
latory commission for authority to take steps to mitigate the risk of such financial danger. If there is no way to mitigate this risk sufficiently, and still provide the required rate reduction, the statute allows the utility to petition the commission for funding from a Ratepayer Equity Trust Fund, established in the state treasury.¹⁰ This fund is made up of tax revenues from the sale of utility plant, statutory penalties, and income from investment of fund assets.

As in the case of the Chrysler bailout in the 1970s, if a utility must tap into the fund, the taxpayers who made the fund possible receive a legal interest in the future success of the utility. This legal interest comes in the form of stock warrants. They can only be exercised if the price of the stock goes up comfortably above the (presumably depressed) level at the time the warrants were issued. And the state would not actually hold any stock, but rather would exercise its right to buy the stock at the earlier (lower) price, and this would trigger an obligation on the part of the utility to buy it back at the present (higher) price, less a 5 percent grace amount.

By virtue of the mandatory price reductions, the financial integrity backstop of the fund, and the warrants to taxpayers against future recovery and success, ratepayers get immediate relief from high rates, utilities' financial integrity is guaranteed, and the taxpayers who guarantee that integrity obtain a claim on the future good fortune of a recovered utility.

Deciding if the standard offer is only transitional, and the terms of ending it, require careful thought. Competitive suppliers will demand a short term for the standard offer, arguing that the standard offer is anti-competitive and prevents them from getting into the market. In effect, they demand that prices be raised so that they can compete and, hopefully, lower prices in the future. Utilities would argue for a longer standard-offer position if the standard-offer price was high enough to let them earn a good return, and if they were permitted to provide the power themselves. This would, in effect, leave them in place as the vertically integrated supplier for most of the customers. The model statute undercuts this incentive by allowing for the standard-offer energy component to be bid out.

¹⁰The model statute has two alternate versions of language to create such a fund.

Sec. XXX-6. Limit on Spread between Residential and Other Rates: "Cap the Gap"

Another cornerstone of the model statute is the section limiting the spread between residential rates and both industrial rates and average rates for the region. Rates for small customers have been rising faster than those for larger customers. The model statute, patterned after a similar provision in the Connecticut legislation, caps this gap in rates. It also puts a check on the spread between residential rates and the average price in the region as a whole.

The commission is also required by this section to examine the impact of restructuring on residential rates, and on the affordability of electricity to low-income consumers. The results of this ongoing review are to be forwarded to the legislature annually, under Section XXX-27.

Sec. XXX-7. Municipal Aggregation

Section XXX-7 is an adaptation of the municipal competitive franchise statute passed in the Massachusetts restructuring bill. It paves the way for a municipality (or group of local governments) to conduct a bid process and select a competitive electricity supplier for their town or city. The supplier so selected would not only supply the governmental offices but would be the presumptive supplier for the electricity customers in the municipality. Consumers would have an opt-out right.

The particular version of the legislation offered here places great emphasis on the leadership of local government in energy efficiency and renewable power. It also permits the aggregation of natural gas customers, not just electricity customers. It could theoretically be extended to telephone service, just as well.

It is important when considering local government aggregation that the procedure for adopting this tool not be made onerous. If the procedural requirements for selecting the municipal aggregation model are made too cumbersome, this approach to aggregating loads and achieving public goals will not succeed. Municipal aggregation can combine the best of local control and competitive markets, while allowing small customers to band together for greater purchasing muscle.

An opt-out (or automatic enrollment with open enrollment options or windows) is essential to preserve the right sought by some customers and key stakeholders for individual customers to be able to choose their own supplier. Note that if the municipality does not have an automatic enrollment status for customers who do not opt out, it may be prohibitively expensive to run a viable municipal aggregation process. The assumption made here, then, is that the democratic decision of the representatives of the community sufficiently reflects the will of the community that requiring those not in agreement to opt out is fair.

Sec. XXX-8. Licensing Competitive Providers; Consumer Protections; Enforcement

One of the major questions facing legislatures in restructuring the electric industry is the extent to which competitive electricity suppliers will be subject to government controls on their business practices. It is well understood that prices for sales of power will be deregulated. However, most states have decided that competitive electricity suppliers must be licensed. That is, they must meet minimum standards in order to do business selling electricity in the state, they must agree to observe requirements set out by the state, and they risk losing their right to sell electricity if they violate these requirements.

The model statute follows the typical path in charging the public utilities commission with the responsibility to vet applicants and issue licenses. It is possible to give this responsibility to the attorney general's office, an existing consumer protection agency, or a new electricity supplier licensing agency. However, it makes sense to give the job to the commission, which in most states has licensing authority for other types of utility providers (e.g., telephone companies), and is knowledgeable about the industry.

The model statute reflects the understanding that licensure is an important tool in protecting consumers. Information that the applicant must provide the commission includes:

- evidence of its ability to provide reliable service;
- evidence of its record in other states regarding consumer protection complaints;

- evidence of its compliance with specific requirements of the state;¹¹
- evidence of the applicant's technical and managerial capacity to provide the services proposed in compliance with all applicable laws and policies of the state;¹²
- a description of the areas where the applicant intends to offer service and the types of services it intends to offer, and, if the applicant intends to serve residential or small business customers in an area smaller than the entire service area of an existing electric utility, evidence demonstrating that so doing will not result in unlawful redlining; and
- disclosure of the names and corporate addresses of all affiliates¹³ of the applicant.

Together, these provisions give the commission information about the applicant's fitness and ability to provide reliable service, on a non-discriminatory basis, with adequate consumer protections.

The statute permits the commission to require applicants to post a bond. This would provide a fund from which consumers could be compensated if the company fails to provide service (or to provide service in accordance with its rate schedules), or harms a consumer by violation of the consumer protection requirements of the statute.

Section XXX-8 also contains a provision intended to prevent so-called "bottom-feeders" from entering the state and targeting vulnerable customers with high-pressure sales tactics, poor service, and high prices. Acting in low-income and minority neighborhoods where many perceive they have few alternatives, such firms follow in the tracks of loan sharks and "phone sharks." The model statute empowers the commission to weed out such predatory

¹¹(such as the minimum level of renewable power resources in the supplier's portfolio)

¹²(with the ability to argue that it is serving customers with large demands, and a resulting sophistication and market power, and thus need not have fully developed retail customer service branches, for example)

¹³Affiliates include holding companies owning the stock of the applicant.

suppliers before they set up a business in the state. The statute permits the license to be revoked for price-gouging practices, and a bottom-feeder that does not get a license is doing business unlawfully and may be put out of business.

Another protection against consumer scams is the prohibition of misleading names, such as "Don't Know." A telephone competitor is actually getting people to switch to its service in some states by having telemarketers ask "which telephone company do you prefer," and when they get the predictable answer from many customers, "don't know," taking that as authorization to switch to their service.

The general licensure section also provides for limited duration licenses, conditional licenses, and the like. It empowers the commission to adopt rules to govern the licensure process.

Sec. XXX-9. Consumer Protections; Obligations of Competitive Electricity Providers

The model statute sets out in considerable detail consumer protections that all suppliers must observe. The statute provides that these protections apply to both electric and gas services.

Existing Protections as the Floor

As in the case of the Pennsylvania and Massachusetts statutes, the model statute provides that existing protections¹⁴ must continue at a minimum. State commissions have sometimes interpreted such a principle to mean that consumers are protected so long as one supplier observes all the existing consumer protections, and consumers can take service from this last-resort supplier if they run into trouble with their competitive supplier.

Some states (notably Connecticut) go further and recite that all suppliers must observe all current consumer protections. Where a statute simply says that existing consumer protection obligations apply to competitive suppliers, a commission can undermine the legislative intent by lax enforcement, or even inconsistent commission regulations. The model statute puts key consumer protections in the statute itself, leaving no doubt about what rights consumers

¹⁴The model statute contains the "continue existing protections" statement, but does not stop there.

have. The model statute also makes it plain that violation of these protections is grounds for a supplier to lose its license.

Spelling Out Consumers' Rights

The model statute spells out consumer rights in a number of key areas: no disconnection from the distribution network for non-payment of a competitive supply, no prepayment or other unfair requirements, a prohibition on selling credit life or credit disability for residential bills,¹⁵ a right to return to the standard offer, a limitation on the charges for switching service, and prohibitions on redlining and other unfair discrimination.

These are specific consumer protections that experience in other industries has proven are necessary when moving to a competitive market. The statute also covers the timing of disconnections and contract terminations, extreme weather hardship protections from disconnection or contract termination, limitations on back-billing in the case of erroneous underbilling, notice and receivership protections in the event a landlord defaults on a bill, and other specific consumer protections.

If your state has statutory or regulatory language that sets out other protections for electricity consumers today, or protections that are stronger or more detailed than those in the model statute, it would be beneficial to include them in the restructuring statute in your state. Connecticut, a state with a long tradition of enacting utility consumer protections in statute, rewrote all of its many detailed provisions to make it clear that they now will apply to protect consumers of competitive electricity supply. The benefits for consumers of having such explicit language in the statute are well worth the cost in terms of getting some help in identifying the rules and drafting them in legislative format.

The model includes these protections in the Connecticut statute:

- inaccurate billing, rebilling;
- termination of service for non-payment, when prohibited;
- notice of termination of residential service or contract, process;

¹⁵In other contexts, credit insurance has proven to be routinely overpriced and too often sold using hard-sell or misleading tactics.

- notice furnished tenants by utility regarding intended termination;
- petition for receiver of rents, hearing, appointment, duties;
- non-payment by absent spouse; and
- refusal of residential utility service.

The commission is empowered to define additional specific protections that are a condition of licensure, if circumstances dictate. Also, the commission is given some leeway to adopt its own procedural rules on dealing with license issuance or revocation. This makes sense, rather than trying to anticipate all the possible situations in a statute. In any event, any statutory rules on these procedures would have to track the specific Mini-APA¹⁶ or other due process norms of the state for analogous situations. (It is beyond the scope of this model statute, and unnecessary for the purpose, to catalog all the different varieties of procedures used for such licensing issues in the 50 states.)

Some states distinguish between rights of small consumers (e.g., those with a demand of 100 kilowatts or less)¹⁷ and larger consumers, who are presumably able to negotiate the package of specific rights they wish. You may find it necessary and acceptable to agree to a similar limitation.

Sec. XXX-10. Consumer Protection: Recourse and Enforcement

The model statute gathers together the primary tools for consumer redress in Section XXX-10. These include dispute resolution, ordering restitution, instituting enforcement actions, private rights of action, penalties, and cease and desist orders.

With regard to dispute resolution, the proposal here is to empower the commission to hear consumer complaints against

¹⁶Administrative Procedures Act at the state level, analogous to the APA at the federal level, setting out procedural requirements for promulgating regulations and rules, as well as conducting contested hearings in individual cases.

¹⁷One hundred kilowatts is the instantaneous draw of electricity by a modest-sized commercial business.

competitive electricity suppliers. If a small consumer of electricity has a dispute, the amount in controversy is likely to be too small to make it sensible to pursue the matter in small claims court. Some administrative recourse is needed. Also, small claims courts do not typically have the power to prevent disconnection or contract termination while the dispute is pending, whereas commissions typically do have this authority.

It would be possible to put the dispute resolution function in another agency, such as the attorney general, or to limit its scope to mediation, as the Massachusetts statute suggests. However, the commission is likely to be the most familiar with the types of issues raised by the dispute, and the integration of the dispute resolution function in the same agency that has licensure powers is likely to produce a more accommodating response from the suppliers.

The model statute explicitly empowers the commission to order restitution. Many state commissions today lack this power, which leaves consumers with incomplete remedy. However, there are, in theory, other ways to take care of a customer's need for a forum for seeking redress.

The statute also empowers the commission to commence civil enforcement actions that could lead to monetary penalties, cease and desist orders, or license suspension or revocation. In addition, the commission may refer a case to the attorney general for further enforcement actions.

The model statute contains a private right of action, permitting consumers to seek redress in court for harms by suppliers. The model statute empowers the commission (here, with the agreement of the sister agency with primary jurisdiction over consumer protection statutes) to designate certain practices as unfair and deceptive acts and practices. The consequence of this designation is that a violation would expose the supplier to the risk of paying treble damages and attorneys fees, in many states.

Sec. XXX-II. Privacy and Unwanted Solicitations

In many states, individuals are concerned about protecting the privacy of information about themselves. Lead research is so sophisticated today that a marketer, armed with a customer's name, address (including zip code), telephone number, and a pro-

file of the amount and timing of electricity use, can infer a great deal of detail about the lifestyle of the household, including the types of appliances.

For their part, marketers complain that if they cannot get information on individual customers, they cannot identify the profitable accounts, and it will be difficult to market to any but the largest customers (who tend to know their own load profiles, or have ready access to this information).¹⁸ They prefer access to the same information the utility has on a customer, or at most a negative check-off, whereby customers are given a limited window of opportunity to indicate, in writing, that they do *not* want identifying customer information disclosed to marketers.

This model statute opts for the most protection for privacy—no information is to be released unless the customer affirmatively asks for it to be released, in writing.¹⁹ The model statute also provides that the commission shall make aggregate load data available on a class-by-class basis (as it is today under regulated vertically integrated monopolies).

Note that the statute later calls for utilities to divest themselves of their power plants, and would limit the percentage of electricity sales in the distribution utility's service area that any affiliate of the distribution utility could handle. These provide strong protections for the marketers from unfair methods of competition by utilities, based on information not available to others. If divestiture and limited service-area marketing are not achieved in your state's statute, it might be sensible to revisit the question of information flow, to make it easier for competitors to have the opportunity to market effectively. In such a case, it would be useful to create a mechanism to determine the market value of the information being released, and to make sure this market value is paid and flowed back to customers in the form of lower distribution rates.

¹⁸ Marketers also point out that utilities have all this information, and where utilities or their affiliates are permitted to continue to sell power at retail, the utilities have an unfair marketing advantage.

¹⁹ Conceivably privacy could be even more tightly protected by requiring such a written release every time a different marketer seeks customer load and other information.

One final caution concerning individual load data. One of the likely impacts of retail competition is that more and more distinctions will be made between customers, in terms of the types of service and the pricing arrangements offered to them. This "market segmentation" is a natural outcome of retail competition. Marketers will likely gravitate first to the high users, not only between classes (e.g., industrial before commercial, commercial before residential), but to the high users within a class. The cost of marketing to the customer and gaining their business can then be spread over a larger volume of sales. The result will be that some customers will not get the good deals or the first opportunity to exercise retail electricity choice. Disclosing customer-specific load data will hasten this market segmentation, for good and for ill.

Sec. XXX-12. Unauthorized Switching, Unauthorized Charges Prohibited; Penalties

Slamming and cramming are two of the most frequent problems cited by telephone consumers. Slamming refers to arranging for a customer's competitive supplier to be switched without the customer's knowing and meaningful agreement.²⁰ Cramming refers to the practice of adding services to a customer's account (such as call-waiting, home security, internet access, and the like) that the customer never ordered.

Crammers and slammers rely on the fact that many customers do not closely examine their bills, and may be confused by the bills. To the extent the problem is confusion, the commission has authority and should exercise it to prevent a confusing bill format. To the extent fraudulent switching or service adding is going on, the statute provides for stiff penalties.

The model statute requires that fees, other than the price of electricity itself, be cost-based. This is a limitation on the amount of money a firm can charge for such fees as late fees, restoration-of-

²⁰The staff of the Florida Public Service Commission has recently advised the commission to permit a telephone competitor, doing business as "Don't Know" and "Don't Care" telephone, to enter the market in that state. The firm is notorious for making a sales pitch to a customer asking what telephone company they prefer, and when they get the answers "don't know" or "don't care," recording that as agreement to be switched. Thus the problem is not merely out-and-out fraud.

service fees, bounced-check fees, and the like. Limiting the firm's ability to set fees at "what the market will bear" is a departure from the general rule of the statute that all prices are deregulated.²¹ However, in other industries that have been deregulated, there is a growing tendency to tack on a series of fees, each small in and of itself, that effectively augments for most consumers the price that is advertised. It is important that these add-ons not be an occasion for gouging the unsuspecting consumer.

Cramming and slamming are so reviled by consumers, generally, that it should not be difficult to obtain agreement to strong protections in the restructuring statute.

Sec. XXX-13. Disclosure, Billing Information, and Labeling

In focus groups across the country, electricity customers uniformly state that they want to be able to compare two or more electricity suppliers' offers on an apples-to-apples basis. They want simple, straightforward, and accurate information that will enable them to compare options. This information is crucial if a truly competitive market is to be created. It is also essential if consumers are to be able to navigate the confusing waters of competitive offerings.

Apples-to-Apples Price Information

The model statute requires competitive electricity suppliers to provide the commission with information it needs to publish "price data, information on price variability, and customer service information, in such a format as to permit reasonable comparisons between price and service offerings of competitive electricity providers."

A key component of these comparisons is the average bill for typical customer types. Under Section XXX-13, the commission decides what the typical customer usage is, and the companies must disclose what their bills would be, given the prevailing distribution rates and the supplier's price. The statute requires the suppliers to provide this fundamental information to its customers in a variety of formats, each of them clear and understandable.

²¹ The limitation on fees for switching to and from standard-offer or low-income discount service are similar restrictions.

Misleading Information Prohibited

Section XXX-13 protects consumers against misleading advertising. Not only must suppliers follow applicable state and federal laws, they are subject to specific restructuring statute requirements designed to prevent customer confusion. In particular, suppliers cannot leave customers with the impression that their charges represent the total charges a customer will face. They must also notify customers of all of their terms and conditions in writing at the time they initiate service. The suppliers must provide a booklet with such information when service is initiated, and annually after that. Suppliers must notify their customers of the availability of low-income discount rates and standard-offer rates. The commission is empowered to further specify advertising and disclosure requirements.

The statute provides that the commission must gather information consumers will want to know on a variety of aspects of the suppliers' activities, and supply it to the public on a quarterly basis. The commission is empowered to require suppliers to provide cost information to permit it to publish a complete picture of the supplier's price and pollution situation:

- (1) rates and charges;
- (2) applicable terms and conditions;
- (3) the percentage of each provider's total electric output derived from several categories of energy sources listed in the subsection and others specified by the commission;
- (4) the rates at which the suppliers' facilities emit a number of pollutants;
- (5) a record of customer complaints and the outcome of each complaint; and
- (6) any other information the commission determines will assist customers in making informed decisions when choosing a competitive electric provider.

In addition to the information gathered and published to help customers make choices in the marketplace, the commission is charged with developing a comparison of prices and services across the state. To help it prepare this analysis, distribution utilities must gather price information from the various suppliers that operate in their service area and file it with the commission.

Finally, to give consumers a basis for understanding the various components of their bills, the statute requires that electric utilities unbundle their bills. The unbundled bills will show the charges for the regulated monopoly components of the bill (e.g., transmission and distribution) separately from the competitive aspects of the service (electric supply). The statute requires the commission to conduct a contested hearing to decide how to split the rates between the different functions of the utility system, and the different classes of customers. This is important because some customers could be paying for costs caused by other customers, and these subsidies should not be frozen into the unbundled rates.

Sec. XXX-14. Divestiture of Generation

The model statute requires that utilities sell their generating plants, as well as the output of any plants they have not sold. The purpose of this requirement is to prevent the same company from owning the monopoly grid and also owning generation plants that will compete with other suppliers' plants for sales of power.

The model statute exempts PURPA contracts,²² energy-efficiency contracts, and nuclear plants from the divestiture requirement, as well as generation required only to maintain the stability of the transmission or distribution system.²³ The PURPA contracts and demand-side management were likely undertaken at the direction of the commission. Regarding nuclear plants, it is unlikely that such plants can be sold except perhaps at a loss.²⁴

The commission is required to set up rules for the sale to maximize the value received for the sale. The consumers will have to share the cost of any shortfall from the failure to maximize the sale value.²⁵ One of the advantages of requiring utilities to share in the

²² The federal Public Utility Regulatory Policy Act of 1978 (PURPA) required all major utilities to buy power from small power producers and cogenerators.

²³ If a load center is far from most of the generation capacity, it can put a strain on the grid, and putting some generation capacity near the load center can relieve some of this burden.

²⁴ Appendix II provides an alternative method for calculating what the utilities should recover to make themselves whole for uneconomic costs stranded as a result of the introduction of competition. In this alternative, utilities must either divest nuclear plants or transfer them to an affiliate and forfeit stranded cost recovery for them.

²⁵ See Section XXX-19 and Appendix II.

cost of uneconomic plants is that this provides the utility an incentive to maximize the value of the sale. Such an incentive is likely to be more effective than any rules of how to handle the sale that the commission can develop.

Sec. XXX-15. Default Service

All restructuring plans have some provision for default service, and the model statute is no exception. Situations in which default supply may be required include (a) termination of a supply contract for any reason, at least until a new supply contract is initiated, (b) moving to a new area without any idea which supplier to choose; and (c) a miscommunication with a supplier, resulting in the customer not realizing that no supplier has been designated. Most importantly, default service is the back-up if competition fails to reach all or part of the residential market.

Because of the way that the electric system functions, the restructuring plan must provide for customers to continue to receive supply if there is some problem with them continuing to receive power from a particular supplier. Electricity flows whenever we are connected to the power grid and we turn on a light or an appliance. If a customer has problems with one supplier, either another supplier must be lined up or the customer must be removed from the grid (physically disconnected). A default supplier is the entity responsible for providing power to a customer without a competitive supplier until the customer can line up another supplier.²⁶

The model statute provides that the commission can use a bid process to select the supplier that will have responsibility for the load of default customers. A competitive electricity supplier may

²⁶ This responsibility will be identified in two ways: before the fact and after the fact. Before the customer uses power, if the customer is identified as a default customer, the default supplier will be obliged to provide sufficient power to the grid to serve that customer. Periodically, at the wholesale level, all the suppliers will enter into a process (perhaps under the auspices of the Independent System Operator) to identify whose customers were taking what load at each given period of measurement (e.g., every quarter hour). The default supplier will be assigned the responsibility of the loads of all default customers not covered by supplies brought to the table specifically by the default supplier, and will also have the responsibility (and the right to bill for) supplies to individual customers who were only identified as default customers through the after-the-fact review of which suppliers were honoring their agreements.

also be chosen by the commission. Note that, unlike some restructuring statutes, this model does not say that the incumbent electric utility will automatically be the default supplier. As in the case of the standard-offer service, Section XXX-5, the model recognizes that the right to serve a large, "pre-aggregated" group of customers is valuable. This right should not be given away. If a provider is designated in the statute, some form of compensation to customers should be provided as well.

Some settlements (e.g., the early Massachusetts Electric Company deal) provided that default customers would get served by the system as a whole and pay spot market prices. This alternative exposes default customers (who could be a large number of customers, and will over time tend to have a higher concentration of payment-troubled customers) to the extreme volatility of the spot markets. In the summer of 1998, for example, wholesale spot market prices for electricity rose at some points to as high as \$7.50 per kilowatt-hour (the national average is 6 cents per kWh). Because of this wild volatility in spot prices, it is better to designate a particular supplier.

Recall that Section XXX-6 provides for a limit on the spread between default prices and system average prices, and Section XXX-15 itself caps default prices at the market price in the region.

Other than the winner of a bid, the incumbent utility is the most obvious candidate to provide default service. In lieu of a bid process, it may be desirable to trade this designation in the statute for some other relief that is sought from the incumbent utility in the statute (such as the amount of net present value stranded cost recovery).

Sec. XXX-16. Marketing: Large Utilities

Sec. XXX-17. Marketing: Small Utilities

Section XXX-16 represents a cornerstone of the model statute's efforts to create a truly competitive market in addition to mere deregulation of energy pricing. This section, based on the provisions of the Maine restructuring statute, severely limits the extent to which an affiliate of a monopoly distribution utility can market power within the service area of that distribution utility.

Section XXX-16 only applies to so-called "large utilities." Two factors suggest that these restrictions apply only to companies with a major share of sales in the state. First, only such large companies could, practically speaking, leverage their control of the bottleneck distribution network to favor their own sales of power to end-users. The second consideration is that the costs of policing the limitation on market share are too high in the case of small utilities, relative to the benefit for the consumer of the greater chance of getting true competition.

Section XXX-16 prohibits the distribution utility from marketing power directly in its own service area. It must set up a separate corporate affiliate, subject to rules of conduct set out in the statute, if it wants to keep making sales of power. This competitive service provider affiliate may sell power to customers outside the transmission or distribution area. However, within the area of its transmission and distribution affiliate, the affiliated competitive service provider may sell only 33 percent of the energy sold in that area. In other words, it is limited to one third of the market within the area where its affiliate owns the bottleneck distribution grid.²⁷

To prevent the utility from abusing even its limited market share within the area of the transmission and distribution affiliate, the statute provides for standards of conduct governing relationships between the competitive supply affiliate and the monopoly transmission and distribution affiliate. The standards included in the model statute are similar to those in statutes and in commission rulings under restructuring. A couple of provisions bear special mention. The model statute requires not only the monopoly utility, but the competitive affiliate, to make their books and records available on reasonable terms to the commission. The commission is empowered to order an audit of these books, at the utility's expense.

In addition to the limitation on marketing within an area by the transmission and distribution company's affiliate, Section XXX-16 limits the overall market share in the state by any one supplier. The

²⁷Note that the competitive service provider may provide service to a greater part of the market if no bidder comes forward and proposes to sell standard-offer service for prices that meet the cap set out in Section XXX-6. In such a case, the competitive service provider can function as the standard-offer supplier, at the standard-offer price cap.

limit proposed in the model statute is 15 percent of the sales in the state. To prevent anyone from getting an unfair advantage for competitive sales by buying control of a distribution utility, the statute bars a purchaser of 10 percent or more of the monopoly firm's stock from selling power at retail in the state, and empowers the commission to order divestiture of even such a limited share if it finds that the control gives the competitive supplier an unfair advantage in the market. After such a divestiture, the transmission and distribution utility may be barred from affiliation with a competitive electricity supplier.

The commission is charged with doing an analysis of the need for such a market share limitation and reporting its findings to the legislature. The model statute suggests that this analysis take place five or six years after competition is introduced. By that time, the market may have settled down some, and the outline of its ongoing shape may be apparent.

In the case of small utilities, no specific limitation is provided on sales within the distribution service territory, or on corporate structure of the small utility. Nor are detailed provisions of a code of conduct set out in the statute. Rather, the statute provides that the commission will provide for a "small utility" code of conduct by way of rulemaking. The commission may, by rule, determine the level of structural or behavioral separation appropriate for the supply and distribution arms of the small utility.

The most important aspect of the large utility section is that it embodies a structural solution to the issue of cross-subsidization and undue market power. Many utilities today argue that no legal separation is needed between its monopoly and competitive arms, and even if a separate affiliate is required, there should be no limitation on that affiliate's right to do business in the competitive market for sales within the affiliated distribution service territory. The model statute endorses a structural solution for several reasons. It is the cleanest solution—there can be no question about the incentives driving management of either company if they are (a) separated and (b) do not do business in the same service area. To this extent, the model statute actually compromises the strict separation of functions that competitive market purists would prefer.

Another reason for relying on structural solutions is to get the incentives right, rather than hoping to police behavior in the face

of powerful incentives to abuse the market position of the parties. It is expensive and intrusive to scour accounting books and cross-question employees. It also has not proven to be easy to demonstrate just how market power and cross-subsidization are occurring (even where the resulting prices to consumers and lack of options suggest it is occurring). Thus, policing behavior is both expensive and, relative to structural solutions, ineffective.

Sec. XXX-18. Marketing: Consumer-owned Utilities

Under the model statute, consumer-owned utilities:

- (1) may sell retail generation service only within their respective service territories; and
- (2) may not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

Various consumer-owned utilities, such as co-operative utilities, have asked for different treatment in the restructuring debates. It seems to be a general rule that no co-op can sell power at retail within another firm's service area unless it is willing to open its own distribution network to retail competition. This is the so-called "reciprocity" principle.²⁸ This statute goes further in restricting co-ops, by limiting their sales to within their distribution territory.²⁹ It does not, however, prevent marketers from coming in to the co-op's territory and making retail sales there. Either a reciprocity provision or this Maine limitation are workable solutions, depending on your state.

Sec. XXX-19. Stranded Cost Recovery

Stranded cost recovery is one of the most contentious and important issues in electric industry restructuring. High prices in

²⁸ A similar concept of reciprocity has been debated in states where competition is being opened up, but the neighboring states have not opened their grids up to retail competition. Experts have differed about whether in principle reciprocity must be demanded before a neighboring state's power companies can come into the restructuring state to sell power, but in practice, reciprocity has been the rule.

²⁹ It is possible that the Maine Legislature chose this cautious and conservative route because a co-op in Maine went bankrupt over nuclear power investments in the 1980s. A state with less sense of caution about the business practices of its cooperatives might welcome their foray into competition.

states moving to competition have typically been caused by utility investments in generation plants, or contracts for the output of such plants, whose costs are higher than the cost of replacing that power in the open market today.³⁰ Aside from reducing rates to eliminate overearning and other contributors to high prices, the only way to reduce costs is to reduce stranded costs.

The statute defines stranded costs as the costs of generation-related assets that are uneconomic relative to what could be obtained in the market, and that were rendered uneconomic because of the move to competition:

- (1) the costs of a utility's regulatory assets related to generation;
- (2) the difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and
- (3) the difference between future contract payments and the market value of a utility's purchased power contracts.

The statute provides for a cut-off date for claiming that the move to competition stranded an investment. After the date chosen in the statute, it should have been understood that competition was a good possibility, and the utility should be responsible for new investments. The statute provides exceptions to this rule, to permit the utility to recover costs that were deferred for later collection by order of the commission (e.g., so-called "regulatory assets"), costs to renegotiate purchased power contracts, energy conservation costs, and costs beyond the control of the utility.³¹

The model bill requires a utility to attempt to reduce its stranded costs. The utility may, for example, try to bargain down the purchase price for power under contract from independent power producers. The statute encourages such mitigation by linking a utility's

³⁰ For a complete discussion of stranded cost issues, see *Stranded Costs and Market Structures in the Electric Industry*, prepared by Tellus Institute for AARP, 1997.

³¹ This provision bears watching, so that this exception is not interpreted to swallow up the entire rule. A stronger version of the pro-consumer model would delete this provision.

level of stranded cost recovery to such efforts. The commission must approve measures taken to reduce stranded costs.

It is hard to reduce stranded costs directly. Most of what goes by the name "mitigation of stranded costs" turns out to be cost-shifting or cost-sharing, rather than cost-reduction. Utilities can run their plants more efficiently. They can renegotiate contracts with independent power producers to push for lower prices on these purchases. In a few cases, it can be proven that management was imprudent in obtaining these generation assets, and reduce the amount payable by customers. But most so-called "mitigation" involves requiring shareholders to absorb some of the cost of these plants, shifting costs from one group of customers to another, or shifting costs from one generation of customers to a later generation.

The model statute does not use the word mitigation in such a broad way. Instead, it uses mitigation narrowly, and instead of that term substitutes the categories: "[s]teps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers." Some such steps are mandatory under the statute, and some are voluntary. Mandatory cost and rate-impact reduction steps include good faith efforts to negotiate the renegotiation of independent power producer contracts and purchased power contracts, maximization of market revenues from existing generation assets, and efforts to maximize current and future operating efficiency. The costs of consultants to help perform these tasks can also be recovered as a mitigation step.

Voluntary steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, may include³² reallocation of depreciation reserves for generation assets to existing generation assets (so long as net costs are not shifted between customer classes as a result), reduction of book assets by applying the net proceeds of any sale of existing assets (again so long as net costs are not shifted between

³²The model statute includes a specific prohibition on using mitigation investments as a means to finance the restarting of a nuclear plant that is closed at the time the statute is passed. This prohibition is based on the experience of legislatures in states with a heavy nuclear plant investment.

customer classes as a result of such application), voluntary write-offs of above-market generation assets, the decision to retire uneconomical generation assets, and efforts to divest generating sites at market prices reflective of best use of sites.³³

The statute requires that the commission determine the level of stranded costs in a contested hearing and provides for the commission to revisit its calculation at least every three years, and make another estimate, based on the situation as it has changed in the interim. This version of the statute calls for these recalculations to be prospective only, with no "true-up" to correct for over- or underestimation in the calculation performed three years earlier.³⁴

Once the level of stranded costs is determined, it must be decided who should pay for them. The model statute insists that shareholders absorb a fair share of the uneconomic costs of the current system. The statute allows the utility to get a return of its investments in the assets, but not a return on its investments. That is, it can recover its costs, but no profit is allowed. The recovery period cannot exceed 10 years.³⁵ The commission is to set a charge for all customers to pay, that will enable the utility to recover the stranded costs allowed under this section. The statute requires the commission to see that stranded costs are allocated to customer classes in the same way they would have been allocated if the restructuring had never happened.

The model statute has two plans for funds to further protect customers. One, the "Ratepayer Equity Plan," is like the Chrysler bail-out. In the Ratepayer Equity Plan, the utility gives ratepayers the right to buy stock (warrants) in the future at today's prices, up to the value of stranded costs given to the utility by the customers.

³³Some believe that the sites where power plants now sit are among the utility's most valuable assets. Given the shrinking number of suitable sites for developing power plants, ratepayers have a great interest in capturing the value of such sites, and not simply handing them over to utility stockholders.

³⁴For more discussion of the pros and cons of a one-time, recurring but prospective, or recurring and reconcilable estimation of stranded costs, see Tellus Institute's stranded costs paper, noted above.

³⁵Note that if the recovery period were the full 10 years, the utility would recover about half of the present value of its investments, because it would not receive from ratepayers the time value of the money it paid for the assets.

This preferred alternative has the utility getting help today to withstand the transition to the market place, and in exchange giving ratepayers a share of its future success.³⁶

The second, called here the Ratepayer Parity Trust Fund, lowers stranded costs by diverting to ratepayers the taxes received by the state from the sale of utility generation assets. These taxes would otherwise go to pay for government responsibilities, or be returned to taxpayers, but under the Ratepayer Parity Trust they would be returned directly to customers. The model version of this fund requires legislative appropriation for the use of the funds, and requires utilities to provide warrants to the extent of the use of the funds.

The model statute does not include any language on securitization. Securitization is a process whereby the utility can issue bonds to raise money for near-term rate reductions, backed by a state-enforced pledge that ratepayers will payoff the bonds. Some utilities are anxious to have this pledge of ratepayer funding, and the certainty it brings. This certainty may also help to lower the interest rate required to raise money from the bonds. Using bonds to fund stranded costs tends to lower the cost by substituting debt for equity.³⁷

Against all these reasons, consumer advocates point out that securitization shifts all the risks of stranded costs to the consumer. If the economy turns sour, or if the plant is poorly managed or is prematurely retired, ratepayers still have to pay for the bonds. If there were no securitization, it is not so clear that ratepayers would have to keep paying for such costs. If it makes sense to include a securitization provision in the statute, make sure that an attorney who is knowledgeable about bond issuances has looked it over for one of the consumer representatives in the negotiations.

³⁶The warrants represent a potential for some dilution of the company's stock. Of course, if the future does not go well for the utility, and its stock does not rise in price, the warrants will not be redeemed, and they will not impact the utility's bottom line. Thus, the customers only share the utility's good fortune, if there is good fortune to share.

³⁷Debt costs can be deducted from taxes, whereas equity recoveries are taxable. Debt rates are usually lower than profit rates.

Sec. XXX-20. Rate Design

Section XXX-20 reaffirms the authority of the commission to set rates for the monopoly transmission and distribution company. The Maine statute, on which this section was based, includes a requirement that commissioners must allow distribution utilities to recover nuclear plant decommissioning costs to the extent required by law. This language appears unnecessary, and for that reason unclear, so it has been deleted from the model statute. The deleted language also did not resolve the question of which part of the rate should bear these generation-related costs.

Section XXX-20 requires the commission to hold a contested hearing to set rates for the monopoly utility shortly after passage of the statute.

Section XXX-20 also provides that the commission will establish a system benefits charge. The system benefits charge, sometimes called a wires charge, is used to pay for benefits to be provided by the electric industry under a restructured system. These benefits include energy-efficiency investments, renewable power development, and low-income bill affordability assistance.

Under Section XXX-20, the costs of such public benefits are recovered by a charge on all retail sales. The charge is to be uniform for all sales to customers within a class. This is a compromise between the pro-small-consumer position that all customers should pay the same rate per kilowatt-hour, and the pro-big-customer position that only residential customers should pay for such system benefits. To mitigate the effect of this rate design, the statute provides that the "cap the gap" limit on price differentials between small and large customers cannot be violated by the allocation of system benefits costs. Another important feature of the Section XXX-20 treatment of stranded costs is that such charges cannot be isolated on the bill, but must be rolled into distribution rates along with other ordinary costs of the distribution company's business.

Sec. XXX-21. Renewable Resources

Section XXX-21 presents the first of three public benefits for which the statute provides support. Renewable resources are electricity power sources that will not be exhausted through use. Often these resources are chosen for support because they do not pro-

duce as many polluting emissions as other more traditional sources of power. These resources are often in a preliminary stage of development and would not be chosen to power electricity if only market forces were used to make such choices.

There are two primary ways policy makers encourage the development of such resources. One is to require power marketers to include a certain amount of such renewable power in their portfolio of power sources. Another is to raise funds to support research and development, or to help renewable power providers to sell their output at market costs (such as by subsidizing customers' purchase of above-market renewable power).

The model statute provides a placeholder for both of these methods of supporting renewable power. Volunteers are encouraged to consult with environmental groups in their states to get information on which to base a decision about what types of support to put in a restructuring statute.

Sec. XXX-22. Energy Efficiency

Energy efficiency is another benefit of the current vertically-integrated monopoly utility system in many states that would be threatened by a move to completely market-based electricity sales. All customers have a stake in making the use of electricity as efficient as possible. The model statute requires distribution utilities to provide energy-efficiency programs to its customers.

The model statute sets out a specific schedule of kilowatt-hour charges to raise the funds to pay for these efficiency programs. Based on the Massachusetts restructuring model, the statute calls for a gradual reduction from 3.3 tenths of a cent per kilowatt-hour to 2.5 tenths of a cent per kilowatt-hour. The commission will have the authority to increase the rate up to the cap of 3.3 tenths of a cent per kilowatt-hour after the fifth year.³⁸

The statute requires that programs funded under this section be cost-effective, and cost-efficiently use ratepayer dollars. The commission is required to promulgate specific rules for the administration of the programs soon after passage of the statute. Note that

³⁸To put this in perspective, in high-rate states, residential customers pay from 9 to 15 cents per kilowatt-hour. Three-and-a-third tenths of a cent is about 2 to 4 percent of the utility's current rates.

this model statute does not provide for statewide administration of energy-efficiency programs. While there are many reasons why such programs should be administered on a statewide basis, there are also potential drawbacks.³⁹

The model statute makes an explicit commitment to energy efficiency for low-income customers. Section XXX-22 provides for a fund from a minimum charge of 0.25 tenths of a cent or 20 percent of the overall energy-efficiency funding, whichever is greater, for energy efficiency targeted to low-income customers. The statute directs that such electric-efficiency programs be coordinated with gas conservation programs run by natural gas firms in the state.

Sec. XXX-23. Consumer Education

Almost every state that has passed restructuring legislation has recognized the importance of giving consumers a basis for exercising their rights in the new market structure. The model statute does not try to define exactly how that should be done. It adopts the concept of a consumer education advisory board to assist the commission in developing these specifics. Sufficient funding is needed, as well. In addition to looking to consumers as a source of money, it might be possible to require competitive providers to contribute to the fund.

Sec. XXX-24. Needs-based, Affordable Rates for Low-income Customers

Section XXX-24 is a primary vehicle to carry out the purpose of the legislature that essential electricity services be affordable for all residential consumers, regardless of income. Section XXX-24 lays out this principle again, making it clear that the issue is not simply affordable access, but affordable service.⁴⁰

³⁹ For more information on statewide administration, see Nancy Brockway, *Statewide Administration of Utility Low-Income, Energy-Efficiency Programs*, NCLC 1998. Note that since that paper was written, California's Legislature has passed A.B. 2841, providing for central fund administration of a number of public benefits programs, including energy-efficiency programs, using boards appointed by the commission to assist in program oversight.

⁴⁰ In some drafts of universal service language, particularly in the telephone industry context, principles are written so that only "access" is promised. Access is not a term of art, so it can mean different things to different people. However, access often is interpreted to mean the physical availability of the service, and not also its financial availability to the customer. For this reason, the word "access"

The model defines affordability in straightforward terms:

For the purposes of this chapter, a bill is affordable if the burden it places on the household is no greater than two times the burden, expressed as a percentage of income, that is borne by the average residential customer of median income.

Thus, the statute uses a "burden-based" method to evaluate whether the cost of electricity to the household is affordable by that household. The model statute scales the cost as a percentage of income, recognizing that the same price can represent widely different burdens on a household's income, depending on the level of that income. For example, in Pennsylvania, median income families paid 2.5 to 5 percent of their income for electricity, depending on whether they used electricity for heating in the winter. By contrast, low-income customers paid between 5 and 40 percent of their income for essential electricity, depending not only on whether they were electric space heat customers, but more importantly on the depth of their poverty. The lower the income, the greater a bite electricity costs takes out of it.

The statute would not require a distribution utility to implement a Percentage of Income Payment Program,⁴¹ although such a burden-based program would be the most direct and effective way to bring bills to the affordable level. Rather, the statute is performance-based. The legislation requires that the program be evaluated by determining whether bills of low-income customers have been reduced to the target level.⁴² Funding is to be provided at a level designed to accomplish this result.

should not be used, or if it is used, other language is essential to clarify that the guarantee goes beyond merely having poles and wires running along the house, and extends to low-income households being able to pay for their electricity and its delivery to them.

⁴¹ Under a PIPP, a low-income household pays monthly an amount equal to the percentage of its income determined to be affordable. Variants include Percentage of Bill Programs and Tiered Discounts. For a description of the various burden-based programs, and other ways to reduce bills to affordable levels, see *Energy and the Poor: The Crisis Continues*, NCLC, 1997.

⁴² Research has demonstrated that the minimum level of income needed to maintain a healthful, basic standard of living ranges between 150 percent and 200 percent of the federal poverty level in areas of moderate to high costs.

