

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H1/28/03 H1/30/03

A Bill

HOUSE BILL 1114

5 By: Representatives Napper, *Lendall*
6 By: Senator B. Johnson
7

For An Act To Be Entitled

10 THE ELECTRIC UTILITY REGULATORY REFORM ACT OF
11 2003.

Subtitle

14 AN ACT TO REPEAL CHAPTER 19 OF TITLE 23
15 AND TO REFORM ELECTRIC UTILITY
16 REGULATION.
17

18 WHEREAS, the environment in the electric utility industry has changed,
19 and it is in the public interest to continue regulating electric rates for
20 the foreseeable future; and

21 WHEREAS, the Arkansas Public Service Commission has determined that
22 Arkansas' electric ratepayers would be unlikely to benefit from, and could be
23 harmed by, retail electric competition for the foreseeable future, and has
24 recommended to the General Assembly that implementation of retail electric
25 competition in Arkansas either be delayed for a significant period of years
26 or be repealed; and

27 WHEREAS, the electric utilities have incurred certain costs in
28 complying with Act 1556 of 1999 that they will not be able to recover under
29 the Act; and

30 WHEREAS, it is in the public interest to adopt the Electric Utility
31 Regulatory Reform Act of 2003.

32
33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
34

35 SECTION 1. *Arkansas Code § 4-9-109(a) is amended to read as follows:*

36 (a) *Except as otherwise provided in subsections (c) and (d), this*



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1 chapter applies to:

- 2 (1) a transaction, regardless of its form, that creates a
- 3 security interest in personal property or fixtures by contract;
- 4 (2) an agricultural lien;
- 5 (3) a sale of accounts, chattel paper, payment intangibles,
- 6 ~~qualified intangible property~~, or promissory notes;
- 7 (4) a consignment;
- 8 (5) a security interest arising under § 4-2-401, § 4-2-505, § 4-
- 9 2-711(3), or § 4-2A-508(5), as provided in § 4-9-110; and
- 10 (6) a security interest arising under § 4-4-210 or § 4-5-118.

11

12 SECTION 2. Arkansas Code § 4-9-301 is amended to read as follows:

13 4-9-301. Law governing perfection and priority of security interests.

14 Except as otherwise provided in §§ 4-9-303 - 4-9-306, ~~and except for~~
15 ~~the perfection, the effect of perfection or nonperfection, and the priority~~
16 ~~of a security interest in qualified intangible property, which shall be~~
17 ~~governed by the law of this state~~, the following rules determine the law
18 governing perfection, the effect of perfection or nonperfection, and the
19 priority of a security interest in collateral:

20 (1) Except as otherwise provided in this section, while a debtor
21 is located in a jurisdiction, the local law of that jurisdiction governs
22 perfection, the effect of perfection or nonperfection, and the priority of a
23 security interest in collateral.

24 (2) While collateral is located in a jurisdiction, the local law
25 of that jurisdiction governs perfection, the effect of perfection or
26 nonperfection, and the priority of a possessory security interest in that
27 collateral.

28 (3) Except as otherwise provided in paragraph (4), while
29 negotiable documents, goods, instruments, money, or tangible chattel paper is
30 located in a jurisdiction, the local law of that jurisdiction governs:

31 (A) perfection of a security interest in the goods by
32 filing a fixture filing;

33 (B) perfection of a security interest in timber to be cut;
34 and

35 (C) the effect of perfection or nonperfection and the
36 priority of a nonpossessory security interest in the collateral.

1 (4) The local law of the jurisdiction in which the wellhead or
2 minehead is located governs perfection, the effect of perfection or
3 nonperfection, and the priority of a security interest in as-extracted
4 collateral.

5
6 SECTION 3. Arkansas Code § 4-9-102 (a)(69) is repealed.

7 ~~(69) "Qualified intangible property" means a fully vested property~~
8 ~~right consisting of the irrevocable right of an electric utility or an~~
9 ~~assignee to charge, collect, receive, and be paid from collections of~~
10 ~~qualified intangible charges in the amount necessary to recover fully the~~
11 ~~qualified costs which are determined to be recoverable by the Arkansas Public~~
12 ~~Service Commission pursuant to the Electric Consumer Choice Act of 1999, §~~
13 ~~23-19-101 et seq., all right, title, and interest of the electric utility or~~
14 ~~assignee in and to the qualified rate order pursuant to which such qualified~~
15 ~~intangible charges are authorized, including, without limitation, the right~~
16 ~~to obtain periodic adjustment of such qualified intangible charges pursuant~~
17 ~~to § 23-19-605(d), and all revenues, collections, claims, payments, money or~~
18 ~~proceeds of, or arising from, qualified intangible charges pursuant to such~~
19 ~~qualified rate order, whether or not the revenues and proceeds arising with~~
20 ~~respect thereto have accrued. Qualified intangible property shall constitute~~
21 ~~a contract right; it is not an account or general intangible.~~

22
23 SECTION 4. Section 4 of Act 324 of 2001, which would repeal Arkansas
24 Code 23-18-103 effective October 1, 2003, is repealed so that Arkansas Code §
25 23-18-103 will remain in effect.

26 ~~SECTION 4. Effective October 1, 2003, Arkansas Code 23-18-103 is~~
27 ~~repealed.~~

28
29 SECTION 5. Section 6 of Act 324 of 2001, which would repeal Arkansas
30 Code 23-18-104, effective October 1, 2003, is repealed so that Arkansas Code
31 § 23-18-104 will remain in effect.

32 ~~SECTION 6. Effective October 1, 2003, Arkansas Code 23-18-104 is~~
33 ~~repealed.~~

34
35 SECTION 6. Arkansas Code § 23-2-304(a), listing power of the Public
36 Service Commission, is amended to add additional subdivisions to read as

1 follows:

2 (9) Assure that retail customers should have access to safe, reliable,
3 and affordable electricity, including protection against service
4 disconnections in extreme weather or in cases of medical emergency or
5 nonpayment for unrelated services; and

6 (10) Assure that electric utility bills, usage, and payment records
7 should be treated as confidential, unless the retail customer consents to
8 their release or the information is provided only in the aggregate.

