

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

CHAPTER 43. PROVISION OF MIDDLE MILE BROADBAND SERVICE BY ELECTRIC
UTILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature finds that access to quality, high-speed broadband Internet service is important to this state, is a necessary prerequisite for enabling economic development and improving education, health care, public safety, and government services in this state, and provides other benefits to its citizens.

(b) The legislature finds that broadband development in unserved and underserved areas of Texas can be facilitated by the participation of electric utilities in this state that own and operate facilities that may be useful for the full deployment of broadband service by Internet service providers throughout this state.

(c) The legislature finds that electric utilities have existing infrastructure in place throughout this state and that excess fiber capacity on that infrastructure could be used to provide middle mile broadband service in unserved and underserved areas.

(d) The legislature finds that it is in the public interest to encourage the deployment of broadband service in unserved and underserved areas by permitting electric utilities to own, construct, or operate fiber facilities for the support of electric service and to lease excess fiber capacity for the provision of middle mile broadband service. The purpose of this chapter is to provide the appropriate framework to facilitate the leasing of excess fiber capacity on electric utility facilities.

(e) The legislature finds that an electric utility may choose to implement middle mile broadband service to lease excess fiber capacity to Internet service providers under the procedures set forth in this chapter, but is not required to do so. The

electric utility shall have the right to decide, in its sole discretion, whether to implement middle mile broadband service and may not be penalized for deciding to implement or not to implement that service.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

Sec. 43.002. APPLICABILITY. (a) This chapter applies to an electric utility whether or not the electric utility is offering customer choice under Chapter 39.

(b) If there is a conflict between the specific provisions of this chapter and any other provisions of this title, the provisions of this chapter control.

(c) Except as otherwise provided by this title, no provision of this title imposes an obligation on an electric utility to construct or operate facilities to provide middle mile broadband service, or to allow others to install facilities or use the electric utility's facilities for the provision of broadband service.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

Sec. 43.003. DEFINITIONS. In this chapter:

(1) "Broadband service" means 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 3 megabits per second.

(2) "Internet service provider" means a commercial entity that provides Internet services to end-use customers on a retail basis.

(3) "Electric delivery system" means the power lines

and related transmission and distribution facilities constructed to deliver electric energy to the electric utility's customers.

(4) "Electric utility" includes an electric utility and a transmission and distribution utility as defined in Section [31.002](#)(6) or (19).

(5) "Middle mile broadband service" means the provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an Internet service provider to provide broadband service. The term does not include provision of Internet service to end-use customers on a retail basis.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. [5](#)), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. [3853](#)), Sec. 1, eff. June 15, 2021.

SUBCHAPTER B. DEVELOPMENT OF MIDDLE MILE BROADBAND SERVICE

Sec. 43.051. AUTHORIZATION FOR MIDDLE MILE BROADBAND SERVICE. (a) An electric utility may own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service in unserved and underserved areas consistent with the requirements of this chapter. Nothing in this chapter prohibits an entity defined in Section [11.003](#)(9) from providing broadband service to an Internet service provider or owning and operating a broadband system as otherwise permitted by law.

(b) The electric utility shall determine on a nondiscriminatory basis which Internet service providers may access excess fiber capacity on the electric utility's electric delivery system or other facilities and provide access points to allow connection between the electric utility's electric delivery system or other facilities and the systems of those Internet service providers. The electric utility shall provide access to excess fiber capacity only on reasonable and nondiscriminatory terms and conditions that assure the electric utility the

unimpaired ability to comply with and enforce all applicable federal and state requirements regarding the safety, reliability, and security of the electric delivery system.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

Sec. 43.052. CHARGES. An electric utility that owns and operates facilities to provide middle mile broadband service may lease excess fiber capacity on the electric utility's electric delivery system or other facilities to an Internet service provider on a wholesale basis and shall charge the Internet service provider for the use of the electric utility's system for all costs associated with that use. The rates, terms, and conditions of a lease of excess fiber capacity described by this section must be nondiscriminatory. An electric utility may not lease excess fiber capacity to provide middle mile broadband service to an affiliated Internet service provider.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

Sec. 43.053. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. (a) Because broadband systems provide benefits to electric delivery systems, the installation of facilities to provide middle mile broadband service on an electric delivery system or other facilities does not require the electric utility or an entity defined in Section 11.003(9) to obtain, modify, or expand easements or other rights-of-way for the middle mile broadband service or to give additional consideration as a result of the installation or the operation of middle mile broadband service on the electric delivery system or other facilities of the electric utility or entity, unless the property owner protests the use as

provided by this section.

(b) Not later than the 60th day before the date an electric utility begins construction in an easement or other property right of fiber optic cables and other facilities for providing middle mile broadband service, the electric utility shall provide written notice to the owners of the affected property of the electric utility's intent to use the easement or other property right for middle mile broadband service.

(c) Notice under this section must:

(1) be sent by first class mail to the last known address of each person in whose name the affected property is listed on the most recent tax roll of each county authorized to levy property taxes against the property; and

(2) state whether any new fiber optic cables used for middle mile broadband service will be located above or below ground in the easement or other property right.

(d) Not later than the 60th day after the date an electric utility mails notice under this section, a property owner entitled to the notice may submit to the electric utility a written protest of the intended use of the easement or other property right for middle mile broadband service. An electric utility that receives a timely written protest may not use the easement or other property right for middle mile broadband service unless the protestor later agrees in writing to that use or that use is authorized by law. If a property owner fails to submit a timely written protest, an electric utility may proceed under Subsection (a) without modifying or expanding the easement for that property owner.