The statute requires that energy efficiency, as prescribed under Section XXX-22, be the first line of defense for low-income customers against unaffordable bills. But the statute likewise recognizes that energy-efficiency measures will take time to install in customers' homes, and will not lower bills for many low-income customers for a number of years (as the efficiency programs are rolled out and implemented). Also, even after the maximum levels of efficiency are achieved, there will remain low-income customers whose income is too low to afford electricity. Thus, while efficiency can provide a long-term benefit to reduce the need for bill assistance, direct bill assistance will need to be provided as well.

The funds for the bill reduction are to come from the distribution utility, and be raised by distribution rates set in ordinary rate cases. The bill authorizes utilities to propose additional forms and levels of assistance to their low-income customers.

The statute provides that bill affordability assistance is not to be counted as income in any means-tested program, to the extent that is within the power of the state. So far, federal welfare programs have not counted bill discounts and reductions as income, and such reductions have not been taxed federally.

In an effort to overcome the stigma and poor credit rating of low-income customers, so that competitive marketers will make efforts to sell power to them, the statute provides that the distribution utility serve as a backstop for the excess debt low-income customers may have related to their energy purchases.

Eligibility for the affordability assistance will be open to low-income customers who have qualified in the preceding 12 months for any means-tested public benefit. The model statute does not require that the customer be presently receiving assistance, as there are a number of households with seasonal income that apply for means-tested welfare only during periods of unemployment, and others who apply only to programs like LIHEAP (Low-Income Home Energy Assistance Program) that are available only at certain times of the year.

The statute also enumerates a number of specific means-tested programs, including but not limited to Transitional Assistance for Needy Families, Supplemental Security Income, food stamps, Medicaid, general assistance, means-tested Veteran's Benefits, and Low-Income Home Energy Assistance, recipients of which are eli-

gible for bill assistance. Finally, the assistance is open to recipients of any other means-tested program for which eligibility does not exceed 175 percent of the federal poverty level, and to those whose annualized household income does not exceed 175 percent of the federal poverty level.

Finally, the model bill specifies the outreach efforts that must be made by program administrators. The utility must engage in substantial outreach efforts, and must report annually to the commission on these efforts and their results. One of the outreach methods must be "automatic enrollment." Under automatic enrollment, computer tapes listing customers are matched with computer lists of recipients of the means-tested benefits that qualify a customer for bill assistance. If a match is found, the customer is automatically given bill assistance. If a household receives means-tested assistance but has no electricity account, the customer is notified of its right to apply for electric service, and obtain the bill assistance to help afford it. The statute requires state agencies administering such programs to cooperate in making automatic enrollment work.

Sec. XXX-25. Commission Participation in Federal and International Proceedings

Section XXX-25 provides explicit authority for the commission to participate in federal and international proceedings that might affect the state's interests. In addition, the section authorizes the commission to monitor developments in the industry, and make whatever reports would be useful to advancing policy in the electric industry.

Sec. XXX-26. Transition; Utility Employees

Section XXX-26 is an example of ways that a restructuring statute can ease the transition to a competitive marketplace for employees of regulated monopoly utilities.

Sec. XXX-27. Reports

The model statute does not assume that we can merely provide the legal right to sell power to competitive suppliers, and all the benefits of competition will flow to customers. Rather, it requires policy implementers to monitor the industry, and report annually on the extent to which the purposes of the statute are being

achieved. In addition, the commission must suggest ways to correct problems that it identifies.

Sec. XXX-28. Intervenor Compensation

Section XXX-28 provides for funding to community groups and others that wish to present their case to the commission in the formal proceedings required by law, but do not have the resources to hire attorneys or expert witnesses. Some states already have intervenor compensation funds, whether at the initiative of the state or in an effort to comply with the Public Utility Regulatory Policy Act of 1978.⁴³ Where your state does not have a well-functioning intervenor funding mechanism that will provide consumer groups the resources they need to have a voice in the implementation of electric industry restructuring, Section XXX-28 provides a model that can be used.

Today, if a case falls under the specific limits of PURPA, utilities must provide the funds for the intervenors. Utilities are typically the source tapped for funding of interventions in non-PURPA situations. One example is where a consumer group persuades the commission to order a utility to return a large over-recovery to customers, and the intervention leading to that order is paid out of the funds to be returned to customers.

Section XXX-28 proposes to use fines collected by the commission in the way of penalties incurred by utilities or competitive electricity providers under Sections XXX-10 and XXX-12 (consumer protection sections) to make up the core of funding for Section XXX-28 intervention support. The commission is authorized to direct the utilities to contribute further, and any interest on moneys in the fund are returned to the fund to support intervention under Section XXX-28.

Section XXX-28 determines who can apply for funding, whether it matters if the applicant has other sources of funding, what to do if there is a publicly funded intervenor, what to do if more than one party advances the arguments raised by the applicant, and similar practical issues in administering intervenor

⁴³For more information about existing intervenor funding arrangements, see Nancy Brockway, *Intervenor Funding in Public Utility Rate Cases*, NCLC, 1996.

funding plans. One key aspect of these arrangements is that the commission is directed to process requests for funding long enough before hearings in a case so that the applicant has some chance of finding out whether it will get funding, before it has to do the work of preparing a filing for which it has no funds.

Sec. 3. Conforming Amendments

Sec. 4. [Repeal Contrary Existing Statutes]

The model statute includes a section based on the Maine statute that reaffirms certain contracts made by utilities under regulation, including contracts to provide conservation services and contracts that fulfill the Public Utility Regulatory Policy Act requirement to buy power from cogenerators and small power non-fossil-fuel generators.

The model statute contains two boilerplate sections typical in a major revision of law, such as the restructuring statute. One requires the commission to identify all the places in the current compilation of statutes that are inconsistent with the new statutory scheme and propose conforming amendments to bring them into synch with the new structure. The second technical amendment repeals any existing statute that is inconsistent with the new structure.

APPENDIX I: Retail Marketing Area Language

Advocates in Ohio have proposed the "retail marketing area" or RMA as a way to jump start the market, while maintaining stability and security for small customers. Under the retail marketing area concept, the distribution service area is divided up into smaller areas, and a bid process is used to choose a standard-offer electricity service provider for the transition period.

The use of a bid process applies competitive pressures to the purchase of electricity for standard-offer customers in these retail marketing areas. It also introduces new names and company identities to the public. While only one such firm in any given RMA will be known as a competitive electricity supplier during the transition period, customers will be exposed to the concept of receiving delivery services from the distribution utility while receiving sup-

ply services from the RMA electricity supplier. In addition, several firms winning the bids across the state will have their names and identities introduced to the public, and have an opportunity to establish a track record of prices and service quality to build on and cite if and when retail competition is introduced.

Customer choice is preserved by providing for an opt-out. Any customer that does not want to be served by the RMA bid winner may choose a different competitive supplier. The proposed language spells out the opportunities to opt out. The statute also expressly deals with the question of whether customers who opt out can be charged an administrative fee for switching services.

To select the geographic retail marketing areas, the distribution companies would file proposed plans for commission consideration, meeting the following criteria:

- feasible size;
- a diverse mix of customers, including low-income customers, based on customer class, socioeconomic, geographic, and load characteristics;
- each RMA reasonably comparable in customer mix to all other RMAs;
- boundaries do not result in a transmission or distribution service bottleneck to the advantage of a particular provider of electric generation service;⁴⁴ and
- contiguous geographically and contiguous in terms of transmission and distribution services.

The sample RMA language in Appendix I exempts co-ops and municipal electric utilities from the requirement of being split into RMAs. This draft also permits municipal utilities to participate and divide their territory into RMAs.

The statute spells out some of the criteria for selecting winning bidders, including the obligation to serve new RMA customers. Price factors include the rate reduction objective specified in the

⁴⁴It may not be possible to avoid such bottlenecks, in which case some way to adjust for the economic impact of the bottleneck may be necessary.

statute for standard-offer service. Non-price factors may include service reliability, customer service quality, assurance of supply, performance guarantees, financial viability, and any other factors the commission considers necessary to run a fair bid process and select a supplier that can meet consumer needs.

Finally, the RMA language provides that the electric distribution utility will supply power to retail marketing areas in those circumstances where the bid process has not produced a competitive electricity supplier for the RMA.

APPENDIX II: Alternative Stranded Cost Recovery Section

Appendix II⁴⁵ contains an alternative method for determining stranded costs. It shares many features with Section XXX-19, the stranded cost recovery section of the model statute. But it provides some different approaches that may be considered when writing your state's statute.

First, the alternative in Appendix II does not only encourage divestiture of generation assets, it requires divestiture of non-nuclear plants and contracts, and requires that utilities make an attempt to divest nuclear assets, if they wish to claim stranded cost recovery. The alternative stranded cost section also goes into some detail about how the divestiture plans should be developed and implemented.

In the case of nuclear assets, the alternative provides a minimum bid price that must be received, or the sale need not go forward. The minimum bid price is the present value of the future cash flow the plant could be expected to bring in over its remaining useful life, assuming efficient management. Also, the Appendix II definition of stranded costs expressly bars recovery of decommissioning costs.⁴⁶

Another aspect of the version of stranded cost recovery contained in Appendix II is that the periodic recalculations of stranded costs (in the case of non-divested plants) include not only a

⁴⁵ Drawn from the Connecticut restructuring statute.

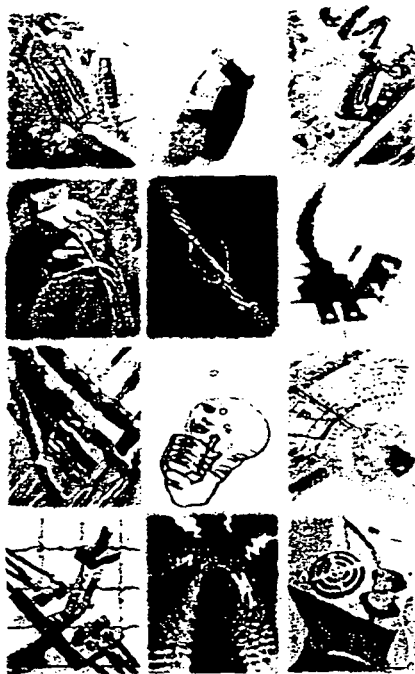
⁴⁶ Section XXX-19 as it appears in the model statute is silent on decommissioning issues, which have tended to be controversial.

prospective re-estimate, but a true-up of past estimates against actual experience.

APPENDIX III: State UDAP Citations

You can access most states' current regulations via the Internet at "www.state.[state's two-letter abbreviation].us."

4



Conclusion

The model language presented here does not cover every issue that is likely to arise in your state's discussion of retail electricity competition. For example, the impact of introducing retail competition on the state's tax revenues⁴⁷ will definitely be of concern to the legislature, and will be part of the mix when the statute is being developed. Also, the model does not lay out any options for securitization, but ultimately you may decide that it is preferable to negotiate a securitization provision in return for some provisions not otherwise achievable.

The model statute does not take up the question of siting of power plants, whereas many states have revised their siting standards and proceedings in light of restructuring. The model statute does not address performance-based ratemaking, although there

⁴⁷Some states have gross receipts taxes on utilities, and if revenues go down as some functions are divvied up by the market among other firms, gross receipts taxes on utilities can go down if current language defining the application of such taxes is not brought up to date.

are some important issues that consumer advocates should be alert to before agreeing to such alternative ratemaking schemes.

Electric industry restructuring is a massive task, and it is impossible to anticipate all the specific issues that will come up in each state. The model statute provides a template on the key issues of concern to the small consumer. It tries to take a strong pro-consumer position. How your own state handles these issues will in part be up to you. It is the hope of the authors that this model will provide some examples that will be useful as you wind your way through the legislative process in your state.

5



Supplement

Electric Billing and Metering Services

Many would-be competitive electricity suppliers are seeking the right to sell and install meters, read meters, and perform billing and collection services, not just for themselves but for all suppliers (including the distribution utilities).

If competition is introduced in metering, it is likely that competitive suppliers will want to retire existing meters and install fancier meters with more ability to record and store data. It is likely that these meters will be installed first among the higher users, even within the residential class. As a result, opening metering to competition will promote market segmentation. Too often, when markets are divided into subsegments, the small users are the ones that get the worst service at the higher prices. On the other hand, competition in meters may lead to innovations that eventually benefit all consumers.

■ In the case of billing, most states are permitting the distribution utility and the competitive electricity supplier to bill separately. The disputes have arisen when the competitive supplier wants to bill not only for its supply of electricity but for the distribution utility's distribution service as well. Most states have indicated that at some point they will permit such bundling by the supplier (at the customer's option), but at the same time, states are not requiring the utility to use the suppliers' billing services.

The model statute does not require utilities to give up control over billing and metering. This issue has been very contentious around the country. Competitive marketers complain that they will be unable to succeed if they can only compete for customers' purchases of electric energy. They insist that they must be able to offer competitive metering and billing services.

Sometimes they argue that they can bring down the costs of these utility functions by bringing the discipline of the market to providing such services. Sometimes they argue that without new meters that record usage at different times of day ("real-time" or "time-of-use" meters), customers will not have the right "price signals,"⁴⁸ or that customers will not be able to take service at rates that vary during the day with the suppliers' costs (which would make it economic for some customers to curtail their use during high-demand, high-cost hours, and switch their usage to lower-demand, lower-cost periods⁴⁹). Other times they argue that they must be able to meter and bill competitively in order to offer customers the convenience of receiving one bill for several services, such as electric, gas, telephone, alarm service, Internet access, and cable TV.

Most advocates for small consumers look at these claims with some skepticism. Consumer advocates may remember that Great

⁴⁸That is, they will pay the same rate every hour of the day, whereas the supplier's costs will go up and down as demand goes up and down, with a spread of anywhere from 15 to 50 times between the lowest cost and the highest in one day, at the extreme.

⁴⁹A report by Tellus Institute and Wisconsin Conservation Corporation, *How Do We Get There from Here*, prepared in 1996 for a group of California consumer advocates, concluded that among residential customers, only the very high users would likely be able to benefit from the availability of such real-time pricing options.

Britain experienced a great deal of confusion when it tried to open up its metering market to competition before there was an infrastructure capable of supplying the new market. Accuracy of meters and confidence in meter reading are other values that consumer advocates have raised. And to the extent existing meters are subject to being changed out, the question arises, Who must pay for the remaining costs of the existing meters—the utility that is left with a meter that is barely worth the cost of removing it, the customer who has agreed to purchase new metering services, or the competitor who has persuaded the customer to switch meters?

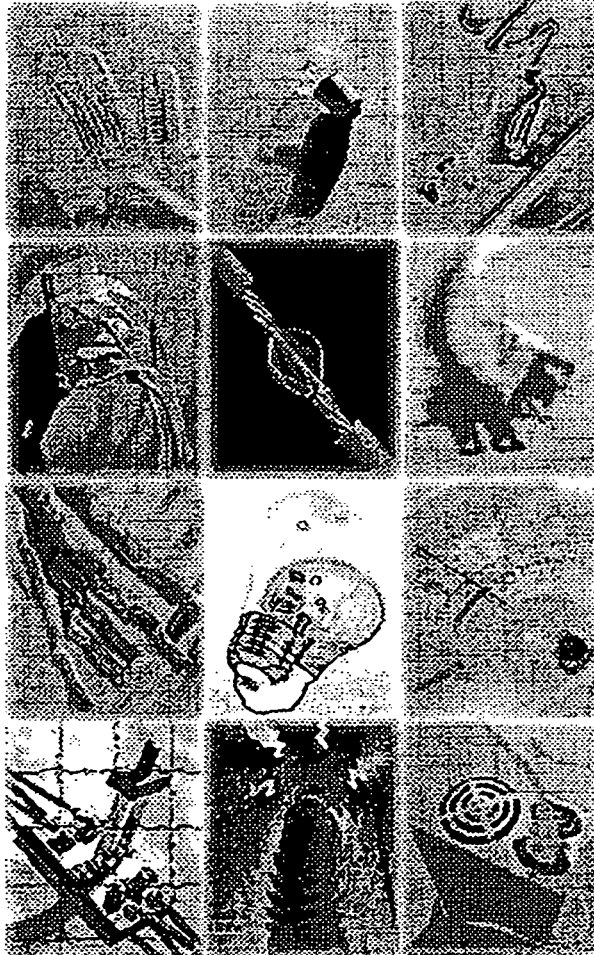


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AN ACT TO
RESTRUCTURE
THE STATE'S
ELECTRIC
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Electric Utility



Restructuring



Model
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Section 3. Conforming Amendments

Section 4. [Repeal Contrary Existing Statutes]

Appendix I: Retail Marketing Area Language

Appendix II: Alternative Stranded Cost Recovery Sections

Appendix III: State UDAP Citations

SECTION 1
FINDINGS

Be it enacted by the people of the State of [Name of State] as follows:

Sec. 1. Findings.
The Legislature finds that:

- A. [Name of State] has unreasonably high electricity rates. On average, rates in [Name of State] are significantly above the regional average. The Legislature also finds that there is a wide disparity in electric rates both within [Name of State] and as compared to the region. The Legislature finds that this combination of facts has a particularly adverse impact on [Name of State] citizens.
- B. [Name of State]'s extraordinarily high electric rates disadvantage all classes of customers: industries, small businesses, and captive residential and institutional ratepayers and do not reflect an efficient industry structure. The Legislature further finds that these high rates are causing businesses to consider relocating or expanding out of state and are a significant impediment to economic growth and new job creation in this state.
- C. Restructuring of electric utilities to provide greater competition and more efficient regulation is a nationwide phenomenon.
- D. Monopoly utility regulation has historically substituted as a proxy for competition in the supply of electricity but recent changes in economic, market and technological forces and national energy policy have increased competition in the electric generation industry. With the introduction of retail customer choice of electricity suppliers as provided by this chapter, market forces may now be able to play an important role in organizing electricity supply for all customers instead of monopoly regulation.
- E. It is in the best interests of all the citizens of [Name of State] that the Legislature, the executive branch, and the public utilities commission work together to establish a competitive market for retail access to electric power in those aspects of the electricity industry where competition can produce the benefits of the market without undermining the benefits of the historic organization of the electricity industry.

AARP

Model
State
Legislation
on
Electric
Utility
Restructuring

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-1

Purpose

AARP

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State
Legislation
on
Electric
Utility
Restructuring

Sec. 2. [Title and Chapter of Code] is enacted to read:

CHAPTER ###

ELECTRIC INDUSTRY
RESTRUCTURING AND
CONSUMER PROTECTION

Sec. XXX-1. Purpose

- A. The most compelling reason to restructure the [Name of State] electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment. Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and divestiture of competitive centralized generation services from transmission and distribution services.
- B. Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.
- C. The following interdependent policy principles are intended to guide the [Name of State] Public Utilities Commission in implementing a statewide electric utility industry restructuring plan, in establishing any interim stranded cost recovery charges, in approving each utility's compliance filing, and in regulating a restructured electric utility industry. In addition, these interdependent principles are intended to guide the [Name of State] Legislature and the [Name of State Environmental Protection Agency] and other state agencies in regulating a restructured electric utility industry.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-2

Statement of
Principles



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-2. Statement of Principles

- A. **Affordable and universal electricity service.** Electricity service is essential to the health and well-being of all residents of the state, and it is the policy of the state of [Name of State] that electric service must be affordable. The restructuring of the existing electricity system should not undermine the policy of the state that electricity bills for all residents must be affordable, and that low-income persons must not be required to bear more than twice the burden of median income households in order to secure necessary electricity supplies. To this end, the state should ensure that universal service and energy conservation policies, activities and services are funded sufficiently to meet the need, and available throughout the state. It is the policy of the state to ensure adequate provision of financial assistance to needy customers with incomes at or below 175 percent of the federal poverty guidelines, and to meet increases in need caused by economic exigencies.
- B. **Consumer protection.** A restructured electric utility industry must provide adequate consumer protection safeguards to prevent unfair terms and conditions of service, and protect consumers from loss of service when such loss of service would pose a threat to health or safety. Consumer protection should not be diminished by the introduction of competition, but rather should be strengthened. Consumers require access to inexpensive, timely and effective dispute-resolution procedures.
- C. **Lower rates and true competition.** The framework for competition in parts of the electricity industry must produce lower rates for all customers. Competition is not introduced in order to provide benefits for competitive providers, but rather to provide benefits for consumers. Government must supervise the market to ensure that true competition emerges quickly, and to prevent any market participant from exercising market power that defeats the purpose of deregulation. Government must police the boundaries between a firm's monopoly activities and its entrepreneurial activities, to ensure that no cross-subsidization can take place, that captive customers do not subsidize competitive ventures, and that competitors are not disadvantaged by unfair reliance of the competitive arm of a firm by its monopoly affiliate.

- D. **Reliable and high quality service.** The introduction of competition must not in any way degrade the reliability of service or the quality of service, including customer service. Some customers may benefit from a deregulated and competitive marketplace, and be able to secure improved reliability or customer service in such a market, but small customers and other vulnerable customers must be protected to ensure that they continue to enjoy high standards of reliability and customer service.
- E. **Conditions for competition.** Regulation of prices is necessary where competitive forces will not adequately discipline a market, where competition will jeopardize the safe and reliable operation of the integrated electricity network, and where segmentation of the market by providers will result in unfair discrimination in prices to different classes of customers. Accordingly, the commission shall determine that an electric service is a potentially competitive service only if it finds, after a public hearing, that provision of the service by alternative sellers:
- (1) will not harm any class of customers;
 - (2) will decrease the cost of providing the service to residential and small commercial customers in this state and also increase the quality or innovation of the service to customers in this state;
 - (3) is a service for which effective competition in the market is certain to develop;
 - (4) will advance the competitive position of this state relative to surrounding states; and
 - (5) will not otherwise jeopardize the safety and reliability of the electric service in this state.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-3

Definitions



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-3. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. **Affiliated interest.** "Affiliated interest" means:

- (1) any person who owns—directly, indirectly or through a chain of successive ownership—10 percent or more of the voting securities of the purchasing entity;
- (2) any person 10 percent or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph A;
- (3) any person 10 percent or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;
- (4) any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3 percent of the purchasing entity's voting securities; or
- (5) any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

B. **Aggregate.** "Aggregate" means to organize individual electricity consumers with common characteristics (such as geography, affiliation, or some other characteristics in common) into an entity for the purpose of purchasing electricity on a group basis.

C. **Aggregator.** "Aggregator" means an entity that aggregates individual customers for the purpose of purchasing electricity.

D. **Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

E. **Competitive electricity provider.** "Competitive electricity provider" means a marketer, broker, aggregator and any other entity selling electricity to the public at retail, including a distribution utility selling standard-offer, default or low-income service.

F. **Consumer-owned transmission and distribution utility.** "Consumer-owned transmission and distri-

bution utility" means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

- (1) the transmission and distribution portions of a rural electrification cooperative organized under chapter [cross-reference state statute on REC organization, or REC statute at federal level];
 - (2) the transmission and distribution portions of an electrification cooperative organized on a cooperative plan under the laws of the state;
 - (3) municipal or quasi-municipal transmission and distribution utilities;
 - (4) the transmission and distribution portions of a municipal or quasi-municipal entity providing generation and other services; and
 - (5) transmission and distribution utilities wholly owned by a municipality.
- G. Distribution plant.** "Distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the distribution or delivery of electricity for public use, and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the distribution of electricity for light, heat or power for public use.
- H. Distribution utility.** "Distribution utility" means an entity, its lessees, its trustees, and its receivers or trustees appointed by a court, owning, controlling, operating or managing a distribution plant for compensation within the state.
- I. Divest.** "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.
- J. Electric billing and metering services.** "Electric billing and metering services" means the following services:
- (1) billing and collection;
 - (2) provision of a meter;
 - (3) meter maintenance and testing; and
 - (4) meter reading.
- K. Electric utility.** "Electric utility" [here insert the definition of the jurisdictional regulated monopoly supplier of electricity under the existing electric industry regulatory structure in the state].
- L. Entity.** "Entity" means a person or organization, including but not limited to any natural person, or any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.
- M. Generation assets.** "Generation assets" include all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.
- N. Generation service.** "Generation service" means the provision of electric power to a consumer through a distribution utility but does not encompass any activity related to the transmission or distribution of that power.

- O. **Large, investor-owned distribution utility.** "Large, investor-owned distribution utility" means an investor-owned distribution utility serving more than 10 percent of the retail electricity customers in the state.
- P. **Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.
- Q. **Public entity.** "Public entity" includes the state, any political subdivision of the state, a municipality and any quasi-municipal entity.
- R. **Qualifying facility.** "Qualifying facility" has the same meaning as provided in section [cross-reference any state PURPA statute, or PURPA itself and FERC regulations thereunder].
- S. **Small, investor-owned distribution utility.** "Small, investor-owned distribution utility" means an investor-owned distribution utility serving fewer than 10 percent of retail electricity customers in the state.
- T. **Retail access.** "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.
- U. **Transmission plant.** "Transmission plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the transmission of electricity for public use, and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the transmission of electricity for light, heat or power.
- V. **Transmission utility.** "Transmission utility" means an entity, its lessees, its trustees, and its receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission plant for compensation within the state.
- W. **Voting securities.** "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-4

Retail

Access;

Deregulation
of Prices



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-4. Retail Access;
Deregulation of Prices

- A. Declaration of competitive conditions; right to purchase generation. Beginning on [transition date], if the commission has issued an order declaring electricity supply to be a potentially competitive service, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers.
- B. Deregulation of generation services. Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation of prices for generation service under this Title on or after [transition date]. There shall be no charge to any residential customer for initiating or terminating low-income discount rates, default service or standard-offer service when said initiation or termination request is made after a regular meter reading. All fees, other than for electricity, shall be cost-based.
- C. Aggregation to be encouraged. When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. The commission and each electric distribution utility shall take all reasonable steps to facilitate consumer-initiated aggregation.
- D. Evaluation of market. In determining whether a market for an electric service has potential competition, the commission shall:
- (1) identify the relevant market;
 - (2) identify, where feasible, the alternative sellers that participate and are reasonably expected to participate in the relevant market;
 - (3) calculate, where feasible, the market share of the sellers that are reasonably expected to participate in the relevant market, and evaluate the significance of each share;
 - (4) determine, where feasible, the capacity of any seller in the relevant market to bid strategically and withhold supply to manipulate prices, and evaluate the significance of such capacity; and
 - (5) determine the likely prices of electricity or other related potentially competitive services in a competitive market as proposed, relative to the likely prices of such services in a regulated monopoly market.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-5

Reduction in

Residential

Rates;

Standard

Offer



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-5. Reduction in Residential Rates; Standard Offer

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

A. Establishment of terms and conditions. The commission shall open a rulemaking proceeding no later than [three months after passage of statute] to establish terms and conditions for standard-offer service that include, but are not limited to:

- (1) entry and exit restrictions;
- (2) protection against a standard-offer service provider's failure to provide service as contracted for;
- (3) appropriate rate design issues;
- (4) retaining averaged prices for all customers in the same class; and
- (5) credit, collection and disconnection practices.

By [five months after passage of legislation], the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service.

B. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under subsection A, the commission shall administer a bid process to select a standard-offer service provider for that distribution utility's service territory. By [nine months after passage of statute], the commission shall review the bid submissions for each distribution utility and select the standard-offer service provider or providers for that utility's service territory.

- (1) The commission shall determine the general credit data and specific information from general load and usage data that distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a distribution utility releases customer-specific data only with the customer's permission. If the distribution utility incurs additional costs to develop and produce the

required data, the commission shall permit that utility to recover those costs through distribution rates.

- (2) The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility.
- (3) A competitive electricity provider that is an affiliate of a large investor-owned distribution utility may submit bids to provide standard-offer service for up to 20 percent of the electric load within the service territory of the large investor-owned distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned distribution utility, the commission shall ensure that such a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.
- (4) A consumer-owned distribution utility and a small investor-owned distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned distribution utility or a small investor-owned distribution utility, the commission shall ensure that such a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.
- (5) The commission may divide the service area of the distribution utility into retail marketing areas as provided in [cross-reference location of language from Appendix I, if included in statute], and conduct separate bid procedures for each such marketing area.
- (6) The commission shall not accept a proposal to provide standard-offer service if the price exceeds the reduced price provided for in Section XXX-5(C), below. Where the commission has not accepted a proposal to provide standard-offer service, the distribution utility shall provide such service.
- (7) By [five months after passage of statute], the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least [three] providers of standard-offer service in each distribution utility service territory, as long as the method does not result in any significant adverse impacts on rates paid by consumers. Such providers may be distinguished by the respective retail marketing area in which they provide service, the types of pricing option they offer to residential and small commercial customers, or such other factors as the commission may approve.

C. Standard offer; rate reductions.

- (1) Each distribution utility, or a competitive electricity provider selected in accordance with this Section XXX-5, shall offer a standard service transition rate by no later than [same date as implementation of restructuring], which, together with the transmission, distribution and transition

charges, produces for such a service package a reduction of at least 15 percent from the comparable rate in effect on the effective date of this statute.

(2) The total rate reduction, net proceeds from the divestiture and the net savings from stranded cost mitigation, in combination with the rate reduction implemented by or on [same date as implementation of restructuring], shall be 25 percent on or before [date one and one-half years later].

(3) The standard service transition rate shall be offered for a transition period of seven years at prices and on terms approved by the commission. The generation services portion of the standard offer shall be provided by a competitive electricity provider chosen through a competitive bid process that is reviewed and approved by the commission, so long as the prices charged by such competitive electricity provider do not exceed the standard offer as determined by this Section XXX-5(C).

(4) If a distribution utility claims that it is unable to meet a total price reduction of 15 percent without jeopardizing its financial integrity, it shall petition the commission to explore any and all possible mechanisms and options within the limits of the constitution which may be available to the commission to achieve compliance with the provisions of this section, including, but not limited to, the authorization of a competitive electricity provider to provide the standard-offer service package.

C. [ALTERNATIVE to C above] Price cap; investigation. If the qualifying bids under subsection B for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to Section XXX-27, the commission shall notify the Legislature of the results of its investigation and its determination.

D. Standard-offer service must be available for a minimum of seven years after opening retail sales to competition. By [one year before the proposed end date of the service], the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest. The commission shall conclude the investigation by [six months before the end date] and report its results to the Legislature pursuant to Section XXX-27.

E. Territorial and rate class application. Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-6

Limit on

Spread

between

Residential

and Other

Rates



Model
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on
Electric
Utility
Restructuring

Sec. XXX-6. Limit on Spread between Residential and Other Rates

- A. **Limit on spread between residential and industrial rates.** Whenever the average of industrial class prices for a 12-month period is less than that of residential class prices by a percentage that is greater than the percentage differential was in the calendar year 1990, the distribution utility will increase the access charge per kilowatt-hour to all industrial customers by an amount equal to the difference between the average industrial price in the aforementioned 12-month period and the average industrial price in that period had the price been the same percentage less than the average residential price that it was in 1990. The sums so collected shall be credited to the residential access charge as an equal amount per kilowatt-hour in the subsequent 12 months.
- B. **Limit on spread between default and regional average rates.** Whenever the average of residential default service prices for a 12-month period is more than that of average prices in the region, the distribution utility will increase the access charge per kilowatt-hour to all non-residential default customers by an amount equal to the difference between the average residential default service price in the aforementioned 12-month period and the average system price in that period. The sums so collected shall be credited to the residential default service access charge as an equal amount per kilowatt-hour in the subsequent 12 months.
- C. **Evaluation of rate impacts of restructuring.** Prior to the termination of the standard service transition rate, the commission shall, in consultation with [specify any other necessary participants in the review], evaluate the effects of electricity restructuring on the level of residential rates, and the affordability of electric power for low-income customers.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-7

Municipal

Aggregation



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-7. Municipal Aggregation

- A. Authorization to aggregate electric and natural gas loads. Any municipality or any group of municipalities acting together within the state is hereby authorized to aggregate the electrical or natural gas loads of interested consumers within its boundaries, provided, however, that such municipalities shall not aggregate loads if such are served by an existing municipal lighting and or gas utility. Such municipalities may enter into agreements for services to facilitate the sale and purchase of electricity, natural gas and other related services. Such service agreements may be entered into by a single city, town, county or by a group of cities, towns or counties.
- B. **Municipal aggregators not utilities.** A municipality which aggregates its electric load and operates pursuant to the provisions of this section shall not be considered a utility engaging in the wholesale purchase and resale of electric power. Providing electric power or energy services to aggregated customers within a municipality shall not be considered a wholesale utility transaction.
- C. **Procedure for securing public authorization for aggregation.** A municipality may initiate a process to aggregate electrical and natural gas loads upon authorization by vote of the legislative authority of the municipality. A referendum of voters in the municipality may be held if the council chooses. Upon an affirmative vote to initiate said process, a municipality establishing load aggregation pursuant to this section shall develop a plan detailing the process for review by its citizens. The plan shall provide for universal access, reliability and equitable treatment of all classes of customers and shall meet any requirements established by law. Said plan shall be filed with the commission for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants and termination of the program. Said plan shall not be implemented until the commission has approved a contract for a supplier that has been selected and recommended to citizens in the municipality or group of municipalities. Approval of said contract will include consideration of both price

and non-price terms and elements that affect the environment, economic development and other policy issues in the public interest:

- D. Participation voluntary; opt-out procedure.** Participation by any retail customer in a municipal or group aggregation program shall be voluntary. A municipality may provide for automatic enrollment in its aggregation program, consistent with this section. A customer enrolled in a municipal aggregation program that is not operational on the retail access date shall receive standard-offer service in the absence of any other selection. Once enrolled in the aggregated entity, any ratepayer may opt-out according to the established plan and/or contract provisions and shall be entitled to receive standard-offer service as if originally enrolled therein.
- E. Energy plans authorized; energy efficiency and renewable energy, commission review.**
- (1) A municipality or group of municipalities establishing load aggregation pursuant to subsection (A) may, by a vote of its legislative body, adopt an energy plan which shall define the manner in which the municipality or municipalities may implement energy-efficiency programs and renewable energy programs that are consistent with the state energy plan or a municipal energy plan adopted pursuant to this section.
 - (2) After adoption of the energy plan by such legislative body, the city or town clerk shall submit the plan to the commission to certify that it is consistent with any such state energy plan. If the plan is certified by the department, the municipality or group of municipalities shall receive and expend moneys from the state renewable energy trust fund and the demand-side management fund [system benefits charges if they exist in your state] in an amount not to exceed that contributed by retail customers within said municipality or group of municipalities. This will not prevent said municipality or municipalities from applying for additional funds to the fund administrators.
 - (3) If the commission determines said energy plan is not consistent with the state energy plan, it shall inform the municipality or municipalities within one month of the decision by written notice of the reasons why it is not consistent with the state energy plan. The municipality or municipalities may reapply at any time with an amended version of the energy plan. The municipality or municipalities shall not be prohibited from proposing for certification an energy plan which is more specific, detailed or comprehensive, or which covers additional subject areas than the state energy plan. This subsection shall not prohibit a municipality from considering, adopting, enforcing or in any other way administering an energy plan which does not comply with any such statewide goals so long as it does not violate the laws of the state.
 - (4) The municipality or municipalities shall, within two years of approval of its plan or such further time as the commission may allow, provide a written notice to the commission that its plan is implemented. The commission may revoke certification of the energy plan if the municipality or municipalities fail to substantially implement the plan or if it is determined by independent audit that the funds were misspent within the time allowed under this subsection.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-8

Licensing

Competitive

Providers;

Consumer

Protections;

Enforcement



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-8. Licensing Competitive
Providers; Consumer Protections;
Enforcement

A. Authority to provide generation and/or sales service. In order to provide effective competition in the market for the generation and sale of electricity in the state and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section. All entities seeking to do business in the state as competitive electricity providers shall submit a license application to the commission, subject to the rules and regulations promulgated by the commission.

B. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this state without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

- (1) evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason, and to honor contracts for purchase of electricity at wholesale and to participate in the spot market as necessary in aggregate amounts corresponding to anticipated retail sales;
- (2) evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;
- (3) disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;
- (4) evidence of the ability to satisfy the renewable resource portfolio requirement established under Section XXX-21;
- (5) evidence of technical and managerial capacity to provide the services proposed in compliance with all applicable laws and policies of the state, with due consideration to the characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve;
- (6) a description and map of the area or areas in which the applicant intends to offer service and

the types of services it intends to offer, and, if the applicant intends to serve residential or small business customers in any area of the state smaller than the entirety of the service area of an existing electric utility, evidence demonstrating that the designation of this smaller area does not violate Section XXX-9(H); and

(7) disclosure of the names and corporate addresses of all affiliates of the applicant, and the doing/business/as names the applicant will use in the state.

C. **Bonding.** The commission shall require a competitive electricity provider to file a bond with the commission as evidence of financial ability (1) to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service, and (2) compensate consumers harmed by violations of the protections mandated by this Title.

D. **Predatory marketing and gouging prohibited.** The commission may not issue a license to an applicant, and may suspend or revoke a license of a competitive electricity provider, that (1) proposes to market predominantly to low-income customers, to customers who have been disconnected from service or denied service or to otherwise vulnerable customers; and (2) whose proposed rates are significantly higher than prevailing residential rates for the same services.

E. **Misleading names prohibited.** No applicant may be granted a license to do business in the state under a name that is misleading, or that would tend to confuse a customer as to whether the customer is applying to or agreeing to take service from the applicant.

F. **Licensing renewals and revocations.** Consistent with all applicable requirements of [here insert cross-reference to state's Mini-APA language, if applicable], the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-9

Consumer

Protections;

Obligations of

Competitive

Electricity

Providers



Model
State
Legislation
on
Electric
Utility
Restructuring

Sec. XXX-9. Consumer Protections;
Obligations of Competitive Electricity
Providers

- A. Existing consumer protections to continue at a minimum. The commission is authorized and directed to retain or make increasing protective of retail ratepayers the rules adopted by the commission and codified at Title YYY of the Code of [Name of State] Regulations, sections #, ##, ### . . . [here insert the references to the appropriate code and statute provisions] and the policies reflected in the commission's adjudication of customer complaints, and, notwithstanding anything in this chapter to the contrary, shall continue to apply them to generation and thus to all competitive electricity providers.
- B. Conditions of licensure: standard consumer protection provisions. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located:
- (1) may not terminate generation service without at least 30 days prior notice to the customer;
 - (2) must offer service to the customer for a minimum period of 30 days;
 - (3) must allow the customer to rescind selection of the competitive electricity provider orally or in writing within five days of receipt of the written disclosures required by subsection B(5) and Section XXX-13, below;
 - (4) may not telemarket services to the customer if the customer has filed with the commission a request not to receive telemarketing from competitive electricity providers or has advised the applicant upon the occasion of a telemarketing contact that he or she does not wish to receive further telephone solicitations;
 - (5) must provide to the customer within 30 days of contracting for retail service a disclosure of information, as required by Section XXX-13 and rules adopted pursuant thereto, in a standard written format established by the commission;
 - (6) may not mislead customers as to the terms or conditions of the competitive electricity provider's service or as to those of any other provider;

- (7) may not charge significantly more than the prevailing rates to low-income or other vulnerable residential customers for similar services available to residential customers generally in the area; and
- (8) must comply with any other provisions adopted by the commission by rule or order.
- C. **Disconnection restricted.** A distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under Section XXX-5. No distribution utility or competitive electricity provider may disconnect or discontinue service to a customer for a disputed amount if that customer has filed a complaint which is pending with the commission. No distribution utility or competitive electricity provider shall terminate a contract for service for nonpayment of any bill other than that of the company proposing to terminate service. Undesignated partial payments shall be applied in such a way as to, first, avoid termination of distribution service and, second, minimize charges.
- D. **Prepayment and other unfair requirements prohibited.** No entity shall require a residential electricity customer to make a prepayment for service or to require a customer to accept time-of-day metering, arbitration of disputes, service limiters, automatic renewal periods longer than one month or a multi-year contract as a condition of obtaining or retaining service from that entity. Form contracts containing any of these provisions are against public policy and are null and void, and no entity may collect for any charges thereunder.
- E. **Credit life/disability for residential bills prohibited.** No entity may sell credit life or disability insurance to insure the payment of any residential electric bill.
- F. **Return to standard offer.** A residential customer eligible for low-income discount rates shall receive the service on demand and may return to standard-offer service at any time, including from default service. An existing residential customer eligible for low-income discount on the date of start of retail access who orders service for the first time from a distribution utility shall be offered standard-offer service from that distribution utility. A residential customer eligible for low-income discount receiving standard-offer service shall be allowed to retain standard-offer service upon moving within the service territory of a distribution utility.
- G. **Limit on charges for switching; notice.** There shall be no charge to any residential customer for initiating or terminating default service, or standard-offer service, when said initiation or termination request is made after a regular meter reading. A distribution utility may impose a reasonable charge, as set by the commission through regulation, for initiating or terminating default service or standard-offer service when a customer does not make such an initiation or termination request upon the receipt of said meter reading results and prior to the receipt of the next regularly scheduled meter reading. For purposes of this subsection, there shall be a regular meter reading conducted of every residential account no less often than once every two

months. Notwithstanding the foregoing, there shall be no charge when the initiation or termination is involuntary on the part of the customer. Distribution utilities and competitive electricity providers shall prominently disclose their lawful charges for initiating and terminating service in their advertising, marketing and billing, and at the time of initial contact with a particular customer, before any request for service or termination is effected.

- H. **Redlining and other unfair discrimination prohibited.** No competitive electricity provider shall refuse to provide electric generation service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability or familial status. No competitive electricity provider shall decline to provide electric generation services to a customer for the reason that the customer is located in an economically distressed geographic area or the customer qualifies for low-income affordability or energy-efficiency services. As a condition of a license, the commission shall prohibit each provider from declining to provide service to customers for the reason that the customers are located in economically distressed areas.
- I. **Limits on miscellaneous charges, fees and penalties.** In addition to any provisions of this Act, the commission shall promulgate rules limiting any charges, fees, penalties or other conditions imposed upon a customer should he or she choose to purchase power from another competitive electricity provider during the term specified in the contract; whether a credit agency will be contacted; deposit requirements and the interest paid on deposits; due date of bills and all consequences of late-payment; consumer rights where a bill is estimated; consumer rights of third-party billing and like arrangements; consumer rights to deferred payment arrangements; limits, if any, on warranty and damages; a toll-free telephone number for service complaints; and any other fees, charges, penalties or terms and conditions of service to residential customers.
- J. **Inaccurate billing, rebilling.**
- (1) No electric utility, electric distribution utility or competitive electricity provider that inaccurately bills a customer for service may bill or otherwise hold the customer financially liable for more than one year after the customer receives such service, unless the customer, by an affirmative act, is responsible for the inaccurate billing or prevents reasonable access to the premises where the company's meter is located by an employee of the company during business hours for the purpose of reading the meter.
 - (2) Any such utility or provider that inaccurately bills a customer for service may bill or otherwise hold the customer financially liable for not more than one year after the customer receives such service, unless a delayed bill for the service (i) would deprive the customer of the opportunity to apply for or receive energy assistance or (ii) is the result of the customer's meter erroneously registering another customer's consumption, in which case the company may not bill or otherwise hold the customer liable for the service provided to another customer.
 - (3) Any such utility or provider that holds a customer financially liable under this subsection shall establish a payment plan that prorates all arrearages for service the customer owes over a period of time that is no shorter than

the period of time for which the customer is being held financially liable. The payment plan shall provide that no payment charged to a customer under such plan shall exceed 50 percent of the average amount that the company charged such customer for each billing period over the previous 12-month period for services received during that period.