9 Notwithstanding this provision, release of such information may be made
10 pursuant to subpoena, court order, or other applicable statute, rule or
11 regulation.

12 SECTION 7. Arkansas Code § 23-3-102 is amended to read as follows:

13 23-3-102. Consolidations, stock purchases in another utility, or
14 rentals of additional property.

15 (a) With the consent and approval of the commission, but not
16 otherwise:

17 (1) Any two (2) or more public utilities may consolidate with
18 each other;

19 (2) Any public utility may acquire the stock, or any part
20 thereof, of any other public utility; and

21 (3) Any public utility may sell, acquire, lease, or rent any
22 public utility plant or property constituting an operating unit or system.

23 (b)(1) Application for the approval and consent of the commission
24 shall be made by the interested public utility and shall contain a concise
25 statement of the proposed action, the reasons therefor, and such other
26 information as may be required by the commission.

27 (2) Upon the filing of an application, the commission shall
28 investigate it, with or without public hearing, and in case of a public
29 hearing, upon such notice as the commission may require. If it finds that
30 the proposed action is consistent with the public interest, it shall give its
31 consent and approval in writing.

32 (3) In reaching its determination, the commission shall take
33 into consideration the reasonable value of the property, plant, equipment, or
34 securities of the utility to be acquired or merged.

35 (c) No public utility shall sell, lease, rent, or otherwise transfer,
36 in any manner, control of electric transmission facilities in this state

1 without the approval of the commission, provided that the approval is
2 required only to the extent the transaction is not subject to the exclusive
3 jurisdiction of the Federal Energy Regulatory Commission or any other federal
4 agency.

5 ~~(e)(d)~~ Any transaction required by this section to be submitted to the
6 commission for its consent and approval shall be void unless the commission
7 shall give its consent and approval thereto in writing.

8 (e)(1) All transactions among or between a regulated electric public
9 utility and any of its divisions, components or affiliates that are not
10 regulated by the commission shall be subject to such rules as may be
11 promulgated by the commission so that:

12 (A) All such transactions that involve regulated services shall
13 be subject to the rates, terms and conditions specified in tariffs approved
14 by the commission; and

15 (B) An electric utility shall not use any revenue from any
16 regulated asset, operation or service to subsidize the provision of any
17 unregulated electric service or any other unregulated activity.

18 (2) Provided, however, that the provisions of this subsection (e)
19 shall not apply to any transactions involving an electric cooperative formed
20 under the Electric Cooperative Corporation Act where the membership of such
21 cooperative approves the transaction and in the case of subdivision
22 (e)(1)(B), the commission has not disallowed the transaction within sixty
23 (60) days after the filing of a notice with the commission in writing of the
24 proposed transaction by the cooperative.

25 SECTION 8. Effective October 1, 2003, Arkansas Code § 23-3-201(a), as
26 it appears on page 95 of the 2002 replacement volume 22 of the Arkansas Code
27 is amended to read as follows:

28 (a) No new construction or operation of any equipment or facilities
29 for supplying a public service, or extension thereof, shall be undertaken
30 without first obtaining from the commission a certificate that public
31 convenience and necessity require, or will require, the construction or
32 operation. ~~Provided, however, no such certificate shall be required for~~
33 ~~electric generation facilities.~~

34
35 SECTION 9. Arkansas Code Title 23, Chapter 4, Subchapter 2, is amended
36 by adding an additional section to read as follows:

1 23-4-209.

2 (a)(1) For purposes of this section, "transition costs" mean those
3 costs, investments, or unfunded mandates, either recurring or non-recurring,
4 incurred by an electric utility after July 30, 1999, that are found to have
5 been necessary to carry out the electric utility's responsibilities
6 associated with efforts to implement retail open access, or were mandated by
7 statute or regulation and are not otherwise recoverable.

8 (2) In no event shall transition costs include retirement or
9 severance programs, marketing or promotional activities, professional or
10 advisory services, or legal costs associated with any competitive strategy.

11 (3) In no event shall costs that are allowable in the utility's
12 regulated cost of service and rates be included as transition costs, and the
13 electric utility shall be required to demonstrate that its requested
14 transition cost recovery does not contain amounts which are otherwise
15 reflected in current rate levels.

16 (4) Additionally, no electric utility shall recover transition
17 costs unless approved by the commission pursuant to this chapter.

18 (b)(1) An electric utility shall be allowed to recover transition
19 costs, incurred no later than January 1, 2002, as may be determined by the
20 Arkansas Public Service Commission after notice and hearing.

21 (2) The recovery shall be by a customer transition charge during
22 a period of time ending thirty-six (36) months after the effective date of
23 this section.

24 (3) The customer transition charges shall be subject to annual
25 review by the commission and costs included in the charges shall be prudent,
26 reasonable, and directly caused by Act 1556 of 1999 and rules and orders
27 adopted by the commission to implement Act 1556.

28 (c) An electric utility shall have a right to recover from its
29 customers any nuclear decommissioning costs, as determined by the commission,
30 associated with the utility's generating assets, and the commission shall
31 retain jurisdiction sufficient to authorize the recovery of those costs.

32
33 SECTION 10. Arkansas Code § 23-18-101 is amended to read as follows:
34 23-18-101. Areas of service.

35 (a) Notwithstanding any provisions of law or the terms of any
36 certificate of convenience and necessity, franchise, permit, license, or

1 other authority granted to a public utility or electric cooperative
2 corporation by the state or a municipality, no public utility or electric
3 cooperative corporation shall furnish, or offer to furnish, electric service
4 at retail and not for resale in any area allocated by the Arkansas Public
5 Service Commission to another electric cooperative corporation or public
6 utility.

7 (b) No later than ninety (90) days after the effective date of this
8 subsection, the commission shall commence a rulemaking proceeding to identify
9 and to repeal or amend all rules and regulations adopted by the commission to
10 facilitate, or in anticipation of, retail electric competition which are
11 inconsistent with, have been rendered unnecessary by, or have been superseded
12 by this act of 2003.

13
14 *SECTION 11.* Arkansas Code Title 23, Chapter 18, Subchapter 1 is
15 amended by adding two additional sections to read as follows:

16 23-18-106.