(e) An electric utility that receives a timely written protest under Subsection (d) regarding proposed middle mile broadband service may cancel the project at any time.

(f) The requirements of this section do not apply to an existing easement that permits the provision of third-party middle mile broadband service on an electric delivery system.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff.

June 15, 2021.

Sec. 43.054. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. An electric utility that installs and operates facilities to provide middle mile broadband service shall employ all reasonable measures to ensure that the operation of the middle mile broadband service does not interfere with or diminish the reliability of the utility's electric delivery system. If a disruption in the provision of electric service occurs, the electric utility is governed by the terms and conditions of the retail electric delivery service tariff. The electric utility may take all necessary actions regarding its middle mile broadband service and the facilities required in the provision of that service to address circumstances that may pose health, safety, security, or reliability concerns. At all times, the provision of broadband service is secondary to the reliable provision of electric delivery services. Except as provided by contract or tariff, an electric utility is not liable to any person, including an Internet service provider, for any damages, including direct, indirect, physical, economic, exemplary, or consequential damages, including loss of business, loss of profits or revenue, or loss of production capacity caused by a fluctuation, disruption, or interruption of middle mile broadband service that is caused in whole or in part by:

(1) force majeure; or

(2) the electric utility's provision of electric delivery services, including actions taken by the electric utility to ensure the reliability and security of the electric delivery system and actions taken in response to address all circumstances that may pose health, safety, security, or reliability concerns.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

SUBCHAPTER C. IMPLEMENTATION OF MIDDLE MILE BROADBAND SERVICE BY

ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An electric utility may install and operate facilities to provide middle mile broadband service on any part of its electric delivery system or other facilities for Internet service providers but may not construct new electric delivery facilities for the purpose of expanding the electric utility's middle mile broadband service.

(b) The installation, operation, and use of middle mile broadband service and the lease of excess fiber capacity by Internet service providers from an electric utility may not be regulated by any state agency, a municipality, or local government other than as provided by this chapter.

(c) An electric utility that owns and operates middle mile broadband service:

(1) may lease excess fiber capacity on the electric utility's electric delivery system or other facilities to an Internet service provider on a wholesale basis; and

(2) may not provide Internet service to end-use customers on a retail basis.

(d) The commission or a state or local government or a regulatory or quasi-governmental or a quasi-regulatory authority may not:

(1) require an electric utility to install or offer middle mile broadband service on the utility's electric delivery system or other facilities;

(2) require an electric utility to allow others to install middle mile broadband service on the utility's electric delivery system or other facilities; or

(3) prohibit an electric utility from installing or offering middle mile broadband service on the utility's electric delivery system or other facilities.

(e) If a municipality or local government is already collecting a charge or fee from the electric utility for the use of the public rights-of-way for the delivery of electricity to retail electric customers, the municipality or local government may not require a franchise or an amendment to a franchise or require an

additional charge, fee, or tax from the electric utility for use of the public rights-of-way for middle mile broadband service.

(f) If the state or a municipality or local government is not already collecting a charge or fee from the electric utility for the use of the public rights-of-way, the state or a municipality or local government may impose a charge on the provision of middle mile broadband service, but the charge may not be greater than the lowest charge that the state or municipality imposes on other providers of broadband service for use of the public rights-of-way in its respective jurisdiction.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

Sec. 43.102. COMMISSION REVIEW OF UTILITY MIDDLE MILE PLAN.

(a) An electric utility that plans a project to deploy middle mile broadband service shall submit to the commission a written plan that includes:

(1) the route of the middle mile broadband service infrastructure proposed for the project;

(2) the location of the electric utility's infrastructure that will be used in connection with the project;

(3) an estimate of potential broadband customers that would be served by the Internet service provider;

(4) the capacity, number of fiber strands, and any other facilities of the middle mile broadband service that will be available to lease to Internet service providers;

(5) the estimated cost of the project, including engineering costs, construction costs, permitting costs, right-of-way costs, and a reasonable allowance for funds used during construction;

(6) the proposed schedule of construction for the project;

(7) testimony, exhibits, or other evidence that demonstrates the project will allow for the provision and

maintenance of middle mile broadband service; and

(8) any other information that the applicant considers relevant or that the commission requires.

(b) The commission, after notice and hearing if required by the commission, shall approve the plan if the commission finds that the plan includes all the items required by Subsection (a) and by commission rule.

(c) The commission must approve, modify, or reject a plan submitted to the commission under this section not later than the 181st day after the date the plan is submitted under Subsection (a).

(d) An approved plan may be updated or amended subject to commission approval in accordance with this section.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. 3853), Sec. 1, eff. June 15, 2021.

Sec. 43.103. COST RECOVERY FOR DEPLOYMENT OF MIDDLE MILE BROADBAND FACILITIES. (a) Where an electric utility installs facilities used to provide middle mile broadband service under Section 43.051, the electric utility's investment in those facilities is eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary are eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. The commission may allow an electric utility to recover investment and associated costs in middle mile broadband service if the plan for the service has been submitted and approved under Section 43.102.

(b) In a proceeding under Chapter 36, revenue received by an electric utility from an Internet service provider for the use of middle mile broadband service must be applied as a revenue credit to customers in proportion to the customers' funding of the underlying infrastructure.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 2, eff. September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. [3853](#)), Sec. 1, eff.
June 15, 2021.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. COMPLIANCE WITH FEDERAL AND STATE LAW. An electric utility that owns and operates facilities for the provision of middle mile broadband service shall comply with all applicable federal and state laws.

Added by Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. [5](#)), Sec. 2, eff.
September 7, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 727 (H.B. [3853](#)), Sec. 1, eff.
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