K. Termination of utility service for nonpayment, when prohibited.

- (1) Notwithstanding any other provision of the general statutes no electric, gas, telephone or water provider, electric utility, electric distribution utility and no municipal utility furnishing electric, gas, telephone or water service shall cause cessation of any such service by reason of delinquency in payment for such service (i) on any Friday, Saturday, Sunday, legal holiday or day before any legal holiday; (ii) at any time during which the business offices of said company or municipal utility are not open to the public; or (iii) within one hour before the closing of the business offices of said company or municipal utility.
- (2) Extreme weather prohibition.
 - (i) From November first to April fifteenth, inclusive, no electric provider, electric utility, electric distribution utility and no municipal utility furnishing electricity shall terminate or refuse to reinstate residential electric service in hardship cases where the customer lacks the financial resources to pay his or her entire account.
 - (ii) From November first to April fifteenth, inclusive, no gas company and no municipal utility furnishing gas shall terminate or refuse to reinstate residential gas service in hardship cases where the customer uses such gas for heat and lacks the financial resources to pay his or her entire account.
 - (iii) Except a gas company that, between April sixteenth and October thirty-first, terminated gas service to a residential customer who uses gas for heat and who, during the previous period of November first to April fifteenth, had gas service maintained because of hardship status, may refuse to reinstate the gas service from November first to April fifteenth, inclusive, only if the customer has failed to pay, since April fifteenth, the lesser of: (a) 20 percent of the outstanding principal balance owed the gas company as of the date of termination, (b) one hundred dollars, or (c) the minimum payments due under the customer's amortization agreement.
- (3) Notwithstanding any other provision of the general statutes to the contrary, no electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electricity or gas shall terminate or refuse to reinstate residential electric or gas service where the customer lacks the financial resources to pay his or her entire account and for which customer or a member of the customer's household the termination or failure to reinstate such service would create a life-threatening situation.

(4) During any period in which a residential customer is subject to termination, an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electricity or gas shall provide such residential customer whose account is delinquent an opportunity to enter into a reasonable amortization agreement with such company to pay such delinquent account and to avoid termination of service. Such amortization agreement shall permit such customer adequate opportunity to apply for and receive the benefits of any available energy-assistance program. An amortization agreement shall be subject to amendment on customer request if there is a change in the customer's financial circumstances.

(5) As used in this section,

(i) "household income" means the combined income over a 12-month period of the customer and all adults, except children of the customer, who are and have been members of the household for six months or more; and

(ii) "hardship case" includes, but is not limited to: (a) a customer receiving local, state or federal public assistance; (b) a customer whose sole source of financial support is Social Security, Veterans' Administration or unemployment compensation benefits; (c) a customer who is head of the household and is unemployed, and the household income is less than 300 percent of the poverty level determined by the federal government; (d) a customer who is seriously ill or who has a household member who is seriously ill; (e) a customer whose income falls below 125 percent of the poverty level determined by the federal government and (f) a customer whose circumstances threaten a deprivation of food and the necessities of life for himself or dependent children if payment of a delinquent bill is required.

(6) Energy-assistance coordination.

(i) In order for a residential customer of a gas public service company to be eligible to have any moneys due and owing deducted from the customer's delinquent account pursuant to this subdivision, the company furnishing electricity or gas shall require that the customer (a) apply and be eligible for benefits available under the [Name of State] energy-assistance program or [any state-appropriated fuel-assistance program]; (b) authorize the company to send a copy of the customer's monthly bill directly to any energy-assistance agency for payment and (c) enter into and comply with an amortization agreement, which agreement is consistent with decisions and policies of the commission. Such an amortization agreement shall reduce a customer's payment by the amount of the benefits reasonably anticipated from the [Name of State] energy-assistance program, state-appropriated fuel-assistance program or other energy-assistance sources.

(ii) Unless the customer requests otherwise, the company shall budget a customer's payments over a 12-month period with an affordable

increment to be applied to any arrearage, provided such payment plan will not result in loss of any energy-assistance benefits to the customer.

- (iii) If a customer authorizes the company to send a copy of his monthly bill directly to any energy-assistance agency for payment, the energy-assistance agency shall make payments directly to the company.
- (iv) If, on April thirtieth, a customer has been in compliance with the requirements of subparagraph (6)(i) of this subsection, during the period starting on the preceding November first, or from such time as the customer's account becomes delinquent, the company shall deduct from such customer's delinquent account an additional amount equal to the amount of money paid by the customer between the preceding November first and April thirtieth and paid on behalf of the customer through the energy-assistance program [and any state-appropriated fuel-assistance program]. Any customer in compliance with the requirements of subparagraph (6)(i) of this subsection on April thirtieth who continues to comply with an amortization agreement through the succeeding October thirty-first, shall also have an amount equal to the amount paid pursuant to such agreement and any amount paid on behalf of such customer between May first and the succeeding October thirty-first deducted from the customer's delinquent account. In no event shall the deduction of any amounts pursuant to this subdivision result in a credit balance to the customer's account.
- (v) No customer shall be denied the benefits of this subsection due to an error by the company. The commission shall allow the amounts deducted from the customer's account pursuant to the implementation plan, described in subdivision (vi) of this subsection, to be recovered by the company in its rates as an operating expense, pursuant to said implementation plan. If the customer fails to comply with the terms of the amortization agreement or any decision of the department rendered in lieu of such agreement and the requirements of subparagraph (6)(i) of this subsection, the company may terminate service to the customer, pursuant to all applicable regulations, provided such termination shall not occur between November first and April fifteenth.
- (vi) Each utility and competitive electricity provider shall submit to the commission annually, on or before July first, an implementation plan which shall include information concerning amortization agreements, counseling, reinstatement of eligibility, rate impacts and any other information deemed relevant by the commission. The commission may approve or modify such plan within 90 days of receipt of the plan. If the commission does not take any action on such plan within 90 days of its receipt, the plan shall automatically take effect at the end of the 90-day period, provided the commission may extend such period for an additional 30 days by notifying the gas public service company before the end of the 90-day period. Any amount recovered by a company in its rates pursuant to this subsec-

tion shall not include any amount approved by the commission as an uncollectible expense. The commission may deny all or part of the recovery required by this subsection if it determines that the company seeking recovery has been imprudent, inefficient or acting in violation of statutes or regulations regarding amortization agreements.

- (7) All electric and gas utilities, electric distribution utilities, competitive electricity providers and municipal utilities furnishing electricity or gas shall collaborate in developing, subject to approval by the commission, standard provisions for the notice of delinquency and impending termination under subsection (1) of Section XXX-9(K). Each such provider and utility shall place on the front of such notice a provision that the company or utility may not effect termination of service to a residential dwelling for nonpayment of disputed bills during the pendency of any complaint. In addition, the notice shall state that the customer must pay current and undisputed bill amounts during the pendency of the complaint.
- (8) At the beginning of any discussion with a customer concerning a reasonable amortization agreement, any such provider or utility shall inform the customer:
 - (i) of the availability of a process for resolving disputes over what constitutes a reasonable amortization agreement;
 - (ii) that the provider or utility will refer such a dispute to one of its review officers as the first step in attempting to resolve the dispute;
 - (iii) that the provider or utility may not effect termination of service to a residential dwelling, or in the case of a provider, the provider's contract with the customer, for nonpayment of a delinquent account during the pendency of any complaint, investigation, hearing or appeal initiated by the customer, unless the customer fails to pay undisputed bills, or undisputed portions of bills, for service received during such period; and
 - (iv) of the availability of all public and private energy-conservation programs, for hardship cases, including programs sponsored or subsidized by such companies and utilities, eligibility criteria, where to apply and the circumstances under which such programs are available without cost.
- (9) The commission shall adopt regulations to carry out the provisions of this subsection. Such regulations shall include, but not be limited to, criteria for determining hardship cases and for reasonable amortization agreements, including appeal of such agreements, for categories of customers.
- (10) Each electric and gas utility, electric distribution utility, competitive electricity provider and municipal utility shall, not later than December first, annually, submit a report to the commission and the Legislature indicating:
 - (i) the number of customers in each of the following categories and the total delinquent balances for such customers as of the preceding April fifteenth;

- (ii) customers who are hardship cases and (a) who made arrangements for reasonable amortization agreements, (b) who did not make such arrangements and (c) customers who are non-hardship cases and who made arrangements for reasonable amortization;
- (iii) (a) the number of heating customers receiving energy assistance during the preceding heating season and the total amount of such assistance and (b) the total balance of the accounts of such customers after all energy assistance is applied to the accounts;
- (iv) the number of hardship cases reinstated between November first of the preceding year and April fifteenth of the same year, the number of hardship cases terminated between April fifteenth of the same year and November first and the number of hardship cases reinstated during each month from April to November, inclusive, of the same year;
- (v) the number of reasonable amortization agreements executed and the number breached during the same year by (a) hardship cases and (b) non-hardship cases; and
- (vi) the number of accounts of (a) hardship cases and (b) non-hardship cases for which part or all of the outstanding balance is written off as uncollectible during the preceding year and the total amount of such uncollectibles.

(11) Nothing in this section shall prohibit an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility from terminating residential utility service upon request of a customer or in accordance with Section XXX-9(K) upon default by a customer on an amortization agreement or collecting delinquent accounts through legal processes, including the processes authorized by section.

L. Notice of termination of residential service or contract; process.

(1) No electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric, gas or water service may terminate such service to a residential dwelling on account of nonpayment of a delinquent account unless such company or municipal utility first gives notice of such delinquency and impending termination by first-class mail addressed to the customer to which such service is billed, at least 30 calendar days prior to the proposed termination, except that if an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric or gas service has issued a notice under this subsection but has not terminated service prior to issuing a new bill to the customer, such company or municipal utility may terminate such service after mailing the customer an additional notice of the impending termination, by certified mail, at least seven calendar days prior to the termination. In no event shall such company or municipal utility terminate service prior to the date of the proposed termination in the initial termination notice. For purposes of this subsection, the 30-day period and seven-day period shall commence on the date such notice is mailed. If such company or municipal utility does not terminate service within 120 days after mailing the initial notice

of termination, such company or municipal utility shall give the customer a new notice at least 30 days prior to termination. Every termination notice issued by a utility, electric distribution utility, competitive electricity provider or municipal utility shall contain or be accompanied by an explanation of the rights of the customer provided in subsection (3) of Section XXX-9(L).

- (2) No such company or municipal utility shall effect termination of service for nonpayment during such time as any resident of a dwelling to which such service is furnished is seriously ill, if the fact of such serious illness is certified to such company or municipal utility by a registered physician within such period of time after the mailing of a termination notice pursuant to subsection (1) of Section XXX-9(L) as the commission may by regulation establish, provided the customer agrees to amortize the unpaid balance of his account over a reasonable period of time and keeps current his account for utility service as charges accrue in each subsequent billing period.
- (3) No such company or municipal utility shall effect termination of service to a residential dwelling for nonpayment during the pendency of any complaint, investigation, hearing or appeal initiated by a customer within such period of time after the mailing of a termination notice pursuant to subsection (1) of Section XXX-9(L) as said commission may by regulation establish.
- (4) Any customer who has initiated a complaint or investigation under subsection (C) of this section shall be given an opportunity for review of such complaint or investigation by a review officer of the company or municipal utility other than a member of such company's or municipal utility's credit staff, provided the commission may waive this requirement for any company or municipal utility employing fewer than 25 full-time employees, which review shall include consideration of whether the customer should be permitted to amortize the unpaid balance of his account over a reasonable period of time. No termination shall be effected for any customer complying with any such amortization agreement, provided such customer also keeps current his account for utility service as charges accrue in each subsequent billing period.
- (5) Any customer whose complaint or request for an investigation has resulted in a determination by a company or municipal utility which is adverse to him may appeal such determination to the commission or a hearing officer appointed by the commission.
- (6) If, following the receipt of a termination notice or the entering into of an amortization agreement, the customer makes a payment or payments amounting to 20 percent of the balance due, the utility, electric distribution utility or competitive electricity provider shall not terminate service without giving notice to the customer, in accordance with the provisions of this section, of the conditions the customer must meet to avoid termination, but such subsequent notice shall not entitle such customer to further investigation, review or appeal by the company, municipal utility or commission.

M. Notice furnished tenants by utility regarding intended termination.

- (1) Notwithstanding the provisions of subsection K, wherever an owner, agent, lessor or manager of a residential dwelling is billed directly by an electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or by a municipal utility for utility service furnished to such building not occupied exclusively by such owner, agent, lessor or manager, and such company or municipal utility has actual or constructive knowledge that the occupants of such dwelling are not the persons to whom the company or municipal utility usually sends its bills, such company or municipal utility shall not terminate such service for nonpayment of a delinquent account owed to such company or municipal utility by such owner, agent, lessor or manager unless:
 - (i) such company or municipal utility makes a good faith effort to notify the occupants of such building of the proposed termination by the means most practicable under the circumstances and best designed to provide actual notice; and
 - (ii) such company or municipal utility provides an opportunity, where practicable, for such occupants to receive service in their own names without any liability for the amount due while service was billed directly to the lessor, owner, agent or manager and without the necessity for a security deposit, provided, if it is not practicable for such occupants to receive service in their own names, the company or municipal utility shall not terminate service to such residential dwelling but may pursue the remedy provided in subsection M.
- (2) Whenever a company or municipal utility has terminated service to a residential dwelling whose occupants are not the persons to whom it usually sends its bills, such company or municipal utility shall, upon obtaining knowledge of such occupancy, immediately reinstate service and thereafter not effect termination unless it first complies with the provisions of subsection (1) of Section XXX-9(M).
- (3) The owner, agent, lessor or manager of a residential dwelling shall be liable for the costs of all electricity, gas, water or heating fuel furnished by a public service company, municipal utility or heating fuel dealer to the building, except for any service furnished to any dwelling unit of the building on an individually metered or billed basis for the exclusive use of the occupants of that dwelling unit. If service is not provided on an individually metered or billed basis and the owner, agent, lessor or manager fails to pay for such service, any occupant who receives service in his own name may deduct, in accordance with the provisions of subsection (4) of Section XXX-9(M), a reasonable estimate of the cost of any portion of such service which is for the use of occupants of dwelling units other than such occupant's dwelling unit.
- (4) Any payments made by the occupants of any residential dwelling pursuant to subsection (1) or (3) of Section XXX-9(M) shall be deemed to be in lieu of an equal amount of rent or payment for use and occupancy and each occupant shall be permitted to deduct such amounts from any sum of rent or payment for use and occupancy due and owing or to become due and owing to the owner, agent, lessor or manager.

- (5) Wherever a company or municipal utility provides service pursuant to subdivision (ii) of subsection (1) of Section XXX-9(M), the company or municipal utility shall notify each occupant of such building in writing that service will be provided in the occupant's own name. Such writing shall contain a conspicuous notice in boldface type stating, "NOTICE TO OCCUPANT. YOU MAY DEDUCT THE FULL AMOUNT YOU PAY (name of company or municipal utility) FOR (type of service) FROM THE MONEY YOU PAY YOUR LANDLORD OR HIS AGENT."
- (6) The owner, agent, lessor or manager shall not increase the amount paid by such occupant for rent or for use and occupancy in order to collect all or part of that amount lawfully deducted by the occupant pursuant to this section.
- (7) Nothing in this section shall be construed to prevent the company, municipal utility, heating fuel dealer or occupant from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

N. Petition for receiver of rents; hearing; appointment; duties.

- (1) Receivership conditions, process.
 - (i) Upon default of the owner, agent, lessor or manager of a residential dwelling who is billed directly by an electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or by a municipal utility for utility service furnished to such building, such company or municipal utility may petition the Superior Court, or a judge thereof, for appointment of a receiver of the rents or payments for use and occupancy for any dwelling for which the owner, agent, lessor or manager is in default.
 - (ii) The court or judge shall forthwith issue an order to show cause why a receiver should not be appointed, which shall be served upon the owner, agent, lessor or manager or his agent in a manner most reasonably calculated to give notice to such owner, agent, lessor or manager as determined by such court or judge, including, but not limited to, a posting of such order on the premises in question. A hearing shall be had on such order no later than 72 hours after its issuance or the first court day thereafter. The sole purpose of such a hearing shall be to determine whether there is an amount due and owing between the owner, agent, lessor or manager and the company or municipal utility.
 - (iii) The court shall make a determination of any amount due and owing and any amount so determined shall constitute a lien upon the real property of such owner. A certificate of such amount may be recorded in the land records of the town in which such property is located describing the amount of the lien and the name of the party in default. When the amount due and owing has been paid, the company or municipality shall issue a certificate discharging the lien and shall file the certificate in the land records of the town in which such lien was recorded.

- (iv) The receiver appointed by the court shall collect all rents or payments for use and occupancy forthcoming from the occupants of the building in question in place of the owner, agent, lessor or manager. The receiver shall pay the petitioner or other supplier, from such rents or payments for use and occupancy, for electric, gas, telephone, water or heating oil supplied on and after the date of his appointment.
 - (v) The owner, agent, lessor or manager shall be liable for such reasonable fees and costs determined by the court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service and heating oil deliveries has been made. The owner, agent, lessor or manager shall be liable to the petitioner for reasonable attorney's fees and costs incurred by the petitioner, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service and heating oil deliveries has been made and after payments of reasonable fees and costs to the receiver.
 - (vi) Any moneys from rental payments or payments for use and occupancy remaining after payment for current electric, gas, telephone and water service or heating oil deliveries, and after payment for reasonable costs and fees to the receiver, and after payment to the petitioner for reasonable attorney's fees and costs, shall be applied to any arrearage found by the court to be due and owing the company or municipal utility from the owner, agent, lessor or manager for service provided such building. Any moneys remaining thereafter shall be turned over to the owner, agent, lessor or manager. The court may order an accounting to be made at such times as it determines to be just, reasonable and necessary.
- (2) Any receivership established pursuant to subsection (1) of Section XXX-9(N) shall be terminated by the court upon its finding that the arrearage which was the subject of the original petition has been satisfied, or that all occupants have agreed to assume liability in their own names for prospective service supplied by the petitioner, or that the building has been sold and the new owner has assumed liability for prospective service supplied by the petitioner.
 - (3) Nothing in this section shall be construed to prevent the petitioner from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.
 - (4) Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any occupant of a building subject to an order appointing a receiver shall be found, after due notice and hearing, to be in contempt of court.
 - (5) If a proceeding is initiated under any proceedings relative to repairs to residential rental property under court supervision, or if a receiver of rent or use and occupancy payments shall be made pursuant to such proceed-

ing or action without regard to whether such proceeding or action is initiated before or after a receivership is established under this section, and such proceeding or action shall take priority over a receivership established under this section in regard to expenditure of such rent or use and occupancy payments.

- (6) Any willful or malicious violation of subsections M and N by any agent, owner, lessor or manager of residential rental property shall be punishable by a fine of not more than 500 dollars or imprisonment for not more than 30 days or both.
 - (7) Nothing in subsections M and N, inclusive, shall be construed to prevent the occupant of such building from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor, manager, company or municipal utility.
- O. **Nonpayment by absent spouse.** The commission may adopt regulations setting forth the terms and conditions under which an electric, gas, telephone and water utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric, gas or water service may be prohibited from terminating service to a residential dwelling on account of nonpayment of a delinquent account in the name of the former spouse or spouse of the person who occupies the dwelling, if the marriage of such persons has been dissolved or annulled or such persons are legally separated or have an action for dissolution or annulment of a marriage or for legal separation pending, pursuant to [cross-reference provisions on divorce and separation].
- P. **Refusal of residential utility service.**
- (1) No public utility, electric distribution utility, competitive electricity provider or municipal utility shall refuse to provide electric, gas or water service to a residential customer based on the financial inability of such customer to pay a security deposit for such service. The commission shall adopt regulations to carry out the provisions of this subsection.
 - (2) No telephone company shall refuse to provide telecommunications service to a candidate or a political committee on the grounds that such candidate, such committee or the person acting on behalf of such committee has offered to pay the security deposit for such service with a credit card.
 - (3) Each such company shall pay interest on any security deposit it receives from a customer at the average rate paid on savings deposits by insured commercial banks as published from time to time in the Federal Reserve Board bulletin and rounded to the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half percent, and the rate for each calendar year shall be not less than the deposit index as defined in subsection (4) of Section XXX-9(P) for that year and rounded to the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half percent.
 - (4) The deposit index for each calendar year shall be equal to the average rate paid on savings deposits by insured commercial banks as last published in the Federal Reserve Board bulletin in November of the prior year. The Commissioner of Banking shall determine the deposit index for each calendar year and publish such deposit index in the Department of Banking

news bulletin no later than December fifteenth of the prior year. For purposes of this section, "Federal Reserve Board bulletin" means the monthly survey of selected deposits published as a special supplement to the Federal Reserve Statistical Release Publication H.6 published by the Board of Governors of the Federal Reserve System or, if such bulletin is superseded or becomes unavailable, a substantially similar index or publication.

- Q. **Additional requirements.** The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider to the extent not specifically provided in this chapter.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-10

Consumer

Protection:

Recourse and

Enforcement



Model
State
Legislation
on
Electric
Utility
Restructuring

**Sec. XXX-10. Consumer Protection:
Recourse and Enforcement**

- A. **Dispute resolution.** The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established under or pursuant to sections XXX-8, 9, 11 and 12.
- B. **Restitution.** The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.
- C. **Enforcement.** The commission through its own counsel or through the Attorney General may apply to the [Superior Court of any county] [identify trial court of broadest jurisdiction] of the state to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it. The commission shall, in coordination with the office of consumer affairs, promulgate rules and regulations which shall include a provision that any violation of said rules and regulations shall be deemed an unfair and deceptive act.
- D. **Notice to Attorney General.** If the commission has reason to believe that any competitive electricity provider, distribution utility, or transmission utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this state or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.
- E. **Private right of action.** A customer or applicant for service may bring an action at law or equity to enforce his rights under this statute. Nothing in this statute shall be construed to prevent any customer or applicant for service from pursuing any remedy available at law or equity. Nothing in this statute shall be construed to require any customer or applicant to exhaust administrative remedies before pursuing non-administrative remedies.
- F. **Penalties.** In an adjudicatory proceeding, the commission may impose a penalty of up to \$25,000 for each violation of this section or any consumer protection rule adopted under this section, provided,

however, that the maximum civil penalty shall not exceed \$2,000,000. Each day a violation continues constitutes a separate offense, provided, however, the maximum civil penalty shall not exceed \$2,000,000. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Intervenor Reimbursement Fund, under Section XXX-28.

G. Cease and desist orders. The commission may issue a cease and desist order.

- (1) Following an adjudicatory hearing held in conformance with [insert identification of type of hearing needed under state statutes, and cross-reference to Mini-APA], if the commission finds that any competitive electricity provider, distribution utility or transmission utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to [cross-reference to Mini-APA section]; or
- (2) In an emergency, without in force and effect until further order of the hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues until otherwise determined by the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-11

Privacy and

Unwanted

Solicitations



Model
State
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on
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Restructuring

Sec. XXX-11. Privacy and Unwanted
Solicitations

- A. **Privacy/unwanted solicitations.** To protect a customer's right to privacy from unwanted solicitation, each distribution utility shall distribute to each customer a form approved by the commission which the customer shall submit to his distribution utility in a timely manner if he wants his name, address, telephone number and rate class to be released to competitive electric providers. On and after [transition date], each distribution utility shall make available to all competitive electric providers customer names, addresses, telephone numbers, if known, and rate class, of those customers from whom the distribution utility has received a form from a customer requesting that such information be released. Additional information about a customer for marketing purposes shall not be released to any electric provider unless a customer signs a release which shall be made available by the commission. No customer information will be provided to a third party without specific written permission of the customer.
- B. **Access to load data.** Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission or distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-12

Unauthorized
Switching,
Unauthorized
Charges
Prohibited;
Penalties



Model
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on
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Restructuring

Sec. XXX-12. Unauthorized Switching,
Unauthorized Charges Prohibited;
Penalties

A. **Unauthorized switching.** Except as provided in sections [cross-reference municipal aggregation and RMA sections], it shall be unlawful for a competitive electricity provider to provide power or other services to such a customer without first obtaining said affirmative choice from the customer signing of a letter of authorization, third-party verification or the completion of a toll-free call made by the customer to an independent third party. For the purposes of this section, "letter of authorization" shall mean, (1) a separate document whose sole purpose is to authorize switching of a customer's competitive electricity provider, and which (2) shall not be combined with inducements of any kind on the same document and (3) at a minimum, the letter of authorization must be printed with readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms: (a) that the consumer understands that only the competitive electricity provider may be designated and (b) that the consumer understands that signing the letter may involve a charge to the consumer for changing competitive electricity providers.

Letters of authorization shall not suggest or require that a consumer take some action in order to retain the consumer's current competitive electricity provider. Upon switching of a customer's service provider, there shall be included in the customer's bill for distribution service an acknowledgment of the service switch, along with information on how to file a complaint regarding an unauthorized switch.

- B. **Unauthorized charges.** No entity shall charge for service to a customer that the customer has not ordered.
- C. **Complaints; penalties.** A customer may initiate a complaint that his retail electricity service has been switched to another competitive electricity provider without his prior authorization. Said complainant shall file the complaint with the commission within 30 days after the statement date of the notice indicating that the customer's retail electricity service has been switched. The commission may, after a full hearing and determination by the commission that such entity knowingly, intentionally, maliciously or

fraudulently switched the service of more than two customers in a one-month period, be prohibited from selling electricity in the state for a period of up to one year for a violation of this Section XXX-12, and a civil penalty not to exceed \$40,000 for the first offense and not less than \$150,000 for any subsequent offense per customer. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Intervenor Reimbursement Fund, under section XXX-28.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-13

Disclosure,

Billing

Information

and Labeling



Model
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Utility
Restructuring

Sec. XXX-13. Disclosure, Billing
Information and Labeling

- A. **Comparative information to make informed purchases.** The commission shall promulgate uniform labeling regulations which shall be applicable to all competitive electricity providers as a condition of licensure, which shall require disclosure, without limitation, of the information required by this section, together with price data, information on price variability and customer service information, in such a format as to permit reasonable comparisons between price and service offerings of competitive electricity providers.
- B. **Format of disclosures; limitation on misleading disclosures.**
- (1) The commission shall prescribe standard typical billing determinants, and competitive electricity providers shall compute the total bill per month per customer for each such example of standard typical billing determinants. Such information shall be disclosed in bold print in print advertisements and on any periodic billing materials, or through clear and unhurried spoken language in the case of television or radio advertisements.
 - (2) Competitive electricity providers shall comply with federal and state laws governing unfair advertising and labeling.
 - (3) A competitive electricity provider shall not advertise or disclose the price of electricity in such a manner as to mislead a reasonable person into believing that the electric generation services portion of the bill will be the total bill amount for the delivery of electricity to the customer's location. When advertising or disclosing the price for electricity, the competitive electricity provider shall also disclose the distribution utility's average current charges, including the competitive transition charge and system benefits charges, inclusive, for that customer class.
- C. **Notice to customers of terms and conditions.** All distribution utilities and competitive electricity providers shall notify their customers in writing of the terms of their agreement to provide service at the time service is initiated.

- D. **Disclosure of rates, terms, conditions and other consumer information.** Before service is initiated by a competitive electricity provider to any customer, the competitive electricity provider shall disclose information on rates and other information to a customer in a written statement which the customer may retain. Each competitive electricity provider shall annually mail a booklet containing this information to each of its residential customers.
- E. **Commission requirements.** The commission shall promulgate such rules and regulations prescribing additional information to be disclosed by a competitive electricity provider company in any advertising or marketing.
- F. **Notice of standard-offer and low-income discount services.** Each distribution utility shall periodically notify all customers of the availability and method of obtaining low-income discount rates and standard-offer service.
- G. **Commission to make available information.** The commission shall maintain and make available to customers upon request, a list of competitive electricity providers and the following information about each such electric provider:
- (1) rates and charges provided by the electric provider;
 - (2) applicable terms and conditions of a contract for electric generation services provided by the electric provider;
 - (3) the percentage of each provider's total electric output derived from each of the categories of energy sources listed in this subsection and those otherwise specified by the commission;
 - (4) the rates at which each facility operated by or under long-term contract to the provider emits nitrogen oxides, sulfur oxides, carbon dioxide, carbon monoxide, radionuclides, particulates and heavy metals, and the analysis of environmental characteristics of each such category of energy source and to the extent such information is unknown, the estimated percentage of the provider's total electric output for which such information is unknown, along with the word "unknown" for that percentage;
 - (5) a record of customer complaints and the disposition of each complaint; and
 - (6) any other information the commission determines will assist customers in making informed decisions when choosing a competitive electric provider. The commission shall update the information quarterly. The commission shall publish such information in standard format so that a customer can readily understand and compare the services provided by each competitive electricity provider. The commission shall publish this information and make its publication broadly available.
- H. **Rules on filings by competitive electricity providers.** In adopting by rule requirements for filing and disclosure of information by competitive electricity providers pursuant to this section, the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:
- (1) a statement of average prices at representative levels of kilowatt-hour usage in the most recent six-month period;

- (2) a description of the average duration of supply arrangements with retail customers in the most recent six-month period;
 - (3) an explanation addressing whether pricing arrangements are fixed or will vary over a specified time period;
 - (4) a statement indicating percentages of electricity supply over the recent six-month period under categories of generation, including, but not limited to, oil-fired, nuclear, hydroelectric, coal, biomass or other renewable resources and regional spot market purchases; and
 - (5) a listing of expected air emissions and a comparison of those emissions to a regional average, as determined by the commission, for nitrous oxide, sulfur dioxide, mercury, fine particulates, radionuclides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent six-month period.
- I. **Price reporting and commission price information dissemination.** Each distribution utility shall report monthly to the commission the average of prices charged by the distribution utility and all competitive electricity suppliers, weighted by the relative numbers of kilowatt-hours of generation sold by each entity in the case where more than one entity supplies generation service, by customer class and separately by subclass within the residential class, for default service and standard-offer service, respectively, in the service area of the distribution utility, on a bundled basis, and broken out between distribution, transmission and generation services, respectively. The commission shall develop and issue, by March first of each year or such other date as the commission shall select, a report which shall detail the status in the previous calendar year of pricing disparities between customer classes and separately within the residential class, regions of the state and distribution companies and competitive electricity providers serving consumers, provided, however, that said report shall also include a comparison of each customer class in the state as compared with the same classes in each of the 49 other states and the District of Columbia.
- J. **Unbundled bills.** Beginning [as soon after passage of the legislation as the commission can process a rate and cost allocation case], distribution utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By [a date soon after passage, and long enough before the ultimate unbundling deadline to permit commission processing of the contested case], each distribution utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by [shortly before the issuance of unbundled bills must begin].

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-14

Divestiture of
Generation



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Utility
Restructuring

Sec. XXX-14. Divestiture of Generation

A. Divestiture required; exceptions. On or before [transition date], each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

- (1) contract with a qualifying facility or with a demand-side management or conservation provider, broker or host;
- (2) ownership interest in a nuclear power plant; or
- (3) ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission or distribution utility in an efficient manner, so long as the commission determines that continued ownership of such generation asset will not significantly impede competition.

No later than [three to six months after passage of the bill], each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter, including the conditions for competition set forth in Section XXX-2(E), and the impact of such divestiture on horizontal and vertical market power, and on accuracy and equity in treatment of stranded costs. By [six to nine months after passage of the bill, depending on choice of filing date], the commission shall issue an order approving the plan, rejecting the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

B. Sale of capacity and energy required. The commission by rule shall require each investor-owned electric utility after [date around time of transition] to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to distributed capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission or distribution utility in an efficient manner, taking into account considerations of life cycle cost, environmental impacts and reliability.

- C. **Maximizing sales value.** In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits an electric utility from renegotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By [date six months after passage of statute], the commission shall provisionally adopt all rules required under this subsection.
- D. **Ownership of generation prohibited.** Except as otherwise permitted under this chapter, on or after [transition date], investor-owned transmission or distribution utilities may not own, have a financial interest in or otherwise control generation or generation-related assets.
- E. **Generation assets permitted.** On or after [transition date], notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission or distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission or distribution utility in an efficient manner.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section
XXX-15
Default
Service



Model
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Legislation
on
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Utility
Restructuring

Sec. XXX-15. Default Service

- A. **Designated default service provider.** The commission may provide for the selection of an entity through competitive bidding to provide default service to customers who, for any reason, have stopped receiving electric generation service or other competitive services, provided, however, that the default service rate so procured shall not exceed the average monthly market price of electricity or other competitive service, respectively, and provided, further, that all bids shall include payment options with rates that remain uniform for periods of up to six months. The commission may authorize a competitive electricity provider to provide default service.
- B. **Reallocation of excess charges.** Whenever the average of residential default service prices for a 12-month period is more than the average of system-average prices for the same period, the distribution utility will increase the access charge per kilowatt-hour to all non-residential default customers by an amount equal to the difference between the average residential default service price in the aforementioned 12-month period and the average system price in that period. The sums so collected shall be credited to the residential default service charges as an equal amount per kilowatt-hour in the subsequent 12 months.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-16

Marketing:

Large Utilities



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Sec. XXX-16. Marketing: Large Utilities

A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Affiliated competitive electricity provider" means a competitive electricity provider whose relationship with a large investor-owned transmission or distribution utility qualifies it as an affiliated interest.

(2) "Purchasing entity" means a person that purchases 10 percent or more of the stock of a distribution utility on or after the effective date of this section.

(3) "Related entity" means:

(i) any person or entity that owns, directly, indirectly or through a chain of successive ownership, 10 percent or more of the voting securities of the purchasing entity;

(ii) any person or entity 10 percent or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (i);

(iii) any person or entity 10 percent or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

(iv) any person, entity or group of persons or entities acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity provided that the person, entity or group of persons or entities beneficially owns more than 3 percent of the purchasing entity's voting securities; or

(v) any purchasing entity of which any person or entity defined in subparagraphs (i) to (iv) is an affiliated interest.

(4) "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

B. Marketing permitted. On and after the beginning of retail access, a large investor-owned transmission or distribution utility may not sell electric energy or capacity to any retail consumer of electricity in the

geographic area where it provides transmission or distribution service, except as specifically authorized by this chapter. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive electricity provider may sell electric energy or capacity to retail consumers of electricity:

- (1) outside the service territory of the transmission or distribution utilities with which it is affiliated; and
 - (2) within the service territory of the transmission or distribution utilities with which it is affiliated, except that:
 - (i) the affiliated competitive electricity provider may not sell or contract to sell more than 33 percent of the total kilowatt-hours sold within the service territory of its affiliated transmission or distribution utilities, as determined by the commission by rule; and
 - (ii) in accordance with Section XXX-5, the affiliated competitive electricity provider may provide standard-offer service within the territory of the transmission or distribution utilities with which it is affiliated where no winning bid offering prices equal to or below the standard-offer price is accepted.
- C. **Commission evaluation of market share limitation.** No later than [five or six years after the transition date], based on its evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the committee of the Legislature having jurisdiction over utility matters.
- D. **Standards of conduct.** The following provisions govern the conduct of transmission and distribution utilities and affiliated competitive electricity providers.
- (1) A transmission or distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive electricity provider or retail customers of its affiliated competitive electricity provider preference over non-affiliated competitive electricity providers or retail customers of non-affiliated competitive electricity providers in matters relating to any regulated product or service.
 - (2) All regulated products and services offered by a transmission or distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination.
 - (3) A transmission or distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive electricity provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service.
 - (4) A transmission or distribution utility shall process all similar requests for

- a regulated product or service in the same manner and within the same period of time.
- (5) A transmission or distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the transmission or distribution utility to the provision of any product or service in which an affiliated competitive electricity provider is involved.
 - (6)
 - (i) A transmission or distribution utility shall process all similar requests for information in the same manner and within the same period of time.
 - (ii) A transmission or distribution utility may not provide information to an affiliated competitive electricity provider without a request when information is made available to non-affiliated competitive electricity providers only upon request.
 - (iii) A transmission or distribution utility may not allow an affiliated competitive electricity provider preferential access to any non-public information regarding the transmission or distribution system or customers taking service from the transmission or distribution utility that is not made available to non-affiliated competitive electricity providers upon request.
 - (iv) A transmission or distribution utility shall instruct all of its employees not to provide affiliated competitive electricity providers or non-affiliated competitive electricity providers any preferential access to non-public information.
 - (7) Employees of a transmission or distribution utility may not share with any affiliated competitive electricity provider or any non-affiliated competitive electricity provider:
 - (i) any market information acquired from the affiliated competitive electricity provider or from any non-affiliated competitive electricity provider; or
 - (ii) any market information developed by the transmission or distribution utility in the course of responding to requests for transmission or distribution service.
 - (8) A transmission or distribution utility shall keep a log of all requests for information made by the affiliated competitive electricity provider and non-affiliated competitive electricity providers and the date of the response to such requests. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph.
 - (9) A transmission or distribution utility may not release any proprietary customer information without the prior written authorization of the customer.
 - (10)
 - (i) A transmission or distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive electricity provider. The transmission or distribution utility may not in any manner promote its affiliated competitive electricity provider.

- (ii) Neither transmission and distribution utilities nor their affiliated competitive electricity providers may in any way represent that any advantage accrues to customers or others in the use of the transmission or distribution utility's services as a result of that customer or others dealing with the affiliated competitive electricity provider.
 - (iii) A transmission or distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive electricity provider, nor may the transmission or distribution utility promote or market any product or service offered by its affiliated competitive electricity provider.
 - (iv) No such affiliate may use the name, corporate name, logo or other identifying information indicating a link to the transmission or distribution utility without payment of a royalty to the transmission or distribution utility in an amount to be determined by the commission based on the market value to the affiliate of such identifying information, which such royalty payment shall be used to reduce any stranded cost payments otherwise chargeable by such utility.
 - (v) The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the transmission or distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order.
- (11) Employees of a transmission or distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive electricity provider or non-affiliated competitive electricity provider.
- (12) Employees of a transmission or distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive electricity provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:
- (i) sharing employees or facilities would be in the best interest of the public;
 - (ii) sharing employees or facilities would have no anticompetitive effect; and
 - (iii) the costs of any shared employees or facilities can be fully and accurately allocated between the transmission or distribution utility and the affiliated competitive electricity provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary.

- (13) A transmission or distribution utility and its affiliated competitive electricity provider shall keep separate books of accounts and records, which are subject to review and audit by the commission at the utility's expense.
- (14) A transmission or distribution utility shall establish and file with the commission a dispute resolution procedure to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The transmission or distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending.
- (15) Transmission and distribution utilities shall maintain their books of account and records of their transmission and distribution operations separately from those of their affiliated competitive electricity provider, and the transmission and distribution books of account and records must be available for commission inspection.
- (16) A transmission or distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient to enable customers and the commission to determine that the company is in compliance with the requirements of this section.
- (17) Each distribution utility should post on its Internet site the load profile and other load data required by the commission.
- E. Affiliates and affiliate transactions: billing and metering services.** If billing and metering services are declared competitive, the commission by rule shall establish minimum standards necessary to protect consumers of these services and codes of conduct governing the relationship among distribution utilities providing electric billing and metering services, any affiliates of distribution utilities providing such services, and providers of such services that are not affiliated with a distribution utility. The commission shall determine each distribution utility's costs of providing electric billing and metering services that are reflected in consumer rates, including capital costs, depreciation, operating expenses and taxes, and shall separate this portion of the consumer rate into a separate charge.
- F. Limitation.** Notwithstanding any other provision, no electric provider or generation entity or affiliate that owns or controls more than 15 percent of the electricity generation capacity that is dispatched by the [regional independent service operator (ISO)], or its successor, may offer electric generation services in the state.

G. Rules. The commission shall adopt rules implementing the provisions of this section, including:

- (1) rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive electricity provider compared to the total kilowatt-hour sales within the service territory of the affiliated transmission or distribution utility;
- (2) rules governing the procedure for divestiture; and
- (3) rules establishing standards of conduct for transmission or distribution utilities and affiliated competitive electricity providers consistent with the requirements of this section.

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by transmission or distribution utilities to every employee of the transmission or distribution utility and posted prominently in every employee location.

H. Penalties. The commission shall require the transmission or distribution utility to divest the affiliated competitive electricity provider if the commission determines in an adjudicatory proceeding that:

- (1) the transmission or distribution utility or an affiliated competitive electricity provider has knowingly violated any provision of this section or any rule adopted by the commission pursuant to this section; and
- (2) the violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy.

The commission may impose administrative penalties of up to \$10,000 for a violation of any provision of this section or any rule adopted by the commission pursuant to this section. Each day of a violation constitutes a separate offense.

I. Prohibition; divestiture. If, after the effective date of this section, 10 percent or more of the stock of a transmission or distribution utility is purchased by an entity:

- (1) the purchasing entity and any related entity may not sell or offer for sale generation service to any retail consumer of electric energy in this state; and
- (2) if, in an adjudicatory proceeding, the commission determines that an affiliated competitive electricity provider obtains an unfair market advantage as a result of the purchase, the commission shall order the transmission or distribution utility to divest the affiliated competitive electricity provider.

If the commission orders a divestiture pursuant to this subsection, the transmission or distribution utility must complete the divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the transmission or distribution utility, the commission may grant an extension for the purpose of permitting the utility to complete a divestiture that has been initiated in good faith but not finalized within the 12-month period. The commission shall oversee and approve a divestiture in accordance with rules adopted pursuant to Section XXX-14.

- J. **Effect of divestiture.** If the commission orders a transmission or distribution utility to divest an affiliated competitive electricity provider pursuant to this section, the transmission or distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.
- K. **Access to books; audits.** The commission shall have access to all books and records of any affiliated competitive electricity provider, and may audit the same. The distribution utility shall pay the cost of any audit ordered by the commission pursuant to this section.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-17

Marketing:

Small Utilities



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Sec. XXX-17. Marketing: Small Utilities

- A. **Small utilities; limitations.** Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated interest of a small investor-owned transmission and distribution utility may sell retail generation service to retail consumers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.
- B. **Rules of conduct.** By [six months after passage of Act], the commission shall open a rulemaking proceeding to determine the extent of separation between a small investor-owned transmission and distribution utility and an affiliated competitive electricity provider necessary to avoid cross-subsidization and market power abuses. By [one year after passage of Act], the commission shall provisionally adopt all rules required under this subsection. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:
- (1) codes of conduct that may be required to ensure the effectiveness of the separation requirement;
 - (2) restrictions on employee activities;
 - (3) accounting standards; and
 - (4) information and service comparability requirements.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-18

Marketing:

Consumer-

owned

Utilities



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on
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Restructuring

**Sec. XXX-18. Marketing:
Consumer-owned Utilities**

A. Consumer-owned utilities; limitations. Consumer-owned transmission and distribution utilities:

- (1) may sell retail generation service only within their respective service territories; and
- (2) may not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

B. Commission review of marketing within territory. Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-19

Stranded Cost
Recovery



Model
State
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on
Electric
Utility
Restructuring

Sec. XXX-19. Stranded Cost Recovery

- A. **Stranded costs defined.** For the purposes of this section, the term "stranded costs" means a utility's prudent, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry required by this chapter and determined by the commission as provided in this subsection.
- B. **Calculation.** For each electric utility, the commission shall determine the sum of the following to the extent they qualify as stranded costs pursuant to subsection 1:
- (1) the costs of a utility's regulatory assets related to generation;
 - (2) the difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and
 - (3) the difference between future contract payments and the market value of a utility's purchased power contracts.
- C. **Exclusions.** Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 [choose some date after which no one can seriously argue competition was not likely], in a utility's stranded costs, except that the commission may include:
- (1) regulatory assets created after April 1, 1995, and prior to [day bill filed or day PUC started proceedings] including:
 - (i) the amortization of costs associated with the restructuring of a qualifying facility contract;
 - (ii) costs deferred pursuant to rate plans;
 - (iii) energy conservation costs; and
 - (2) obligations incurred by a utility after April 1, 1995 [same date], and prior to [transition date] that are beyond the control of the electric utility; and
 - (3) obligations incurred by an electric utility after April 1, 1995 [same date], to reduce potential stranded costs.
- D. **Mitigation.** An electric utility shall pursue all reasonable means to reduce its potential stranded costs

and to receive the highest possible value for generation assets and contracts, including the exploration of all reasonable and lawful opportunities to reduce the cost to ratepayers of contracts with qualifying facilities. The commission shall consider a utility's efforts to satisfy this requirement when determining the amount of a utility's stranded costs.

E. Stranded costs recoverable; mitigation.

- (1) When retail access begins, the commission shall provide a distribution utility a reasonable opportunity to recover stranded costs through the rates of the distribution utility, as provided in this section. The distribution utility shall be permitted return of 100 percent of the costs determined by the commission to be stranded, which recovery shall be allowed over a period not to exceed 10 years, but the distribution utility shall not be entitled to a return on such stranded costs. Nothing in this chapter may be construed to give a distribution utility a greater opportunity to recover stranded costs than existed prior to the implementation of retail access.
- (2) The commission may reduce or increase the amount of stranded costs that the commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs, and based on its compliance with this chapter. Any electric utility seeking to claim stranded costs shall, in accordance with this subsection, take all reasonable efforts to reduce such stranded costs, and to mitigate present value rate impacts, so long as the present value of such stranded costs is not thereby increased. Before the approval by the commission of any stranded cost recovery, the electric utility shall show to the satisfaction of the commission that the electric utility has taken all reasonable steps to reduce such stranded costs and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased, and also that it has taken all reasonable steps to minimize the net present value cost to be recovered from customers.
- (3) Steps to reduce costs, mitigate near-term rate impacts or minimize the net present value cost to be recovered from customers, shall include:
 - (i) good faith efforts to negotiate the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission;
 - (ii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to Section XXX-14 of this Act;
 - (iii) maximization of market revenues from existing generation assets; and
 - (iv) efforts to maximize current and future operating efficiency, including appropriate and timely maintenance, trouble-shooting, aggressive identification and correction of potential problem areas.
- (4) Steps to reduce costs, mitigate near-term rate impacts or minimize the net present value cost to be recovered from customers, may include:
 - (i) reduction of book assets by application of net proceeds of any sale of existing assets, so long as net costs are not shifted between customer classes as a result of such application;

- (ii) voluntary write-offs of above-market generation assets;
- (iii) the decision to retire uneconomical generation assets; and
- (iv) efforts to divest generating sites at market prices reflective of best use of sites.

(5) Cost reduction and rate impact mitigation measures shall not include any expenditures to restart a nuclear generation asset that was not operating for reasons other than scheduled maintenance or refueling at the time such expenditure was made.

(6) Any such cost reduction and rate impact mitigation efforts shall be subject to approval by the commission.

(7) The commission shall allow the cost of such cost reduction and rate impact mitigation measures to be included in the calculation of stranded costs to the extent that such costs are reasonable relative to the amount of the reduction in stranded costs resulting from the measures.

F. Determination of stranded costs charges. Before retail access begins, the commission shall estimate the stranded costs for each electric utility in the state. The commission shall use these estimates as the basis for a stranded costs charge to be charged by each distribution utility when retail access begins. Every three years, until the utility is no longer recovering adjustable stranded costs, the commission shall correct any substantial inaccuracies in the stranded costs estimates associated with adjustable stranded costs and adjust the stranded costs charges to reflect any such correction. The commission may correct adjustable stranded costs estimates and adjust the stranded costs charges at any other time. When correcting stranded costs estimates and adjusting stranded costs charges, the commission shall make any change effective only prospectively and may not reconcile past estimates to reflect actual values.

For purposes of this subsection, "adjustable stranded costs" means stranded costs other than stranded costs associated with divested generation assets.

G. Recovery of stranded costs. The commission shall set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds exceeding book costs against the aggregate value of all other stranded electricity generation assets. The commission may not shift cost recovery among customer classes in a manner inconsistent with existing law, as applicable. Cost recovery among customer classes and among customers shall be based on class use of each stranded asset and collected on a per-kilowatt-hour-use basis.

H. Ratepayer Equity Plan. A utility that is allowed to recover uneconomic costs pursuant to this Section XXX-19 shall establish a Ratepayer Equity Plan before implementing any charge therefor. The purpose of the plan shall be to compensate ratepayers with shares of common stock equal in value to the amount of cost recovery charges collected thereunder. The plan shall be filed with the commission, which shall approve or modify the plan so that the plan shall require the utility to do the following:

- (1) calculate the total amount of costs recovered by the utility for each fiscal quarter of the recovery period;

- (2) determine the market value of the stock of the utility as indicated by the last trading price on a public exchange market as of the last date of each fiscal quarter (If the stock is held by a holding company, the holding company's stock shall be used to determine market value.);
- (3) deposit with the State Treasurer stock certificates for the utility or holding company's stock for which the total market value determined under item (2) is equal to the cost recovery calculated under item (1) within 15 days of the end of the fiscal quarter; and
- (4) distribute all proceeds from the sale of the stock by the State Treasurer to all customers who have paid the cost recovery charge through a reduction in or elimination of the monthly customer charge. Customers who have not paid the cost recovery charge shall not receive any of the proceeds.

H. [ALTERNATIVE to H above] Ratepayer Parity Trust Fund.

- (1) Fund established. There shall be established as a trust fund within the treasury of the state, the Ratepayer Parity Trust Fund, to which shall be credited all personal and corporate tax revenues attributable to the sale of assets relative to Section XXX-14 of this chapter, any appropriations made for the purposes of providing extraordinary assistance to utilities in achieving the rate reductions required by this chapter and any income derived from investments of amounts credited to said fund. Amounts credited to said fund shall be received and held in trust and shall be used solely for the purpose of providing extraordinary assistance in achieving the required rate reduction pursuant to Section XXX-5(C) of this chapter, subject to appropriation for said purposes. Prior to any such appropriation being made by the Legislature, the commission shall file with the [Secretary of Administration and Finance, or comparable state official] a request for distribution of such monies in said fund as may be available for appropriation.
- (2) Payments from the fund; conditions. If the distribution utility claims that it is unable to meet a price reduction of 25 percent it shall petition the commission to explore any and all mechanisms, including authorizing an alternate generation company or provider to provide the standard offer, and receipt of funds authorized by the commission from the Ratepayer Parity Trust Fund.
- (3) Payments from the fund; warrants. In the event and to the extent that a distribution utility receives payments from the Ratepayer Parity Trust Fund, the utility shall execute and deliver to the treasury of the state, to be held in trust, warrants in the face amount of the receipts from the fund for the purchase of stock in the utility (or its parent in the case of a subsidiary not publicly traded) at the price of the stock of the utility (or its said parent) at the time of the receipt of payment from the fund.
- (4) Option to redeem warrants. In the event the price of the stock for which warrants were issued pursuant to this section exceeds the price of the stock at the time of receipt of payment from the fund by 20 percent or more, the Treasurer of the state may exercise the warrants. If the warrants are so exercised, the utility must forthwith purchase the stock from the

Treasurer at the price at the time the Treasurer notified the utility of the redemption of the warrants, less 5 percent.

- I. **Proceedings.** The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned distribution utility and each consumer-owned distribution utility. In the same proceedings, the commission shall establish the revenue requirements for each distribution utility and stranded costs charges to be charged by each distribution utility when retail access begins. The proceedings must be completed by [six months from date of enactment].

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-20

Rate Design



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on
Electric
Utility
Restructuring

Sec. XXX-20. Rate Design

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section.

- A. **Applicable law.** The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable.
- B. **Proceeding.** Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before [pick a date that gives the commission sufficient time but is prior to the opening of the market] for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.
- C. **System benefits charge; limit on rate spread.** The commission shall establish a system benefits charge to be imposed against all retail usage. The system benefits charge shall be determined by the commission in a general and equitable manner and shall be imposed on all end-use sales at a uniform rate that is applied equally to all customers of the same class regardless of which electric company served an individual customer on [date prior to passage of legislation]. On and after [date five years after passage of legislation], the commission shall allocate the rate of the system benefits charge in accordance with methods in effect on [date prior to passage of legislation], for allocation of electric company generation among classes of customers, provided the price differential between industrial customers and residential customers shall not exceed the average price differential for electric service between industrial and residential rates in effect during calendar year [same year as in Section XXX-6]. The system benefits charge shall be rolled into distribution rates and recovered as part of distribution rates.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-21

Renewable

Resources



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Sec. XXX-21. Renewable Resources

- A. **Policy.** In order to ensure an adequate and reliable supply of electricity for [Name of State] residents and to encourage the use of renewable and indigenous resources, it is the policy of this state to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this state rely in a manner consistent with this section.
- B. **Definition.** As used in this section, the term "renewable resource" means a source of electrical generation that generates power that can physically be delivered to the control region in which the regional independent service operator or similar body, or its successor as approved by the Federal Energy Regulatory Commission, has authority over rates for transmission services and:
- (1) whose total power production capacity does not exceed [detail to be filled in on state-by-state basis] megawatts and that relies on one or more of the following sources of energy: [detail to be filled in on state-by-state basis].
- C. **Portfolio requirements.** As a condition of licensing pursuant to Section XXX-8, each competitive electricity provider in this state must demonstrate in a manner satisfactory to the commission that no less than [detail to be filled in on state-by-state basis] percent of its portfolio of supply sources for retail electricity sales in this state are accounted for by renewable resources. By [one year after effective date], the commission shall provisionally adopt rules establishing reasonable procedures for implementing this requirement.
- D. **Report.** In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying renewable resource requirements, the commission shall review the [detail to be filled in on state-by-state basis] percent portfolio requirement and make a recommendation for any change to the committee of the Legislature having jurisdiction over utilities and energy matters no later than [five] years after the beginning of retail competition.
- E. **Funding for research and development.**
- F. **Net metering authorized.**

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-22

Energy

Efficiency



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Restructuring

Sec. XXX-22. Energy Efficiency

- A. Energy-efficiency programs required. The commission shall require distribution utilities to implement energy-conservation programs and include the cost of any such programs in the rates of distribution utilities.
- B. Funding. Beginning on [transition date], the commission is authorized and directed to require a mandatory charge per kilowatt-hour for all consumers in the state to fund energy-efficiency activities including, but not limited to, demand-side management programs. Said charge shall be in the following amount: 3.3 mills (\$0.0033) per kilowatt-hour, and further provided that in authorizing such activities the commission shall ensure that they are delivered in a cost-effective and cost-efficient manner.
- C. Rulemaking. By [one year after passage of legislation], the commission shall commence a rule-making proceeding on energy conservation programs. By [date one year later], the commission shall provisionally adopt rules establishing energy conservation programs in compliance with this subsection.
- D. Low-income energy efficiency. At least 20 percent of the amount expended for residential demand-side management programs by each distribution utility in any year, and in no event less than the amount funded by a charge of 0.25 mills per kilowatt-hour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive low-income residential demand-side management and education programs. The low-income residential demand-side management and education programs shall be coordinated with all gas distribution companies in the state with the objective of standardizing implementation.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-23

Consumer

Education



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Restructuring

Sec. XXX-23. Consumer Education

A. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program, which should be in compliance with this subsection.

- (1) The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation. However, the commission may reimburse members for their reasonable costs of attending board meetings, in the case of members who otherwise would be unable to participate on account of financial hardship.
- (2) In its recommendations, the advisory board shall address:
 - (i) the level of funding necessary for adequate educational efforts and the appropriate source of that funding;
 - (ii) the aspects of retail access on which consumers need education;
 - (iii) the most effective means of accomplishing the education of consumers;
 - (iv) the appropriate entities to conduct the education effort; and
 - (v) any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.
- (3) The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-24

Needs-based,
Affordable
Rates for
Low-income
Customers



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Sec. XXX-24. Needs-based, Affordable Rates for Low-income Customers

- A. **Policy.** In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity and all residents of the state should be able to afford essential electricity supplies, it is the policy of the state to ensure that bills for low-income consumers are affordable. For the purposes of this chapter, a bill is affordable if the burden it places on the household is no greater than two times the burden, expressed as a percentage of income, that is borne by the national average residential customer of median income. Bills may be rendered affordable by energy-efficiency improvements in the building and appliances of customers' dwellings, and by reducing rates for such customers.
- B. **Low-income assistance.** To the extent that energy-efficiency assistance for low-income customers, as provided for under Section XXX-22, is not expected to reduce a low-income customer's bill below the threshold of affordability as set forth herein, rate reduction assistance shall be made available under this section. In order to meet the needs for bill assistance of low-income consumers in the state, and to meet future increases in need caused by economic exigencies, the commission shall:
- (1) receive funds collected by all distribution utilities in the state at a rate set by the commission in periodic rate cases; and
 - (2) set initial funding in generic proceedings or in periodic rate cases for low-income affordability rates based on an assessment of the aggregate of low-income customers' needs for bill reductions sufficient to render the resulting bills affordable. The funding mechanism may not result in bill affordability assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.
- C. **Further assistance authorized.** Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is

not specifically required by this chapter, subject to the approval of the commission.

- D. **Backstop for net incremental credit risk of serving low-income customers.** Each distribution utility shall guarantee payment to the generation supplier for all power sold to low-income customers at said affordability rates.
- E. **Eligibility.** Eligibility for the affordability rates established herein shall be extended to low-income customers who have qualified in the preceding 12 months for any means-tested public benefit including, but not limited to, Transitional Assistance for Needy Families (TANF), Supplemental Security Income (SSI), food stamps, Medicaid, general assistance (if in the state), means-tested Veteran's Benefits, Low-Income Home Energy Assistance (LIHEAP) or any other means-tested program for which eligibility does not exceed 175 percent of the federal poverty level, or whose annualized household income does not exceed 175 percent of the federal poverty level.
- F. **Outreach.** Each distribution utility shall conduct substantial outreach efforts and shall report to the commission, at least annually, as to its outreach activities and results. Outreach must include establishing an automated program of matching customer accounts with lists of recipients of said means-tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified. The [insert names of welfare and LIHEAP agencies of state] shall cooperate with the commission in facilitating the establishment of such automatic enrollment process.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section
XXX-25
Commission
Participation
in Federal and
International
Proceedings



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Sec. XXX-25. Commission Participation
in Federal and International
Proceedings

A. Authority. Without limiting the commission's authority under any other provision of law, the commission may:

- (1) intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this state are affected; and
- (2) monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:
 - (i) the safety and economic effects or potential effects of market competition on nuclear units; and
 - (ii) the effects or potential effects of market competition on [Name of State]'s air quality.

B. Findings; responsibility. The Legislature finds that, in order for retail competition in this state to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission system must be fully independent of influence by market participants. The commission shall use all means within its authority and resources to advocate for and promote the interests of [Name of State] ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-27

Reports



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Sec. XXX-27. Reports

A. **Annual restructuring report.** On November fifteenth of each calendar year, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utility matters a report describing the commission's activities in carrying out the requirements of this chapter and the activities relating to changes in the regulation of electric utilities in other states, and evaluating the effectiveness of competition in achieving the purposes of this statute. Said report shall contain, but is not limited to:

- (1) electricity spot price information for the previous calendar year, including, but not limited to, the average regional monthly spot price;
- (2) a determination of whether all customer classes and market segments, including low-usage, low-income and other vulnerable customers, are being adequately served by competitive energy markets;
- (3) a determination of the competitiveness of energy markets, including a determination whether the electric industry is providing consumers with the lowest prices possible and the optimal level of service quality, within a restructured, competitive retail marketplace;
- (4) identification of any substantial fluctuation or pricing differences in the cost of electricity available to consumers, especially with respect to geographic regions and low- and moderate-income customers;
- (5) an analysis of the reliability of the provision and distribution of electricity in the state in the prior year, and a forecast of reliability for the next five years; and
- (6) recommendations for improving any deficiencies so identified in electricity energy, including drafts of legislation.

B. **Independent system operator.** The commission shall monitor events in the region pertaining to:

- (1) the development of an independent system operator with responsibility for transmission reliability;
- (2) the management of competitive access to the regional transmission system; and

(3) rights to negotiate potential contracts between sellers and buyers of electricity.

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or transmission or distribution utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the state are available to remedy this problem.

SECTION 2

[TITLE and
CHAPTER
OF CODE]

Section

XXX-28

Intervenor

Compensation



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Sec. XXX-28. Intervenor Compensation

- A. Intervenor Compensation Fund established.** The commission shall establish an Intervenor Compensation Fund, to which shall be credited all receipts of civil penalties levied by the commission pursuant to Sections XXX-10 and 12, such other funds as the commission may direct distribution utilities to collect from all customers for that purpose and the income from the investment of balances in the fund.
- B. Scope.** The Intervenor Compensation Fund shall be used to provide funding to entities that intervene in adjudications or rulemaking proceedings before the commission on issues involving the interpretation and implementation of this chapter on behalf of residential customers. The funds may be used to obtain legal assistance, administrative assistance and expert assistance. No funds may be used in any way for lobbying or publicity. Funds shall be awarded for the presentation of any responsible position, regardless of the likelihood of its adoption, so long as its adoption is not precluded by clear precedent, law or constitutional restriction.
- C. Entities that may obtain compensation.** Intervenor compensation shall be available only to entities that would experience financial hardship in presenting their case without such funding. Such entities may be individuals or organizations. The fact that an entity receives funds that may be used for intervention does not per se disqualify the entity from receiving intervenor compensation.
- D. Supplement to other public representation.** It shall be no barrier to the receipt of intervenor compensation from this fund that a public advocate, consumer counsel or other representative of utility consumers has been funded to intervene and has intervened in the case for participation in which funding is sought. The commission may for purposes of administrative economy order the consolidation of like presentations.
- E. Process.** Entities that seek intervenor compensation from this fund shall submit a written application to the commission in the form it prescribes, providing information sufficient to establish eligibility for funding under this Section XXX-28, and including a proposed itemized budget and a statement of the issues to be presented, and the nature of any legal representation or consulting assistance proposed to

be obtained. The commission shall by rule prescribe a process for consideration of such applications. An application may be made before a formal case is filed, if it is reasonably likely that a formal case will be filed. Funds shall be awarded no later than three weeks before the date on which testimony or formal written comments must be filed by intervenors at the commission in the case in question. Recipients must periodically, and at the conclusion of the case, file reports documenting the use of the funds for the purposes set forth in the approved application. The commission may by rule determine further specifics of the process for obtaining, using and accounting for such funds.

SECTION 3
CONFORMING
AMENDMENTS

Sec. 3. Conforming Amendments

By December 31 [next date six months after passage of bill], the Public Utilities Commission shall identify and submit to the committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.



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Sec. 4. [Repeal Contrary Existing Statutes]

SECTION 4

[REPEAL
CONTRARY
EXISTING
STATUTES]



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APPENDIX I

RETAIL
MARKETING
AREA
LANGUAGE



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Appendix I: Retail Marketing Area Language

Sec. XXX-#. Retail Marketing Areas

- A. Until [three years after transition date], this state shall be divided pursuant to this section into retail marketing areas (RMAs) under the authority of Section 722(g) of the "Energy Policy Act of 1991," 106 Stat. 2776, 16 U.S.C. 824(k)(g). A retail marketing area under this section is not a reseller of electricity, but rather is a geographic designation for the purpose of aggregating retail electric service customers. In each retail marketing area, electric generation service shall be aggregated and bid out for all retail customers in the area that choose not to opt out of the aggregated pool, as further provided in subdivision (c) of this section.
- B. Retail marketing areas shall cease to exist three years after [the end of the transition period], for the purposes of subsections A to J of this section. Retail marketing areas shall be rebid halfway through the transition period in accordance with subsections H and I of this section.
- C. Any customer may opt out of the aggregated retail marketing area pool at any time. To define the aggregated pool for the purposes of the first and second rounds of bidding, the public utilities commission shall set a date by which any customer who wishes to opt out of the aggregated pool for that bidding round must do so, and shall establish procedures providing for an affirmative indication by a customer that the customer is opting out of the pool. Any customer that, after acceptance of the bid for a retail marketing area, moves into that area or initiates service for the first time within that retail marketing area may choose any competitive electric company to supply the customer's generation service, including the winning bidder for the retail marketing area.
- D. A distribution utility in this state may impose a reasonable switching fee on any customer that cancels service with the provider providing service to the retail marketing area. A switching fee may be imposed by the winning bidder of a retail marketing area on any customer who opts out of the retail marketing area bid pool after the opt-out date set by the commission under subsection C of this section,

with the exception of a customer who moves outside the retail marketing area. Such a switching fee may also be imposed by the winning bidder on a customer entering the retail marketing area bid pool after the opt-out date, including a customer who previously had opted out of the pool. The amount of any such switching fees for customers opting out of or into a retail marketing area bid pool shall be disclosed and considered in the retail marketing area bid selection process under this section. The switching fee shall not exceed a nominal charge covering only the administrative costs of the utility or company, as the case may be. Retail electric generation service shall be provided to a customer entering the bid pool after the opt-out date at the prevailing rate for the retail marketing area.

- E. Except as otherwise provided in subsection F of this section, the basic mapping units for retail marketing areas shall be subunits of monopoly service territories as those territories exist on the effective date of this section. To facilitate the mapping process, incumbent electric utilities shall file plans with the commission proposing to divide their service territories in a manner that allows for reliable and efficient delivery of power to discrete geographic areas by use of the existing transmission and distribution networks. The plans shall be in such form and include such information as the commission shall prescribe by rule initially adopted not later than 45 days after the effective date of this section.
- F. (1) In fixing the boundaries of each retail marketing area, the commission shall consider the plans submitted under subsection E of this section, and may make such modifications as it considers necessary to such proposed boundaries. The commission shall determine the boundaries of each retail marketing area, and approve final boundaries, pursuant to all of the following criteria.
 - (i) Each retail marketing area is a feasible size and has a diverse mix of customers, including low-income customers, based on customer class, socioeconomic, geographic and load characteristics; and each RMA is reasonably comparable in customer mix to all other RMAs.
 - (ii) The boundaries do not result in an electric transmission or distribution service bottleneck to the advantage of a particular provider of electric generation service.
 - (iii) Each RMA consists of territory that is contiguous geographically and contiguous in terms of electric transmission and distribution services.
- (2) The commission may change a RMA boundary for the purpose of the second round of bidding if it determines that the change was necessary to comply with the criteria specified in subsection F(1) of this section.
- (3) A distribution utility shall provide the commission with such information as the commission considers necessary to establish RMA boundaries. The commission shall take such measures as it considers necessary to protect the confidentiality of that information.

G. Notwithstanding the criteria specified in subsections E and F(1) of this section:

- (1) the service territory of an incumbent electric cooperative, as that territory exists on the date boundaries are approved under this section, shall not be its own RMA and shall not be part of any other RMA; and
- (2) territory and retail electric service customers within the boundaries of a municipal corporation that, on the effective date of this section, transmits or distributes electricity through facilities owned or operated by an incumbent municipal electric utility, including facilities jointly owned or operated with one or more other municipal electric utilities, shall be excluded from any RMA. However, the legislative authority of such municipal corporation may opt into the RMA process prescribed in this section, for all or part of its territory, by a filing with the commission by such date and pursuant to such filing procedures as the commission shall prescribe by rule.

H. The commission shall issue the request for proposals for each RMA and shall oversee the RMA bidding process. For this purpose, the commission shall adopt bidding rules that include all of the following:

- (1) a requirement that a bidder demonstrate a minimum financial and capacity commitment for the particular service bid upon;
- (2) an open, fair and unbiased process for submitting bids and selecting winning bids;
- (3) any price or non-price factors the commission shall use to evaluate bids and choose a winning bid. Price factors shall include, but not be limited to, the rate reduction objective specified in [Sections XXX-5 and 6]. Non-price factors may include, but are not limited to, service reliability, customer service quality, assurance of supply, performance guarantees, financial viability and such other factors as the commission considers appropriate;
- (4) contracting criteria and standard contract provisions, including a requirement that the winning bidder must supply electric generation service to any new retail customer that joins or rejoins the marketing pool after the award of the bid;
- (5) other relevant rules to ensure fair and unbiased bidding and fair and unbiased selection of winning bids by the commission, and to ensure performance by the winning bidder; and
- (6) except as otherwise provided in this section, initial rules under this section shall be adopted not later than 275 days after the effective date of this section.

I. Selection of RMA providers.

- (1) The commission shall select the winning bidder or bidders for each RMA, except that an electric cooperative may choose between participating in the commission's bidding process or that of the cooperative issuing the request for proposals, overseeing the bidding process and conducting the bidding for its own RMA. A winning bid may include a bid by the incum-

bent electric utility or its affiliate, subject to the limitations of [Sections XXX-14, 16 and 17]. The selection of a winning bid under this section shall not be subject to legal action absent actual fraud.

- (2) In either round of bidding under this section, the commission, or the electric cooperative in the case of an electric cooperative that conducts its own bidding as approved in division I(1) of this section, may let a RMA out for rebid if the commission or cooperative, respectively, determines that a request for bids for the RMA was substantially technically deficient. Such a determination shall not be subject to legal action absent actual fraud.
- J. If the commission determines that no acceptable bid has been submitted for a particular RMA, the electric distribution utility in the RMA shall procure electric generation service for each of its distribution service customers in the RMA for the time prior to [cross reference date three years after transition date], or until such time as a RMA provider is selected in the case of a RMA rebid under division I(2) of this section. Such generation service shall be provided at not greater than the standard-offer rate.

APPENDIX II

ALTERNATIVE
STRANDED
COST
RECOVERY
SECTIONS



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Appendix II: Alternative Stranded Cost Recovery Sections

Sec. XXX-19-A. Stranded Cost Recovery—Non-nuclear Generation Assets

A. Definitions. As used in this section:

- (1) "Generation assets" means electric generation facilities and generation-related operations and functions owned by an electric utility and includes associated contractual obligations for energy or capacity from such generation assets; and
- (2) "Net proceeds" means the book income from the sale or divestiture of assets, consisting of sales price less reasonable expenses of sale and related income and other taxes.

B. Divestiture precondition for stranded cost recovery.

- (1) No electric utility shall be eligible to claim any stranded costs as provided in Sections XXX-7-9 inclusive unless the utility (i) before the date when the commission approves a divestiture plan has sold its non-nuclear generating assets and (ii) on and after the date when the commission approves such a plan, has submitted all of its remaining non-nuclear generation assets owned or held as of the effective date of this act to a public auction held in a manner designed to produce a maximum sale price in accordance with this subsection.
- (2) Each electric utility that elects to divest itself of non-nuclear generation assets shall, not later than [date soon after passage of Act] submit a plan to the commission. The divestiture plan shall include:
 - (i) any documentation the commission reasonably determines is necessary to approve the auction procedure, including a copy of the request for proposal and a description of the solicitation process;
 - (ii) a detailed description of the process for the sale and transfer of non-nuclear generation assets; and

- (iii) the book value of all assets the electric utility intends to make available for sale. The commission shall issue a final order approving or modifying the plan in a time frame that will allow divestiture to be accomplished by [date two years from enactment].

The commission shall appoint a consultant who shall be an entity unrelated to the electric utility and that meets the commission's qualifications, to conduct the auction process.

- (3) The commission shall not approve a sale unless (i) the sale price of an asset or assets equals or exceeds the book value for the asset or assets, (ii) the commission determines the bidder meets all the applicable qualifications established by federal law and regulation, (iii) the sale is conducted in accordance with the divestiture plan approved by the commission, (iv) the bidder proves to the satisfaction of the commission that it will preserve labor agreements in effect at the time of the sale and (v) the sale will result in a net benefit to ratepayers, as determined by the commission.
- (4) All net proceeds realized by an electric utility from the sale of nonnuclear generation assets pursuant to this section that exceed the total book value of all the assets sold pursuant to this section shall be netted against the amount of stranded costs as provided in subdivision (4) of subsection H and subsection I of Section XXX-19-C of this Act.
- (5) If an electric utility complies with the provisions of this subsection but does not receive any bids for an asset by a qualified bidder that equal or exceed the minimum bid as provided in this subsection, the commission shall calculate the value of stranded costs for each such asset in accordance with subsection G of Section XXX-19-C of this Act.

Sec. XXX-19-B. Stranded Cost Recovery—Nuclear Generation Assets

A. Definitions. As used in this section:

- (1) "Generation assets" means electric generation facilities and generation-related operations and functions owned by an electric utility and includes associated contractual obligations for energy or capacity from such generation assets; and
- (2) "Net proceeds" means the book income from the sale or divestiture of assets, consisting of sales price less reasonable expenses of sale and related income and other taxes.

B. Divestiture or transfer. Not later than [four to seven years after enactment], each electric distribution utility shall either (1) submit its nuclear generation assets to a public auction held in a manner designed to produce the best sale price, in accordance with subsection C of this section in order to divest itself of remaining nuclear generation assets, or (2) transfer remaining nuclear generation assets to one or more legally separate corporate affiliates at their book value, in which case no stranded costs shall be recovered.

C. Divestiture plan.

- (1) Each electric distribution utility that elects to divest itself of its nuclear

generation assets shall, in a time frame that will allow divestiture to occur by [date chosen above], submit a divestiture plan to the commission. The divestiture plan shall include (i) any documentation the commission determines is reasonably necessary to approve the auction procedure, (ii) a detailed description of the process for the sale and transfer of nuclear generation assets and (iii) information the commission determines is necessary for the commission to determine the value of the minimum bid for each nuclear generation asset, as provided in subdivision 3 of this subsection. The commission shall hold a hearing and issue a final order approving or modifying the plan in a time frame that will allow divestiture to be accomplished by [date chosen above]. Any hearing shall be conducted as a contested case. The commission shall appoint a consultant to conduct the auction process, who shall be an entity unrelated to the said utility and that meets the qualifications of the commission.

- (2) The commission shall not approve a sale unless (i) the sale price equals or exceeds the minimum bid established by the commission for the asset, (ii) the commission determines the bidder meets all applicable qualifications established by federal law and regulation, (iii) the sale is conducted in accordance with the divestiture plan as approved by the commission, (iv) the bidder proves to the satisfaction of the commission that the bidder will preserve labor agreements in effect at the time of sale and (v) the sale will result in a net benefit to ratepayers, as determined by the commission. Transfer in ownership of any asset shall not occur until the commission determines that the purchaser is fully qualified to provide electric generation services pursuant to [Section XXX-8], or pursuant to applicable federal law and regulation.
- (3) The commission shall determine the minimum bid price for each nuclear generation asset by determining the future net cash flow that a nuclear generation asset of comparable size, age and technical characteristics that is prudently and efficiently operated would be expected to produce over its expected remaining useful life, discounted to a present value.
- (4) If a final bid is less than book value for an asset, the electric distribution utility shall be entitled to recover the difference between the bid price and the book value as stranded costs pursuant to subdivision (2) of subsection H of Section XXX-19-C. If a final bid exceeds book value for an asset, the net proceeds realized by the electric distribution company that are above book value should be netted against the amount of stranded costs as provided in subdivision (4) of subsection H of Section XXX-19-C of this Act.

D. No satisfactory bid; calculation of stranded costs.

- (1) If an electric utility elects to sell all its remaining nuclear generation assets by public auction and complies with the provisions of subsection C of this section but does not receive bids for an asset by a qualified bidder that equal or exceed the minimum bid price, as determined by the commission in accordance with the provisions of subsection C of this section, the commission shall calculate the value of stranded costs for each such action in accordance with subdivision (3) of subsection H of Section XXX-19-C of this Act.

- (2) Not later than [date from above] the electric utility shall transfer the nuclear generation assets described in subdivision 1 of this subsection to one or more legally separate corporate affiliates. If in order to comply with rules, regulations or licensing requirements of the United States Nuclear Regulatory Commission an electric utility is unable to legally separate its nuclear assets to one or more corporate affiliates, the generation assets may remain in separate divisions of the electric utility.

E. Calculation, recovery of interim stranded nuclear generation costs.

- (1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the stranded cost recovery assessment in accordance with Section XXX-19-D of this Act.
- (2) On or after the date when a nuclear generation asset is sold at public auction or transferred to a corporate affiliate, the commission shall calculate the stranded costs for nuclear generation assets in accordance with subsection H of Section XXX-19-C of this Act.

Sec. XXX-19-C. Stranded Cost Estimation

A. Definitions.

- (1) "Stranded cost recovery assessment" means those non-bypassable rates and other charges that are authorized by the commission (i) to recover stranded costs as determined under this section or (ii) to recover costs determined under subdivision (1) of subsection E of Section XXX-19-B of this Act. If requested by the electric utility or electric distribution utility, the commission shall include in the stranded cost recovery assessment non-bypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions contemplated in this section.
- (2) "Customer" means any individual, business, firm, corporation, association, tax-exempt organization, joint stock association, trust, partnership, limited liability company, the United States or its agencies, this state, any political subdivision thereof or state agency that purchases electric generation or distribution services as a retail end-user in the state from any electric supplier, electric utility or electric distribution utility.
- (3) "Net proceeds" means net proceeds as defined in Section XXX-6 of this Act.
- (4) "Stranded costs" means that portion of generation assets, generation-related regulatory assets or long-term contract costs determined by the commission in accordance with the provisions of subsections E, F, G and H of this section.

- (5) "Generation assets" means the total construction and other capital asset costs of generation facilities expressly approved for inclusion in rates before July 1, 1997 [a recent date by which time the risk that the system would be opened to competition would be clear to any reasonable person], but does not include (i) any costs relating to the decommissioning of any such facility or (ii) any costs which the commission found during a proceeding initiated before [effective date of statute], were incurred because of imprudent management.
 - (6) "Generation-related regulatory assets" means generation-related costs authorized or mandated before [same date as cut-off for imprudence proceeding initiation in subdivision 5], by the commission, expressly approved for inclusion in rates, and include, but are not limited to, costs incurred for deferred taxes, conservation programs, environmental protection programs, public policy costs and research and development costs, net of any applicable credits payable to customers, but does not include any costs which the commission found during a proceeding initiated before [same imprudence proceeding cutoff], were incurred because of imprudent management.
 - (7) "Long-term contract costs" mean the above-market portion of the costs of contractual obligations expressly approved for inclusion in the rates that were entered into before [date], arising from independent power producer contracts required by law or purchased power contracts approved by the Federal Energy Regulatory Commission.
- B. Commission order; divestiture as precondition.** The commission shall, in accordance with the provisions of this section, identify and calculate, upon application by an electric utility, those stranded costs that may be collected through the stranded cost recovery assessment, which shall be calculated and collected in accordance with Section XXX-19-D of this Act. No electric distribution utility shall be eligible to claim stranded costs unless a public auction has been held to divest itself of all non-nuclear generation assets in accordance with subsection B of Section XXX-6 of this Act or the electric utility has sold its non-nuclear generation assets in accordance with [cross-reference any statutory requirements on sale of generation assets].
- C. Efforts to reduce stranded costs; mitigation of near-term rate impacts.**
- (1) Notwithstanding subdivision (1) of subsection E of Section XXX-19-B of this Act, any electric utility seeking to claim stranded costs shall, in accordance with this subsection, take all reasonable efforts to reduce such stranded costs, and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased. Before the approval by the commission of any stranded cost recovery, the electric utility shall show to the satisfaction of the commission that the electric utility has taken all reasonable steps to reduce such stranded costs and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased, and also that it has taken all reasonable steps to minimize the net present value cost to be recovered from customers.

- (2) Steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, shall include:
 - (i) except to the extent provided in collective bargaining agreements or agreements to purchase generation assets entered into before [effective date of statute], the obtaining of written commitments from purchasers of generation facilities divested pursuant to Sections XXX-14 and 19-B of this Act, that the purchasers will offer employment to persons who were employed in nonmanagerial positions by a divested facility at any time during the three-month period prior to divestiture, at levels of wages and overall compensation not lower than the employees' lowest level during the six-month period before the date the contract to divest the asset was entered into;
 - (ii) good faith efforts to negotiate the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission; and
 - (iii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to Sections XXX-6 and 7 of this Act;
 - (iv) maximization of market revenues from existing generation assets; and
 - (v) efforts to maximize current and future operating efficiency, including appropriate and timely maintenance, trouble-shooting, aggressive identification and correction of potential problem areas.
- (3) Steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, may include:
 - (i) reallocation of depreciation reserves for generation assets to existing generation assets to the extent consistent with generally accepted accounting principles, and so long as net costs are not shifted between customer classes as a result of such reallocation;
 - (ii) reduction of book assets by application of net proceeds of any sale of existing assets, so long as net costs are not shifted between customer classes as a result of such application;
 - (iii) voluntary write-offs of above-market generation assets;
 - (iv) the decision to retire uneconomical generation assets; and
 - (v) efforts to divest generating sites at market prices reflective of best use of sites.
- (4) Cost reduction and rate impact mitigation measures shall not include any expenditures to restart a nuclear generation asset that was not operating for reasons other than scheduled maintenance or refueling at the time such expenditure was made.
- (5) Any such cost reduction and rate impact mitigation efforts shall be subject to approval by the commission.
- (6) The commission shall allow the cost of such cost reduction and rate

impact mitigation measures to be included in the calculation of stranded costs to the extent that such costs are reasonable relative to the amount of the reduction in stranded costs resulting from the measures.

D. Application; contents; contested hearing. An electric utility shall submit to the commission an application for recovery of that portion of generation-related regulatory assets, long-term contract costs, generation assets and cost-reduction and rate impact mitigation costs which are determined by the commission in accordance with this section and subdivision (1) of subsection E of Section XXX-19-B of this Act. The application shall contain a description of cost reduction and rate impact mitigation efforts, and a request for recovery through the stranded cost recovery assessment. The commission shall hold a contested hearing for each electric utility and shall issue a finding of the calculation of stranded costs in a time frame that allows for collection of the stranded cost recovery assessment to begin on [transition date].

E. Value of regulatory assets. The commission shall calculate the stranded costs for generation-related regulatory assets to be their book value as of [transition date].

F. Calculation of stranded costs; long-term contracts.

(1) The commission shall calculate the stranded costs for any portion of a long-term contract cost that have been reduced to a fixed present value through the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission as such present value. In making such calculation, the commission shall net purchased power contracts approved by the Federal Energy Regulatory Commission that are below market value against any such contracts that are above market value.

(2) The commission shall calculate the stranded costs for any portion of a long-term contract cost that has not been reduced to a fixed present value through the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission by comparing the contract price to the market price at least annually. In making such calculation, the commission shall net purchased power contracts approved by the Federal Energy Regulatory Commission that are below market value against any such contracts that are above market value.

G. Non-nuclear generation asset; estimation of stranded cost if not sold.

(1) The commission shall calculate the stranded cost for each generation asset described in Section XXX-19-C, Section C(S) of this Act to be the difference between its book value and the market value of a prudently and efficiently managed non-nuclear generation facility of comparable size, age and technical characteristics in a competitive market. In determining the market value of any such asset, the commission may consider (i) the dollars per kilowatt received from the sale of similar generation facilities in the region, if any, (ii) income capitalization based on the operating history and capacity of the facility, the market rates for power, and any existing long-term contracts for the sale of energy and/or capacity, (iii) independent market appraisals or (iv) other relevant factors.

- (2) The commission shall calculate the stranded costs for such generation assets at least every three years.

