# 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 [FILL IN 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.

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 [INSERT 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% 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.

#### 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% or more of the voting securities of the purchasing entity;
- (2) Any person 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph A;
- (3) Any person 10% 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% 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" includes 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 regs 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.

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 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 effective 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; and
- (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.
- (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 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 [5 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 [9 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% 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 [5 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 [3] 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 March 1, 2000 which, together with the transmission, distribution, and transition charges, produces for such a service package a rate reduction of at least fifteen percent from the comparable rate in effect on the date of passage of this Act.
- (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 March 1, 2000, shall be 25 per cent on or before September 1, 2001.

- (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. Price cap; investigation. [ALTERNATIVE to C above] 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-28, the commission shall notify the Legislature of the results of its investigation and its determination.
- D. Implementation period. Standard-offer service must be available until [5 or 7 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-28.
- 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.

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 twelve-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 kWh to all industrial customers by an amount equal to the difference between the average industrial price in the aforementioned twelve-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 kWh in the subsequent twelve months.

- B. Limit on spread between default and regional average rates. Whenever the average of residential default service prices for a twelve-month period is more than that of average prices in the region, the distribution utility will increase the access charge per kWh to all non-residential-default customers by an amount equal to the difference between the average residential default service price in the aforementioned twelve-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 kWh in the subsequent twelve months.
- C. Evaluation of rate impacts of restructuring. Prior to the termination of the [] year period 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.

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. If such aggregated entity is not fully operational on the retail access date, any ratepayer to be automatically enrolled therein shall receive standard offer service unless affirmatively electing not to do so. 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 benefit 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 the reasons why it is not consistent with the state energy plan. The municipality or municipalities may reapply at anytime 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 state-wide 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. Electric billing and metering services. Unless the commission determines that electric billing and metering services are not competitive, beginning five years after the transition date, pursuant to rules adopted by the commission, the provision of electric billing and metering services is subject to competition. The commission by rule may establish a different date for the beginning of competition for the provision of

billing or metering services. In considering whether billing and metering services are competitive, the commission shall consider the standards set forth in Section XXX-2(E), as well as the impact of competition in billing and metering on metering and billing accuracy, customer confusion, and customer confidence in the accuracy of metering and billing.

Sec. XXX-9. 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-22;
- (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-10(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 at commission discretion. The commission shall consider the need for requiring and, if it determines there is a need, may 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.

Sec. XXX-10. 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 5 days of receipt of the written disclosures required by subsection B(5) and XXX-14, 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-14 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 non-payment 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 pre-payment for service or to require a customer to accept time-of-day metering, arbitration of disputes, service limiters, 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, or 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 fifty percent of the average amount that the company charged such customer for each billing period over the previous twelve-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) Twenty per cent 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 twelve-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 three hundred per cent 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 one hundred twenty-five 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 using gas for heat to be eligible to have any moneys due and owing deducted from the customer's delinquent account pursuant to this subdivision, the company furnishing 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 twelve-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.
- (v) 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. (vi) 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 (vii) 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.

- (vii) 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 ninety days of receipt of the plan. If the commission does not take any action on such plan within ninety days of its receipt, the plan shall automatically take effect at the end of the ninety-day period, provided the commission may extend such period for an additional thirty days by notifying the gas public service company before the end of the ninety-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-10(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 and
- (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.
- (iv) Each such provider and utility shall inform and counsel all customers who are hardship cases as to the availability of all public and private energy conservation programs, 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 nonhardship 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,
  - (iii) 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,

- (iv) the number of reasonable amortization agreements executed and the number breached during the same year by (A) hardship cases and (B) nonhardship cases, and
- (v) the number of accounts of (A) hardship cases and (B) nonhardship 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 a 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-10(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 thirteen 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 thirteen-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 one hundred twenty days after mailing the initial notice of termination, such company or municipal utility shall give the customer a new notice at least thirteen 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 this section.
  - (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 this section 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; provided, any telephone company during the pendency of any complaint, investigation, hearing or appeal may terminate telephone service if the amount of charges accruing and outstanding subsequent to the initiation of any complaint, investigation, hearing or appeal exceeds on a monthly basis the average monthly bill for the previous three months or if the customer fails to keep current his telephone account for all undisputed charges or fails to comply with any amortization agreement as hereafter provided.
- (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 twenty-five 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 twenty per cent 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 re 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).
- (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 this section, 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 this section 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), 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 seventy-two 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) 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 subsection M and N by any agent, owner, lessor, or manager of residential rental property shall be punishable by a fine of not more than five hundred dollars or imprisonment for not more than thirty 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 this section 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-11. 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-9,10, 12 and 13.
  - 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. 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 \$1,000,000. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Intervenor Reimbursement Fund, under section XXX-29.
- 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.

Sec. XXX-12. 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.

Sec. XXX-13. 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 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 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-13, 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-29.

Sec. XXX-14. 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 and 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 systems 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 of 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, radionucleides, 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 6-month period;
- (2) A description of the average duration of supply arrangements with retail customers in the most recent 6-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 6-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, radionucleides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent 6-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.
- I. 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].

## Sec. XXX-15. 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 [3-6 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 [6-9 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 re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By [date 6 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-16. 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.

Sec. XXX-17. 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% 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% or more of the voting securities of the purchasing entity;
- (ii) Any person or entity 10% 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% 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% 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 providers 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% 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 [5 or 6 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 nonpublic 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 nonpublic 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.
- (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.
- D. 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.
- E. Limitation. Notwithstanding any other provision, no electric provider or generation entity or affiliate that owns or controls more than fifteen percent of the electricity generation capacity that is dispatched by the [regional ISO], or its successor, may offer electric generation services in the state.
- F. 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.