17 (a) The Arkansas Public Service Commission shall have the authority to
18 adopt rules and regulations under which electric utilities shall seek
19 commission review and approval of the processes, actions, and plans by which
20 the utilities:

21 (1) Engage in comprehensive resource planning;

22 (2) Acquire electric energy, capacity, and generation assets; or

23 (3) Utilize alternative methods to meet their obligations to
24 serve Arkansas retail electric customers.

25 (b) With regard to electric cooperatives formed under the Electric
26 Cooperative Corporation Act, to the extent that an electric distribution
27 cooperative purchases electricity from an electric generation and
28 transmission cooperative pursuant to a wholesale power contract, the
29 authority granted to the Arkansas Public Service Commission by subdivisions
30 (a)(1) and (2) of this section shall not extend to such electric distribution
31 cooperative to the extent of such purchases, but shall only extend to such
32 electric generation and transmission cooperative.

33 (c) Subsection (a) does not apply to any transaction involving the
34 acquisition of generation assets, which is closed and finalized prior to the
35 adoption of the rules and regulations authorized in subsection (a), or within
36 one (1) year after the effective date of this act of 2003, whichever comes

1 later, and which is the subject of an order or ruling of any federal or state
2 regulatory agency issued on or before January 1, 2003.

3 (d) Reasonable and prudent costs incurred in compliance with
4 subsection (a) and in compliance with the provisions of §§ 23-3-201 through
5 23-3-206 and 23-18-501 through 23-18-529 shall be eligible for recovery in
6 the rates of any electric utility making such an acquisition, subject to
7 final approval by the commission. When the utility establishes that the
8 costs were incurred in compliance with subsection (a), a rebuttable
9 presumption is established that the costs were reasonable and prudent and
10 incurred in the public interest. Nothing in this subsection shall be deemed
11 to supercede the provisions of § 23-4-103.

12
13 23-18-107.

14 The commission may, but it is not required to, adopt ratemaking
15 policies appropriate to allow utilities to recover from their customers the
16 reasonable and prudent costs and a reasonable return associated with the
17 acquisition or construction by electric utilities of incremental resources.
18 Nothing in this subsection shall be deemed to supercede the provisions of §
19 23-4-103.

20
21 SECTION 12. Arkansas Code § 23-18-511 [Effective until October 1,
22 2003] as it appears on pages 290 and 291 of the September 2002 Advance Code
23 Services Supplement to the Arkansas Code is reenacted and shall read as
24 follows:

25 23-18-511. Application for certificate - Contents generally. ~~[Effective~~
26 ~~until October 1, 2003.]~~

27 An applicant for a certificate shall file with the Arkansas Public
28 Service Commission a verified application in such form as the commission may
29 prescribe and containing the following information:

30 (1) A general description of the location and type of the major
31 utility facility proposed to be built;

32 (2) A general description of any reasonable alternate location
33 or locations considered for the proposed facility;

34 (3) A statement of the need and reasons for construction of the
35 facility;

36 (4) A statement of the estimated costs of the facility and the

1 proposed method of financing the construction of the facility;

2 (5)(A) A general description of any reasonable alternate methods
3 of financing the construction of the facility and a description of the
4 comparative merits and detriments of each alternate financing method
5 considered.

6 (B) If at the time of filing of the application the
7 federal income tax laws and the state laws would permit the issuance of tax-
8 exempt bonds to finance the construction of the proposed facility for the
9 applicant by a state financing agency, the application shall also include a
10 discussion of the merits and detriments of financing the facility with such
11 bonds;

12 (6) An analysis of the projected economic or financial impact on
13 the applicant and the local community where the facility is to be located as
14 a result of the construction and the operation of the proposed facility;

15 (7) An analysis of the estimated effects on energy costs to the
16 consumer as a result of the construction and operation of the proposed
17 facility;

18 (8)(A) An exhibit containing an environmental impact statement,
19 which shall fully develop the four (4) factors listed in subdivision (8)(B)
20 of this section, treating in reasonable detail such considerations, if
21 applicable, as the proposed facility's direct and indirect effect on the
22 ecology of the land, air and water environment, established park and
23 recreational areas, and on any sites of natural, historic, and scenic values
24 and resources of the area in which the facility is to be located, and any
25 other relevant environmental effects.

26 (B) The environmental impact statement shall set out:

27 (i) The environmental impact of the proposed action;
28 (ii) Any adverse environmental effects which cannot
29 be avoided;

30 (iii) A description of the comparative merits and
31 detriments of each alternate location or for generating plants, the energy
32 production process considered, and a statement of the reasons why the
33 proposed location and production process were selected for the facility; and

34 (iv) Any irreversible and irretrievable commitments
35 of resources which would be involved in the proposed action should it be
36 implemented; and

1 (9) Such other information of an environmental or economic
2 nature as the applicant may consider relevant or as the commission may by
3 regulation or order require.
4

5 SECTION 13. Arkansas Code § 23-18-511 [Effective October 1, 2003] as
6 it appears on pages 603 and 604 of the 2002 Replacement Volume 22 of the
7 Arkansas Code is repealed.

8 ~~23-18-511. Application for certificate—Contents generally. [Effective~~
9 ~~October 1, 2003.]~~

10 ~~An applicant for a certificate shall file with the commission a verified~~
11 ~~application in such form as the commission may prescribe and containing the~~
12 ~~following information:~~

13 ~~(1) A general description of the location and type of the major~~
14 ~~utility facility proposed to be built;~~

15 ~~(2) A general description of any reasonable alternate location~~
16 ~~or locations considered for the proposed facility;~~

17 ~~(3) Except in the case of a major utility facility as defined by~~
18 ~~§ 23-18-503(5)(A), a statement of the need and reasons for construction of~~
19 ~~the facility;~~

20 ~~(4) Except in the case of a major utility facility as defined by~~
21 ~~§ 23-18-503(5)(A), a statement of the estimated costs of the facility and the~~
22 ~~proposed method of financing the construction of the facility;~~

