

AN ACT

relating to affiliates of public utilities and regulation of electric utilities with regard to payments to affiliates and unbundling requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.058, Utilities Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) A finding under Subsection (b) must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price to the electric utility is not higher than the prices charged by the supplying affiliate ~~[to its other affiliates or divisions or to a nonaffiliated person]~~ for the same item or class of items to:

(A) its other affiliates or divisions; or

(B) a nonaffiliated person within the same market area or having the same market conditions.

(f) If the regulatory authority finds that an affiliate expense for the test period is unreasonable, the regulatory authority shall:

(1) determine the reasonable level of the expense; and

(2) include that expense in determining the electric utility's cost of service.

1 SECTION 2. Chapter 11, Utilities Code, is amended by adding
2 Section 11.0042 to read as follows:

3 Sec. 11.0042. DEFINITION OF AFFILIATE. (a) The term
4 "person" or "corporation" as used in the definition of "affiliate"
5 provided by Section 11.003(2) does not include:

6 (1) a broker or dealer registered under the Securities
7 Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

8 (2) a bank or insurance company as defined under the
9 Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as
10 amended;

11 (3) an investment adviser registered under state law
12 or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et
13 seq.); or

14 (4) an investment company registered under the
15 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.); or

16 (5) an employee benefit plan, pension fund, endowment
17 fund, or other similar entity that may, directly or indirectly,
18 own, hold, or control five percent or more of the voting securities
19 of a public utility or the parent corporation of a public utility if
20 the entity did not acquire the voting securities:

21 (A) for the purpose of or with the effect of
22 changing or influencing the control of the issuer of the
23 securities; or

24 (B) in connection with or as a participant in any
25 transaction that changes or influences the control of the issuer of
26 the securities.

27 (b) For the purpose of determining whether a person is an

1 affiliate under Section 11.006(a)(3), the term "person" does not
2 include an entity that may, directly or indirectly, own, hold, or
3 control the voting securities of a public utility or the parent
4 corporation of a public utility if the entity did not acquire the
5 voting securities:

6 (1) for the purpose of or with the effect of changing
7 or influencing the control of the issuer of the securities; or

8 (2) in connection with or as a participant in any
9 transaction that changes or influences the control of the issuer of
10 the securities.

11 (c) A report filed by an entity described by Subsection
12 (a)(5) or (b) with the Securities and Exchange Commission is
13 conclusive evidence of the entity's intent if the report confirms
14 that the voting securities were not acquired:

15 (1) for the purpose of or with the effect of changing
16 or influencing the control of the issuer of the securities; or

17 (2) in connection with or as a participant in any
18 transaction that changes or influences the control of the issuer of
19 the securities.

20 SECTION 3. Section 39.051, Utilities Code, is amended by
21 amending Subsection (c) and adding Subsection (c-1) to read as
22 follows:

23 (c) An electric utility may accomplish the separation
24 required by Subsection (b) either through the creation of separate
25 nonaffiliated companies or separate affiliated companies owned by a
26 common holding company or through the sale of assets to a third
27 party. An electric utility may create separate transmission and

1 distribution utilities. Notwithstanding any other provision of
2 this chapter, an electric utility that does not have stranded costs
3 described by Section 39.254 and that on September 1, 2005, has not
4 finalized unbundling pursuant to a commission order approving an
5 unbundling plan may also meet the requirements of Subsection (b)
6 for generation facilities existing on September 1, 2005, in the
7 Electric Reliability Council of Texas if it meets and maintains
8 compliance with the following requirements:

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

13 (2) the electric utility has a contract or contracts
14 with separate nonaffiliated companies or separate affiliated
15 companies for the sale of all of the output from its generating
16 units that have not been mothballed or retired with a contract term
17 that is no shorter than 20 years or the life of the generating
18 units, whichever is shorter; and

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

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

25 SECTION 4. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

1 Act does not receive the vote necessary for immediate effect, this
2 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1668 passed the Senate on April 21, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1668 passed the House, with amendments, on May 25, 2005, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor