

Amend SB 743 on third reading by adding the following new appropriately numbered SECTION and renumbering the remaining SECTIONS:

SECTION _____. Subsection (c), Section 39.051, Utilities Code, is amended as follows:

(c) An electric utility may accomplish the separation required by Subsection (b) either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission and distribution utilities. Notwithstanding any other provision of this Chapter, an electric utility that does not have stranded costs described by Section 39.254 and that on September 1, 2005 has not finalized unbundling pursuant to a commission order approving an unbundling plan may also meet the requirements of Subsection (b) for generation facilities existing on September 1, 2005 in the Electric Reliability Council of Texas if it meets and maintains compliance with the following requirements:

(1) the electric utility has no more than 400 megawatts of Texas jurisdictional capacity from generating units within the Electric Reliability Council of Texas that have not been mothballed or retired;

(2) the electric utility has a contract or contracts with separate nonaffiliated companies or separate affiliated companies for the sale of all of the output from its generating units that have not been mothballed or retired with a contract term that is no shorter than twenty years or the life of the generating units, whichever is shorter; and

(3) the electric utility has a separate division within the electric utility for its generation business activities.

(c-1) A separate division described by Subsection (c)(3) is subject to subsection (d) and, for the purposes of this Chapter, is considered a separate affiliated power generation company and a competitive affiliate.