23 ~~(5)(A) Except in the case of a major utility facility as defined~~
24 ~~by § 23-18-503(5)(A), a general description of any reasonable alternate~~
25 ~~methods of financing the construction of the facility and a description of~~
26 ~~the comparative merits and detriments of each alternate financing method~~
27 ~~considered.~~

28 ~~(B) If at the time of filing the application the federal~~
29 ~~income tax laws and the state laws would permit the issuance of tax-exempt~~
30 ~~bonds to finance the construction of the proposed facility for the applicant~~
31 ~~by a state financing agency, the application shall also include a discussion~~
32 ~~of the merits and detriments of financing the facility with tax-exempt bonds;~~

33 ~~(6) An analysis of the projected economic or financial impact on~~
34 ~~the applicant and the local community where the facility is to be located as~~
35 ~~a result of the construction and the operation of the proposed facility;~~

36 ~~(7) Except in the case of a major utility facility as defined by~~

1 ~~§ 23-18-503(5)(A), an analysis of the estimated effects on energy costs to~~
 2 ~~the consumer as a result of the construction and operation of the proposed~~
 3 ~~facility;~~

4 ~~(8)(A) An exhibit containing an environmental impact statement,~~
 5 ~~which shall fully develop the four (4) factors listed in subdivision (8)(B)~~
 6 ~~of this section, treating in reasonable detail such considerations, if~~
 7 ~~applicable, as the proposed facility's direct and indirect effect on the~~
 8 ~~ecology of the land, air, and water environment, established park and~~
 9 ~~recreational areas, and on any sites of natural, historic, and scenic values~~
 10 ~~and resources of the area in which the facility is to be located, and any~~
 11 ~~other relevant environmental effects.~~

12 ~~(B) The environmental impact statement shall set out:~~

13 ~~(i) The environmental impact of the proposed action;~~

14 ~~(ii) Any adverse environmental effects which cannot~~
 15 ~~be avoided;~~

16 ~~(iii) A description of the comparative merits and~~
 17 ~~detriments of each alternate location, or for generating plants, the energy~~
 18 ~~production process considered, and a statement of the reasons why the~~
 19 ~~proposed location and production process were selected for the facility; and~~

20 ~~(iv) Any irreversible and irretrievable commitments~~
 21 ~~of resources which would be involved in the proposed action should it be~~
 22 ~~implemented; and~~

23 ~~(9) In the case of a major utility facility as defined by § 23-~~
 24 ~~18-503(5)(B), the effect of the proposed facility on competition for the sale~~
 25 ~~of electric generation in the state or region; and~~

26 ~~(10) Any other information of an environmental or economic~~
 27 ~~nature that the applicant may consider relevant or that the commission may by~~
 28 ~~regulation or order require.~~

29
 30 *SECTION 14.* Arkansas Code § 23-18-519 [Effective until October 1,
 31 2003] as it appears on pages 610 and 611 of the 2002 Replacement Volume 22 of
 32 the Arkansas Code is reenacted and shall read as follows:

33 23-18-519. Decision of commission - Modifications of application.
 34 ~~{Effective until October 1, 2003.}~~

35 (a) The Arkansas Public Service Commission shall render a decision
 36 upon the record either granting or denying the application as filed, or

1 granting it upon such terms, conditions, or modifications of the location,
2 financing, construction, operation, or maintenance of the major utility
3 facility as the commission may deem appropriate.

4 (b) The commission may not grant a certificate for the location,
5 financing, construction, operation, and maintenance of a major utility
6 facility, either as proposed or as modified by the commission, unless it
7 shall find and determine:

8 (1) The basis of the need for the facility;

9 (2) That the facility will serve the public interest,
10 convenience, and necessity;

11 (3) The nature of the probable environmental impact of the
12 facility;

13 (4) That the facility represents an acceptable adverse
14 environmental impact, considering the state of available technology, the
15 requirements of the customers of the applicant for utility service, the
16 nature and economics of the proposal, and the various alternatives, if any,
17 and other pertinent considerations;

18 (5) The nature of the probable economic impact of the facility;

19 (6) That the facility financing method either as proposed or as
20 modified by the commission represents an acceptable economic impact,
21 considering economic conditions and the need for and cost of additional
22 public utility services;

23 (7) In the case of an electric transmission line, that such
24 facility is not inconsistent with known plans of other electric systems
25 serving the state, which plans have been filed with the commission;

26 (8) In the case of a gas transmission line, that the location of
27 the line will not pose an undue hazard to persons or property along the area
28 to be traversed by the line;

29 (9) That the energy efficiency of the power production facility
30 has been given significant weight in the decision-making process; and

31 (10) That the location of the facility as proposed conforms as
32 closely as practicable to applicable state, regional, and local laws and
33 regulations issued thereunder, except that the commission may refuse to apply
34 all or any part of any regional or local law or regulation if it finds that,
35 as applied to the proposed facility, that law or regulation is unreasonably
36 restrictive in view of the existing technology, or of factors of cost or

1 economics, or of the needs of consumers whether located inside or outside of
2 the directly affected government subdivisions.

3 (c)(1) If the commission determines that the location or design of all
4 or a part of the proposed facility should be modified, it may condition its
5 certificate upon the modification, provided that the municipalities,
6 counties, and persons residing therein affected by the modification shall
7 have been given reasonable notice thereof, if the persons, municipalities, or
8 counties have not previously been served with notice of the application.

9 (2) If the commission requires in the case of a transmission
10 line that a portion thereof shall be located underground in one (1) or more
11 areas, the commission, after giving appropriate notice and an opportunity to
12 be heard to affected ratepayers, shall have the power and authority to
13 authorize the adjustment of rates and charges to customers within the areas
14 where the underground portion of the transmission line is located in order to
15 compensate for the additional costs, if any, of such underground
16 construction.

17 (d)(1) If the commission determines that financing of all or part of
18 the proposed facility should be modified, it may condition its certificate
19 upon the modification.

20 (2) If at the time of filing the application or within sixty
21 (60) days thereafter, the federal income tax laws and the state laws would
22 permit the issuance of tax-exempt bonds to finance the construction of the
23 proposed facility for the applicant and if the commission determines that
24 financing the facility with such tax-exempt bonds would be in the best
25 interests of the people of the state, the commission, after giving
26 appropriate notice and an opportunity to be heard to the parties, shall have
27 the power and authority to require by order or regulation that the facility
28 be financed in such manner as may be provided elsewhere by law.