H. Nuclear generation stranded cost recovery; application; process.

- (1) On or before [four years after transition date], an electric utility may submit to the commission an application for recovery of that portion of nuclear generation assets which is determined by the commission in accordance with this subsection, which application shall contain a request for recovery through the stranded cost recovery assessment. The commission shall hold a hearing for each electric utility and issue a finding of the calculation of such nuclear generation assets in accordance with the provisions of this subsection. Any hearing shall be conducted as a contested case.
- (2) The commission shall calculate stranded costs for each nuclear generation asset that was divested at a price less than book value as described in subdivision (4) of subsection C of Section XXX-19-B of this Act as the difference between the book value of such asset and the final bid price of the asset.
- (3) The commission shall calculate the stranded costs for each nondivested nuclear generation asset described in subdivision (1) of subsection D of Section XXX-19-B of this Act as the difference between the book value of this asset and the market value of a prudently and efficiently managed nuclear generating facility of comparable size, age and technical characteristics in a competitive market. In determining the market value of any such asset, the commission may consider (i) the dollars per kilowatt received from the sale of similar generation facilities in the region, if any, (ii) income capitalization based on the operating history and capacity of the facility, the market rates for power, and any existing long-term contracts for the sale of energy and/or capacity, (iii) independent market appraisals or (iv) other relevant factors.

At least every four years after the date when the commission issues an initial finding of the calculation of stranded costs for such nondivested nuclear generation assets as provided in this subdivision until the earlier of (i) the expiration of the collection of the stranded cost recovery assessment or (ii) the date when such an asset is divested, the commission shall hold a hearing and issue a finding to adjust the stranded cost calculation of each such asset and to adjust the stranded cost recovery assessment accordingly to true-up the stranded cost recovery for the difference between the market value project in such initial finding and the actual market value of a prudently and efficiently managed nuclear generating facility of comparable size, age and technical characteristics during the time period between the initial finding and the adjustment date, provided the second and subsequent adjustments shall reflect the difference during the time period since the most recent true-up. The commission shall calculate the value of each such asset in accordance with the methodology provided in this subdivision. Any hearing shall be conducted as a contested case.

- (4) After the commission has calculated the total value of stranded costs of all nuclear generating assets, the commission shall (i) reduce such amount by

the net proceeds that are above book value realized by an electric utility from the sale of non-nuclear generation assets pursuant to Section XXX-14 of this Act, (ii) reduce such valuation to reflect the total net proceeds that are above book value realized by an electric utility from the sale of any nuclear generation assets pursuant to subsection C of Section XXX-19-B of this Act and (iii) reduce such amount by the net proceeds that are above book value received by an electric utility for the sale or lease of any real property after [effective date of Act].

- I. **Balance of net proceeds; application to long-term contracts.** If any net proceeds described in subdivision (4) of subsection H of this section remain after the reduction in the calculation of nuclear generation assets pursuant to said subdivision (4) or are realized after said reduction is calculated, the additional amount of such net proceeds shall be netted against long-term contract costs described in subdivision (2) of subsection F of this section, and the stranded cost recovery assessment shall be adjusted accordingly.
- J. **Disallowance for non-operating nuclear plant and regulatory assets.**
 - (1) No electric utility shall be eligible to claim any stranded costs for a nuclear generation asset or for any generation-related regulatory asset related to such generation asset, if the generation asset is not operating as a result of an order issued by the United States Nuclear Regulatory Commission that applies specifically to such asset. Any such asset shall be eligible after it is permitted to and has resumed operation, and is selling power provided, however, that no true-up shall provide stranded cost recovery for that period during which such asset was not operating.
 - (2) Any generation asset that is retired shall no longer be eligible for stranded cost recovery as previously calculated pursuant to this section, but may be eligible for stranded cost recovery for so much of the undepreciated cost that would have been permitted to be included in rates under traditional regulation.
- K. **Netting proceeds of post-transition sale of nuclear assets.** If an electric utility elected to transfer any of its nuclear generation assets and related operations and functions to a separate corporate affiliate or to a division that is functionally separate from the electric distribution utility pursuant to Section XXX-19-B of this Act, and subsequently sold any such assets in an arm's length transaction to an unrelated entity prior to [date 10-15 years after effective date] the net proceeds realized from such sale that exceed book value for such assets shall be netted against the total amount of stranded costs, and the stranded cost recovery assessment shall be adjusted accordingly, and, if appropriate, other reimbursement of ratepayers shall be ordered by the commission.

Sec. XXX-19-D. Stranded Cost Recovery Assessment Authorized

- A. **Assessment authorized.** The commission shall assess and beginning [one year after transition date], impose a stranded cost recovery assessment, which shall be imposed on all customers of each electric distribution utility to provide funds for the purposes described in section D of this section. The

commission shall hold a contested case hearing to determine the amount of the stranded cost recovery assessment.

- B. **Factors to consider.** The commission shall consider the effect on all customer rates and other factors relevant to reducing rates in determining the amount of the stranded cost recovery assessment and the manner in which and the period over which it shall be imposed in any decision of the commission to set or adjust the stranded cost recovery assessment.
- C. **Allocation of costs.** The stranded cost recovery assessment shall be determined by the commission in a general and equitable manner and shall be imposed on all customers at a rate that is applied equally to all customers of the same class in accordance with the methods of allocation in effect as of [effective date of Act]. The assessment shall have a generally applicable manner of determination that may be measured on the basis of percentages of total costs of retail sales of electric generation services. Any exemption of the assessment by customers under a special contract shall not result in an increase in rates to any customer.
- D. **Amount of assessment.** The commission shall establish, fix and revise the assessment in an amount sufficient at all times to:
 - (1) pay an electric utility's stranded costs; and
 - (2) pay interim capital costs determined under subdivision (1) of subsection E of Section XXX-19-B of this Act.

APPENDIX III

STATE
UDAP
CITATIONS

Appendix III: State UDAP
Citations

Ala. Code § 8-19-1

Alaska Stat. § 45.50.471

Ariz. Rev. Stat. Ann. § 44-1521

Ark. Code Ann. § 4-88-101

Cal. Civ. Code § 1750 (West)

Cal. Bus. & Prof. Code §§ 17200 & 17500 (West)

Colo. Rev. Stat. § 6-1-101

Conn. Gen. Stat. § 42-110a

Del. Code Ann. tit. 6 § 2511

Del. Code Ann. tit. 6 § 2531

D.C. Code Ann. § 28-3901

Fla. Stat. Ann. § 501.201 (West)

Ga. Code Ann. § 10-1-370

Ga. Code Ann. § 10-1-390

Haw. Rev. Stat. § 480

Haw. Rev. Stat. § 481A

Idaho Code § 48-601

815 Ill. Comp. Stat. Ann. § 505/1 et seq. (Smith-Hurd)



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815 Ill. Comp. Stat. Ann. § 510/1 et seq. (Smith-Hurd)

Ind. Code Ann. § 24-5-0.5-1 (Burns)

Iowa Code Ann. § 714.16 (West)

Kan. Stat. Ann. § 50-623

Ky. Rev. Stat. § 367.110

La. Rev. Stat. Ann. § 51:1401 (West)

Me. Rev. Stat. Ann. tit. 5 § 206

Me. Rev. Stat. Ann. tit. 10 § 1211

Md. Com. Law Code Ann. §§ 13-101, 14-101

Mass. Gen. Laws Ann. ch. 93A

Mich. Comp. Laws Ann. § 445.901

Minn. Stat. Ann. § 8.31 (West)

Minn. Stat. Ann. § 325D.44

Minn. Stat. Ann. § 325F.67

Minn. Stat. Ann. § 325F.69

Miss. Code Ann. § 75-24-1

Mo. Rev. Stat. § 407.010

Mont. Code Ann. § 30-14-101

Neb. Rev. Stat. § 59-1601

Neb. Rev. Stat. § 87-301

Nev. Rev. Stat. §§ 41.600, 598.0903

N.H. Rev. Stat. Ann. § 358-A:1

N.J. Stat. Ann. § 56:8-1 (West)

N.M. Stat. Ann. § 57-12-1

N.Y. Exec. Law § 63(12) (Consol.)

N.Y. Gen. Bus. Law § 349 and § 350 (Consol.)

N.C. Gen. Stat. § 75-1.1

N.D. Gen. Stat. § 51-15-01

Ohio Rev. Code Ann. § 1345.01 (Baldwin)

Ohio Rev. Code Ann. § 4165 (Baldwin)

Okla. Stat. Ann. tit. 15 § 751 (West)

Okla. Stat. Ann. tit. 78 § 51 (West)

Or. Rev. Stat. § 646.605

Pa. Stat. Ann. tit. 73 § 201-1 (Purdon)

R.I. Gen. Law § 6-13.1-1

S.C. Code Ann. § 39-5-10 (Law. Co-op)

S.D. Codified Laws Ann. § 37-24-1

Tenn. Code Ann. § 47-18-101

Tex. Bus. & Com. Code Ann. § 17.41 (Vernon)

Utah Code Ann. §§ 13-2-1 and 13-5-1

Utah Code Ann. § 13-11-1

Vt. Stat. Ann. tit. 9 § 2451

Va. Code § 59.1-196

Wash. Rev. Code Ann. § 19.86 et seq.

W. Va. Code § 46A-6-101

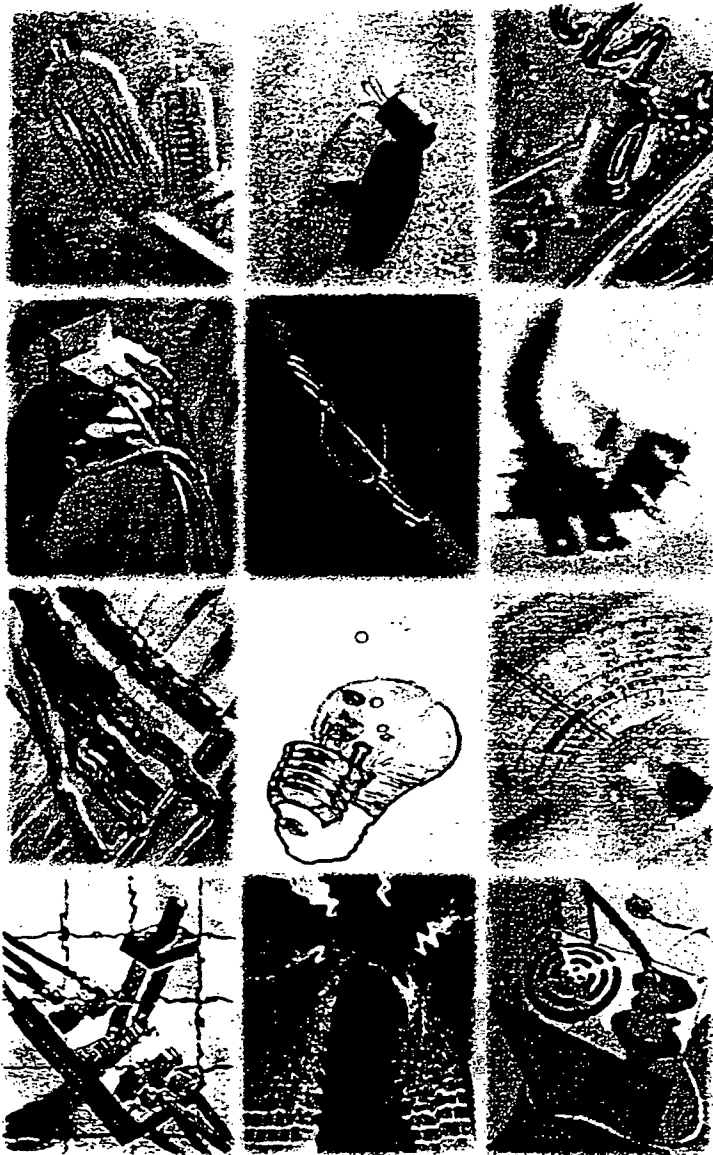
Wis. Stat. Ann. § 100.18 (West)

Wis. Stat. Ann. §§ 100.20, 100-24, 100-26 (West)

Wyo. Stat. § 40-12-101

MODEL STATE LEGISLATION

Electric Utility



Restructuring



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The AARP State Legislation Department provides assistance and resources to the Association's volunteers and staff to expand their capacities for influencing state policy-making. The department's goal is the adoption of state public policy that addresses the broad needs of older persons within an intergenerational context that promotes the well-being of all.

The Utility Issues Team of the State Legislation Department seeks, through legislative and regulatory advocacy, to protect the rights of residential utility consumers to reliable utility services, fair rates, privacy, fair marketing of services by utilities, adequate information on available services, and proper representation before state utility commissions.

by
National Consumer Law Center

for
AARP
State Legislation Department
Utility Issues Team
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AARP Model State Legislation on Electric Utility Restructuring

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An Act to Restructure the State's Electric Industry and Provide for Consumer Protection

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Be it enacted by the people of the State of [Name of State] as follows:¹

SEC. 1. FINDINGS.

The Legislature finds that:

- A. [Name of State] has unreasonably high electricity rates. On average, rates in [Name of State] are significantly above the regional average. The Legislature also finds that there is a wide disparity in electric rates both within [Name of State] and as compared to the region. The Legislature finds that this combination of facts has a particularly adverse impact on [Name of State] citizens.
- B. [Name of State]'s extraordinarily high electric rates disadvantage all classes of customers: industries, small businesses, and captive residential and institutional ratepayers and do not reflect an efficient industry structure. The Legislature further finds that these high rates are causing businesses to consider relocating or expanding out of state and are a significant impediment to economic growth and new job creation in this state.
- C. Restructuring of electric utilities to provide greater competition and more efficient regulation is a nationwide phenomenon.
- D. Monopoly utility regulation has historically substituted as a proxy for competition in the supply of electricity but recent changes in economic, market and technological forces and national energy policy have increased competition in the electric generation industry. With the introduction of retail customer choice of electricity suppliers as provided by this chapter, market forces may now be able to play an important role in organizing electricity supply for all customers instead of monopoly regulation.

¹ Sources: Unless otherwise noted, statute language is drawn from the Maine restructuring statute, 1997 Maine Laws Ch. 316. This statute not only has good specific provisions, it is laid out in a logical manner. The model statute has rearranged the sections to an extent, but has largely maintained the division of subject matter from the Maine statute. Brackets indicate areas of choice for the drafters (typically placeholders where certain dates must be inserted, cross-references to other statutes of the state, etc.).

E. It is in the best interests of all the citizens of [Name of State] that the Legislature, the executive branch, and the public utilities commission work together to establish a competitive market for retail access to electric power in those aspects of the electricity industry where competition can produce the benefits of the market without undermining the benefits of the historic organization of the electricity industry.

SEC. 2. [TITLE AND CHAPTER OF CODE] IS ENACTED TO READ:

CHAPTER

ELECTRIC INDUSTRY RESTRUCTURING AND CONSUMER PROTECTION

SEC. XXX-1. PURPOSE

- A. The most compelling reason to restructure the [Name of State] electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment. Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and divestiture of competitive centralized generation services from transmission and distribution services.
- B. Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.
- C. The following interdependent policy principles are intended to guide the [Name of State] Public Utilities Commission in implementing a statewide electric utility industry restructuring plan, in establishing any interim stranded cost recovery charges, in approving each utility's compliance filing, and in regulating a restructured electric utility industry. In addition, these interdependent principles are intended to guide the [Name of State] Legislature and the [Name of State Environmental Protection Agency] and other state agencies in regulating a restructured electric utility industry.

SEC. XXX-2. STATEMENT OF PRINCIPLES

- A. **Affordable and universal electricity service.** Electricity service is essential to the health and well-being of all residents of the state, and it is the policy of the state of [Name of State] that electric service must be affordable.² The restructuring of the existing electricity system should not undermine the policy of the state that electricity bills for all residents must be affordable, and that low-income persons must not be required to bear more than twice the burden of median income households in order to secure necessary electricity supplies. To this end, the state should ensure that universal service and energy conservation policies, activities and services are funded sufficiently to meet the need, and available throughout the state. It is the policy of the state to ensure adequate provision of financial assistance to needy customers with incomes at or below 175 percent of the federal poverty guidelines, and to meet increases in need caused by economic exigencies.³
- B. **Consumer protection.** A restructured electric utility industry must provide adequate consumer protection safeguards to prevent unfair terms and conditions of service, and protect consumers from loss of service when such loss of service would pose a threat to health or safety. Consumer protection should not be diminished by the introduction of competition, but rather should be strengthened. Consumers require access to inexpensive, timely and effective dispute-resolution procedures.
- C. **Lower rates and true competition.** The framework for competition in parts of the electricity industry must produce lower rates for all customers. Competition is not introduced in order to provide benefits for competitive providers, but rather to provide benefits for consumers. Government must supervise the market to ensure that true competition emerges quickly, and to prevent any market participant from exercising market power that defeats the purpose of deregulation. Government must police the boundaries between a firm's monopoly activities and its entrepreneurial

² Source: Ma. Stat. 1997, c. 164, § 1(a).

³ Derived from 1997 Maine Laws Ch. 316, § 3214, codified at Maine Revised Statutes, Title 35-A, § 3214.

activities, to ensure that no cross-subsidization can take place, that captive customers do not subsidize competitive ventures, and that competitors are not disadvantaged by unfair reliance of the competitive arm of a firm by its monopoly affiliate.

- D. Reliable and high quality service.** The introduction of competition must not in any way degrade the reliability of service or the quality of service, including customer service. Some customers may benefit from a deregulated and competitive marketplace and be able to secure improved reliability or customer service in such a market, but small customers and other vulnerable customers must be protected to ensure that they continue to enjoy high standards of reliability and customer service.
- E. Conditions for competition.** Regulation of prices is necessary where competitive forces will not adequately discipline a market, where competition will jeopardize the safe and reliable operation of the integrated electricity network, and where segmentation of the market by providers will result in unfair discrimination in prices to different classes of customers. Accordingly, the commission shall determine that an electric service is a potentially competitive service only if it finds, after a public hearing, that provision of the service by alternative sellers:
- (1) will not harm any class of customers;
 - (2) will decrease the cost of providing the service to residential and small commercial customers in this state and also increase the quality or innovation of the service to customers in this state;
 - (3) is a service for which effective competition in the market is certain to develop;
 - (4) will advance the competitive position of this state relative to surrounding states; and
 - (5) will not otherwise jeopardize the safety and reliability of the electric service in this state.

SEC. XXX-3. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. Affiliated interest. "Affiliated interest" means:

- (1) any person who owns—directly, indirectly or through a chain of successive ownership—10 percent or more of the voting securities of the purchasing entity;
- (2) any person 10 percent or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph A;
- (3) any person 10 percent or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;
- (4) any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3 percent of the purchasing entity's voting securities; or
- (5) any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

B. Aggregate. "Aggregate" means to organize individual electricity consumers with common characteristics (such as geography, affiliation, or some other characteristics in common) into an entity for the purpose of purchasing electricity on a group basis.

C. Aggregator. "Aggregator" means an entity that aggregates individual customers for the purpose of purchasing electricity.

D. Broker. "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

E. Competitive electricity provider. "Competitive electricity provider" means a marketer, broker, aggregator and any other entity selling electricity to the public at retail, including a distribution utility selling standard-offer, default or low-income service.

F. Consumer-owned transmission and distribution utility. "Consumer-owned transmission and distribution utility" means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

- (1) the transmission and distribution portions of a rural electrification cooperative organized under chapter [cross-reference state statute on REC organization, or REC statute at federal level];

- (2) the transmission and distribution portions of an electrification cooperative organized on a cooperative plan under the laws of the state;
- (3) municipal or quasi-municipal transmission and distribution utilities;
- (4) the transmission and distribution portions of a municipal or quasi-municipal entity providing generation and other services; and
- (5) transmission and distribution utilities wholly owned by a municipality.

G. Distribution plant. "Distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the distribution or delivery of electricity for public use, and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the distribution of electricity for light, heat or power for public use.

H. Distribution utility. "Distribution utility" means an entity, its lessees, its trustees, and its receivers or trustees appointed by a court, owning, controlling, operating or managing a distribution plant for compensation within the state.

I. Divest. "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.

J. Electric billing and metering services. "Electric billing and metering services" means the following services:

- (1) billing and collection;
- (2) provision of a meter;
- (3) meter maintenance and testing; and
- (4) meter reading.

K. Electric utility. "Electric utility" [here insert the definition of the jurisdictional regulated monopoly supplier of electricity under the existing electric industry regulatory structure in the state].

L. Entity. "Entity" means a person or organization, including but not limited to any natural person, or any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.

- M. Generation assets.** "Generation assets" include all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.
- N. Generation service.** "Generation service" means the provision of electric power to a consumer through a distribution utility but does not encompass any activity related to the transmission or distribution of that power.
- O. Large, investor-owned distribution utility.** "Large, investor-owned distribution utility" means an investor-owned distribution utility serving more than 10 percent of the retail electricity customers in the state.⁴
- P. Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.
- Q. Public entity.** "Public entity" includes the state, any political subdivision of the state, a municipality and any quasi-municipal entity.
- R. Qualifying facility.** "Qualifying facility" has the same meaning as provided in section [cross-reference any state PURPA statute, or PURPA itself and FERC regulations thereunder].
- S. Small, investor-owned distribution utility.** "Small, investor-owned distribution utility" means an investor-owned distribution utility serving fewer than 10 percent of retail electricity customers in the state.
- T. Retail access.** "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.
- U. Transmission plant.** "Transmission plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the transmission of

⁴ Maine's statute used the figure 50,000 as the dividing line between large and small utilities. Maine has about 350,000 customers, so 50,000 is between 10 and 15 percent of the customers in the state.

electricity for public use, and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the transmission of electricity for light, heat or power.

- V. **Transmission utility.** "Transmission utility" means an entity, its lessees, its trustees, and its receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission plant for compensation within the state.
- W. **Voting securities.** "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

SEC. XXX-4. RETAIL ACCESS; DEREGULATION OF PRICES

- A. **Declaration of competitive conditions; right to purchase generation.** Beginning on [transition date]⁵, if the commission has issued an order declaring electricity supply to be a potentially competitive service, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers.
- B. **Deregulation of generation services.** Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation of prices for generation service under this Title on or after [transition date]. There shall be no charge to any residential customer for initiating or terminating low-income discount rates, default service, or standard-offer service when said initiation or termination request is made after a regular meter reading. All fees, other than for electricity, shall be cost-based.
- C. **Aggregation to be encouraged.** When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose.⁶ The commission

⁵ Choose a date that is sufficiently far in the future to permit any necessary planning (e.g., two years from passage of the legislation), yet which does not delay the transfer longer than desired.

⁶ Maine language on municipal aggregation limitation is removed, and subject is treated in later section on municipal aggregation from Massachusetts statute. In

and each electric distribution utility shall take all reasonable steps to facilitate consumer-initiated aggregation.

D. **Evaluation of market.** In determining whether a market for an electric service has potential competition, the commission shall:

- (1) identify the relevant market;
- (2) identify, where feasible, the alternative sellers that participate and are reasonably expected to participate in the relevant market;
- (3) calculate, where feasible, the market share of the sellers that are reasonably expected to participate in the relevant market, and evaluate the significance of each share;
- (4) determine, where feasible, the capacity of any seller in the relevant market to bid strategically and withhold supply to manipulate prices, and evaluate the significance of such capacity; and
- (5) determine the likely prices of electricity or other related potentially competitive services in a competitive market as proposed, relative to the likely prices of such services in a regulated monopoly market.

SEC. XXX-5. REDUCTION IN RESIDENTIAL RATES; STANDARD OFFER⁷

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

A. **Establishment of terms and conditions.** The commission shall open a rulemaking proceeding no later than [three months after passage of statute] to establish terms and conditions for standard-offer service that include, but are not limited to:

- (1) entry and exit restrictions;

addition, section is recast to go beyond mere right to aggregation, to include obligation of commission and incumbent utilities to facilitate aggregation.

⁷ Maine Revised Statutes, Title 35-A, § 3212. References to "transmission and distribution utility" were replaced with references to "distribution utility." The focus here in limiting utility participation is to deal with retail competition issues, not wholesale issues.

- (2) protection against a standard-offer service provider's failure to provide service as contracted for;
- (3) appropriate rate design issues;
- (4) retaining averaged prices for all customers in the same class; and
- (5) credit, collection and disconnection practices.

By [five months after passage of legislation], the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service.

B. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under subsection A, the commission shall administer a bid process to select a standard-offer service provider for that distribution utility's service territory.⁸ By [nine months after passage of statute], the commission shall review the bid submissions for each distribution utility and select the standard-offer service provider or providers for that utility's service territory.

- (1) The commission shall determine the general credit data and specific information from general load and usage data that distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a distribution utility releases customer-specific data only with the customer's permission. If the distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through distribution rates.

⁸ A number of states either mandate or encourage a bid process. The model statute here combines the Ohio "retail marketing area" concept of a bid for portions of the service area of a utility, with a utility-provided standard offer as a fallback in the event no winning bid is made that proposes a price matching or lower than the standard-offer price. Where the statute is drafted merely to encourage a bid process, states typically leave the issue to the public utilities commission (PUC) to decide later. Some states, though, give the job to the incumbent utility, at least at the beginning. This is a valuable market, and utilities (or marketers, for that matter) should give value for obtaining it.

- (2) The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility.
- (3) A competitive electricity provider that is an affiliate of a large investor-owned distribution utility may submit bids to provide standard-offer service for up to 20 percent of the electric load within the service territory of the large investor-owned distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned distribution utility, the commission shall ensure that such a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.
- (4) A consumer-owned distribution utility and a small investor-owned distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned distribution utility or a small investor-owned distribution utility, the commission shall ensure that such a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.
- (5) The commission may divide the service area of the distribution utility into retail marketing areas as provided in [cross-reference location of language from Appendix I, if included in statute], and conduct separate bid procedures for each such marketing area.
- (6) The commission shall not accept a proposal to provide standard-offer service if the price exceeds the reduced price provided for in Section XXX-5(C), below. Where the commission has not accepted a proposal to provide standard-offer service, the distribution utility shall provide such service.
- (7) By [five months after passage of statute], the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least [three] providers of standard-offer service in each distribution utility service territory, as long as the method does not

result in any significant adverse impacts on rates paid by consumers. Such providers may be distinguished by the respective retail marketing area in which they provide service, the types of pricing option they offer to residential and small commercial customers, or such other factors as the commission may approve.

C. Standard offer; rate reductions.

- (1) Each distribution utility, or a competitive electricity provider selected in accordance with this Section XXX-5, shall offer a standard service transition rate by no later than [same date as implementation of restructuring], which, together with the transmission, distribution and transition charges, produces for such a service package a rate reduction of at least 15 percent from the comparable rate in effect on the filing date of this statute.
- (2) The total rate reduction, net proceeds from the divestiture and the net savings from stranded cost mitigation, in combination with the rate reduction implemented by or on [same date as implementation of restructuring], shall be 25 percent on or before [date one and one-half years later].
- (3) The standard service transition rate shall be offered for a transition period of seven years at prices and on terms approved by the commission. The generation services portion of the standard offer shall be provided by a competitive electricity provider chosen through a competitive bid process that is reviewed and approved by the commission, so long as the prices charged by such competitive electricity provider do not exceed the standard offer as determined by this Section XXX-5(C).⁹
- (4) If a distribution utility claims that it is unable to meet a total price reduction of 15 percent without jeopardizing its financial integrity, it shall petition the commission to explore any and all possible mechanisms and options within the limits of the constitution which may be available to the commission to achieve compliance with the provisions of this section, including, but not limited to, the authorization of a competitive electricity provider to provide the standard-offer service package.¹⁰

⁹ Ma. Stat. 1997, c. 164, § 193; Ma. G.L. c.164, § 1B(b).

¹⁰ Ma. Stat. 1997 c. 164, § 193; Ma. G. L. c. 164, § 1G (c)(3).

- C. [ALTERNATIVE to C above] Price cap; investigation. If the qualifying bids under subsection B for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to Section XXX-27, the commission shall notify the Legislature of the results of its investigation and its determination.
- D. Implementation period. Standard-offer service must be available for a minimum of seven years after opening retail sales to competition. By [one year before the proposed end date of the service], the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest. The commission shall conclude the investigation by [six months before the end date] and report its results to the Legislature pursuant to Section XXX-27.
- E. Territorial and rate class. Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

SEC. XXX-6. LIMIT ON SPREAD BETWEEN RESIDENTIAL AND OTHER RATES

A. Limit on spread between residential and industrial rates.

Whenever the average of industrial class prices for a 12-month period is less than that of residential class prices by a percentage that is greater than the percentage differential was in the calendar year 1990, the distribution utility will increase the access charge per kilowatt-hour to all industrial customers by an amount equal to the difference between the average industrial price in the aforementioned 12-month period and the average industrial price in that period had the price been the same percentage less than the average residential price that it was in 1990. The sums so collected

shall be credited to the residential access charge as an equal amount per kilowatt-hour in the subsequent 12 months.¹¹

B. Limit on spread between default and regional average rates.

Whenever the average of residential default service prices for a 12-month period is more than that of average prices in the region, the distribution utility will increase the access charge per kilowatt-hour to all non-residential default customers by an amount equal to the difference between the average residential default service price in the aforementioned 12-month period and the average system price in that period. The sums so collected shall be credited to the residential default service access charge as an equal amount per kilowatt-hour in the subsequent 12 months.¹²

C. Evaluation of rate impacts of restructuring. Prior to the termination of the standard service transition rate, the commission shall, in consultation with [specify any other necessary participants in the review], evaluate the effects of electricity restructuring on the level of residential rates, and the affordability of electric power for low-income customers.¹³

SEC. XXX-7. MUNICIPAL AGGREGATION

A. Authorization to aggregate electric and natural gas loads. Any municipality or any group of municipalities acting together within the state is hereby authorized to aggregate the electrical or natural gas loads of interested consumers within its boundaries, provided, however, that such municipalities shall not aggregate loads if such are served by an existing municipal lighting and or gas utility.¹⁴

¹¹ Conn. H.B. 5005, § 75, Public Act 98-28 (1998).

¹² Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1B(d).

¹³ Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1(4)(ii)—The Massachusetts provision specifically focuses on affordability, and requires recommendation on whether to institute a burden-based low-income-affordability rate. The model statute starts with the assumption that a burden-based rate is best, so this section has been changed to focus more broadly on whether restructuring is achieving the rate reduction objectives the Legislature has in mind for it.)

¹⁴ Note that your state may have a specific term for a municipal utility, such as a municipal light department, or light plant, or other such term, which would then

Such municipalities may enter into agreements for services to facilitate the sale and purchase of electricity, natural gas and other related services. Such service agreements may be entered into by a single city, town, county or by a group of cities, towns or counties.

- B. **Municipal aggregators not utilities.** A municipality which aggregates its electric load and operates pursuant to the provisions of this section shall not be considered a utility engaging in the wholesale purchase and resale of electric power. Providing electric power or energy services to aggregated customers within a municipality shall not be considered a wholesale utility transaction.
- C. **Procedure for securing public authorization for aggregation.** A municipality may initiate a process to aggregate electrical and natural gas loads upon authorization by vote of the legislative authority of the municipality. A referendum of voters in the municipality may be held if the council chooses.¹⁵ Upon an affirmative vote to initiate said process, a municipality establishing load aggregation pursuant to this section shall develop a plan detailing the process for review by its citizens. The plan shall provide for universal access, reliability and equitable treatment of all classes of customers and shall meet any requirements established by law. Said plan shall be filed with the commission for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations and its

have to be inserted here. Your state may also have other forms of local governmental or quasi-governmental utility operations, such as utility districts, county utilities, and the like. The model statute language can be adapted to cover any of these forms. For ease of drafting, the municipal approach is reflected in the model.

¹⁵ Your state may have some municipal law precedents that discuss the creation of municipal public power utilities; typically these have overly onerous procedures for obtaining approvals to create a municipal power utility. Municipal aggregation should not require such complex and prohibitively expensive procedures. The same type of vote used in the municipalities to authorize the municipal executive (whether the mayor, or some other officer) to make a major purchase for the municipality is all that is needed. This may be, for example, a city council vote, a board of selectmen's vote, or a town meeting vote. Remember that the service will be acquired for aggregated businesses and residents by competitive bid, and that all customers have the opportunity to opt-out of the aggregator, so there is no need for excessively cumbersome approval procedures.

funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants and termination of the program. Said plan shall not be implemented until the commission has approved a contract for a supplier that has been selected and recommended to citizens in the municipality or group of municipalities. Approval of said contract will include consideration of both price and non-price terms and elements that affect the environment, economic development and other policy issues in the public interest.

D. Participation voluntary; opt-out procedure. Participation by any retail customer in a municipal or group aggregation program shall be voluntary. A municipality may provide for automatic enrollment in its aggregation program, consistent with this section. A customer enrolled in a municipal aggregation program that is not operational on the retail access date shall receive standard-offer service in the absence of any other selection. Once enrolled in the aggregated entity, any ratepayer may opt-out according to the established plan and/or contract provisions and shall be entitled to receive standard-offer service as if originally enrolled therein.

E. Energy plans authorized; energy efficiency and renewable energy, commission review.

- (1) A municipality or group of municipalities establishing load aggregation pursuant to subsection (A) may, by a vote of its legislative body, adopt an energy plan which shall define the manner in which the municipality or municipalities may implement energy-efficiency programs and renewable energy programs that are consistent with the state energy plan or a municipal energy plan adopted pursuant to this section.
- (2) After adoption of the energy plan by such legislative body, the city or town clerk shall submit the plan to the commission to certify that it is consistent with any such state energy plan. If the plan is certified by the department, the municipality or group of municipalities shall receive and expend moneys from the state renewable energy trust fund and the demand-side management fund [system benefits charges if they exist in your state] in an amount not to exceed that contributed by retail customers within said municipality or group of municipalities.

This will not prevent said municipality or municipalities from applying for additional funds to the fund administrators.

- (3) If the commission determines said energy plan is not consistent with the state energy plan, it shall inform the municipality or municipalities within one month of the decision by written notice of the reasons why it is not consistent with the state energy plan. The municipality or municipalities may reapply at any time with an amended version of the energy plan. The municipality or municipalities shall not be prohibited from proposing for certification an energy plan which is more specific, detailed or comprehensive, or which covers additional subject areas than the state energy plan. This subsection shall not prohibit a municipality from considering, adopting, enforcing or in any other way administering an energy plan which does not comply with any such statewide goals so long as it does not violate the laws of the state.
- (4) The municipality or municipalities shall, within two years of approval of its plan or such further time as the commission may allow, provide a written notice to the commission that its plan is implemented. The commission may revoke certification of the energy plan if the municipality or municipalities fail to substantially implement the plan or if it is determined by independent audit that the funds were misspent within the time allowed under this subsection.

SEC. XXX-8. LICENSING COMPETITIVE PROVIDERS; CONSUMER PROTECTIONS; ENFORCEMENT

A. Authority to provide generation and/or sales service. In order to provide effective competition in the market for the generation and sale of electricity in the state and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section. All entities seeking to do business in the state as competitive electricity providers shall submit a license application to the commission, subject to the rules and regulations promulgated by the commission.¹⁶

¹⁶ Ma. Stat. 1997 c. 164, § 193; Ma. G. L. c. 164, § 1F(1)(iii).

B. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this state without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

- (1) evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason, and to honor contracts for purchase of electricity at wholesale and to participate in the spot market as necessary in aggregate amounts corresponding to anticipated retail sales;¹⁷
- (2) evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;
- (3) disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;
- (4) evidence of the ability to satisfy the renewable resource portfolio requirement established under Section XXX-21;
- (5) evidence of technical and managerial capacity to provide the services proposed in compliance with all applicable laws and policies of the state,¹⁸ with due consideration to the characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve;¹⁹
- (6) a description and map of the area or areas in which the applicant intends to offer service and the types of services it intends to offer, and, if the applicant intends to serve residential or small business customers in any area of the state smaller than the entirety of the service area of an existing electric utility,

¹⁷ There are two types of financial ability customers care about—the ability to make good on individual promises to customers, and the ability to make good on requirements to supply adequate power. This latter issue was dramatized in the summer of 1998 when some suppliers in the Midwest defaulted on their contracts, unable to come through with adequate power at peak times.

¹⁸ This provision is based on the entry requirements many commissions follow today to determine the qualifications of competitive providers in the telephone industry and other utility businesses.

¹⁹ Illinois P.A. 90-561, -Art. I, § 5, 220 ILCS 5/16-115(d)(1).

evidence demonstrating that the designation of this smaller area does not violate Section XXX-9(H);²⁰ and

(7) disclosure of the names and corporate addresses of all affiliates of the applicant, and the doing/business/as names the applicant will use in the state.

C. **Bonding.** The commission shall require a competitive electricity provider to file a bond with the commission as evidence of financial ability (1) to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service, and (2) compensate consumers harmed by violations of the protections mandated by this Title.

D. **Predatory marketing and gouging prohibited.** The commission may not issue a license to an applicant, and may suspend or revoke a license of a competitive electricity provider, that (1) proposes to market predominantly to low-income customers, to customers who have been disconnected from service or denied service or to otherwise vulnerable customers; and (2) whose proposed rates are significantly higher than prevailing residential rates for the same services.

E. **Misleading names prohibited.** No applicant may be granted a license to do business in the state under a name that is misleading, or that would tend to confuse a customer as to whether the customer is applying to or agreeing to take service from the applicant.²¹

F. **Licensing renewals and revocations.** Consistent with all applicable requirements of [*here insert cross-reference to state's Mini-APA language, if applicable*], the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct

²⁰ Illinois P.A. 90-561, Art. I, § 5, 220 ILCS 5/16-115(c).

²¹ This is a new clause, prompted by the emergence of at least one firm that uses d/b/a names like "I don't know" and "It doesn't matter," to trick consumers into appearing to justify taking service from them when the customer responds in this fashion to the salesperson's inquiry such as "which electric company do you want to have?"

proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

SEC. XXX-9. CONSUMER PROTECTIONS, OBLIGATIONS OF COMPETITIVE ELECTRICITY PROVIDERS

- A. Existing consumer protections to continue at a minimum.** The commission is authorized and directed to retain or make increasing protective of retail ratepayers the rules adopted by the commission and codified at Title YYY of the Code of [Name of State] Regulations, sections #, ##, ### . . . [here insert the references to the appropriate code and statute provisions] and the policies reflected in the commission's adjudication of customer complaints, and, notwithstanding anything in this chapter to the contrary, shall continue to apply them to generation and thus to all competitive electricity providers.²²
- B. Conditions of licensure: standard consumer protection provisions.** As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located:
- (1) may not terminate generation service without at least 30 days prior notice to the customer;
 - (2) must offer service to the customer for a minimum period of 30 days;
 - (3) must allow the customer to rescind selection of the competitive electricity provider orally or in writing within five days of receipt of the written disclosures required by subsection B(5) and Section XXX-13, below;
 - (4) may not telemarket services to the customer if the customer has filed with the commission a request not to receive telemarketing from competitive electricity providers or has advised the applicant upon the occasion of a telemarketing contact that he or she does not wish to receive further telephone solicitations;²³

²² Ma. Stat. 1997 c. 164, § 193; Ma. G. L. c. 164, § 1F(7).

²³ Last clause added to Maine language. The requirement that the notice be in writing is removed, because such a requirement is a major barrier to a consumer wishing to be protected from such unwanted solicitations.

- (5) must provide to the customer within 30 days of contracting for retail service a disclosure of information, as required by Section XXX-13 and rules adopted pursuant thereto, in a standard written format established by the commission;
- (6) may not mislead customers as to the terms or conditions of the competitive electricity provider's service or as to those of any other provider;²⁴
- (7) may not charge significantly more than the prevailing rates to low-income or other vulnerable residential customers for similar services available to residential customers generally in the area; and
- (8) must comply with any other provisions adopted by the commission by rule or order.

C. Disconnection restricted. A distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under Section XXX-5. No distribution utility or competitive electricity provider may disconnect or discontinue service to a customer for a disputed amount if that customer has filed a complaint which is pending with the commission.²⁵ No distribution utility or competitive electricity provider shall terminate a contract for service for nonpayment of any bill other than that of the company proposing to terminate service. Undesignated partial payments shall be applied in such a way as to, first, avoid termination of distribution service and, second, minimize charges.

D. Prepayment and other unfair requirements prohibited. No entity shall require a residential electricity customer to make a prepayment for service or to require a customer to accept time-of-day metering, arbitration of disputes, service limiters, automatic renewal periods longer than one month or a multi-year contract as a condition of obtaining or retaining service from that entity. Form

²⁴ Added prohibition on misleading customers.

²⁵ Ma. Stat. 1997 c. 164, § 193; Ma. G. L. c. 164, § 1F(2).

contracts containing any of these provisions are against public policy and are null and void, and no entity may collect for any charges thereunder.

- E. **Credit life/disability for residential bills prohibited.** No entity may sell credit life or disability insurance to insure the payment of any residential electric bill.²⁶
- F. **Return to standard offer.** A residential customer eligible for low-income discount rates shall receive the service on demand and may return to standard-offer service at any time, including from default service. An existing residential customer eligible for low-income discount on the date of start of retail access who orders service for the first time from a distribution utility shall be offered standard-offer service from that distribution utility. A residential customer eligible for low-income discount receiving standard-offer service shall be allowed to retain standard-offer service upon moving within the service territory of a distribution utility.²⁷
- G. **Limit on charges for switching; notice.** There shall be no charge to any residential customer for initiating or terminating default service, or standard-offer service, when said initiation or termination request is made after a regular meter reading. A distribution utility may impose a reasonable charge, as set by the commission through regulation, for initiating or terminating default service or standard-offer service when a customer does not make such an initiation or termination request upon the receipt of said meter reading results and prior to the receipt of the next regularly scheduled meter reading. For purposes of this subsection, there shall be a regular meter reading conducted of every residential account no less often than once every two months. Notwithstanding the foregoing, there shall be no charge when the initiation or termination is involuntary on the part of the customer.²⁸ Distribution utilities and competitive electricity providers shall prominently disclose their lawful charges for initiating and

²⁶ New provision.

²⁷ Ma. Stat. 1997 c. 164, § 193; Ma. G. L. c. 164, § 1F(4)(iii).

²⁸ Ma. Stat. 1997 c. 164, § 193; Ma. G. L. c. 164, § 1F(4)(iv).

terminating service in their advertising, marketing and billing, and at the time of initial contact with a particular customer, before any request for service or termination is effected.