- G. 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.

- H. Prohibition; divestiture. If, after the effective date of this section, 10% 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 subsection 4.

- I. 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.
- J. 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-18. 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.

Sec. XXX-19. 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.

Sec. XXX-20. 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% of the costs determined by the commission to be stranded, which recovery shall

be allowed over a period not to exceed ten 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; and
  - (ii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to section XXX-15 of this act.
  - (iii) maximization of market revenues from existing generation assets;
  - (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. In [2003] and every 3 years thereafter 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-20 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.
- (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-15 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 moneys 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 per cent 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 passage.

# Sec. XXX-21. 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 October 1, 1999 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 Benefit Charge; limit on rate spread. The commission shall establish a systems benefit charge to be imposed against all retail usage. The systems 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 [July 1, 1998.] On and after [July 1, 2003], the commission shall allocate the rate of the systems benefit charge in accordance with methods in effect on [July 1, 1998], 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 [1991]. The system benefit charge shall be rolled into distribution rates and recovered as part of distribution rates.

#### Sec. XXX-22. Renewable resources.

A. Policy. In order to ensure an adequate and reliable supply of electricity for FILL IN 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 ISO 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 [] 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 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than []% 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 []% 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 [5] years after the beginning of retail competition.
  - E. Funding for research and development.
  - F. Net metering authorized.

#### Sec. XXX-23. 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 amounts: 3.3 mills (\$0.0033) per kilowatt-hour for calendar year (first year of transition date); 3.1 mills (\$0.0031) per kilowatt-hour for calendar year (next year); 2.85 (\$0.00285) mills per kilowatt-hour for calendar year (next year); 2.7 mills (\$0.0027) per kilowatt-hour for calendar year (next year); and 2.5 mills (\$0.0025) per kilowatt-hour for each successive year, provided however that the commission may thereafter increase the mill rate for such activities up to a maximum of 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 [July 1, 1998], the commission shall commence a rule-making proceeding on energy conservation programs. By [July 1, 1999], 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.

#### Sec. XXX-24. Consumer education.

A. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program 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.

Sec. XXX-25. 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 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-23, 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, Supplemental Security Income, food stamps, Medicaid, general assistance [if in the state], means-tested Veteran's Benefits, Low-Income Home Energy Assistance, 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.

Sec. XXX-26. 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 FILL IN 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 FILL IN 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-27 Transition; utility employees.

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 January 1, 2000; 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 2 years after the beginning of retail access, provide to eligible employees retraining services and out-placement services and benefits, including intensive vocational-interests-and-aptitude screening;

- (3) Provide full tuition for 2 years at the University of FILL IN 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 2 years at the University of FILL IN 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 2 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. 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-28. Reports.

A. Annual restructuring report. On November 15th 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 or not 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;
- (6) recommendations for improving any deficiencies so identified in electricity energy, including drafts of legislation.
- C. 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.

#### Sec. XXX-29 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-11 and 13, 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. 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-29, 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 3 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 after 6 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 Areas.

A. Until [3 years after transition date] this state shall be divided pursuant to this section into retail marketing areas 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 that 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 that 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 that 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 forty-five 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.

- (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 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, and except as the kilowatt-hour surcharge is otherwise authorized to be paid pursuant to Section XXX-# that the bidder include in its bid the kilowatt-hour surcharge authorized under section [cross reference surcharge language];
- (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 [cross-reference rate reduction language in statute]. 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.
- (6) Except as otherwise provided in this section, initial rules under this section shall be adopted not later than two-hundred-seventy-five 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 incumbent electric utility or its affiliate, subject to the limitations of Sections XXX-#, # and #.. 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 3 years after transition date], or until such time as an 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

## Section 20-A. Stranded Cost Recovery - Nonnuclear Generation Assets

- A. Definitions. As used in this section:
- (1) "Generation assets" means electric generation facilities and generationrelated 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 sections 8-10 inclusive unless the utility (i) before the date when the commission approves a divestiture plan has sold its nonnuclear generating assets, and (ii) on and after the date when the commission approves such a plan, has submitted all of its remaining nonnuclear 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 nonnuclear 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 nonnuclear 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 2 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 20-C of this act.
- (5) In 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 20-C of this act.

Section 20-B. Stranded cost recovery - nuclear generation assets.

- A. Definitions. As used in this section:
- (1) "Generation assets" means electric generation facilities and generationrelated 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 (4-7 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-9, 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 20-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 20-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 20-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 competitive transition assessment in accordance with Section 20-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 20-C of this act.

Section 20-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 20-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 and sections 9 to 14 of this act;
- (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 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 20-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 nonnuclear generation assets in accordance with subsection B of section 6 of this act or the electric utility has sold its nonnuclear 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 20-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 6 and 7 of this act, that the purchasers will offer employment to persons who were employed 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 6 and 7 of this act.
  - (iv) maximization of market revenues from existing generation assets;
  - (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 20-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 longterm 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. Nonnuclear generation asset; estimation of stranded cost if not sold.
- (1) The commission shall calculate the stranded cost for each generation asset described in subdivision (7) of subsection B of section 6 of this act to be the difference between its book value and the market value of a prudently and efficiently managed nonnuclear 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 (4 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 20-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 20-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 nonnuclear generation assets pursuant to subdivision (4) of subsection B of section 6 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 20-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 20-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.

Section 20-D. Stranded cost recovery assessment authorized.

A. Assessment authorized. The commission shall assess and beginning [1 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. The assessment shall be payable by customers on an equal basis on the same payment terms and shall be eligible [sic] or subject to prepayment on an equal basis. 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) to pay an electric utility stranded costs, and
- (2) to pay interim capital costs determined under subdivision (1) of subsection E of Section 20-B of this act.