29 (e) A copy of the decision and any order issued therewith shall be
30 served upon each party within sixty (60) days after the conclusion of each
31 hearing held under this subchapter.

32
33 *SECTION 15.* Arkansas Code § 23-18-519 [Effective October 1, 2003] as
34 it appears on pages 612 and 613 of the 2002 Replacement Volume 22 of the
35 Arkansas Code is repealed.

36 ~~23-18-519. Decision of commission—Modifications of application.~~

1 ~~{Effective October 1, 2003.}~~

2 ~~(a) The Arkansas Public Service Commission shall render a decision~~
3 ~~upon the record either granting or denying the application as filed, or~~
4 ~~granting it upon such terms, conditions, or modifications of the location,~~
5 ~~financing, construction, operation, or maintenance of the major utility~~
6 ~~facility as the commission may deem appropriate.~~

7 ~~(b) The commission may not grant a certificate for the location,~~
8 ~~financing, construction, operation, and maintenance of a major utility~~
9 ~~facility, either as proposed or as modified by the commission, unless it~~
10 ~~shall find and determine:~~

11 ~~(1) Except in the case of a major utility facility as defined by~~
12 ~~§ 23-18-503(5)(A), the basis of the need for the facility;~~

13 ~~(2) Except in the case of a major utility facility as defined by~~
14 ~~§ 23-18-503(5)(A), that the facility will serve the public interest,~~
15 ~~convenience, and necessity;~~

16 ~~(3) The nature of the probable environmental impact of the~~
17 ~~facility;~~

18 ~~(4) That the facility represents an acceptable adverse~~
19 ~~environmental impact, considering the state of available technology, the~~
20 ~~requirements of the customers of the applicant for utility service, the~~
21 ~~nature and economics of the proposal, and the various alternatives, if any,~~
22 ~~and other pertinent considerations;~~

23 ~~(5) The nature of the probable economic impact of the facility;~~

24 ~~(6) Except in the case of a major utility facility as defined by~~
25 ~~§ 23-18-503(5)(A), that the facility financing method, either as proposed or~~
26 ~~as modified by the commission, represents an acceptable economic impact,~~
27 ~~considering economic conditions and the need for and cost of additional~~
28 ~~public utility services;~~

29 ~~(7) In the case of an electric transmission line, that such a~~
30 ~~facility is not inconsistent with known plans of other electric systems~~
31 ~~servicing the state, which plans have been filed with the commission;~~

32 ~~(8) In the case of a gas transmission line, that the location of~~
33 ~~the line will not pose an undue hazard to persons or property along the area~~
34 ~~to be traversed by the line;~~

35 ~~(9) In the case of a major utility facility as defined by § 23-~~
36 ~~18-503(5)(B), the effect of the proposed facility on competition for the sale~~

1 of electric generation in the state or regions; and

2 ~~(10) That the location of the facility as proposed conforms as~~
3 ~~closely as practicable to applicable state, regional, and local laws and~~
4 ~~regulations issued thereunder, except that the commission may refuse to apply~~
5 ~~all or any part of any regional or local law or regulation if it finds that,~~
6 ~~as applied to the proposed facility, that law or regulation is unreasonably~~
7 ~~restrictive in view of the existing technology, or of factors of cost or~~
8 ~~economics, or of the needs of consumers whether located inside or outside of~~
9 ~~the directly affected government subdivisions.~~

10 ~~(c)(1) If the commission determines that the location or design of all~~
11 ~~or a part of the proposed facility should be modified, it may condition its~~
12 ~~certificate upon the modification, provided that the municipalities,~~
13 ~~counties, and persons residing therein affected by the modification shall~~
14 ~~have been given reasonable notice thereof, if the persons, municipalities, or~~
15 ~~counties have not previously been served with notice of the application.~~

16 ~~(2) If the commission requires in the case of a transmission~~
17 ~~line that a portion thereof shall be located underground in one (1) or more~~
18 ~~areas, the commission, after giving appropriate notice and an opportunity to~~
19 ~~be heard to affected ratepayers, shall have the power and authority to~~
20 ~~authorize the adjustment of rates and charges to customers within the areas~~
21 ~~where the underground portion of the transmission line is located in order to~~
22 ~~compensate for the additional costs, if any, of such underground~~
23 ~~construction.~~

24 ~~(d)(1) If the commission determines that financing of all or part of~~
25 ~~the proposed facility should be modified, it may condition its certificate~~
26 ~~upon the modification.~~

27 ~~(2) If at the time of filing the application or within sixty~~
28 ~~(60) days thereafter, the federal income tax laws and the state laws would~~
29 ~~permit the issuance of tax exempt bonds to finance the construction of the~~
30 ~~proposed facility for the applicant and if the commission determines that~~
31 ~~financing the facility with such tax exempt bonds would be in the best~~
32 ~~interests of the people of the state, the commission, after giving~~
33 ~~appropriate notice and an opportunity to be heard to the parties, shall have~~
34 ~~the power and authority to require by order or regulation that the facility~~
35 ~~be financed in such manner as may be provided elsewhere by law.~~

36 ~~(e) A copy of the decision and any order issued therewith shall be served~~

1 ~~upon each party within sixty (60) days after the conclusion of each hearing~~
2 ~~held under this subchapter.~~

3
4 SECTION 16. Nothing in this act shall alter or diminish the Arkansas
5 Public Service Commission's authority under otherwise applicable law.

6
7 SECTION 17. The Arkansas Public Service Commission shall conduct a
8 collaborative meeting to study the feasibility of a large user access program
9 for electric service choice, including a commitment to insure there is no
10 cost shifting to any other class of customers, and report to the General
11 Assembly on or before September 30, 2004.