- H. Redlining and other unfair discrimination prohibited.** No competitive electricity provider shall refuse to provide electric generation service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability or familial status. No competitive electricity provider shall decline to provide electric generation services to a customer for the reason that the customer is located in an economically distressed geographic area or the customer qualifies for low-income affordability or energy-efficiency services.²⁹ As a condition of a license, the commission shall prohibit each provider from declining to provide service to customers for the reason that the customers are located in economically distressed areas.³⁰
- I. Limits on miscellaneous charges, fees and penalties.** In addition to any provisions of this Act, the commission shall promulgate rules limiting any charges, fees, penalties or other conditions imposed upon a customer should he or she choose to purchase power from another competitive electricity provider during the term specified in the contract; whether a credit agency will be contacted; deposit requirements and the interest paid on deposits; due date of bills and all consequences of late-payment; consumer rights where a bill is estimated; consumer rights of third-party billing and like arrangements; consumer rights to deferred payment arrangements; limits, if any, on warranty and damages; a toll-free telephone number for service complaints; and any other fees, charges, penalties or terms and conditions of service to residential customers.³¹

²⁹ Conn. H.B. 5005, Public Act 98-28 (1998), § 29, (reference to sexual orientation removed).

³⁰ Conn. H.B. 5005, Public Act 98-28 (1998), §§ 22(g), 29.

³¹ Ma. Stat. 1997, c. 164, §193; Ma. G.L. c.164, § 1F(5)(1). See Appendix II for language of Connecticut statute, H.B. 5005, Public Act 98-28 (1998), §§ 37-65, spelling out in greater detail rights of consumers in numerous situations. Ideally, the statute would contain all the consumer rights spelled out in detail, as here, rather than a more limited set of more generally described rights, or a cross-reference to regulations or statute sections, or a mandate and authority to the commission to create specific rules.

J. Inaccurate billing, rebilling.³²

- (1) No electric utility, electric distribution utility, or competitive electricity provider that inaccurately bills a customer for service may bill or otherwise hold the customer financially liable for more than one year after the customer receives such service, unless the customer, by an affirmative act, is responsible for the inaccurate billing or prevents reasonable access to the premises where the company's meter is located by an employee of the company during business hours for the purpose of reading the meter.
- (2) Any such utility or provider that inaccurately bills a customer for service may bill or otherwise hold the customer financially liable for not more than one year after the customer receives such service, unless a delayed bill for the service (i) would deprive the customer of the opportunity to apply for or receive energy assistance or (ii) is the result of the customer's meter erroneously registering another customer's consumption, in which case the company may not bill or otherwise hold the customer liable for the service provided to another customer.
- (3) Any such utility or provider that holds a customer financially liable under this subsection shall establish a payment plan that prorates all arrearages for service the customer owes over a period of time that is no shorter than the period of time for which the customer is being held financially liable. The payment plan shall provide that no payment charged to a customer under such plan shall exceed 50 percent of the average amount that the company charged such customer for each billing period over the previous 12-month period for services received during that period.

If the protections are in the statute, as some are above and as more are in the Connecticut material adapted in Section XXX-9(J-P), they will be stronger and longer-lasting.

³² Material in subsections J through P is adapted from sections 16-259a, and 16-262c through 16-262j of the general statutes of Connecticut. Deletes telephone-specific material, and reference to accelerated back-billing in the event of any missed payments. Clarifies that customer, not third party, must deny meter access to trigger longer period of back-billing. Deletes specific privacy provision.

K. Termination of utility service for nonpayment, when prohibited.

- (1) Notwithstanding any other provision of the general statutes no electric, gas, telephone or water provider, electric utility, electric distribution utility and no municipal utility furnishing electric, gas, telephone or water service shall cause cessation of any such service by reason of delinquency in payment for such service (i) on any Friday, Saturday, Sunday, legal holiday or day before any legal holiday; (ii) at any time during which the business offices of said company or municipal utility are not open to the public; or (iii) within one hour before the closing of the business offices of said company or municipal utility.
- (2) Extreme weather prohibition.
 - (i) From November first to April fifteenth,³³ inclusive, no electric provider, electric utility, electric distribution utility and no municipal utility furnishing electricity shall terminate or refuse to reinstate residential electric service in hardship cases where the customer lacks the financial resources to pay his or her entire account.
 - (ii) From November first to April fifteenth, inclusive, no gas company and no municipal utility furnishing gas shall terminate or refuse to reinstate residential gas service in hardship cases where the customer uses such gas for heat and lacks the financial resources to pay his or her entire account.
 - (iii) Except a gas company that, between April sixteenth and October thirty-first, terminated gas service to a residential customer who uses gas for heat and who, during the previous period of November first to April fifteenth, had gas service maintained because of hardship status, may refuse to reinstate the gas service from November first to April fifteenth, inclusive, only if the customer has failed to pay, since April fifteenth, the lesser of: (a) 20 percent of the outstanding principal balance owed the gas company as of the date of termination, (b) one hundred dollars, or (c) the

³³ In warm-temperature states, the summer period should be substituted throughout this subsection.

minimum payments due under the customer's amortization agreement.

- (3) Notwithstanding any other provision of the general statutes to the contrary, no electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electricity or gas shall terminate or refuse to reinstate residential electric or gas service where the customer lacks the financial resources to pay his or her entire account and for which customer or a member of the customer's household the termination or failure to reinstate such service would create a life-threatening situation.
- (4) During any period in which a residential customer is subject to termination, an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electricity or gas shall provide such residential customer whose account is delinquent an opportunity to enter into a reasonable amortization agreement with such company to pay such delinquent account and to avoid termination of service. Such amortization agreement shall permit such customer adequate opportunity to apply for and receive the benefits of any available energy-assistance program. An amortization agreement shall be subject to amendment on customer request if there is a change in the customer's financial circumstances.
- (5) As used in this section,
 - (i) "household income" means the combined income over a 12-month period of the customer and all adults, except children of the customer, who are and have been members of the household for six months or more; and
 - (ii) "hardship case" includes, but is not limited to: (a) a customer receiving local, state or federal public assistance; (b) a customer whose sole source of financial support is Social Security, Veterans' Administration or unemployment compensation benefits; (c) a customer who is head of the household and is unemployed, and the household income is less than 300 percent of the poverty level determined by the federal government; (d) a customer who is seriously ill or who has a household member who is seriously ill; (e) a customer whose income falls below 125

percent of the poverty level determined by the federal government and (f) a customer whose circumstances threaten a deprivation of food and the necessities of life for himself or dependent children if payment of a delinquent bill is required.

(6) Energy-assistance coordination.

- (i) In order for a residential customer of a gas public service company to be eligible to have any moneys due and owing deducted from the customer's delinquent account pursuant to this subdivision, the company furnishing electricity or gas shall require that the customer (a) apply and be eligible for benefits available under the [Name of State] energy-assistance program or [any state-appropriated fuel-assistance program]; (b) authorize the company to send a copy of the customer's monthly bill directly to any energy-assistance agency for payment and (c) enter into and comply with an amortization agreement, which agreement is consistent with decisions and policies of the commission. Such an amortization agreement shall reduce a customer's payment by the amount of the benefits reasonably anticipated from the [Name of State] energy-assistance program, state-appropriated fuel-assistance program or other energy-assistance sources.
- (ii) Unless the customer requests otherwise, the company shall budget a customer's payments over a 12-month period with an affordable increment to be applied to any arrearage, provided such payment plan will not result in loss of any energy-assistance benefits to the customer.
- (iii) If a customer authorizes the company to send a copy of his monthly bill directly to any energy-assistance agency for payment, the energy-assistance agency shall make payments directly to the company.
- (iv) If, on April thirtieth, a customer has been in compliance with the requirements of subparagraph (6)(i) of this subsection, during the period starting on the preceding November first, or from such time as the customer's account becomes delinquent, the company shall deduct from such customer's delinquent account an additional amount equal to the amount of money paid by the

customer between the preceding November first and April thirtieth and paid on behalf of the customer through the energy-assistance program [and any state-appropriated fuel-assistance program]. Any customer in compliance with the requirements of subparagraph (6)(i) of this subsection on April thirtieth who continues to comply with an amortization agreement through the succeeding October thirty-first, shall also have an amount equal to the amount paid pursuant to such agreement and any amount paid on behalf of such customer between May first and the succeeding October thirty-first deducted from the customer's delinquent account. In no event shall the deduction of any amounts pursuant to this subdivision result in a credit balance to the customer's account.

- (v) No customer shall be denied the benefits of this subsection due to an error by the company. The commission shall allow the amounts deducted from the customer's account pursuant to the implementation plan, described in subdivision (vi) of this subsection, to be recovered by the company in its rates as an operating expense, pursuant to said implementation plan. If the customer fails to comply with the terms of the amortization agreement or any decision of the department rendered in lieu of such agreement and the requirements of subparagraph (6)(i) of this subsection, the company may terminate service to the customer, pursuant to all applicable regulations, provided such termination shall not occur between November first and April fifteenth.
- (vi) Each utility and competitive electricity provider shall submit to the commission annually, on or before July first, an implementation plan which shall include information concerning amortization agreements, counseling, reinstatement of eligibility, rate impacts and any other information deemed relevant by the commission. The commission may approve or modify such plan within 90 days of receipt of the plan. If the commission does not take any action on such plan within 90 days of its receipt, the plan shall automatically take effect at the end of the 90-day period, provided the commission may extend such period

for an additional 30 days by notifying the gas public service company before the end of the 90-day period. Any amount recovered by a company in its rates pursuant to this subsection shall not include any amount approved by the commission as an uncollectible expense. The commission may deny all or part of the recovery required by this subsection if it determines that the company seeking recovery has been imprudent, inefficient or acting in violation of statutes or regulations regarding amortization agreements.

- (7) All electric and gas utilities, electric distribution utilities, competitive electricity providers and municipal utilities furnishing electricity or gas shall collaborate in developing, subject to approval by the commission, standard provisions for the notice of delinquency and impending termination under subsection (1) of Section XXX-9(K). Each such provider and utility shall place on the front of such notice a provision that the company or utility may not effect termination of service to a residential dwelling for nonpayment of disputed bills during the pendency of any complaint. In addition, the notice shall state that the customer must pay current and undisputed bill amounts during the pendency of the complaint.
- (8) At the beginning of any discussion with a customer concerning a reasonable amortization agreement, any such provider or utility shall inform the customer:
 - (i) of the availability of a process for resolving disputes over what constitutes a reasonable amortization agreement;
 - (ii) that the provider or utility will refer such a dispute to one of its review officers as the first step in attempting to resolve the dispute;
 - (iii) that the provider or utility may not effect termination of service to a residential dwelling, or in the case of a provider, the provider's contract with the customer, for nonpayment of a delinquent account during the pendency of any complaint, investigation, hearing or appeal initiated by the customer, unless the customer fails to pay undisputed bills, or undisputed portions of bills, for service received during such period; and
 - (iv) of the availability of all public and private energy-conservation programs, for hardship cases, including

programs sponsored or subsidized by such companies and utilities, eligibility criteria, where to apply and the circumstances under which such programs are available without cost.

- (9) The commission shall adopt regulations to carry out the provisions of this subsection. Such regulations shall include, but not be limited to, criteria for determining hardship cases and for reasonable amortization agreements, including appeal of such agreements, for categories of customers.³⁴
- (10) Each electric and gas utility, electric distribution utility, competitive electricity provider and municipal utility shall, not later than December first, annually, submit a report to the commission and the Legislature indicating:
 - (i) the number of customers in each of the following categories and the total delinquent balances for such customers as of the preceding April fifteenth;
 - (ii) customers who are hardship cases and (a) who made arrangements for reasonable amortization agreements, (b) who did not make such arrangements and (c) customers who are non-hardship cases and who made arrangements for reasonable amortization;
 - (iii) (a) the number of heating customers receiving energy assistance during the preceding heating season and the total amount of such assistance and (b) the total balance of the accounts of such customers after all energy assistance is applied to the accounts;
 - (iv) the number of hardship cases reinstated between November first of the preceding year and April fifteenth of the same year, the number of hardship cases terminated between April fifteenth of the same year and November first and the number of hardship cases reinstated during each month from April to November, inclusive, of the same year;
 - (v) the number of reasonable amortization agreements executed and the number breached during the same year by (a) hardship cases and (b) non-hardship cases; and
 - (vi) the number of accounts of (a) hardship cases and (b) non-hardship cases for which part or all of the outstanding

³⁴ Deleted reference to interest on unpaid bills.

balance is written off as uncollectible during the preceding year and the total amount of such uncollectibles.

- (11) Nothing in this section shall prohibit an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility from terminating residential utility service upon request of a customer or in accordance with Section XXX-9(K) upon default by a customer on an amortization agreement or collecting delinquent accounts through legal processes, including the processes authorized by section.

L. Notice of termination of residential service or contract; process.³⁵

- (1) No electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric, gas or water service may terminate such service to a residential dwelling on account of nonpayment of a delinquent account unless such company or municipal utility first gives notice of such delinquency and impending termination by first-class mail addressed to the customer to which such service is billed, at least 30 calendar days prior to the proposed termination, except that if an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric or gas service has issued a notice under this subsection but has not terminated service prior to issuing a new bill to the customer, such company or municipal utility may terminate such service after mailing the customer an additional notice of the impending termination, by certified mail, at least seven calendar days prior to the termination. In no event shall such company or municipal utility terminate service prior to the date of the proposed termination in the initial termination notice. For purposes of this subsection, the 30-day period and seven-day period shall commence on the date such notice is mailed. If such company or municipal utility does not terminate service within 120 days after mailing the initial notice of termination, such company or municipal utility shall give the customer a new notice at least 30 days prior to termination. Every termination

³⁵ From Connecticut general statutes, § 16-262d.

notice issued by a utility, electric distribution utility, competitive electricity provider or municipal utility shall contain or be accompanied by an explanation of the rights of the customer provided in subsection (3) of Section XXX-9(L).

- (2) No such company or municipal utility shall effect termination of service for nonpayment during such time as any resident of a dwelling to which such service is furnished is seriously ill, if the fact of such serious illness is certified to such company or municipal utility by a registered physician within such period of time after the mailing of a termination notice pursuant to subsection (1) of Section XXX-9(L) as the commission may by regulation establish, provided the customer agrees to amortize the unpaid balance of his account over a reasonable period of time and keeps current his account for utility service as charges accrue in each subsequent billing period.
- (3) No such company or municipal utility shall effect termination of service to a residential dwelling for nonpayment during the pendency of any complaint, investigation, hearing or appeal initiated by a customer within such period of time after the mailing of a termination notice pursuant to subsection (1) of this section as said commission may by regulation establish.
- (4) Any customer who has initiated a complaint or investigation under subsection (C) of this section shall be given an opportunity for review of such complaint or investigation by a review officer of the company or municipal utility other than a member of such company's or municipal utility's credit staff, provided the commission may waive this requirement for any company or municipal utility employing fewer than 25 full-time employees, which review shall include consideration of whether the customer should be permitted to amortize the unpaid balance of his account over a reasonable period of time. No termination shall be effected for any customer complying with any such amortization agreement, provided such customer also keeps current his account for utility service as charges accrue in each subsequent billing period.
- (5) Any customer whose complaint or request for an investigation has resulted in a determination by a company or municipal utility which is adverse to him may appeal such determination to the commission or a hearing officer appointed by the commission.

- (6) If, following the receipt of a termination notice or the entering into of an amortization agreement, the customer makes a payment or payments amounting to 20 percent of the balance due, the utility, electric distribution utility or competitive electricity provider shall not terminate service without giving notice to the customer, in accordance with the provisions of this section, of the conditions the customer must meet to avoid termination, but such subsequent notice shall not entitle such customer to further investigation, review or appeal by the company, municipal utility or commission.

M. Notice furnished tenants by utility regarding intended termination.³⁶

- (1) Notwithstanding the provisions of subsection K, wherever an owner, agent, lessor or manager of a residential dwelling is billed directly by an electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or by a municipal utility for utility service furnished to such building not occupied exclusively by such owner, agent, lessor or manager, and such company or municipal utility has actual or constructive knowledge that the occupants of such dwelling are not the persons to whom the company or municipal utility usually sends its bills, such company or municipal utility shall not terminate such service for nonpayment of a delinquent account owed to such company or municipal utility by such owner, agent, lessor or manager unless:
- (i) such company or municipal utility makes a good faith effort to notify the occupants of such building of the proposed termination by the means most practicable under the circumstances and best designed to provide actual notice; and
 - (ii) such company or municipal utility provides an opportunity, where practicable, for such occupants to receive service in their own names without any liability for the amount due while service was billed directly to the lessor, owner, agent or manager and without the necessity for a security deposit, provided, if it is not practicable for

³⁶ From Connecticut general statutes, § 16-262e.

such occupants to receive service in their own names, the company or municipal utility shall not terminate service to such residential dwelling but may pursue the remedy provided in subsection M.

- (2) Whenever a company or municipal utility has terminated service to a residential dwelling whose occupants are not the persons to whom it usually sends its bills, such company or municipal utility shall, upon obtaining knowledge of such occupancy, immediately reinstate service and thereafter not effect termination unless it first complies with the provisions of subsection (1) of Section XXX-9(M).
- (3) The owner, agent, lessor or manager of a residential dwelling shall be liable for the costs of all electricity, gas, water or heating fuel furnished by a public service company, municipal utility or heating fuel dealer to the building, except for any service furnished to any dwelling unit of the building on an individually metered or billed basis for the exclusive use of the occupants of that dwelling unit. If service is not provided on an individually metered or billed basis and the owner, agent, lessor or manager fails to pay for such service, any occupant who receives service in his own name may deduct, in accordance with the provisions of subsection (4) of Section XXX-9(M), a reasonable estimate of the cost of any portion of such service which is for the use of occupants of dwelling units other than such occupant's dwelling unit.
- (4) Any payments made by the occupants of any residential dwelling pursuant to subsection (1) or (3) of Section XXX-9(M) shall be deemed to be in lieu of an equal amount of rent or payment for use and occupancy and each occupant shall be permitted to deduct such amounts from any sum of rent or payment for use and occupancy due and owing or to become due and owing to the owner, agent, lessor or manager.
- (5) Wherever a company or municipal utility provides service pursuant to subdivision (ii) of subsection (1) of Section XXX-9(M), the company or municipal utility shall notify each occupant of such building in writing that service will be provided in the occupant's own name. Such writing shall contain a conspicuous notice in boldface type stating, "NOTICE TO OCCUPANT. YOU MAY DEDUCT THE

FULL AMOUNT YOU PAY (name of company or municipal utility) FOR (type of service) FROM THE MONEY YOU PAY YOUR LANDLORD OR HIS AGENT.”

- (6) The owner, agent, lessor or manager shall not increase the amount paid by such occupant for rent or for use and occupancy in order to collect all or part of that amount lawfully deducted by the occupant pursuant to this section.
- (7) Nothing in this section shall be construed to prevent the company, municipal utility, heating fuel dealer or occupant from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

N. Petition for receiver of rents; hearing; appointment; duties.

- (1) Receivership conditions, process.
 - (i) Upon default of the owner, agent, lessor or manager of a residential dwelling who is billed directly by an electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or by a municipal utility for utility service furnished to such building, such company or municipal utility may petition the Superior Court, or a judge thereof, for appointment of a receiver of the rents or payments for use and occupancy for any dwelling for which the owner, agent, lessor or manager is in default.
 - (ii) The court or judge shall forthwith issue an order to show cause why a receiver should not be appointed, which shall be served upon the owner, agent, lessor or manager or his agent in a manner most reasonably calculated to give notice to such owner, agent, lessor or manager as determined by such court or judge, including, but not limited to, a posting of such order on the premises in question. A hearing shall be had on such order no later than 72 hours after its issuance or the first court day thereafter. The sole purpose of such a hearing shall be to determine whether there is an amount due and owing between the owner, agent, lessor or manager and the company or municipal utility.
 - (iii) The court shall make a determination of any amount due and owing and any amount so determined shall constitute

a lien upon the real property of such owner. A certificate of such amount may be recorded in the land records of the town in which such property is located describing the amount of the lien and the name of the party in default. When the amount due and owing has been paid, the company or municipality shall issue a certificate discharging the lien and shall file the certificate in the land records of the town in which such lien was recorded.

- (iv) The receiver appointed by the court shall collect all rents or payments for use and occupancy forthcoming from the occupants of the building in question in place of the owner, agent, lessor or manager. The receiver shall pay the petitioner or other supplier, from such rents or payments for use and occupancy, for electric, gas, telephone, water or heating oil supplied on and after the date of his appointment.
- (v) The owner, agent, lessor or manager shall be liable for such reasonable fees and costs determined by the court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service and heating oil deliveries has been made. The owner, agent, lessor or manager shall be liable to the petitioner for reasonable attorney's fees and costs incurred by the petitioner, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service and heating oil deliveries has been made and after payments of reasonable fees and costs to the receiver.
- (vi) Any moneys from rental payments or payments for use and occupancy remaining after payment for current electric, gas, telephone and water service or heating oil deliveries, and after payment for reasonable costs and fees to the receiver, and after payment to the petitioner for reasonable attorney's fees and costs, shall be applied to any arrearage found by the court to be due and owing the company or municipal utility from the owner, agent, lessor or manager for service provided such building. Any

moneys remaining thereafter shall be turned over to the owner, agent, lessor or manager. The court may order an accounting to be made at such times as it determines to be just, reasonable and necessary.

- (2) Any receivership established pursuant to subsection (1) of Section XXX-9(N) shall be terminated by the court upon its finding that the arrearage which was the subject of the original petition has been satisfied, or that all occupants have agreed to assume liability in their own names for prospective service supplied by the petitioner, or that the building has been sold and the new owner has assumed liability for prospective service supplied by the petitioner.
- (3) Nothing in this section shall be construed to prevent the petitioner from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.
- (4) Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any occupant of a building subject to an order appointing a receiver shall be found, after due notice and hearing, to be in contempt of court.
- (5) If a proceeding is initiated under any proceedings relative to repairs to residential rental property under court supervision, or if a receiver of rent or use and occupancy payments shall be made pursuant to such proceeding or action without regard to whether such proceeding or action is initiated before or after a receivership is established under this section, and such proceeding or action shall take priority over a receivership established under this section in regard to expenditure of such rent or use and occupancy payments.
- (6) Any willful or malicious violation of subsections M and N by any agent, owner, lessor or manager of residential rental property shall be punishable by a fine of not more than 500 dollars or imprisonment for not more than 30 days or both.³⁷
- (7) Nothing in subsections M and N, inclusive, shall be construed to prevent the occupant of such building from pursuing any

³⁷ From Connecticut general statutes Sec. 16-262g. Reference to utilities deleted, as material is covered in Sections XXX-8 and XXX-10.

other action or remedy at law or equity that it may have against the owner, agent, lessor, manager, company or municipal utility.³⁸

O. **Nonpayment by absent spouse.**³⁹ The commission may adopt regulations setting forth the terms and conditions under which an electric, gas, telephone and water utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric, gas or water service may be prohibited from terminating service to a residential dwelling on account of nonpayment of a delinquent account in the name of the former spouse or spouse of the person who occupies the dwelling, if the marriage of such persons has been dissolved or annulled or such persons are legally separated or have an action for dissolution or annulment of a marriage or for legal separation pending, pursuant to [cross-reference provisions on divorce and separation].

P. **Refusal of residential utility service.**⁴⁰

- (1) No public utility, electric distribution utility, competitive electricity provider or municipal utility shall refuse to provide electric, gas or water service to a residential customer based on the financial inability of such customer to pay a security deposit for such service. The commission shall adopt regulations to carry out the provisions of this subsection.
- (2) No telephone company shall refuse to provide telecommunications service to a candidate or a political committee on the grounds that such candidate, such committee or the person acting on behalf of such committee has offered to pay the security deposit for such service with a credit card.
- (3) Each such company shall pay interest on any security deposit it receives from a customer at the average rate paid on savings deposits by insured commercial banks as published from time to time in the Federal Reserve Board bulletin and rounded to

³⁸ From Connecticut general statutes Sec. 16-262h. Reference to utilities deleted, as material is covered in Sections XXX-8 and XXX-10.

³⁹ From Connecticut general statutes, Sec. 16-262i.

⁴⁰ From Connecticut general statutes, Sec. 16-262j.

the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half percent, and the rate for each calendar year shall be not less than the deposit index as defined in subsection (4) of Section XXX-9(P) for that year and rounded to the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half percent.

- (4) The deposit index for each calendar year shall be equal to the average rate paid on savings deposits by insured commercial banks as last published in the Federal Reserve Board bulletin in November of the prior year. The Commissioner of Banking shall determine the deposit index for each calendar year and publish such deposit index in the Department of Banking news bulletin no later than December fifteenth of the prior year. For purposes of this section, "Federal Reserve Board bulletin" means the monthly survey of selected deposits published as a special supplement to the Federal Reserve Statistical Release Publication H.6 published by the Board of Governors of the Federal Reserve System or, if such bulletin is superseded or becomes unavailable, a substantially similar index or publication.

Q. Additional requirements. The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider to the extent not specifically provided in this chapter.

SEC. XXX-10. CONSUMER PROTECTION: RECOURSE AND ENFORCEMENT

- A. Dispute resolution.** The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established under or pursuant to sections XXX-8, 9, 11 and 12.
- B. Restitution.** The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

- C. **Enforcement.** The commission through its own counsel or through the Attorney General may apply to the [Superior Court of any county] [*identify trial court of broadest jurisdiction*] of the state to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it. The commission shall, in coordination with the office of consumer affairs,⁴¹ promulgate rules and regulations which shall include a provision that any violation of said rules and regulations shall be deemed an unfair and deceptive act.⁴²
- D. **Notice to Attorney General.** If the commission has reason to believe that any competitive electricity provider, distribution utility, or transmission utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this state or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.
- E. **Private right of action.** A customer or applicant for service may bring an action at law or equity to enforce his rights under this statute. Nothing in this statute shall be construed to prevent any customer or applicant for service from pursuing any remedy available at law or equity. Nothing in this statute shall be construed to require any customer or applicant to exhaust administrative remedies before pursuing non-administrative remedies.
- F. **Penalties.** In an adjudicatory proceeding, the commission may impose a penalty of up to \$25,000 for each violation of this section or any consumer protection rule adopted under this section, provided, however, that the maximum civil penalty shall not exceed \$2,000,000. Each day a violation continues constitutes a separate offense, provided,

⁴¹ Insert name of comparable consumer protection agency in your state.

⁴² Ma. Stat. 1997 c. 164, § 244; Ma. G.L. c.164, § 102C(b). Need to use language from, and cross reference to, appropriate unfair and deceptive acts and practices (UDAP) statute in statute (mini-FTC legislation). See Appendix III for list of such statutes by state. Effect should be to give consumers a stronger avenue of recourse in the courts, including treble damages and attorneys fees in many states.

however, the maximum civil penalty shall not exceed \$2,000,000.⁴³ Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Intervenor Reimbursement Fund, under Section XXX-28.

G. **Cease and desist orders.** The commission may issue a cease and desist order.

- (1) Following an adjudicatory hearing held in conformance with [*insert identification of type of hearing needed under state statutes, and cross-reference to Mini-APA*], if the commission finds that any competitive electricity provider, distribution utility or transmission utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to [*cross-reference to Mini-APA section*]; or
- (2) In an emergency, without in force and effect until further order of the hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues until otherwise determined by the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

⁴³ Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(7)—for violations of Ma. G. L. c. 164, §§ 1A—1H, or c.93A (Unfair and Deceptive Acts and Practices). Massachusetts' overall limitation is \$1,000,000. The model statute proposes to place penalty receipts in a fund to be used to support intervention by consumers and consumer groups in proceedings regarding restructuring before the commission.

SEC. XXX-11. PRIVACY AND UNWANTED SOLICITATIONS

- A. **Privacy/unwanted solicitations.** To protect a customer's right to privacy from unwanted solicitation, each distribution utility shall distribute to each customer a form approved by the commission which the customer shall submit to his distribution utility in a timely manner if he wants his name, address, telephone number and rate class to be released to competitive electric providers. On and after [transition date], each distribution utility shall make available to all competitive electric providers customer names, addresses, telephone numbers, if known, and rate class, of those customers from whom the distribution utility has received a form from a customer requesting that such information be released. Additional information about a customer for marketing purposes shall not be released to any electric provider unless a customer signs a release which shall be made available by the commission.⁴⁴ No customer information will be provided to a third party without specific written permission of the customer.
- B. **Access to load data.** Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission or distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

SEC. XXX-12. UNAUTHORIZED SWITCHING, UNAUTHORIZED CHARGES PROHIBITED; PENALTIES

- A. **Unauthorized switching.** Except as provided in sections [cross-reference municipal aggregation and RMA sections], it shall be unlawful for a competitive electricity provider to provide power or other services to such a customer without first obtaining said affirmative choice from the customer signing of a letter of authorization, third-party verification or the completion of a toll-free call made by the customer to an independent third party. For

⁴⁴ Conn. H.B. 5005, § 26(a), Public Act 98-28 (1998). Connecticut statute is negative check-off, requiring customer to ask to be taken off lists, failing which the information is made public. The model statute, by contrast, requires an affirmative statement in writing from the customer asking for information to be released to providers.

the purposes of this section, "letter of authorization" shall mean, (1) a separate document whose sole purpose is to authorize switching of a customer's competitive electricity provider, and which (2) shall not be combined with inducements of any kind on the same document and (3) at a minimum, the letter of authorization must be printed with readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms: (a) that the consumer understands that only the competitive electricity provider may be designated and (b) that the consumer understands that signing the letter may involve a charge to the consumer for changing competitive electricity providers.

Letters of authorization shall not suggest or require that a consumer take some action in order to retain the consumer's current competitive electricity provider. Upon switching of a customer's service provider, there shall be included in the customer's bill for distribution service an acknowledgment of the service switch, along with information on how to file a complaint regarding an unauthorized switch.⁴⁵

- B. Unauthorized charges.** No entity shall charge for service to a customer that the customer has not ordered.
- C. Complaints; penalties.** A customer may initiate a complaint that his retail electricity service has been switched to another competitive electricity provider without his prior authorization. Said complainant shall file the complaint with the commission within 30 days after the statement date of the notice indicating that the customer's retail electricity service has been switched.⁴⁶ The commission may, after a full hearing and determination by the commission that such entity knowingly, intentionally, maliciously or fraudulently switched the service of more than two customers in a one-month period, be prohibited from selling electricity in the state for a period of up to one year⁴⁷ for a violation of this Section XXX-12, and a civil penalty

⁴⁵ Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(8)(a).

⁴⁶ Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(8) (b)—detailed procedure continues in Massachusetts statute.

⁴⁷ Added category of "knowing" violations, and reduced minimum period of violations to one month and minimum number slammed or crammed to two. Ma. Stat.

not to exceed \$40,000 for the first offense and not less than \$150,000 for any subsequent offense per customer.⁴⁸ Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Intervenor Reimbursement Fund, under Section XXX-28.

SEC. XXX-13. DISCLOSURE, BILLING INFORMATION AND LABELING

- A. **Comparative information to make informed purchases.** The commission shall promulgate uniform labeling regulations which shall be applicable to all competitive electricity providers as a condition of licensure, which shall require disclosure, without limitation, of the information required by this section, together with price data, information on price variability and customer service information, in such a format as to permit reasonable comparisons between price and service offerings of competitive electricity providers.
- B. **Format of disclosures; limitation on misleading disclosures.**
- (1) The commission shall prescribe standard typical billing determinants, and competitive electricity providers shall compute the total bill per month per customer for each such example of standard typical billing determinants. Such information shall be disclosed in bold print in print advertisements and on any periodic billing materials, or through clear and unhurried spoken language in the case of television or radio advertisements.⁴⁹
 - (2) Competitive electricity providers shall comply with federal and state laws governing unfair advertising and labeling.⁵⁰

1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(8)(e).

⁴⁸ Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(8)(d). Another good source for language is the bill filed in 1998 by Senator McCain of Arizona in the United States Senate on telecommunications cramming and slamming practices.

⁴⁹ Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(5)(ii) (requirement of unhurried speech added).

⁵⁰ Ma. Stat. 1997, c. 164, § 193, § 1F(6).

- (3) A competitive electricity provider shall not advertise or disclose the price of electricity in such a manner as to mislead a reasonable person into believing that the electric generation services portion of the bill will be the total bill amount for the delivery of electricity to the customer's location. When advertising or disclosing the price for electricity, the competitive electricity provider shall also disclose the distribution utility's average current charges, including the competitive transition charge and system benefits charges, inclusive, for that customer class.⁵¹
- C. **Notice to customers of terms and conditions.** All distribution utilities and competitive electricity providers shall notify their customers in writing of the terms of their agreement to provide service at the time service is initiated.⁵²
- D. **Disclosure of rates, terms, conditions and other consumer information.** Before service is initiated by a competitive electricity provider to any customer, the competitive electricity provider shall disclose information on rates and other information to a customer in a written statement which the customer may retain. Each competitive electricity provider shall annually mail a booklet containing this information to each of its residential customers.
- E. **Commission requirements.** The commission shall promulgate such rules and regulations prescribing additional information to be disclosed by a competitive electricity provider company in any advertising or marketing.⁵³
- F. **Notice of standard-offer and low-income discount services.** Each distribution utility shall periodically notify all customers of the availability and method of obtaining low-income discount rates and standard-offer service.
- G. **Commission to make available information.** The commission shall maintain and make available to customers upon request, a list

⁵¹ Conn. H.B. 5005, § 26(f), Public Act 98-28 (1998).

⁵² Ma. Stat. 1997, c. 164, § 193, § 1F(2)(i).

⁵³ Ma. Stat. 1997, c. 164, § 193, § 1F(5)(iii).

of competitive electricity providers and the following information about each such electric provider:

- (1) rates and charges provided by the electric provider;
- (2) applicable terms and conditions of a contract for electric generation services provided by the electric provider;
- (3) the percentage of each provider's total electric output derived from each of the categories of energy sources listed in this subsection and those otherwise specified by the commission;
- (4) the rates at which each facility operated by or under long-term contract to the provider emits nitrogen oxides, sulfur oxides, carbon dioxide, carbon monoxide, radionuclides, particulates and heavy metals, and the analysis of environmental characteristics of each such category of energy source and to the extent such information is unknown, the estimated percentage of the provider's total electric output for which such information is unknown, along with the word "unknown" for that percentage;
- (5) a record of customer complaints and the disposition of each complaint; and
- (6) any other information the commission determines will assist customers in making informed decisions when choosing a competitive electric provider. The commission shall update the information quarterly. The commission shall publish such information in standard format so that a customer can readily understand and compare the services provided by each competitive electricity provider.⁵⁴ The commission shall publish this information and make its publication broadly available.

H. Rules on filings by competitive electricity providers. In adopting by rule requirements for filing and disclosure of information by competitive electricity providers pursuant to this section, the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:

- (1) a statement of average prices at representative levels of kilowatt-hour usage in the most recent six-month period;

⁵⁴ Conn. H.B. 5005, § 27(b), Public Act 98-28 (1998).

- (2) a description of the average duration of supply arrangements with retail customers in the most recent six-month period;
- (3) an explanation addressing whether pricing arrangements are fixed or will vary over a specified time period;
- (4) a statement indicating percentages of electricity supply over the recent six-month period under categories of generation, including, but not limited to, oil-fired, nuclear, hydroelectric, coal, biomass or other renewable resources and regional spot market purchases; and
- (5) a listing of expected air emissions and a comparison of those emissions to a regional average, as determined by the commission, for nitrous oxide, sulfur dioxide, mercury, fine particulates, radionuclides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent six-month period.

I. **Price reporting and commission price information dissemination.** Each distribution utility shall report monthly to the commission the average of prices charged by the distribution utility and all competitive electricity suppliers, weighted by the relative numbers of kilowatt-hours of generation sold by each entity in the case where more than one entity supplies generation service, by customer class and separately by subclass within the residential class, for default service and standard-offer service, respectively, in the service area of the distribution utility, on a bundled basis, and broken out between distribution, transmission and generation services, respectively. The commission shall develop and issue, by March first of each year or such other date as the commission shall select, a report which shall detail the status in the previous calendar year of pricing disparities between customer classes and separately within the residential class, regions of the state and distribution companies and competitive electricity providers serving consumers, provided, however, that said report shall also include a comparison of each customer class in the state as compared with the same classes in each of the 49 other states and the District of Columbia.⁵⁵

⁵⁵ Based on the Maine statute, and on Ma. Stat. 1997 c. 164, § 48; Ma. G.L. c.25A, § 7.

J. **Unbundled bills.** Beginning [as soon after passage of the legislation as the commission can process a rate and cost allocation case], distribution utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By [a date soon after passage, and long enough before the ultimate unbundling deadline to permit commission processing of the contested case], each distribution utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by [shortly before the issuance of unbundled bills must begin].⁵⁶

SEC. XXX-14. DIVESTITURE OF GENERATION⁵⁷

A. **Divestiture required; exceptions⁵⁸** On or before [transition date], each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

- (1) contract with a qualifying facility or with a demand-side management or conservation provider, broker or host;
- (2) ownership interest in a nuclear power plant;⁵⁹ or

⁵⁶ Maine Revised Statutes, Title 35-A, § 3213.

⁵⁷ Maine Revised Statutes, Title 35-A, § 3204. See also Appendix II, an adapted version of the Connecticut language on stranded cost recovery (eliminating the securitization references). But see *Stranded Costs and Market Structures in the Electric Industry*, a white paper prepared by Tellus Institute for AARP, 1997, in which the authors argue that requiring divestiture (sale) of assets and using the sales price as the basis for calculating stranded costs has a number of disadvantages. The Connecticut language contains a number of provisions that can be adapted to the situation where you decide to use a so-called "administrative" determination of stranded costs, rather than requiring a divestiture sale and obtaining a "market" determination of such costs.

⁵⁸ Maine exemption for ownership interest in a facility located outside the United States is removed, to prevent cross-subsidization of foreign investments with distribution utility ratepayer funds, particularly stranded cost recovery, which increases cash flow.

⁵⁹ This, of course, only applies in a state whose utilities own nuclear generation. It is also a highly political question, and it involves a consideration of whether the Nuclear Regulatory Commission (NRC) would permit divestiture, and whether a buyer could be found. The NRC will not issue a license to a plant unless the

- (3) ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission or distribution utility in an efficient manner, so long as the commission determines that continued ownership of such generation asset will not significantly impede competition.

No later than [three to six months after passage of the bill], each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter, including the conditions for competition set forth in Section XXX-2(E), and the impact of such divestiture on horizontal and vertical market power, and on accuracy and equity in treatment of stranded costs. By [six to nine months after passage of the bill, depending on choice of filing date], the commission shall issue an order approving the plan, rejecting the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

- B. **Sale of capacity and energy required.**⁶⁰ The commission by rule shall require each investor-owned electric utility after [date around time of transition] to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to distributed capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission or distribution utility in an

operator is financially secure. As for whether nuclear plants have a market, there are indications pro and con, from recent transactions for shares in such plants. The language here reflects Maine's handling of these issues, but need not be how every other state treats the question.

⁶⁰ Maine option to request extension of time for sale is deleted—evidence is growing that the longer a company waits to sell its generation, the lower the sales price will be. Thus, the risk of losing that premium of sales price over book enjoyed by companies that have divested so far is added to the risk of delaying the creation of a truly competitive market.

efficient manner, taking into account considerations of life cycle cost, environmental impacts and reliability.⁶¹

- C. **Maximizing sales value.** In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits an electric utility from renegotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By [date six months after passage of statute], the commission shall provisionally adopt all rules required under this subsection.
- D. **Ownership of generation prohibited.** Except as otherwise permitted under this chapter, on or after [transition date], investor-owned transmission or distribution utilities may not own, have a financial interest in or otherwise control generation or generation-related assets.
- E. **Generation assets permitted.** On or after [transition date], notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission or distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission or distribution utility in an efficient manner.

SEC. XXX-15. DEFAULT SERVICE

- A. **Designated default service provider.** The commission may provide for the selection of an entity through competitive bidding to provide default service to customers who, for any reason, have stopped receiving electric generation service or other competitive services, provided, however, that the default service rate so procured shall not exceed the average monthly market price of electricity or other competitive service, respectively and provided, further, that all bids shall include payment options with rates that

⁶¹ Adds to Maine exemption the limitation that only distributed capacity and energy may be acquired by a monopoly distribution utility, and sets out the standards of least cost, environmental mitigation, and reliability.

remain uniform for periods of up to six months. The commission may authorize a competitive electricity provider to provide default service.⁶²

- B. **Reallocation of excess charges.** Whenever the average of residential default service prices for a 12-month period is more than the average of system-average prices for the same period, the distribution utility will increase the access charge per kilowatt-hour to all non-residential default customers by an amount equal to the difference between the average residential default service price in the aforementioned 12-month period and the average system price in that period. The sums so collected shall be credited to the residential default service charges as an equal amount per kilowatt-hour in the subsequent 12 months.

SEC. XXX-16. MARKETING: LARGE UTILITIES⁶³

A. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- (1) "Affiliated competitive electricity provider" means a competitive electricity provider whose relationship with a large investor-owned transmission or distribution utility qualifies it as an affiliated interest.
- (2) "Purchasing entity" means a person that purchases 10 percent or more of the stock of a distribution utility on or after the effective date of this section.
- (3) "Related entity" means:
 - (i) any person or entity that owns, directly, indirectly or through a chain of successive ownership, 10 percent or more of the voting securities of the purchasing entity;
 - (ii) any person or entity 10 percent or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (i);
 - (iii) any person or entity 10 percent or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

⁶² Ma. Stat. 1997, c. 164, § 193, Ma. G.L. § 1B(d).

⁶³ Maine Revised Statutes, Title 35-A, § 3205.

- (iv) any person, entity or group of persons or entities acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person, entity or group of persons or entities beneficially owns more than 3 percent of the purchasing entity's voting securities; or
 - (v) any purchasing entity of which any person or entity defined in subparagraphs (i) to (iv) is an affiliated interest.
- (4) "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

B. Marketing permitted. On and after the beginning of retail access, a large investor-owned transmission or distribution utility may not sell electric energy or capacity to any retail consumer of electricity in the geographic area where it provides transmission or distribution service, except as specifically authorized by this chapter. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive electricity provider may sell electric energy or capacity to retail consumers of electricity:

- (1) outside the service territory of the transmission or distribution utilities with which it is affiliated; and
- (2) within the service territory of the transmission or distribution utilities with which it is affiliated, except that:
 - (i) the affiliated competitive electricity provider may not sell or contract to sell more than 33 percent of the total kilowatt-hours sold within the service territory of its affiliated transmission or distribution utilities, as determined by the commission by rule; and
 - (ii) in accordance with Section XXX-5, the affiliated competitive electricity provider may provide standard-offer service within the territory of the transmission or distribution utilities with which it is affiliated where no winning bid offering prices equal to or below the standard-offer price is accepted.

