(i) Notwithstanding any other provision of this section, if requested by a municipally owned utility, the commission shall examine all areas within the municipally owned utility's service area that are also certificated to one or more other retail electric utilities and, after notice and hearing, may amend the retail electric utilities' certificates so that only one retail electric utility is certificated to provide distribution services in the area, provided that:

(1) the application is filed with the commission within 12 months of the effective date of this provision and is

limited to single certification of the area within the municipality's boundaries as of February 1, 1999;

(2) the commission preserves the right of an electric utility or an electric cooperative to serve its existing customers, including any property owned or leased by any customer; and

(3) the municipality is a member city of a municipal power agency, as that term is used in Section 40.059.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 32, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 796, Sec. 1, eff. June 14, 2001.

Sec. 37.061. EXISTING SERVICE AREA AGREEMENTS. (a) Notwithstanding any other provision of this title, the commission shall allow a municipally owned utility to amend the service area boundaries of its certificate if:

(1) the municipally owned utility was the holder of a certificate as of January 1, 1999;

(2) the municipally owned utility has an agreement existing before January 1, 1999, with a public utility serving the area that the public utility will not contest an application to amend the certificate to add municipal territory; and

(3) the area for which a certificate is requested is not certificated to a retail electric utility that is not a party to the agreement and that has not consented in writing to certification of the area to the municipality.

(b) The commission may not amend the certificate of the public utility serving the affected area based on the granting of a certificate to the municipally owned utility.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 32, eff. Sept. 1, 1999.

SUBCHAPTER C. MUNICIPALITIES

Sec. 37.101. SERVICE IN ANNEXED OR INCORPORATED AREA. (a) If an area is or will be included within a municipality as the result of annexation, incorporation, or another reason, each electric utility and each electric cooperative that holds or is entitled to hold a certificate under this title to provide service

or operate a facility in the area before the inclusion has the right to continue to provide the service or operate the facility and extend service within the utility's or cooperative's certificated area in the annexed or incorporated area under the rights granted by the certificate and this title.

(b) Notwithstanding any other law, an electric utility has the right to:

(1) continue and extend service within the utility's certificated area; and

(2) use roads, streets, highways, alleys, and public property to furnish retail electric utility service.

(c) The governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street by:

(1) giving the electric utility 30 days' notice; and

(2) specifying the new location for the facility along the right-of-way of the street.

(d) This section does not:

(1) limit the power of a city, town, or village to incorporate or of a municipality to extend its boundaries by annexation; or

(2) prohibit a municipality from levying a tax or other special charge for the use of the streets as authorized by Section [182.025](#), Tax Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 33, eff. Sept. 1, 1999.

Sec. 37.102. GRANT OF CERTIFICATE FOR CERTAIN MUNICIPALITIES. (a) If a municipal corporation offers retail electric utility service in a municipality having a population of more than 151,000 that is located in a county having a population of more than 2.5 million, the commission shall singly certificate areas in the municipality's boundaries in which more than one electric utility provides electric utility service.

(b) In singly certificating an area under Subsection (a), the commission shall preserve the right of an electric utility to

serve the customers the electric utility was serving on June 17, 1983. This subsection does not apply to a customer at least partially served by a nominal 69,000 volts system who gave notice of termination to the utility servicing that customer before June 17, 1983.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 179, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 272, eff. September 1, 2023.

SUBCHAPTER D. REGULATION OF SERVICES, AREAS, AND FACILITIES

Sec. 37.151. PROVISION OF SERVICE. Except as provided by Sections 37.152 and 37.153, a certificate holder shall:

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

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1170 (H.B. 3309), Sec. 4, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. 1938), Sec. 6, eff. May 16, 2019.

Sec. 37.152. GROUNDS FOR REDUCTION OF SERVICE. (a) Unless the commission issues a certificate that the present and future convenience and necessity will not be adversely affected, a certificate holder may not discontinue, reduce, or impair service to any part of the holder's certificated service area except for:

(1) nonpayment of charges;

(2) nonuse; or

(3) another similar reason that occurs in the usual course of business.

(b) A discontinuance, reduction, or impairment of service

must be in compliance with and subject to any condition or restriction the commission prescribes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.153. REQUIRED REFUSAL OF SERVICE. A certificate holder shall refuse to serve a customer in the holder's certificated area if the holder is prohibited from providing the service under Section [212.012](#), [232.029](#), or [232.0291](#), Local Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. [425](#)), Sec. 13, eff. September 1, 2005.

Sec. 37.154. TRANSFER OF CERTIFICATE. (a) An electric utility or municipally owned utility may sell, assign, or lease a certificate or a right obtained under a certificate if the purchaser, assignee, or lessee is already certificated by the commission to provide electric service within the same electric power region, coordinating council, independent system operator, or power pool, or if the purchaser, assignee, or lessee is an electric cooperative or municipally owned utility. As part of a transaction subject to Sections [39.262\(1\)-\(o\)](#) and [39.915](#), the commission may approve a sale, assignment, or lease to an entity that has not been previously certificated if the approval will not diminish the retail rate jurisdiction of this state. Any purchase, assignment, or lease under this section requires that the commission determine that the purchaser, assignee, or lessee can provide adequate service.

(b) A sale, assignment, or lease of a certificate or a right is subject to conditions the commission prescribes.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 44 (S.B. [1938](#)), Sec. 7, eff. May 16, 2019.

Sec. 37.155. APPLICATION OF CONTRACTS. A contract approved

by the commission between retail electric utilities that designates areas and customers to be served by the utilities:

(1) is valid and enforceable; and

(2) shall be incorporated into the appropriate areas of certification.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.156. INTERFERENCE WITH ANOTHER UTILITY. If an electric utility constructing or extending the utility's lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of another utility, the commission by order may:

(1) prohibit the construction or extension; or

(2) prescribe terms for locating the affected lines, plants, or systems.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 37.157. MAPS. (a) An electric utility shall file with the commission one or more maps that show each utility facility and that separately illustrate each utility facility for the generation, transmission, or distribution of the utility's services on a date the commission orders.

(b) Each electric utility, transmission and distribution utility, electric cooperative, and municipally owned utility shall provide the utility's service area boundary map, using good faith efforts, in a geographic information system format to the commission. The service area boundary map may be provided to the commission in a geodatabase feature class or shapefile.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 85 (S.B. [1093](#)), Sec. 1, eff. May 19, 2023.