12
13 *SECTION 18. Arkansas Code Title 23, Chapter 19 is repealed.*

14 ~~23-19-101. Title and legislative policy and purpose.~~

15 ~~(a) This chapter shall be known as the "Electric Consumer Choice Act~~
16 ~~of 1999".~~

17 ~~(b) This chapter is intended to protect the public interest as it is~~
18 ~~affected by the rates and services of electric utilities and other providers~~
19 ~~of electric power. The General Assembly finds that electric service has~~
20 ~~traditionally been considered a natural monopoly, that the normal forces of~~
21 ~~competition which operate to regulate prices in a free enterprise system have~~
22 ~~not been generally applicable to electric service, and that electric rates,~~
23 ~~operations, and services have been actively regulated by public agencies with~~
24 ~~the objective that this regulation shall operate as a substitute for~~
25 ~~competition. The state by law and regulation has required electric utilities~~
26 ~~to serve all retail customers requesting service in their allocated service~~
27 ~~territories, to provide safe and reliable service at just and reasonable~~
28 ~~rates, and to make the investments necessary to provide the facilities~~
29 ~~required to offer such service. In exchange and to induce electric utilities~~
30 ~~to meet these requirements, the state has protected such utilities from~~
31 ~~certain forms of direct competition through the granting of exclusive service~~
32 ~~areas and has been required by law to allow utilities an opportunity to earn~~
33 ~~a fair return on their invested capital.~~

34 ~~(c) However, the General Assembly further finds that recent economic~~
35 ~~and technological developments in the electric utility industry will make~~
36 ~~possible the introduction of retail competition in the generation and sale of~~

1 electric power, which should benefit electric consumers in Arkansas.—The
2 General Assembly also finds that introduction of competition into the retail
3 electric market may cause major capital and other investments made by those
4 utilities in the past to be substantially changed in value.—The purpose of
5 this chapter is to establish regulatory procedures for the implementation of
6 such competition as may be in the public interest on terms and conditions
7 that are just and reasonable to consumers, electric utilities, and other
8 providers of electric power, and to provide reasonable protection for, and
9 recovery of, the investments made by utilities to carry out their service
10 obligations under the legal and regulatory principles heretofore in force.

11 ~~(d) The General Assembly finds that:~~

12 ~~(1) A competitive retail electric market that gives retail~~
13 ~~customers the opportunity to choose the retail customer's provider of~~
14 ~~electricity and that encourages full and fair competition among providers of~~
15 ~~electricity should be established by October 1, 2003, but no later than~~
16 ~~October 1, 2005; and~~

17 ~~(2) Reciprocity among electric utilities and other providers of~~
18 ~~electric service to the extent permitted in this chapter:~~

19 ~~(A) Is necessary to promote fair competition and to ensure~~
20 ~~the benefits of competition to the greatest number of consumers; and~~

21 ~~(B) Would assist in the transition from regulation to~~
22 ~~competition.~~

23 ~~(e) The General Assembly further finds that certain changes and~~
24 ~~additions to existing law are required to permit and facilitate such~~
25 ~~transactions described in § 23-19-601 et seq.—It is the declared legislative~~
26 ~~intent of this chapter to provide a procedure pursuant to which the rights of~~
27 ~~electric utilities to receive future payments associated with stranded costs~~
28 ~~may be established as property, to provide that such property and interests~~
29 ~~therein may be assigned, sold, or otherwise transferred, and to provide a~~
30 ~~procedure and method to accomplish such securitization and provide benefits~~
31 ~~to the citizens of Arkansas.~~

32 ~~(f) The General Assembly further finds that it should not mandate~~
33 ~~competition for customers of municipally owned electric utility systems.~~
34 ~~This finding arises from the unique nature of such municipally owned systems.~~
35 ~~Municipally owned electric utility systems are owned and operated by~~
36 ~~municipal governments primarily as a benefit to those who reside within such~~

1 municipalities. Their rates and operating practices have historically been
 2 established by the elected officials of such municipalities through their
 3 delegated legislative authority. Municipal utility rates are subject to
 4 reserved initiative and referendum rights of municipal residents which give
 5 them a direct control over the rates and operations of municipally owned
 6 electric utility systems that is not available to customers of utilities
 7 regulated by the Arkansas Public Service Commission. Further, a municipal
 8 electric utility system is likely, as a result of its ability to pool its
 9 customers' loads, to be able to provide lower retail electric rates for its
 10 residential, industrial, and commercial customers than individual customers
 11 would be able to secure.

12
 13 ~~23-19-102. Definitions.~~

14 ~~As used in this chapter:~~

15 ~~(1) "Above market purchased power costs" means wholesale~~
 16 ~~electric costs in excess of the market value of such electric service that an~~
 17 ~~electric utility is obligated to pay under an existing purchased power~~
 18 ~~contract;~~

19 ~~(2)(A) "Affiliate" means:~~

20 ~~(i) A subsidiary or any company or corporation owned~~
 21 ~~or effectively controlled by an electric utility or energy service provider;~~
 22 ~~or~~

23 ~~(ii) A subsidiary or any company or corporation~~
 24 ~~owned or effectively controlled by the same company or corporation that owns~~
 25 ~~or effectively controls an electric utility or energy service provider or of~~
 26 ~~which an electric utility or energy service provider is a subsidiary.~~

27 ~~(B) The Arkansas Public Service Commission may also~~
 28 ~~determine after notice and hearing that a person is an affiliate as a result~~
 29 ~~of having a financial interest in another electric utility or energy service~~
 30 ~~provider. In making such a determination under this subdivision (2)(B), the~~
 31 ~~commission may exempt a person from any or all regulations applicable to such~~
 32 ~~person by virtue of that person's status as an affiliate;~~

33 ~~(3) "Aggregator" means an entity that combines retail customers~~
 34 ~~for the purpose of purchasing electric energy and related services;~~

35 ~~(4) "Assignee" means an entity including, without limitation, a~~
 36 ~~person to which an electric utility assigns, sells, or transfers, other than~~

1 as a security, all or a portion of its interest in, or right to, qualified
2 intangible property. The term includes an entity that has obtained such an
3 assignment, sale, or transfer of qualified intangible property from another
4 assignee. An assignee shall not be subject to the jurisdiction of the
5 commission solely by virtue of being an assignee of qualified intangible
6 property;