C. Commission evaluation of market share limitation. No later than [five or six years after the transition date], based on its

evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the committee of the Legislature having jurisdiction over utility matters.

D. Standards of conduct. The following provisions govern the conduct of transmission and distribution utilities and affiliated competitive electricity providers.

- (1) A transmission or distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive electricity provider or retail customers of its affiliated competitive electricity provider preference over non-affiliated competitive electricity providers or retail customers of non-affiliated competitive electricity providers in matters relating to any regulated product or service.
- (2) All regulated products and services offered by a transmission or distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination.
- (3) A transmission or distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive electricity provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service.
- (4) A transmission or distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time.
- (5) A transmission or distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the transmission or distribution utility to the provision of any product or service in which an affiliated competitive electricity provider is involved.
- (6) (i) A transmission or distribution utility shall process all similar requests for information in the same manner and within the same period of time.

- (ii) A transmission or distribution utility may not provide information to an affiliated competitive electricity provider without a request when information is made available to non-affiliated competitive electricity providers only upon request.
 - (iii) A transmission or distribution utility may not allow an affiliated competitive electricity provider preferential access to any non-public information regarding the transmission or distribution system or customers taking service from the transmission or distribution utility that is not made available to non-affiliated competitive electricity providers upon request.
 - (iv) A transmission or distribution utility shall instruct all of its employees not to provide affiliated competitive electricity providers or non-affiliated competitive electricity providers any preferential access to non-public information.
- (7) Employees of a transmission or distribution utility may not share with any affiliated competitive electricity provider or any non-affiliated competitive electricity provider:
- (i) any market information acquired from the affiliated competitive electricity provider or from any non-affiliated competitive electricity provider; or
 - (ii) any market information developed by the transmission or distribution utility in the course of responding to requests for transmission or distribution service.
- (8) A transmission or distribution utility shall keep a log of all requests for information made by the affiliated competitive electricity provider and non-affiliated competitive electricity providers and the date of the response to such requests. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph.
- (9) A transmission or distribution utility may not release any proprietary customer information without the prior written authorization of the customer.
- (10) (i) A transmission or distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive electricity provider. The transmission or

- distribution utility may not in any manner promote its affiliated competitive electricity provider.
- (ii) Neither transmission and distribution utilities nor their affiliated competitive electricity providers may in any way represent that any advantage accrues to customers or others in the use of the transmission or distribution utility's services as a result of that customer or others dealing with the affiliated competitive electricity provider.
 - (iii) A transmission or distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive electricity provider, nor may the transmission or distribution utility promote or market any product or service offered by its affiliated competitive electricity provider.
 - (iv) No such affiliate may use the name, corporate name, logo or other identifying information indicating a link to the transmission or distribution utility without payment of a royalty to the transmission or distribution utility in an amount to be determined by the commission based on the market value to the affiliate of such identifying information, which such royalty payment shall be used to reduce any stranded cost payments otherwise chargeable by such utility.
 - (v) The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the transmission or distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order.⁶⁴
- (11) Employees of a transmission or distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive electricity provider or non-affiliated competitive electricity provider.
- (12) Employees of a transmission or distribution utility may not be shared with, and must be physically separated from those of, an

⁶⁴ Section reorganized and royalty provision added.

affiliated competitive electricity provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

- (i) sharing employees or facilities would be in the best interest of the public;
- (ii) sharing employees or facilities would have no anti-competitive effect; and
- (iii) the costs of any shared employees or facilities can be fully and accurately allocated between the transmission or distribution utility and the affiliated competitive electricity provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary.

- (13) A transmission or distribution utility and its affiliated competitive electricity provider shall keep separate books of accounts and records, which are subject to review and audit by the commission at the utility's expense.
- (14) A transmission or distribution utility shall establish and file with the commission a dispute resolution procedure to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The transmission or distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending.
- (15) Transmission and distribution utilities shall maintain their books of account and records of their transmission and

distribution operations separately from those of their affiliated competitive electricity provider, and the transmission and distribution books of account and records must be available for commission inspection.

- (16) A transmission or distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient to enable customers and the commission to determine that the company is in compliance with the requirements of this section.
- (17) Each distribution utility should post on its Internet site the load profile and other load data required by the commission.

E. Affiliates and affiliate transactions: billing and metering services. If billing and metering services are declared competitive, the commission by rule shall establish minimum standards necessary to protect consumers of these services and codes of conduct governing the relationship among distribution utilities providing electric billing and metering services, any affiliates of distribution utilities providing such services, and providers of such services that are not affiliated with a distribution utility. The commission shall determine each distribution utility's costs of providing electric billing and metering services that are reflected in consumer rates, including capital costs, depreciation, operating expenses and taxes, and shall separate this portion of the consumer rate into a separate charge.

F. Limitation. Notwithstanding any other provision, no electric provider or generation entity or affiliate that owns or controls more than 15 percent of the electricity generation capacity that is dispatched by the [regional independent service operator (ISO)], or its successor, may offer electric generation services in the state.

G. Rules. The commission shall adopt rules implementing the provisions of this section, including:

- (1) rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive electricity provider compared to the total kilowatt-hour sales within the service territory of the affiliated transmission or distribution utility;
- (2) rules governing the procedure for divestiture; and

- (3) rules establishing standards of conduct for transmission or distribution utilities and affiliated competitive electricity providers consistent with the requirements of this section.

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by transmission or distribution utilities to every employee of the transmission or distribution utility and posted prominently in every employee location.

H. **Penalties.** The commission shall require the transmission or distribution utility to divest the affiliated competitive electricity provider if the commission determines in an adjudicatory proceeding that:

- (1) the transmission or distribution utility or an affiliated competitive electricity provider has knowingly violated any provision of this section or any rule adopted by the commission pursuant to this section; and
- (2) the violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy.

The commission may impose administrative penalties of up to \$10,000 for a violation of any provision of this section or any rule adopted by the commission pursuant to this section. Each day of a violation constitutes a separate offense.

I. **Prohibition; divestiture.** If, after the effective date of this section, 10 percent or more of the stock of a transmission or distribution utility is purchased by an entity:

- (1) the purchasing entity and any related entity may not sell or offer for sale generation service to any retail consumer of electric energy in this state; and
- (2) if, in an adjudicatory proceeding, the commission determines that an affiliated competitive electricity provider obtains an unfair market advantage as a result of the purchase, the commission shall order the transmission or distribution utility to divest the affiliated competitive electricity provider.

If the commission orders a divestiture pursuant to this subsection, the transmission or distribution utility must complete the

divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the transmission or distribution utility, the commission may grant an extension for the purpose of permitting the utility to complete a divestiture that has been initiated in good faith but not finalized within the 12-month period. The commission shall oversee and approve a divestiture in accordance with rules adopted pursuant to Section XXX-14.

- J. **Effect of divestiture.** If the commission orders a transmission or distribution utility to divest an affiliated competitive electricity provider pursuant to this section, the transmission or distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.
- K. **Access to books; audits.** The commission shall have access to all books and records of any affiliated competitive electricity provider, and may audit the same. The distribution utility shall pay the cost of any audit ordered by the commission pursuant to this section.

SEC. XXX-17. MARKETING: SMALL UTILITIES⁶⁵

- A. **Small utilities; limitations.** Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated interest of a small investor-owned transmission and distribution utility may sell retail generation service to retail consumers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.
- B. **Rules of conduct.** By [six months after passage of Act], the commission shall open a rulemaking proceeding to determine the extent of separation between a small investor-owned transmission and distribution utility and an affiliated competitive electricity provider necessary to avoid cross-subsidization and market power abuses. By [one year after passage of Act], the commission shall provisionally adopt all rules required under this subsection. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

⁶⁵ Maine Revised Statutes, Title 35-A, § 3206.

- (1) codes of conduct that may be required to ensure the effectiveness of the separation requirement;
- (2) restrictions on employee activities;
- (3) accounting standards; and
- (4) information and service comparability requirements.

SEC. XXX-18. MARKETING: CONSUMER-OWNED UTILITIES⁶⁶

A. Consumer-owned utilities; limitations. Consumer-owned transmission and distribution utilities:

- (1) may sell retail generation service only within their respective service territories; and
- (2) may not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

B. Commission review of marketing within territory.

Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law.

SEC. XXX-19. STRANDED COST RECOVERY⁶⁷

A. **Stranded costs defined.** For the purposes of this section, the term "stranded costs" means a utility's prudent, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry required by this chapter and determined by the commission as provided in this subsection.

B. **Calculation.** For each electric utility, the commission shall determine the sum of the following to the extent they qualify as stranded costs pursuant to subsection 1:

⁶⁶ Maine Revised Statutes, Title 35-A, § 3207.

⁶⁷ Maine Revised Statutes, Title 35-A, § 3208. See also Appendix II, an adapted version of the Connecticut language (with references to securitization removed).

- (1) the costs of a utility's regulatory assets related to generation;
- (2) the difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and
- (3) the difference between future contract payments and the market value of a utility's purchased power contracts.

C. **Exclusions.** Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 [choose some date after which no one can seriously argue competition was not likely], in a utility's stranded costs, except that the commission may include:

- (1) regulatory assets created after April 1, 1995, and prior to [day bill filed or day PUC started proceedings] including:
 - (i) the amortization of costs associated with the restructuring of a qualifying facility contract;
 - (ii) costs deferred pursuant to rate plans; and
 - (iii) energy conservation costs;
- (2) obligations incurred by a utility after April 1, 1995 [same date], and prior to [transition date] that are beyond the control of the electric utility; and
- (3) obligations incurred by an electric utility after April 1, 1995 [same date], to reduce potential stranded costs.

D. **Mitigation.** An electric utility shall pursue all reasonable means to reduce its potential stranded costs and to receive the highest possible value for generation assets and contracts, including the exploration of all reasonable and lawful opportunities to reduce the cost to ratepayers of contracts with qualifying facilities. The commission shall consider a utility's efforts to satisfy this requirement when determining the amount of a utility's stranded costs.⁶⁸

⁶⁸ See Appendix II, modified version of Connecticut statute, for more detail on the question of "mitigation" of costs. See also *Stranded Costs and Market Structures in the Electric Industry*, prepared by Tellus Institute for AARP, 1997, on what constitutes true mitigation, and on cost-shifting risks of some measures that have been given the name "mitigation."

E. Stranded costs recoverable; mitigation.

- (1) When retail access begins, the commission shall provide a distribution utility a reasonable opportunity to recover stranded costs through the rates of the distribution utility, as provided in this section.⁶⁹ The distribution utility shall be permitted return of 100 percent of the costs determined by the commission to be stranded, which recovery shall be allowed over a period not to exceed 10 years, but the distribution utility shall not be entitled to a return on such stranded costs.⁷⁰ Nothing in this chapter may be construed to give a distribution utility a greater⁷¹ opportunity to recover stranded costs than existed prior to the implementation of retail access.
- (2) The commission may reduce or increase the amount of stranded costs that the commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs, and based on its compliance with this chapter.⁷² Any electric utility seeking to claim stranded costs shall, in accordance with this subsection, take all reasonable efforts to reduce such stranded costs,

⁶⁹ Maine statute provides for comparably full cost recovery: "The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter."

⁷⁰ This formula, a return "of" but not "on" costs, provides in practice a sharing of uneconomic costs between shareholders and customers. Depending on the utility's cost of capital, and the length of the recovery period, the utility will bear up to 50 percent of the net present value of stranded costs, assuming compliance with the statute and all reasonable steps to mitigate stranded costs. For more discussion of the basis for such a sharing, see *Stranded Costs and Market Structures in the Electric Industry*, prepared by Tellus Institute for AARP, 1997. Alternative formulations allow a utility the cost of debt capital (e.g., interest payments it must make on corporate bonds it has floated) but no return on equity capital (what is commonly thought of as profit). This provides a higher recovery by the utility, but still imposes a sharing of the burden of uneconomic costs.

⁷¹ Maine statute includes floor: "or lesser."

⁷² Added standard of overall compliance with statute as condition of stranded cost recovery. Will be helpful in cases of abuse of residual monopoly status. Material after this point in this subsection on mitigation is adapted from the Connecticut statute. See Appendix II for more context.

and to mitigate present value rate impacts,⁷³ so long as the present value of such stranded costs is not thereby increased.⁷⁴ Before the approval by the commission of any stranded cost recovery, the electric utility shall show to the satisfaction of the commission that the electric utility has taken all reasonable steps to reduce such stranded costs and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased, and also that it has taken all reasonable steps to minimize the net present value cost to be recovered from customers.

- (3) Steps to reduce costs, mitigate near-term rate impacts or minimize the net present value cost to be recovered from customers, shall include:⁷⁵
 - (i) good faith efforts to negotiate the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission;⁷⁶
 - (ii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to Section XXX-14 of this Act;

⁷³ Maine statute says "mitigate near-term" rate impacts.

⁷⁴ The term "mitigate" is used in the Connecticut statute. "Mitigation" has come to mean a large number of actions that tend to reduce near-term rate impacts or the total amount claimed in stranded costs, but which do not necessarily reduce the outlay expected of customers, at least over the remaining useful life of the assets claimed to be stranded by competition. This rewrite, therefore, takes pains to use language that is more specific in describing what is authorized, and what the impact will be, requiring always that the net present value of any steps not increase as a result of "mitigation" efforts.

⁷⁵ Reference to negotiating the employment of nonmanagerial staff by the new owners of power plants sold as a result of divestiture are deleted. Union issues will be important in the design of a restructuring statute, unions can be allies of consumers in important ways, and many unions point out that good jobs with good pay and steady employment are one of the "stranded benefits" of the current system. However, writing in the desired solutions to these problems was beyond the scope of this draft.

⁷⁶ Connecticut also requires that "the fixed present value of any contract to which a political subdivision of the state is a party shall be calculated using the political subdivision's tax-exempt borrowing rate as the discount rate."

- (iii) maximization of market revenues from existing generation assets;⁷⁷ and
 - (iv) efforts to maximize current and future operating efficiency, including appropriate and timely maintenance, trouble-shooting, aggressive identification and correction of potential problem areas.⁷⁸
- (4) Steps to reduce costs, mitigate near-term rate impacts or minimize the net present value cost to be recovered from customers, may include:
- (i) reduction of book assets by application of net proceeds of any sale of existing assets, so long as net costs are not shifted between customer classes as a result of such application;⁷⁹
 - (ii) voluntary write-offs of above-market generation assets;⁸⁰
 - (iii) the decision to retire uneconomical generation assets;⁸¹ and

⁷⁷ Connecticut's original language would make it permissive for a utility to try to get the best price for the output of its generation assets not used for own-load supply. It should be mandatory, not permissive, so the language is moved to the mandatory subdivision of the subsection.

⁷⁸ Again, appropriate and timely maintenance to maximize operating efficiency is a baseline requirement of sound utility management, and should not be permissive. As with the other items of sound utility management that the language in the Connecticut statute makes permissive, the better course is not only to require such behavior, but to reduce stranded cost recovery by the extent of costs incurred that would have been avoided by such sound practices. For this reason, such steps are mandatory in the model draft.

⁷⁹ Connecticut leaves open the question of whether the commission can require that such offsets be done, or whether it is up to the utility. It would be preferable to require that such offsets be made, except where and to the extent the result is cost shifting between classes.

⁸⁰ As noted by Tellus Institute in their white paper for AARP, *Stranded Costs and Market Structures in the Electric Industry*, 1997, voluntary write-offs amount to a sharing of stranded costs between stockholders and ratepayers.

⁸¹ The impact such retirement will have on rates will vary based on the state's treatment of the undepreciated costs of retired uneconomic plant. Typically, utilities have not received 100 percent recovery under monopoly regulation for the undepreciated costs of such plant, but rather some sharing has been imposed. One typical formula is amortization (recovery over time) of the undepreciated costs, without any return, which means the utility loses the expected profits and time value of money related to the undepreciated portion of the plant. In such a scenario, a 10-year recovery period would cause the utility to recover approximately 50 percent of the net present value of the undepreciated amount.

- (iv) efforts to divest generating sites at market prices reflective of best use of sites.⁸²
- (5) Cost reduction and rate impact mitigation measures shall not include any expenditures to restart a nuclear generation asset that was not operating for reasons other than scheduled maintenance or refueling at the time such expenditure was made.
- (6) Any such cost reduction and rate impact mitigation efforts shall be subject to approval by the commission.
- (7) The commission shall allow the cost of such cost reduction and rate impact mitigation measures to be included in the calculation of stranded costs to the extent that such costs are reasonable relative to the amount of the reduction in stranded costs resulting from the measures.

F. **Determination of stranded costs charges.** Before retail access begins, the commission shall estimate the stranded costs for each electric utility in the state. The commission shall use these estimates as the basis for a stranded costs charge to be charged by each distribution utility when retail access begins. Every three years, until the utility is no longer recovering adjustable stranded costs, the commission shall correct any substantial inaccuracies in the stranded costs estimates associated with adjustable stranded costs and adjust the stranded costs charges to reflect any such correction. The commission may correct adjustable stranded costs estimates and adjust the stranded costs charges at any other time. When correcting stranded costs estimates and adjusting stranded costs charges, the commission shall make any change effective only prospectively and may not reconcile past estimates to reflect actual values.⁸³

For purposes of this subsection, “adjustable stranded costs” means stranded costs other than stranded costs associated with divested generation assets.

⁸² See note above about offsets by proceeds of sales.

⁸³ See Appendix II for Connecticut’s more detailed language on computation of stranded costs, particularly in light of divestiture requirements. Note also that Connecticut requires retrospective true-up of stranded costs associated with assets that were not divested.

G. Recovery of stranded costs. The commission shall set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds exceeding book costs against the aggregate value of all other stranded electricity generation assets. The commission may not shift cost recovery among customer classes in a manner inconsistent with existing law, as applicable. Cost recovery among customer classes and among customers shall be based on class use of each stranded asset and collected on a per-kilowatt-hour-use basis.

H. Ratepayer Equity Plan.⁸⁴ A utility that is allowed to recover uneconomic costs pursuant to this Section XXX-19 shall establish a Ratepayer Equity Plan before implementing any charge therefor. The purpose of the plan shall be to compensate ratepayers with shares of common stock equal in value to the amount of cost recovery charges collected thereunder. The plan shall be filed with the commission, which shall approve or modify the plan so that the plan shall require the utility to do the following:

- (1) calculate the total amount of costs recovered by the utility for each fiscal quarter of the recovery period;⁸⁵
- (2) determine the market value of the stock of the utility as indicated by the last trading price on a public exchange market as of the last date of each fiscal quarter (If the stock is held by a holding company, the holding company's stock shall be used to determine market value.);
- (3) deposit with the State Treasurer stock certificates for the utility or holding company's stock for which the total market value determined under item (2) is equal to the cost recovery

⁸⁴ H.B. 676, 90th General Assembly, Illinois, 1997.

⁸⁵ This version requires warrants for all stranded costs recovered from ratepayers. Another formulation would not require warrants for stranded costs unless extraordinary costs were permitted [for example, all costs above those implied in the sharing mechanism of Section XXX-19(XX), above] in order to preserve the "financial integrity" of the utility (essentially, in order to keep it out of bankruptcy). Permitting ordinary recovery of the utility's "share" of stranded costs, while requiring warrants in return for a fiscal "bail-out" would be in keeping with the model statute's overall sharing of the risks and rewards of restructuring. Again, the version in the model statute is the stricter requirement of warrants in exchange for *all* stranded cost recovery.

- calculated under item (1) within 15 days of the end of the fiscal quarter; and
- (4) distribute all proceeds from the sale of the stock by the State Treasurer to all customers who have paid the cost recovery charge through a reduction in or elimination of the monthly customer charge. Customers who have not paid the cost recovery charge shall not receive any of the proceeds:

H. [ALTERNATIVE to H above] Ratepayer Parity Trust Fund.⁸⁶

- (1) Fund established. There shall be established as a trust fund within the treasury of the state, the Ratepayer Parity Trust Fund, to which shall be credited all personal and corporate tax revenues attributable to the sale of assets relative to Section XXX-14 of this chapter, any appropriations made for the purposes of providing extraordinary assistance to utilities in achieving the rate reductions required by this chapter and any income derived from investments of amounts credited to said fund. Amounts credited to said fund shall be received and held in trust and shall be used solely for the purpose of providing extraordinary assistance in achieving the required rate reduction pursuant to Section XXX-5(C) of this chapter, subject to appropriation for said purposes. Prior to any such appropriation being made by the Legislature, the commission shall file with the [Secretary of Administration and Finance, or comparable state official] a request for distribution of such monies in said fund as may be available for appropriation.
- (2) Payments from the fund; conditions. If the distribution utility claims that it is unable to meet a price reduction of 25 percent it shall petition the commission to explore any and all mechanisms, including authorizing an alternate generation company or provider to provide the standard offer, and receipt of funds authorized by the commission from the Ratepayer Parity Trust Fund.⁸⁷

⁸⁶ If this alternative (a tax-based fund for uneconomic cost recovery by the utilities) is adopted, the language in Section XXX-15 regarding commission provisions for stranded cost recovery through distribution rates would have to be amended for consistency.

⁸⁷ Based on Ma. Stat. 1997, c. 164, § 193, § 1G(c)(4).

- (3) Payments from the fund; warrants. In the event and to the extent that a distribution utility receives payments from the Ratepayer Parity Trust Fund, the utility shall execute and deliver to the treasury of the state, to be held in trust, warrants in the face amount of the receipts from the fund for the purchase of stock in the utility (or its parent in the case of a subsidiary not publicly traded) at the price of the stock of the utility (or its said parent) at the time of the receipt of payment from the fund.
 - (4) Option to redeem warrants. In the event the price of the stock for which warrants were issued pursuant to this section exceeds the price of the stock at the time of receipt of payment from the fund by 20 percent or more, the Treasurer of the state may exercise the warrants. If the warrants are so exercised, the utility must forthwith purchase the stock from the Treasurer at the price at the time the Treasurer notified the utility of the redemption of the warrants, less 5 percent.
- I. **Proceedings.** The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned distribution utility and each consumer-owned distribution utility. In the same proceedings, the commission shall establish the revenue requirements for each distribution utility and stranded costs charges to be charged by each distribution utility when retail access begins. The proceedings must be completed by [six months from date of enactment].

SEC. XXX-20. RATE DESIGN⁸⁸

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section.⁸⁹

⁸⁸ Me. Statute, § 3209.

⁸⁹ Some restructuring statutes explicitly encourage or require a commission to use so-called "alternative forms of regulation" (such as price caps or "performance-based ratemaking") to set rates for the parts of the industry that will continue to function as regulated monopolies. There are a number of problems with such methods, depending on how they are done. These issues are beyond the scope of this model statute. For further information on performance-based ratemaking and the vulnerable consumer, contact Jerrold Oppenheim, National Consumer Law Center, Boston, MA.

- A. **Applicable law.** The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable.
- B. **Proceeding.** Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before [pick a date that gives the commission sufficient time but is prior to the opening of the market] for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.⁹⁰
- C. **System benefits charge; limit on rate spread.**⁹¹ The commission shall establish a systems benefit charge to be imposed against all retail usage.⁹² The systems benefit charge shall be determined by the commission in a general and equitable manner and shall be imposed on all end-use sales at a uniform rate that is applied equally to all customers of the same class regardless of which electric company served an individual customer on [date prior to passage of legislation]. On and after [date five years later], the commission shall allocate the rate of the systems benefit charge in accordance with methods in effect on [date prior to passage of legislation], for allocation of electric company generation among classes of customers, provided the price differential between industrial customers and residential customers shall not exceed the average price differential for electric service between industrial and residential rates in effect during calendar year [same year as in Section XXX-6]. The systems benefit charge shall be rolled into distribution rates and recovered as part of distribution rates.

⁹⁰ Provision barring exit fees deleted.

⁹¹ Connecticut H.B. 5005, §§ 18(a), 18(b), Public Act 98-28 (1998).

⁹² Maine statute imposes charge on all end-use customers. Note that it would also be possible to impose the charge on competitive electricity providers, as an access fee, although no jurisdiction has done so yet. This would be somewhat similar to the recovery of telephone universal service charges from all interexchange carriers.

SEC. XXX-21. RENEWABLE RESOURCES⁹³

- A. **Policy.** In order to ensure an adequate and reliable supply of electricity for [Name of State] residents and to encourage the use of renewable and indigenous resources, it is the policy of this state to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this state rely in a manner consistent with this section.
- B. **Definition.** As used in this section, the term “renewable resource” means a source of electrical generation that generates power that can physically be delivered to the control region in which the regional independent service operator or similar body, or its successor as approved by the Federal Energy Regulatory Commission, has authority over rates for transmission services and:⁹⁴
- (1) whose total power production capacity does not exceed [detail to be filled in on state-by-state basis] megawatts⁹⁵ and that relies on one or more of the following sources of energy:⁹⁶ [detail to be filled in on state-by-state basis].
- C. **Portfolio requirements.** As a condition of licensing pursuant to Section XXX-8, each competitive electricity provider in this state must demonstrate in a manner satisfactory to the commission that no less than [detail to be filled in on state-by-state basis] percent of its portfolio of supply sources for retail electricity sales in this state

⁹³ Maine Revised Statutes, Title 35-A, § 3210.

⁹⁴ Maine provision includes cogenerators and small power producers licensed under the Public Utility Regulatory Policies Act of 1978 (PURPA).

⁹⁵ Maine statute's threshold is 100 megawatts. It may be desirable to use a lower threshold, to encourage decentralized renewable resources.

⁹⁶ It is beyond the scope of this model statute to resolve the numerous conceptual and practical questions about what types of power should be considered renewable, and in need of a market assist. You will want to consult the environmental groups in your state, and/or national groups such as the Union of Concerned Scientists (Cambridge, MA), Natural Resources Defense Council (New York and San Francisco), and Sierra Club (various locations) to discuss resource types, as well as other questions raised by this section.

are accounted for by renewable resources. By [one year after effective date], the commission shall provisionally adopt rules establishing reasonable procedures for implementing this requirement.

D. **Report.** In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying renewable resource requirements, the commission shall review the [detail to be filled in on state-by-state basis] percent portfolio requirement and make a recommendation for any change to the committee of the Legislature having jurisdiction over utilities and energy matters no later than [five] years after the beginning of retail competition.

E. **Funding for research and development.**⁹⁷

F. **Net metering authorized.**⁹⁸

SEC. XXX-22. ENERGY EFFICIENCY⁹⁹

A. **Energy-efficiency programs required.** The commission shall require distribution utilities to implement energy-conservation programs and include the cost of any such programs in the rates of distribution utilities.¹⁰⁰

B. **Funding.**¹⁰¹ Beginning on [transition date], the commission is authorized and directed to require a mandatory charge per kilowatt-

⁹⁷ Connecticut and Massachusetts have valuable model language on this issue.

⁹⁸ For net metering model language, consult Union of Concerned Scientists, Cambridge, MA.

⁹⁹ Maine Revised Statutes, Title 35-A, § 3211.

¹⁰⁰ Maine provides that "the commission shall require transmission and distribution utilities to select energy-efficiency service providers through periodic competitive bidding." Competitive bidding can have counter-intuitive and counterproductive results in utility-funded energy-efficiency programs, *unless done right*, and for this reason, the absolute requirement is deleted from the model statute. For more information on ways to conduct competitive bidding in energy-efficiency programs, consult Energy Efficiency Institute, Colchester, Vermont.

¹⁰¹ This section is based on Ma. Stat. 1997 c. 164, § 19. Maine left funding to commission discretion. Model statute follows Massachusetts in setting out specific mill

hour for all consumers in the state to fund energy-efficiency activities including, but not limited to, demand-side management programs. Said charge shall be in the following amount: 3.3 mills (\$0.0033) per kilowatt-hour,¹⁰² and further provided that in authorizing such activities the commission shall ensure that they are delivered in a cost-effective and cost-efficient manner.¹⁰³

C. **Rulemaking.** By [date one year after passage], the commission shall commence a rule-making proceeding on energy conservation programs. By [date one year later], the commission shall provisionally adopt rules establishing energy conservation programs in compliance with this subsection.¹⁰⁴

D. **Low-income energy efficiency.**¹⁰⁵ At least 20 percent of the amount expended for residential demand-side management programs by each distribution utility in any year, and in no event less than the amount funded by a charge of 0.25 mills per kilowatt-hour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive low-income residential demand-side management and education programs. The low-income residential demand-side management and education programs shall

rate (tenths of a cent per kilowatt-hour) charge to fund energy efficiency, but deletes sunset provision (applied in Massachusetts statute to non-low-income energy efficiency), and exemption for customers of municipal power departments.

¹⁰² Massachusetts statute sunsets non-low-income energy-efficiency and fixed low-income program mill rate by statute.

¹⁰³ Cost-effectiveness tests generally refer to a comparison of program benefits to program costs, measured from a variety of perspectives. Cost-efficiency is a term coined by Harlan Lachman and Paul Cillo of the Energy Efficiency Institute, Colchester, Vermont, to refer to the choice of the most effective measures and programs over those that produce lower levels of savings for the same funding, albeit cost-effectively.

¹⁰⁴ Maine language ("On March 1, 2001, the division of energy resources shall, in order to determine if energy investments shall continue beyond that time, review then-current market barriers, experience with competitive markets, and related environmental and economic goals.") deleted. No sunset, or assumption that market transformation will solve all efficiency problems.

¹⁰⁵ Ma. Stat. 1997, c. 164, § 37; Ma. G.L. c.25, § 19.

be coordinated with all gas distribution companies in the state with the objective of standardizing implementation.¹⁰⁶

SEC. XXX-23. CONSUMER EDUCATION

A. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program, which should be in compliance with this subsection.

- (1) The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation. However, the commission may reimburse members for their reasonable costs of attending board meetings, in the case of members who otherwise would be unable to participate on account of financial hardship.
- (2) In its recommendations, the advisory board shall address:
 - (i) the level of funding necessary for adequate educational efforts and the appropriate source of that funding;
 - (ii) the aspects of retail access on which consumers need education;
 - (iii) the most effective means of accomplishing the education of consumers;
 - (iv) the appropriate entities to conduct the education effort; and
 - (v) any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.
- (3) The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program.

¹⁰⁶ Massachusetts language providing that such work "shall be implemented through the low-income weatherization and fuel assistance program network" is deleted. Volunteers will need to decide on a state-by-state basis if this is the best approach.

SEC. XXX-24. NEEDS-BASED, AFFORDABLE RATES FOR LOW-INCOME CUSTOMERS¹⁰⁷

- A. Policy. In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity and all residents of the state should be able to afford essential electricity supplies, it is the policy of the state to ensure that bills for low-income consumers are affordable.¹⁰⁸ For the purposes of this chapter, a bill is affordable if the burden it places on the household is no greater than two times the burden, expressed as a percentage of income, that is borne by the national average residential customer of median income.¹⁰⁹ Bills may be rendered affordable by energy-efficiency improvements in the building and appliances of customers' dwellings, and by reducing rates for such customers.
- B. Low-income assistance. To the extent that energy-efficiency assistance for low-income customers, as provided for under Section XXX-22, is not expected to reduce a low-income customer's bill below the threshold of affordability as set forth herein, rate reduction assistance shall be made available under this section. In order to meet the needs for bill assistance of low-income consumers in the state,¹¹⁰ and to meet future increases in need caused by economic exigencies, the commission shall:
- (1) receive funds collected by all distribution utilities in the state at a rate set by the commission in periodic rate cases; and
 - (2) set initial funding in generic proceedings or in periodic rate cases for low-income affordability rates based on an assessment

¹⁰⁷ Maine Revised Statutes, Title 35-A, § 3214. Changed header to reflect issue of affordability.

¹⁰⁸ Maine language "adequate provision of financial assistance" replaced with reference to affordable bills.

¹⁰⁹ This definition of affordability is added to provide a benchmark for evaluating the success of affordability efforts.

¹¹⁰ Maine language on "continue existing levels of financial assistance for low-income households" replaced by generic language that does not assume any particular level of existing assistance.

of the aggregate of low-income customers' needs for bill reductions sufficient to render the resulting bills affordable. The funding mechanism may not result in bill affordability assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.

- C. **Further assistance authorized.** Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not specifically required by this chapter, subject to the approval of the commission.¹¹¹
- D. **Backstop for net incremental credit risk of serving low-income customers.** Each distribution utility shall guarantee payment to the generation supplier for all power sold to low-income customers at said affordability rates.¹¹²
- E. **Eligibility.** Eligibility for the affordability rates established herein shall be extended to low-income customers who have qualified in the preceding 12 months for any means-tested public benefit including, but not limited to, Transitional Assistance for Needy Families (TANF), Supplemental Security Income (SSI), food stamps, Medicaid, general assistance (if in the state), means-tested Veteran's Benefits, Low-Income Home Energy Assistance (LIHEAP) or any other means-tested program for which eligibility does not exceed 175 percent of the federal poverty level, or whose annualized household income does not exceed 175 percent of the federal poverty level.¹¹³

¹¹¹ Maine-specific provision calling for legislative study of mechanisms to fund low-income energy bill assistance deleted, along with Maine-specific reference to levels of support presently in rates.

¹¹² Ma. Stat. 1997, c. 164, § 193; Ma. G.L. c.164, § 1F(4)(i).

¹¹³ Ma. Stat. 1997, c. 164, § 193, § 1F(4)(i), restoring original intent of drafters to extend eligibility to working poor who do not receive any means-tested benefits, but whose incomes are at or below 175 percent of the federal poverty level.

F. **Outreach.** Each distribution utility shall conduct substantial outreach efforts and shall report to the commission, at least annually, as to its outreach activities and results. Outreach must include establishing an automated program of matching customer accounts with lists of recipients of said means-tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified.¹¹⁴ The [insert names of welfare and LIHEAP agencies of state] shall cooperate with the commission in facilitating the establishment of such automatic enrollment process.

SEC. XXX-25. COMMISSION PARTICIPATION IN FEDERAL AND INTERNATIONAL PROCEEDINGS¹¹⁵

A. **Authority.** Without limiting the commission's authority under any other provision of law, the commission may:

- (1) intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this state are affected; and
- (2) monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:
 - (i) the safety and economic effects or potential effects of market competition on nuclear units; and
 - (ii) the effects or potential effects of market competition on [Name of State]'s air quality.

B. **Findings; responsibility.** The Legislature finds that, in order for retail competition in this state to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission system must be fully

¹¹⁴ Ma. Stat. 1997, c. 164, § 193; c. 164, § 1F(4)(i) (substitute "must" for "may" in referencing automatic enrollment plan).

¹¹⁵ Maine Revised Statutes, Title 35-A, § 3215.

independent of influence by market participants. The commission shall use all means within its authority and resources to advocate for and promote the interests of [Name of State] ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

SEC. XXX-26. TRANSITION; UTILITY EMPLOYEES¹¹⁶

A. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Eligible employees" means all employees of an electric utility:

- (i) who are not officers of the utility;
- (ii) who are employed by the utility on [date three years after passage]; and
- (iii) who are laid off due to retail competition.

Absent other just cause, a layoff after [transition date] is deemed to have been due to retail competition. The commission by rule shall establish a date after which a layoff is deemed not to have been due to retail competition. An employee is not an eligible employee by reason of the transfer of the employee's job duties or assignment within a company or within affiliated companies at similar levels of compensation.

(2) "Retail competition" means:

- (i) retail access; or
- (ii) the sale or merger of any generation asset that occurs prior to [transition date].

B. **Substantive plan.** Prior to the beginning of retail access, each investor-owned electric utility shall prepare a plan for providing transition services and benefits for eligible employees. The plan must:

- (1) include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential;
- (2) for two years after the beginning of retail access, provide to eligible employees retraining services and out-placement

¹¹⁶ Maine Revised Statutes, Title 35-A, § 3216.

- services and benefits, including intensive vocational-interests-and-aptitude screening;
- (3) provide full tuition for two years at the University of [Name of State] or a vocational or technical school in the state or other reasonable retraining services of value equal to full in-state tuition for two years at the University of [Name of State], at the discretion of the eligible employee;
 - (4) for 24 months or until permanent replacement coverage is obtained through re-employment, whichever comes first, provide continued health care insurance at the benefit and contribution levels existing during employment with the utility; and
 - (5) provide severance pay equal to two weeks of base pay for each year of full-time employment.

The plan may include provisions for providing early retirement benefits.

C. Procedural requirements. Each investor-owned utility shall file with the commission a plan for providing transition services and benefits for eligible employees that conforms to the requirements of subsection 2. A plan must be filed prior to the utility finalizing any transaction that would result in an eligible employee being laid off or at least 90 days prior to the start of retail access, whichever is first. Prior to filing the plan with the commission, the utility shall inform its employees and their certified representatives of the provisions of the proposed plan and, in accordance with applicable law, shall confer with those employees or their certified representatives regarding the impact of the proposed plan on those employees and measures to minimize any resulting hardships on those employees.

While a plan is in effect, an investor-owned utility shall file notice with the commission of any closure or relocation of facilities and any action or reorganization that will result in layoffs. The notice must include a description of the actions, the reasons for them and an assessment of their effects on the utility's employees.

D. Collective bargaining. If an investor-owned electric utility company or one or more of its subsidiary or parent companies is party to a collective bargaining agreement recognized by federal or state law, and if as a result of retail competition any of those

companies creates, acquires or merges with any other entity, that entity shall continue to recognize and bargain with the union representing the employees of the company at the time of the creation, acquisition or merger and shall refrain from making unilateral changes in the employees' terms and conditions of employment. In addition, any successor employer is bound to the terms of the collective bargaining agreement to the extent permitted by federal law. Nothing in this section prevents any company, corporation or other business from entering into any collective agreement as allowed by state or federal law.

- E. **Cost recovery.** The commission shall allocate the reasonable accrual increment cost of the services and benefits required under this section to ratepayers through charges collected by the transmission and distribution utility on a per kilowatt-hour basis. All charges collected must be transferred to a system benefits administrator in the transmission and distribution utility and used to provide services and benefits pursuant to the requirements of this section.
- F. **Rules.** The commission shall adopt rules necessary to implement this section.

SEC. XXX-27. REPORTS¹¹⁷

- A. **Annual restructuring report.** On November fifteenth¹¹⁸ of each calendar year, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utility matters a report describing the commission's activities in carrying out the requirements of this chapter and the activities relating to changes in the regulation of electric utilities in other states, and evaluating the

¹¹⁷ Maine Revised Statutes, Title 35-A, § 3217.

¹¹⁸ The "power year" in the electricity industry traditionally has been November 1 through October 31. Also, many legislatures go into session around the turn of the year, and some require bills to be filed early in December. Whatever date is chosen, it would be helpful to have it correspond to occasions during the year when the recommendations can be (a) complete and (b) useful to ongoing policymaking.

effectiveness of competition in achieving the purposes of this statute. Said report shall contain, but is not limited to:¹¹⁹

- (1) electricity spot price information for the previous calendar year, including, but not limited to, the average regional monthly spot price;
- (2) a determination of whether all customer classes and market segments, including low-usage, low-income and other vulnerable customers, are being adequately served by competitive energy markets;
- (3) a determination of the competitiveness of energy markets, including a determination whether the electric industry is providing consumers with the lowest prices possible and the optimal level of service quality, within a restructured, competitive retail marketplace;
- (4) identification of any substantial fluctuation or pricing differences in the cost of electricity available to consumers, especially with respect to geographic regions and low- and moderate-income customers;
- (5) an analysis of the reliability of the provision and distribution of electricity in the state in the prior year, and a forecast of reliability for the next five years; and
- (6) recommendations for improving any deficiencies so identified in electricity energy, including drafts of legislation.¹²⁰

B. Independent system operator. The commission shall monitor events in the region pertaining to:

¹¹⁹ Maine provision on identifying costs of administration of competition removed:

“(7) an accounting of the commission’s actual and estimated future costs of enforcing and implementing the provisions of this chapter governing the relationship between a transmission and distribution utility and an affiliated competitive electricity provider and the costs incurred by transmission and distribution utilities in complying with those provisions, together with an assessment of the effects of imposing these costs on ratepayers and the potential effects of assessing transmission and distribution utilities for these costs and prohibiting the costs from being passed through to ratepayers.”

¹²⁰ Enumerated list to this point largely from Ma. Stat. 1997 c. 164, § 50; c.25A, § 11E.

- (1) the development of an independent system operator with responsibility for transmission reliability;
- (2) the management of competitive access to the regional transmission system; and
- (3) rights to negotiate potential contracts between sellers and buyers of electricity.

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or transmission or distribution utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the state are available to remedy this problem.

SEC. XXX-28. INTERVENOR COMPENSATION

- A. Intervenor Compensation Fund established.** The commission shall establish an Intervenor Compensation Fund, to which shall be credited all receipts of civil penalties levied by the commission pursuant to Sections XXX-10 and 12, such other funds as the commission may direct distribution utilities to collect from all customers for that purpose and the income from the investment of balances in the fund.
- B. Scope.** The Intervenor Compensation Fund shall be used to provide funding to entities that intervene in adjudications or rulemaking proceedings before the commission on issues involving the interpretation and implementation of this chapter on behalf of residential customers. The funds may be used to obtain legal assistance, administrative assistance and expert assistance. No funds may be used in any way for lobbying or publicity. Funds shall be awarded for the presentation of any responsible position, regardless of the likelihood of its adoption, so long as its adoption is not precluded by clear precedent, law or constitutional restriction.
- C. Entities that may obtain compensation.** Intervenor compensation shall be available only to entities that would experience financial hardship in presenting their case without such funding. Such entities may be individuals or organizations. The fact that an entity

receives funds that may be used for intervention does not per se disqualify the entity from receiving intervenor compensation.