7 (5) ~~"Commission" means the Arkansas Public Service Commission or~~
8 ~~any successor agency unless otherwise specifically designated;~~

9 (6) ~~"Current cost of service study" means a newly prepared cost~~
10 ~~of service study designed to support unbundled rates, or an existing cost of~~
11 ~~service study used to support a company's existing rate schedules which were~~
12 ~~filed with the commission to become effective within three (3) years of July~~
13 ~~30, 1999, modified as necessary to support unbundled rates;~~

14 (7) ~~"Customer transition charge", sometimes referred to as "non-~~
15 ~~bypassable charge", means a charge applicable to all retail customers of an~~
16 ~~electric utility served at either the distribution or transmission level~~
17 ~~within the electric utility's distribution service area as it existed prior~~
18 ~~to July 30, 1999;~~

19 (8) ~~"Dollar weighted average remaining life" means the quotient~~
20 ~~of:~~

21 (A) ~~The sum, for all generating assets and contracts, of~~
22 ~~the retail stranded cost associated with each asset or contract, multiplied~~
23 ~~by the estimated remaining operating life of that asset or remaining term of~~
24 ~~that contract; divided by~~

25 (B) ~~The net sum of the stranded costs of all generating~~
26 ~~assets and contracts;~~

27 (9) ~~"Electric utility" means any person or any combination of~~
28 ~~persons, or lessees, trustees, and receivers of such a person, now or~~
29 ~~hereafter owning or operating for compensation in this state equipment or~~
30 ~~facilities for producing, generating, transmitting, distributing, selling, or~~
31 ~~furnishing electricity to or for the public at retail in this state,~~
32 ~~including an electric cooperative corporation generating or transmitting~~
33 ~~electricity. Provided, however, the term does not include:~~

34 (A) ~~An energy service provider; or~~

35 (B) ~~Any person not otherwise an electric utility or a~~
36 ~~business unit of an electric utility that;~~

1 ~~(i) —Furnishes electricity only to itself, its~~
2 ~~employees, or its tenants as an incident of such employee service or tenancy,~~
3 ~~when such electricity is not resold to or used by others;~~

4 ~~(ii) —Owns or operates in this state equipment or~~
5 ~~facilities used primarily for the production and generation of electric~~
6 ~~energy, a portion of which may be consumed by that person and any remainder~~
7 ~~of which is sold at wholesale;~~

8 ~~(iii) —Owns or operates in this state equipment or~~
9 ~~facilities used, after the implementation of retail open access, solely for~~
10 ~~the production and generation of electric energy; or~~

11 ~~(iv) —Is a municipal corporation owning a municipal~~
12 ~~electric utility;~~

13 ~~(10) —"Energy service provider" means a qualifying facility, a~~
14 ~~power broker, a power marketer, any entity, other than an electric utility or~~
15 ~~a municipal electric utility, or an aggregator other than a municipality or~~
16 ~~county or group of municipalities or counties, that sells or otherwise~~
17 ~~provides electricity to or for itself or a retail electric customer,~~
18 ~~regardless of whether such entity sells other electric services and~~
19 ~~regardless of whether such entity takes title to the electricity;~~

20 ~~(11) —"Existing purchased power contract" means a purchased power~~
21 ~~contract in effect on January 1, 1999;~~

22 ~~(12) —"Financing party" means a holder of qualified bonds,~~
23 ~~including a trustee, collateral agent, or other entity acting for the benefit~~
24 ~~of such a holder, or any other person to whom qualified intangible property~~
25 ~~has been pledged. A financing party shall not be subject to the jurisdiction~~
26 ~~of the commission solely by virtue of being a financing party;~~

27 ~~(13) —"Generation assets" means generation plants and generation-~~
28 ~~related assets, as so classified by the Uniform System of Accounts, or a~~
29 ~~succeeding accounting system;~~

30 ~~(14) —"Market value" means, for generation assets, the value the~~
31 ~~assets would have brought when or if sold in a bona fide third-party~~
32 ~~transaction or transactions on the open market, including the transactions~~
33 ~~described in § 23-19-301(c)(1) — (3), or the value determined under the~~
34 ~~alternative valuation method provided by § 23-19-301(c)(4);~~

35 ~~(15) —"Municipal corporation" means a city of the first class, a~~
36 ~~city of the second class, or a town, incorporated under the laws of this~~

1 state, or any commission, department, division, or agency thereof, including
2 any municipally owned or controlled corporation, or any improvement district,
3 consolidated public utility system improvement district, or nonprofit
4 corporation lessee of such entity;

5 (16) ~~"Municipal electric utility" means any electric generation,~~
6 ~~transmission, or distribution system owned or operated by any municipal~~
7 ~~corporation;~~

8 (17) ~~"Net retail stranded cost" means the excess, if any,~~
9 ~~allocable to Arkansas retail customers of the book value for ratemaking~~
10 ~~purposes of all of an electric utility's generation assets that have been~~
11 ~~found by the commission to be prudently incurred, verifiable, and~~
12 ~~nonmitigable, and that would have been eligible for recovery in rates under~~
13 ~~continued rate regulation, and all of the generation related costs associated~~
14 ~~with an electric utility's purchased power, fuel, and fuel transportation~~
15 ~~agreements that have been found by the commission to be prudently incurred,~~
16 ~~verifiable, and nonmitigable, and that would have been eligible for recovery~~
17 ~~in rates under continued rate regulation, over the market value of all of~~
18 ~~those assets and agreements;~~

19 (18) ~~"Person" means any individual, partnership, corporation,~~
20 ~~cooperative association, trust, including a business trust, limited liability~~
21 ~~company, governmental entity, or any other legal entity. Notwithstanding the~~
22 ~~above, "person" as defined herein shall not be considered to include a~~
23 ~~municipal corporation or municipal electric utility;~~

24 (19) ~~"Power broker" means a person who acts as an agent or~~
25 ~~intermediary on behalf of another person for the purpose of facilitating the~~
26 ~~sale or purchase of electric energy and who does not purchase the electric~~
27 ~~energy on his or her own behalf;~~