- D. **Supplement to other public representation.** It shall be no barrier to the receipt of intervenor compensation from this fund that a public advocate, consumer counsel or other representative of utility consumers has been funded to intervene and has intervened in the case for participation in which funding is sought. The commission may for purposes of administrative economy order the consolidation of like presentations.
- E. **Process.** Entities that seek intervenor compensation from this fund shall submit a written application to the commission in the form it prescribes, providing information sufficient to establish eligibility for funding under this Section XXX-28, and including a proposed itemized budget and a statement of the issues to be presented, and the nature of any legal representation or consulting assistance proposed to be obtained. The commission shall by rule prescribe a process for consideration of such applications. An application may be made before a formal case is filed, if it is reasonably likely that a formal case will be filed. Funds shall be awarded no later than three weeks before the date on which testimony or formal written comments must be filed by intervenors at the commission in the case in question. Recipients must periodically, and at the conclusion of the case, file reports documenting the use of the funds for the purposes set forth in the approved application. The commission may by rule determine further specifics of the process for obtaining, using and accounting for such funds.

SEC. 3. CONFORMING AMENDMENTS

By December 31, [next date six months after passage of bill], the Public Utilities Commission shall identify and submit to the committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.

**SEC. 4. [REPEAL CONTRARY EXISTING
STATUTES]**

APPENDIX I: RETAIL MARKETING AREA LANGUAGE

SEC. XXX-#. RETAIL MARKETING AREAS¹²¹

- A. Until [three years after transition date], this state shall be divided pursuant to this section into retail marketing areas (RMAs) under the authority of Section 722(g) of the "Energy Policy Act of 1991," 106 Stat. 2776, 16 U.S.C. 824(k)(g). A retail marketing area under this section is not a reseller of electricity, but rather is a geographic designation for the purpose of aggregating retail electric service customers. In each retail marketing area, electric generation service shall be aggregated and bid out for all retail customers in the area that choose not to opt out of the aggregated pool, as further provided in subdivision (c) of this section.
- B. Retail marketing areas shall cease to exist three years after [the end of the transition period], for the purposes of subsections A to J of this section. Retail marketing areas shall be rebid halfway through the transition period in accordance with subsections H and I of this section.
- C. Any customer may opt out of the aggregated retail marketing area pool at any time. To define the aggregated pool for the purposes of the first and second rounds of bidding, the public utilities commission shall set a date by which any customer who wishes to opt out of the aggregated pool for that bidding round must do so, and shall establish procedures providing for an affirmative indication by a customer that the customer is opting out of the pool. Any customer that, after acceptance of the bid for a retail marketing area, moves into that area or initiates service for the first time within that retail marketing area may choose any competitive electric company to supply the customer's generation service, including the winning bidder for the retail marketing area.
- D. A distribution utility in this state may impose a reasonable switching fee on any customer that cancels service with the provider providing service to the retail marketing area. A switching fee may be imposed by the winning bidder of a retail marketing

¹²¹ Section 4928.33 [Proposed Ohio Retail Marketing Area Language].

area on any customer who opts out of the retail marketing area bid pool after the opt-out date set by the commission under subsection C of this section, with the exception of a customer who moves outside the retail marketing area. Such a switching fee may also be imposed by the winning bidder on a customer entering the retail marketing area bid pool after the opt-out date, including a customer who previously had opted out of the pool. The amount of any such switching fees for customers opting out of or into a retail marketing area bid pool shall be disclosed and considered in the retail marketing area bid selection process under this section. The switching fee shall not exceed a nominal charge covering only the administrative costs of the utility or company, as the case may be. Retail electric generation service shall be provided to a customer entering the bid pool after the opt-out date at the prevailing rate for the retail marketing area.

- E. Except as otherwise provided in subsection F of this section, the basic mapping units for retail marketing areas shall be subunits of monopoly service territories as those territories exist on the effective date of this section. To facilitate the mapping process, incumbent electric utilities shall file plans with the commission proposing to divide their service territories in a manner that allows for reliable and efficient delivery of power to discrete geographic areas by use of the existing transmission and distribution networks. The plans shall be in such form and include such information as the commission shall prescribe by rule initially adopted not later than 45 days after the effective date of this section.
- F. (1) In fixing the boundaries of each retail marketing area, the commission shall consider the plans submitted under subsection E of this section, and may make such modifications as it considers necessary to such proposed boundaries. The commission shall determine the boundaries of each retail marketing area, and approve final boundaries, pursuant to all of the following criteria.
 - (i) Each retail marketing area is a feasible size and has a diverse mix of customers, including low-income customers, based on customer class, socioeconomic, geographic and load characteristics; and each RMA is reasonably comparable in customer mix to all other RMAs.

- (ii) The boundaries do not result in an electric transmission or distribution service bottleneck to the advantage of a particular provider of electric generation service.
 - (iii) Each RMA consists of territory that is contiguous geographically and contiguous in terms of electric transmission and distribution services.
- (2) The commission may change a RMA boundary for the purpose of the second round of bidding if it determines that the change was necessary to comply with the criteria specified in subsection F(1) of this section.
 - (3) A distribution utility shall provide the commission with such information as the commission considers necessary to establish RMA boundaries. The commission shall take such measures as it considers necessary to protect the confidentiality of that information.

G. Notwithstanding the criteria specified in subsections E and F(1) of this section:

- (1) the service territory of an incumbent electric cooperative, as that territory exists on the date boundaries are approved under this section, shall not be its own RMA and shall not be part of any other RMA; and
- (2) territory and retail electric service customers within the boundaries of a municipal corporation that, on the effective date of this section, transmits or distributes electricity through facilities owned or operated by an incumbent municipal electric utility, including facilities jointly owned or operated with one or more other municipal electric utilities, shall be excluded from any RMA. However, the legislative authority of such municipal corporation may opt into the RMA process prescribed in this section, for all or part of its territory, by a filing with the commission by such date and pursuant to such filing procedures as the commission shall prescribe by rule.

H. The commission shall issue the request for proposals for each RMA and shall oversee the RMA bidding process. For this purpose, the commission shall adopt bidding rules that include all of the following:

- (1) a requirement that a bidder demonstrate a minimum financial and capacity commitment for the particular service bid upon;

- (2) an open, fair and unbiased process for submitting bids and selecting winning bids;
- (3) any price or non-price factors the commission shall use to evaluate bids and choose a winning bid. Price factors shall include, but not be limited to, the rate reduction objective specified in [Sections XXX-5 and XXX-6].¹²² Non-price factors may include, but are not limited to, service reliability, customer service quality,¹²³ assurance of supply, performance guarantees, financial viability and such other factors as the commission considers appropriate;¹²⁴
- (4) contracting criteria and standard contract provisions, including a requirement that the winning bidder must supply electric generation service to any new retail customer that joins or rejoins the marketing pool after the award of the bid;
- (5) other relevant rules to ensure fair and unbiased bidding and fair and unbiased selection of winning bids by the commission, and to ensure performance by the winning bidder; and
- (6) except as otherwise provided in this section, initial rules under this section shall be adopted not later than 275 days after the effective date of this section.

I. Selection of RMA providers.¹²⁵

- (1) The commission shall select the winning bidder or bidders for each RMA, except that an electric cooperative may choose between participating in the commission's bidding process or that of the cooperative issuing the request for proposals,

¹²² This provision is moved up from later position in Ohio proposal, and edited to reflect model statute's requirement of rate reduction.

¹²³ Added customer service quality to list of criteria.

¹²⁴ Deleted language in Ohio proposal adding new criteria for awarding bids: "The general criteria for selecting any winning bid shall be whether the bid achieves the policy of promoting effective retail electric generation service competition in this state and promotes the availability of adequate, reliable, and reasonably priced electric generation serve to consumers in the RMA."

¹²⁵ Ohio proposal appears to call for one winning bidder per RMA. It might make sense to permit more than one, depending on the size and density of the RMAs, and the different objectives that various bidders can help the state achieve.

overseeing the bidding process and conducting the bidding for its own RMA. A winning bid may include a bid by the incumbent electric utility or its affiliate, subject to the limitations of [Sections XXX-14, XXX-16 and XXX-17]. The selection of a winning bid under this section shall not be subject to legal action absent actual fraud.

(2) In either round of bidding under this section, the commission, or the electric cooperative in the case of an electric cooperative that conducts its own bidding as approved in division I(1) of this section, may let a RMA out for rebid if the commission or cooperative, respectively, determines that a request for bids for the RMA was substantially technically deficient. Such a determination shall not be subject to legal action absent actual fraud.

J. If the commission determines that no acceptable bid has been submitted for a particular RMA, the electric distribution utility in the RMA shall procure electric generation service for each of its distribution service customers in the RMA for the time prior to [cross reference date three years after transition date], or until such time as a RMA provider is selected in the case of a RMA rebid under division I(2) of this section. Such generation service shall be provided at not greater than the standard-offer rate.

APPENDIX II: ALTERNATIVE STRANDED COST RECOVERY SECTIONS¹²⁶

SEC. XXX-19-A. STRANDED COST RECOVERY—NON-NUCLEAR GENERATION ASSETS

A. Definitions. As used in this section:

- (1) "Generation assets" means electric generation facilities and generation-related operations and functions owned by an electric utility and includes associated contractual obligations for energy or capacity from such generation assets; and
- (2) "Net proceeds" means the book income from the sale or divestiture of assets, consisting of sales price less reasonable expenses of sale and related income and other taxes.

B. Divestiture precondition for stranded cost recovery.

- (1) No electric utility shall be eligible to claim any stranded costs as provided in Sections XXX-7 through XXX-9 inclusive unless the utility (i) before the date when the commission approves a divestiture plan has sold its non-nuclear generating assets and (ii) on and after the date when the commission approves such a plan, has submitted all of its remaining non-nuclear generation assets owned or held as of the effective date of this act to a public auction held in a manner designed to produce a maximum sale price¹²⁷ in accordance with this subsection.
- (2) Each electric utility that elects to divest itself of non-nuclear generation assets shall, not later than [date soon after passage of Act] submit a plan to the commission. The divestiture plan shall include:
 - (i) any documentation the commission reasonably determines is necessary to approve the auction procedure, including a copy of the request for proposal and a description of the solicitation process;

¹²⁶ Adapted from Connecticut Statute, H.B. 5005, P.A. 98-28 (1998), sections 6 through 10.

¹²⁷ Connecticut standard of "commercially reasonable" replaced with higher standard.

- (ii) a detailed description of the process for the sale and transfer of non-nuclear generation assets; and
- (iii) the book value of all assets the electric utility intends to make available for sale. The commission shall issue a final order approving or modifying the plan in a time frame that will allow divestiture to be accomplished by [date two years from enactment].

The commission shall appoint a consultant who shall be an entity unrelated to the electric utility and that meets the commission's qualifications, to conduct the auction process.

- (3) The commission shall not approve a sale unless (i) the sale price of an asset or assets equals or exceeds the book value for the asset or assets, (ii) the commission determines the bidder meets all the applicable qualifications established by federal law and regulation, (iii) the sale is conducted in accordance with the divestiture plan approved by the commission, (iv) the bidder proves to the satisfaction of the commission that it will preserve labor agreements in effect at the time of the sale and (v) the sale will result in a net benefit to ratepayers, as determined by the commission.¹²⁸
- (4) All net proceeds realized by an electric utility from the sale of nonnuclear generation assets pursuant to this section that exceed the total book value of all the assets sold pursuant to this section shall be netted against the amount of stranded costs as provided in subdivision (4) of subsection H and subsection I of Section XXX-19-C of this Act.
- (5) If an electric utility complies with the provisions of this subsection but does not receive any bids for an asset by a qualified bidder that equal or exceed the minimum bid as provided in this subsection, the commission shall calculate the value of stranded costs for each such asset in accordance with subsection G of Section XXX-19-C of this Act.

SEC. XXX-19-B. STRANDED COST RECOVERY—NUCLEAR GENERATION ASSETS

A. Definitions. As used in this section:

¹²⁸ Section allowing affiliates to bid removed.

- (1) "Generation assets" means electric generation facilities and generation-related operations and functions owned by an electric utility and includes associated contractual obligations for energy or capacity from such generation assets; and
- (2) "Net proceeds" means the book income from the sale or divestiture of assets, consisting of sales price less reasonable expenses of sale and related income and other taxes.

B. **Divestiture or transfer.** Not later than [four to seven years after enactment], each electric distribution utility shall either (1) submit its nuclear generation assets to a public auction held in a manner designed to produce the best sale price,¹²⁹ in accordance with subsection C of this section in order to divest itself of remaining nuclear generation assets, or (2) transfer remaining nuclear generation assets to one or more legally separate corporate affiliates at their book value, in which case no stranded costs shall be recovered.

C. **Divestiture plan.**

- (1) Each electric distribution utility that elects to divest itself of its nuclear generation assets shall, in a time frame that will allow divestiture to occur by [date chosen above], submit a divestiture plan to the commission. The divestiture plan shall include (i) any documentation the commission determines is reasonably necessary to approve the auction procedure, (ii) a detailed description of the process for the sale and transfer of nuclear generation assets and (iii) information the commission determines is necessary for the commission to determine the value of the minimum bid for each nuclear generation asset, as provided in subdivision 3 of this subsection. The commission shall hold a hearing and issue a final order approving or modifying the plan in a time frame that will allow divestiture to be accomplished by [date chosen above]. Any hearing shall be conducted as a contested case. The commission shall appoint a consultant to conduct the auction process, who shall be an entity unrelated to the said utility and that meets the qualifications of the commission.¹³⁰

¹²⁹ Connecticut standard of "commercially reasonable" replaced with higher standard.

¹³⁰ Connecticut requires consultation with Office of Consumer Counsel in selection of consultant.

- (2) The commission shall not approve a sale unless (i) the sale price equals or exceeds the minimum bid established by the commission for the asset, (ii) the commission determines the bidder meets all applicable qualifications established by federal law and regulation, (iii) the sale is conducted in accordance with the divestiture plan as approved by the commission, (iv) the bidder proves to the satisfaction of the commission that the bidder will preserve labor agreements in effect at the time of sale¹³¹ and (v) the sale will result in a net benefit to ratepayers, as determined by the commission. Transfer in ownership of any asset shall not occur until the commission determines that the purchaser is fully qualified to provide electric generation services pursuant to [Section XXX-8], or pursuant to applicable federal law and regulation.¹³²
- (3) The commission shall determine the minimum bid price for each nuclear generation asset by determining the future net cash flow that a nuclear generation asset of comparable size, age and technical characteristics that is prudently and efficiently operated would be expected to produce over its expected remaining useful life, discounted to a present value.¹³³
- (4) If a final bid is less than book value for an asset, the electric distribution utility shall be entitled to recover the difference between the bid price and the book value as stranded costs pursuant to subdivision (2) of subsection H of Section XXX-19-C.¹³⁴ If a final bid exceeds book value for an asset, the net

¹³¹ Connecticut statute has many protections for labor. In this case, the risk is that a bidder will promise a high bid, hoping to reduce costs after the sale by firing existing plant staff, and hiring new non-union labor or renegotiating with the current staff to stay on at lower wages.

¹³² If the purchaser does not intend to sell the power at retail, no license is required.

¹³³ Connecticut subdivision permitting affiliate of utility to bid is deleted.

¹³⁴ This provision would effectively fix the value of stranded costs, and make them a function of the bid process, with no later true-up if circumstances change. For example, if the plant later were to be taken out of service before the end of its useful life, but were still subject to regulation, the utility would have to take the plant out of ratebase, and might not recover its undepreciated value. For a further discussion of the difference between fixing stranded cost based on the results of a divestiture sale and

proceeds realized by the electric distribution company that are above book value should be netted against the amount of stranded costs as provided in subdivision (4) of subsection H of Section XXX-19-C of this Act.

D. No satisfactory bid; calculation of stranded costs.

- (1) If an electric utility elects to sell all its remaining nuclear generation assets by public auction and complies with the provisions of subsection C of this section but does not receive bids for an asset by a qualified bidder that equal or exceed the minimum bid price, as determined by the commission in accordance with the provisions of subsection C of this section, the commission shall calculate the value of stranded costs for each such action in accordance with subdivision (3) of subsection H of Section XXX-19-C of this Act.
- (2) Not later than [date from above] the electric utility shall transfer the nuclear generation assets described in subdivision 1 of this subsection to one or more legally separate corporate affiliates. If in order to comply with rules, regulations or licensing requirements of the United States Nuclear Regulatory Commission an electric utility is unable to legally separate its nuclear assets to one or more corporate affiliates, the generation assets may remain in separate divisions of the electric utility.

E. Calculation, recovery of interim stranded nuclear generation costs.

- (1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the stranded cost recovery assessment in accordance with Section XXX-19-D of this Act.

fixing stranded costs by a recurring administrative (commission) determination of the difference between the costs of the asset and the likely value, see *Stranded Costs and Market Structures in the Electric Industry*, prepared by Tellus Institute for AARP, 1997.

- (2) On or after the date when a nuclear generation asset is sold at public auction or transferred to a corporate affiliate, the commission shall calculate the stranded costs for nuclear generation assets in accordance with subsection H of Section XXX-19-C of this Act.¹³⁵

SEC. XXX-19-C. STRANDED COST ESTIMATION

A. Definitions.¹³⁶

- (1) "Stranded cost recovery assessment"¹³⁷ means those non-bypassable rates and other charges that are authorized by the commission (i) to recover stranded costs as determined under this section or (ii) to recover costs determined under subdivision (1) of subsection E of Section XXX-19-B of this Act.¹³⁸ If requested by the electric utility or electric distribution utility, the commission shall include in the stranded cost recovery assessment non-bypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions contemplated in this section.
- (2) "Customer" means any individual, business, firm, corporation, association, tax-exempt organization, joint stock association, trust, partnership, limited liability company, the United States or its agencies, this state, any political subdivision thereof or state agency that purchases electric generation or distribution services as a retail end-user in the state from any electric supplier, electric utility or electric distribution utility;

¹³⁵ Subdivision 2, regarding securitization bonds, deleted.

¹³⁶ Subsections and subdivisions dealing with securitization deleted.

¹³⁷ Connecticut uses term "competitive transition assessment."

¹³⁸ "E. Calculation, recovery of interim stranded nuclear generation costs.

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."

- (3) "Net proceeds" means net proceeds as defined in Section 6 of this Act.
- (4) "Stranded costs" means that portion of generation assets, generation-related regulatory assets or long-term contract costs determined by the commission in accordance with the provisions of subsections E, F, G and H of this section.
- (5) "Generation assets" means the total construction and other capital asset costs of generation facilities expressly approved¹³⁹ for inclusion in rates before July 1, 1997 [a recent date by which time the risk that the system would be opened to competition would be clear to any reasonable person], but does not include (i) any costs relating to the decommissioning of any such facility or (ii) any costs which the commission found during a proceeding initiated before [effective date of statute], were incurred because of imprudent management.
- (6) "Generation-related regulatory assets" means generation-related costs authorized or mandated before [same date as cut-off for imprudence proceeding initiation in subdivision 5], by the commission, expressly¹⁴⁰ approved for inclusion in rates, and include, but are not limited to, costs incurred for deferred taxes, conservation programs, environmental protection programs, public policy costs and research and development costs, net of any applicable credits payable to customers, but does not include any costs which the commission found during a proceeding initiated before [same imprudence proceeding cutoff], were incurred because of imprudent management.
- (7) "Long-term contract costs" mean the above-market portion of the costs of contractual obligations expressly approved¹⁴¹ for inclusion in the rates that were entered into before [date],¹⁴² arising from independent power producer contracts required by law or purchased power contracts approved by the Federal Energy Regulatory Commission.

¹³⁹ Modifier "expressly" added.

¹⁴⁰ Modifier "expressly" added.

¹⁴¹ Modifier "expressly" added.

¹⁴² Connecticut uses transition date.

B. **Commission order; divestiture as precondition.** The commission shall, in accordance with the provisions of this section, identify and calculate, upon application by an electric utility, those stranded costs that may be collected through the stranded cost recovery assessment, which shall be calculated and collected in accordance with Section XXX-19-D of this Act. No electric distribution utility shall be eligible to claim stranded costs unless a public auction has been held to divest itself of all non-nuclear generation assets in accordance with subsection B of Section XXX-6 of this Act or the electric utility has sold its non-nuclear generation assets in accordance with [cross-reference any statutory requirements on sale of generation assets].¹⁴³

C. **Efforts to reduce stranded costs; mitigation of near-term rate impacts.**

(1) Notwithstanding subdivision (1) of subsection E of Section XXX-19-B of this Act,¹⁴⁴ any electric utility seeking to claim stranded costs shall, in accordance with this subsection, take all reasonable efforts to reduce such stranded costs, and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased.¹⁴⁵ Before the approval

¹⁴³ Some states require utilities to get commission or even legislative approval to sell off the assets they use in providing their public service. The reason these statutes were enacted was to make sure that a public utility did not take itself out of business and leave customers without service, unless other means to provide service were assured.

¹⁴⁴ "E. Calculation, recovery of interim stranded nuclear generation costs.

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."

¹⁴⁵ The term "mitigate" is used in the Connecticut statute. "Mitigation" has come to mean a large number of actions that tend to reduce near-term rate impacts or the total amount claimed in stranded costs, but which do not necessarily reduce the outlay expected of customers, at least over the remaining useful life of the assets claimed to be stranded by competition. This rewrite, therefore, takes pains to use language that is more specific in describing what is authorized, and what the impact will be, requiring always that the net present value of any steps not increase as a result of "mitigation" efforts.

by the commission of any stranded cost recovery, the electric utility shall show to the satisfaction of the commission that the electric utility has taken all reasonable steps to reduce such stranded costs and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased, and also that it has taken all reasonable steps to minimize the net present value cost¹⁴⁶ to be recovered from customers.

- (2) Steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, shall include:
 - (i) except to the extent provided in collective bargaining agreements or agreements to purchase generation assets entered into before [effective date of statute], the obtaining of written commitments from purchasers of generation facilities divested pursuant to Sections XXX-14 and XXX-19-B of this Act, that the purchasers will offer employment to persons who were employed in nonmanagerial positions by a divested facility at any time during the three-month period prior to divestiture, at levels of wages and overall compensation not lower than the employees' lowest level during the six-month period before the date the contract to divest the asset was entered into;¹⁴⁷
 - (ii) good faith efforts to negotiate the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission;¹⁴⁸
 - (iii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to Sections XXX-6 and XXX-7 of this Act;

¹⁴⁶ Inserted qualifier "net present value."

¹⁴⁷ This section is not needed if employment-related costs are not included in stranded costs for recovery in the stranded cost recovery assessment.

¹⁴⁸ Connecticut also requires that "the fixed present value of any contract to which a political subdivision of the state is a party shall be calculated using the political subdivision's tax-exempt borrowing rate as the discount rate."

- (iv) maximization of market revenues from existing generation assets;¹⁴⁹ and
 - (v) efforts to maximize current and future operating efficiency, including appropriate and timely maintenance, trouble-shooting, aggressive identification and correction of potential problem areas.¹⁵⁰
- (3) Steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, may include:
- (i) reallocation of depreciation reserves for generation assets to existing generation assets to the extent consistent with generally accepted accounting principles,¹⁵¹ and so long as net costs are not shifted between customer classes as a result of such reallocation;
 - (ii) reduction of book assets by application of net proceeds of any sale of existing assets, so long as net costs are not shifted between customer classes as a result of such application;¹⁵²
 - (iii) voluntary write-offs of above-market generation assets;¹⁵³

¹⁴⁹ Connecticut's original language would make it permissive for a utility to try to get the best price for the output of its generation assets not used for own-load supply. It should be mandatory, not permissive, so the language is moved to the mandatory subdivision of the subsection.

¹⁵⁰ Again, appropriate and timely maintenance to maximize operating efficiency is a baseline requirement of sound utility management, and should not be permissive. As with the other items of sound utility management that the language in the Connecticut statute makes permissive, the better course is not only to require such behavior, but to reduce stranded cost recovery by the extent of costs incurred that would have been avoided by such sound practices. For this reason, such steps are mandatory in the model statute.

¹⁵¹ Reallocation of depreciation reserves does not lower net present value costs. Also, it is necessary to be alert for cost-shifting when reallocating such depreciation reserves.

¹⁵² Connecticut leaves open the question of whether the commission can require that such offsets be done, or whether it is up to the utility. It would be preferable to require that such offsets be made, except where and to the extent the result is cost-shifting between classes.

¹⁵³ As noted by Tellus Institute in their white paper for AARP, *Stranded Costs and Market Structures in the Electric Industry*, 1997, voluntary write-offs amount to a sharing of stranded costs between stockholders and ratepayers.

- (iv) the decision to retire uneconomical generation assets;¹⁵⁴
and
 - (v) efforts to divest generating sites at market prices reflective of best use of sites.¹⁵⁵
- (4) Cost reduction and rate impact mitigation measures shall not include any expenditures to restart a nuclear generation asset that was not operating for reasons other than scheduled maintenance or refueling at the time such expenditure was made.
 - (5) Any such cost reduction and rate impact mitigation efforts shall be subject to approval by the commission.
 - (6) The commission shall allow the cost of such cost reduction and rate impact mitigation measures to be included in the calculation of stranded costs to the extent that such costs are reasonable relative to the amount of the reduction in stranded costs resulting from the measures.

D. Application; contents; contested hearing. An electric utility shall submit to the commission an application for recovery of that portion of generation-related regulatory assets, long-term contract costs, generation assets and cost-reduction and rate impact mitigation costs which are determined by the commission in accordance with this section and subdivision (1) of subsection E of Section XXX-19-B of this Act.¹⁵⁶ The application shall contain a

¹⁵⁴ The impact such retirement will have on rates will vary based on the state's treatment of the undepreciated costs of retired uneconomic plant. Typically, utilities have not received 100 percent recovery under monopoly regulation for the undepreciated costs of such plant, but rather some sharing has been imposed. One typical formula is amortization (recovery over time) of the undepreciated costs, without any return, which means the utility loses the expected profits and time value of money related to the undepreciated portion of the plant. In such a scenario, a 10 year recovery period would cause the utility to recover approximately 50 percent of the net present value of the undepreciated amount.

¹⁵⁵ See note above about offsets by proceeds of sales.

¹⁵⁶ "E. Calculation, recovery of interim stranded nuclear generation costs.

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."

description of cost reduction and rate impact mitigation efforts, and a request for recovery through the stranded cost recovery assessment.¹⁵⁷ The commission shall hold a contested hearing for each electric utility and shall issue a finding of the calculation of stranded costs in a time frame that allows for collection of the stranded cost recovery assessment to begin on [transition date].

- E. **Value of regulatory assets.** The commission shall calculate the stranded costs for generation-related regulatory assets to be their book value as of [transition date].¹⁵⁸
- F. **Calculation of stranded costs; long-term contracts.**
- (1) The commission shall calculate the stranded costs for any portion of a long-term contract cost that have been reduced to a fixed present value through the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission as such present value. In making such calculation, the commission shall net purchased power contracts approved by the Federal Energy Regulatory Commission that are below market value against any such contracts that are above market value.
 - (2) The commission shall calculate the stranded costs for any portion of a long-term contract cost that has not been reduced to a fixed present value through the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission by comparing the contract price to the market price at least annually. In making such calculation, the commission shall net purchased power contracts approved by the Federal Energy Regulatory Commission that are below market value against any such contracts that are above market value.¹⁵⁹

¹⁵⁷ Connecticut reference to securitization deleted.

¹⁵⁸ Connecticut reference to securitization deleted.

¹⁵⁹ Connecticut reference to securitization eliminated. (Connecticut allows long-term contract stranded costs to be recovered, but not securitized.)

G. Non-nuclear generation asset; estimation of stranded cost if not sold.

- (1) The commission shall calculate the stranded cost for each generation asset described in this Act to be the difference between its book value and the market value of a prudently and efficiently managed non-nuclear generation facility of comparable size, age and technical characteristics in a competitive market. In determining the market value of any such asset, the commission may consider (i) the dollars per kilowatt received from the sale of similar generation facilities in the region, if any,¹⁶⁰ (ii) income capitalization based on the operating history and capacity of the facility, the market rates for power, and any existing long-term contracts for the sale of energy and/or capacity,¹⁶¹ (iii) independent market appraisals or (iv) other relevant factors.
- (2) The commission shall calculate the stranded costs for such generation assets at least every three years.¹⁶²

H. Nuclear generation stranded cost recovery; application; process.

- (1) On or before [four years after transition date], an electric utility may submit to the commission an application for recovery of that portion of nuclear generation assets which is determined by the commission in accordance with this subsection, which application shall contain a request for recovery through the stranded cost recovery assessment. The commission shall hold a hearing for each electric utility and issue a finding of the calculation of such nuclear generation assets in accordance with the provisions of this subsection. Any hearing shall be conducted as a contested case.¹⁶³

¹⁶⁰ Reference to regional sales added.

¹⁶¹ Substituted "energy and/or capacity" for "power and capacity" in Connecticut statute.

¹⁶² Connecticut reference to securitization eliminated. (Connecticut allows stranded costs for non-divested nonnuclear generation assets to be recovered, but not securitized.)

¹⁶³ Connecticut reference to securitization eliminated. (Connecticut allows nuclear stranded costs from nondivested plants, and from divested plants sold at less than book value, to be recovered, but not securitized.)

- (2) The commission shall calculate stranded costs for each nuclear generation asset that was divested at a price less than book value as described in subdivision (4) of subsection C of Section XXX-19-B of this Act as the difference between the book value of such asset and the final bid price of the asset.¹⁶⁴
- (3) The commission shall calculate the stranded costs for each nondivested nuclear generation asset described in subdivision (1) of subsection D of Section XXX-19-B of this Act as the difference between the book value of this asset and the market value of a prudently and efficiently managed nuclear generating facility of comparable size, age and technical characteristics in a competitive market. In determining the market value of any such asset, the commission may consider (i) the dollars per kilowatt received from the sale of similar generation facilities in the region, if any,¹⁶⁵ (ii) income capitalization based on the operating history and capacity of the facility, the market rates for power, and any existing long-term contracts for the sale of energy and/or capacity,¹⁶⁶ (iii)¹⁶⁷ independent market appraisals or (iv) other relevant factors.

At least every four years after the date when the commission issues an initial finding of the calculation of stranded costs for such nondivested nuclear generation assets as provided in this subdivision until the earlier of (i) the expiration of the collection of the stranded cost recovery assessment or (ii) the date when such an asset is divested, the commission shall hold a hearing and issue a finding to adjust the stranded cost calculation of each such asset and to adjust the stranded cost recovery assessment accordingly to true-up the stranded cost recovery for the difference between the

¹⁶⁴ Connecticut language on finality of calculation—"The commission's calculation of stranded costs pursuant to this subdivision shall be final and shall not be subject to further adjustment by the commission."—deleted.

¹⁶⁵ Reference to regional sales added.

¹⁶⁶ Substituted "energy and/or capacity" for "power and capacity" in Connecticut statute.

¹⁶⁷ Connecticut language on use of systems benefit charge to pay for decommissioning costs—"the provision for decommissioning and related costs to be paid from the systems benefit charge provided in section XXX-X of this Act"—deleted.

market value project in such initial finding and the actual market value of a prudently and efficiently managed nuclear generating facility of comparable size, age and technical characteristics during the time period between the initial finding and the adjustment date, provided the second and subsequent adjustments shall reflect the difference during the time period since the most recent true-up. The commission shall calculate the value of each such asset in accordance with the methodology provided in this subdivision. Any hearing shall be conducted as a contested case.

- (4) After the commission has calculated the total value of stranded costs of all nuclear generating assets, the commission shall (i) reduce such amount by the net proceeds that are above book value realized by an electric utility from the sale of non-nuclear generation assets pursuant to Section XXX-14 of this Act, (ii) reduce such valuation to reflect the total net proceeds that are above book value realized by an electric utility from the sale of any nuclear generation assets pursuant to subsection C of Section XXX-19-B of this Act and (iii) reduce such amount by the net proceeds that are above book value received by an electric utility for the sale or lease of any real property after [effective date of Act].¹⁶⁸

I. Balance of net proceeds; application to long-term contracts. If any net proceeds described in subdivision (4) of subsection H of this section remain after the reduction in the calculation of nuclear generation assets pursuant to said subdivision (4) or are realized after said reduction is calculated, the additional amount of such net proceeds shall be netted against long-term contract costs described in subdivision (2) of subsection F of this section, and the stranded cost recovery assessment shall be adjusted accordingly.

¹⁶⁸ Caution about potential for cost-shifting in application of net proceeds of sale of real property, if such real property costs would have been allocated to one class under ratemaking, and are simply netted out against all classes' stranded cost recovery obligation under this provision.

J. Disallowance for non-operating nuclear plant and regulatory assets.¹⁶⁹

- (1) No electric utility shall be eligible to claim any stranded costs for a nuclear generation asset or for any generation-related regulatory asset related to such generation asset, if the generation asset is not operating as a result of an order issued by the United States Nuclear Regulatory Commission that applies specifically to such asset. Any such asset shall be eligible after it is permitted to and has resumed operation, and is selling power provided, however, that no true-up shall provide stranded cost recovery for that period during which such asset was not operating.¹⁷⁰
- (2) Any generation asset that is retired shall no longer be eligible for stranded cost recovery as previously calculated pursuant to this section, but may be eligible for stranded cost recovery for so much of the undepreciated cost that would have been permitted to be included in rates under traditional regulation.¹⁷¹

K. Netting proceeds of post-transition sale of nuclear assets. If an electric utility elected to transfer any of its nuclear generation assets and related operations and functions to a separate corporate affiliate or to a division that is functionally separate from the electric distribution utility pursuant to Section XXX-19-B of this Act, and subsequently sold any such assets in an arm's length transaction to an unrelated entity prior to [date 10-15 years after effective date] the net proceeds realized from such sale that exceed book value for such assets shall be netted against the total amount of stranded costs, and the stranded cost recovery assessment shall be adjusted accordingly, and, if appropriate, other reimbursement of ratepayers shall be ordered by the commission.

¹⁶⁹ Connecticut only creates a disallowance of stranded cost recovery for non-operating nuclear plant. Question whether there should be any stranded cost recovery for non-operating plants, or at least whether the recovery should be adjusted to reflect any reduction in cost recovery that would have taken place had the asset remained subject to regulation.

¹⁷⁰ Added proviso regarding no true-up covering period of non-operation.

¹⁷¹ Deleted subdivision (2), regarding particular Connecticut nuclear generating plant, and replaced with generic language on retired plant.

SEC. XXX-19-D. STRANDED COST RECOVERY ASSESSMENT
AUTHORIZED¹⁷²

- A. **Assessment authorized.** The commission shall assess and beginning [one year after transition date], impose a stranded cost recovery assessment, which shall be imposed on all customers of each electric distribution utility to provide funds for the purposes described in section D of this section. The commission shall hold a contested case hearing to determine the amount of the stranded cost recovery assessment.
- B. **Factors to consider.** The commission shall consider the effect on all customer rates and other factors relevant to reducing rates in determining the amount of the stranded cost recovery assessment and the manner in which and the period over which it shall be imposed in any decision of the commission to set or adjust the stranded cost recovery assessment.
- C. **Allocation of costs.** The stranded cost recovery assessment shall be determined by the commission in a general and equitable manner and shall be imposed on all customers at a rate that is applied equally to all customers of the same class in accordance with the methods of allocation in effect as of [effective date of Act].¹⁷³ The assessment shall have a generally applicable manner of determination that may be measured on the basis of percentages of total costs of retail sales of electric generation services. Any exemption of the assessment by customers under a special contract shall not result in an increase in rates to any customer.
- D. **Amount of assessment.** The commission shall establish, fix and revise the assessment in an amount sufficient at all times to:¹⁷⁴
- (1) pay an electric utility's stranded costs; and

¹⁷² Securitization references deleted.

¹⁷³ Language exempting special contract customers deleted, except for last sentence, below, by which utility is permitted to exempt such customers in whole or in part, but may not recover costs attributable to such customers from other customers.

¹⁷⁴ Securitization language deleted.

- (2) pay interim capital costs determined under subdivision (1) of subsection E of Section XXX-19-B of this Act.¹⁷⁵

¹⁷⁵ "E. Calculation, recovery of interim stranded nuclear generation costs.

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."

APPENDIX III: STATE UDAP CITATIONS

Ala. Code § 8-19-1

Alaska Stat. § 45.50.471

Ariz. Rev. Stat. Ann. § 44-1521

Ark. Code Ann. § 4-88-101

Cal. Civ. Code § 1750 (West)

Cal. Bus. & Prof. Code §§ 17200 & 17500 (West)

Colo. Rev. Stat. § 6-1-101

Conn. Gen. Stat. § 42-110a

Del. Code Ann. tit. 6 § 2511

Del. Code Ann. tit. 6 § 2531

D.C. Code Ann. § 28-3901

Fla. Stat. Ann. § 501.201 (West)

Ga. Code Ann. § 10-1-370

Ga. Code Ann. § 10-1-390

Haw. Rev. Stat. § 480

Haw. Rev. Stat. § 481A

Idaho Code § 48-601

815 Ill. Comp. Stat. Ann. § 505/1 et seq. (Smith-Hurd)

815 Ill. Comp. Stat. Ann. § 510/1 et seq. (Smith-Hurd)

Ind. Code Ann. § 24-5-0.5-1 (Burns)

Iowa Code Ann. § 714.16 (West)

Kan. Stat. Ann. § 50-623

Ky. Rev. Stat. § 367.110

La. Rev. Stat. Ann. § 51:1401 (West)

Me. Rev. Stat. Ann. tit. 5 § 206

Me. Rev. Stat. Ann. tit. 10 § 1211

Md. Com. Law Code Ann. §§ 13-101, 14-101

Mass. Gen. Laws Ann. ch. 93A

Mich. Comp. Laws Ann. § 445.901
Minn. Stat. Ann. § 8.31 (West)
Minn. Stat. Ann. § 325D.44
Minn. Stat. Ann. § 325F.67
Minn. Stat. Ann. § 325F.69
Miss. Code Ann. § 75-24-1
Mo. Rev. Stat. § 407.010
Mont. Code Ann. § 30-14-101
Neb. Rev. Stat. § 59-1601
Neb. Rev. Stat. § 87-301
Nev. Rev. Stat. §§ 41.600, 598.0903
N.H. Rev. Stat. Ann. § 358-A:1
N.J. Stat. Ann. § 56:8-1 (West)
N.M. Stat. Ann. § 57-12-1
N.Y. Exec. Law § 63(12) (Consol.)
N.Y. Gen. Bus. Law § 349 and § 350 (Consol.)
N.C. Gen. Stat. § 75-1.1
N.D. Gen. Stat. § 51-15-01
Ohio Rev. Code Ann. § 1345.01 (Baldwin)
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Okla. Stat. Ann. tit. 15 § 751 (West)
Okla. Stat. Ann. tit. 78 § 51 (West)
Or. Rev. Stat. § 646.605
Pa. Stat. Ann. tit. 73 § 201-1 (Purdon)
R.I. Gen. Law § 6-13.1-1
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S.D. Codified Laws Ann. § 37-24-1
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Utah Code Ann. §§ 13-2-1 and 13-5-1

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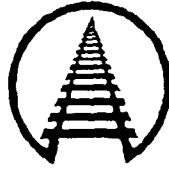
Wash. Rev. Code Ann. § 19.86 et seq.

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March 23, 2001

The Honorable Dick Cheney
The White House
Washington, DC 20500

Dear Mr. Vice President:

I am writing to you in your capacity as chairman of the White House Energy Policy Development Task Force. The Association of American Railroads (AAR) appreciates this opportunity to offer its observations on the impact of higher energy prices on the nation's rail sector.

I would note that AAR's comments are intended to supplement the briefing papers submitted to you earlier by the Coal-Based Generation Stakeholders group of which the railroads are leading members. Some 52 percent of our nation's electricity is generated by coal (with more than two-thirds of that coal transported by rail) and coal is one of the nation's least expensive sources of electrical energy.

In developing an effective energy strategy, it is important to remember that America -- at least until recently -- has enjoyed some of the lowest energy prices in the world. These low energy costs have enhanced our competitive position in all sectors of trade from agriculture to manufacturing.

Railroads applaud the Bush administration's efforts to develop a national energy strategy, and we commend you for personally taking on the responsibility for this effort. Energy improvements will contribute to the industry's bottom line due to both lower diesel fuel costs as well as their impact on railroad customers. These customers range from automobile manufacturers whose products can be affected by higher fuel prices to electric utility customers for whom railroads ship millions of tons of coal each year.

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Despite the fact that railroads are three times more fuel efficient than trucks, the price of diesel fuel continues to be a major challenge for the rail industry. In providing cost and energy efficient freight service, U.S. freight railroads consume huge volumes of diesel fuel – over four billion gallons annually. Because the cost of fuel is a major cost component of railroad operations – comprising 7.1 percent of industry costs – the alarming jump in fuel prices over recent periods has been a substantial hardship for railroads and their customers.

The price of railroad fuel toward the end of 2000 was the highest during the past 20 years, and likely the highest ever. As of the end of 2000, the average price paid by railroads for diesel fuel had rocketed to a level 239 percent of the price at the beginning of 1999. Long term contracts and customer agreements often limit the ability of railroads to recover major cost increases in a timely fashion. Thus, railroads are being forced to expend an additional \$2.4 billion annually or \$6.6 million more each and every day. Moreover, because this huge increase in costs is required to perform exactly the same level of service, these increased costs have a direct impact on the industry's financial bottom line. In fact, they represent an amount equal to three-quarters of industry net income.

Looking ahead, future pricing policies will have to include major price increases to recover lost profitability as a result of fuel cost increases. Some shippers have indicated that they will be unable to absorb these transportation rate increases and will be forced to pass the expense on to their customers.

Because railroads have huge fixed costs to cover, it makes economic sense to move traffic that is marginally profitable (i.e., railroads handle traffic that is slightly above variable cost because it contributes to fixed cost). However, the fuel cost increases have raised our variable costs to such a degree that, in some segments, variable costs are becoming higher than the revenue, and traffic that has been historically profitable may have to be eliminated.

Moreover, higher energy prices are having a negative effect on some freight shippers, a development that affects freight railroads indirectly. For instance, eight of the ten major aluminum producers served by one leading railroad are currently shut down, and the remaining two are operating at 50 percent capacity. Instead of producing product, these companies are selling their allotted power.

Other railroads report that dramatically higher natural gas prices have led to significant traffic losses due to reductions in production and plant closures in areas such as plastics, cement, fertilizer, and intermediate gases such as propane and butane.

For these reasons, AAR encourages you to take strong and immediate action to formulate an effective national energy strategy. In addition to urging support for actions