28 (20) ~~"Power marketer" means a person who acquires, purchases, or~~
29 ~~generates electric energy on its own behalf with the intent of reselling such~~
30 ~~electric energy to another person;~~

31 (21) ~~"Purchased power" means the purchase of capacity and~~
32 ~~associated energy by an electric utility or from another provider of~~
33 ~~electricity, including, but not limited to, wholesale power agreements or~~
34 ~~tariffs approved by a federal regulatory authority allocable to Arkansas~~
35 ~~retail customers;~~

36 (22) ~~"Qualified bonds" means bonds, debentures, notes,~~

1 ~~certificates of participation or of beneficial interest, or other evidences~~
2 ~~of indebtedness or ownership that are issued by or on behalf of the electric~~
3 ~~utility or an assignee pursuant to a qualified rate order, the proceeds of~~
4 ~~which are directly or indirectly used to recover, finance, or refinance~~
5 ~~qualified costs and which are directly or indirectly secured by or payable~~
6 ~~from qualified intangible property;~~

7 ~~(23) "Qualified costs" means qualified stranded costs and~~
8 ~~qualified financing costs;~~

9 ~~(24) "Qualified financing costs" means:~~

10 ~~(A) The reasonable and prudent costs of retiring then-~~
11 ~~existing debt or equity capital, including, without limitation, accrued~~
12 ~~interest and acquisition or redemption premiums, costs of defeasance, and~~
13 ~~other related fees, costs, and charges, through the use of the proceeds of~~
14 ~~qualified bonds or the assignment, sale, or other transfer of qualified~~
15 ~~intangible property;~~

16 ~~(B) The reasonable and prudent costs incurred to issue,~~
17 ~~service, redeem, or refinance the qualified bonds, including, without~~
18 ~~limitation, accrued interest and acquisition or redemption premiums,~~
19 ~~reserves, credit enhancement costs, hedging or interest rate swap costs, and~~
20 ~~other related fees, costs, and charges; or to assign, sell, or otherwise~~
21 ~~transfer qualified intangible property, including, without limitation,~~
22 ~~professional services, and advisory fees; and~~

23 ~~(C) Any taxes or governmental fees payable by the electric~~
24 ~~utility as a consequence of the creation or transfer of qualified intangible~~
25 ~~property, the issuance and sale of qualified bonds or other actions taken by~~
26 ~~the electric utility with respect thereto or as a consequence thereof. As~~
27 ~~used in this chapter, the terms "interest", "acquisition or redemption~~
28 ~~premium", "principal", and other terms specific to debt shall also include~~
29 ~~comparable costs incurred in connection with certificates of participation,~~
30 ~~certificates of beneficial interest, or other evidences of ownership;~~

31 ~~(25) "Qualified intangible charges" means those charges~~
32 ~~authorized to be imposed, charged, collected, and received by an electric~~
33 ~~utility from its retail customers to recover qualified costs pursuant to a~~
34 ~~qualified rate order, including all adjustments to such charges implemented~~
35 ~~in accordance with § 23-19-605(d), which charges shall be separate and apart~~
36 ~~from charges for the sale and delivery of electricity and electricity-related~~

1 ~~services by the electric utility;~~

2 ~~(26) "Qualified intangible property" means a fully vested~~
3 ~~property right consisting of the irrevocable right of the electric utility or~~
4 ~~an assignee to charge, collect, receive, and be paid from collections of~~
5 ~~qualified intangible charges in the amount necessary to recover fully the~~
6 ~~qualified costs which are determined to be recoverable by the commission~~
7 ~~pursuant to this chapter, all right, title, and interest of the electric~~
8 ~~utility or assignee in and to the qualified rate order pursuant to which such~~
9 ~~qualified intangible charges are authorized, including, without limitation,~~
10 ~~the right to obtain periodic adjustment of such qualified intangible charges~~
11 ~~pursuant to § 23 19 605(d), and all revenues, collections, claims, payments,~~
12 ~~money or proceeds of, or arising from, qualified intangible charges pursuant~~
13 ~~to such qualified rate order, whether or not the revenues and proceeds~~
14 ~~arising with respect thereto have accrued. Qualified intangible property~~
15 ~~shall constitute a contract right;~~

16 ~~(27) "Qualified rate order" means an irrevocable written order~~
17 ~~issued by the commission pursuant to § 23 19 601 et seq. Except as otherwise~~
18 ~~provided in § 23 19 601 et seq., the order shall become final and effective~~
19 ~~immediately upon receipt by the commission of written consent from the~~
20 ~~related electric utility to the terms of such order;~~

21 ~~(28) "Qualified stranded costs" means those net retail stranded~~
22 ~~costs which the commission deems to be eligible for securitization pursuant~~
23 ~~to this chapter. The amount of any stranded costs that shall be deemed to be~~
24 ~~eligible for securitization shall not exceed the amount of the utility's~~
25 ~~stranded costs as determined by the commission;~~

26 ~~(29) "Qualifying facility" means a cogeneration or small power~~
27 ~~production facility entitled to the rights and privileges of a qualifying~~
28 ~~facility under the Public Utilities Regulatory Policies Act of 1978;~~

29 ~~(30) "Retail customer" means any consumer who takes, receives,~~
30 ~~or consumes electricity;~~

31 ~~(31) "Retail open access" means the obligation of an electric~~
32 ~~utility to allow retail customers to choose their supplier of electric~~
33 ~~energy;~~

34 ~~(32) "Retail stranded costs" means that part of stranded costs~~
35 ~~associated with the provision of retail service;~~

36 ~~(33) "Securitization" means a financing of qualified stranded~~

1 ~~costs authorized by the commission pursuant to this chapter through which an~~
2 ~~electric utility receives the proceeds from the sale of qualified bonds~~
3 ~~secured by beneficial interest in, or a pledge of, qualified tangible~~
4 ~~property transferred by the electric utility to an assignee or pledged as~~
5 ~~security for such qualified bonds;~~

6 ~~(34) "Standard service agreement" means an agreement for the~~
7 ~~sale and purchase of electricity between an electric utility and a retail~~
8 ~~customer pursuant to an existing commission approved tariff of general~~
9 ~~applicability;~~

10 ~~(35) "Standard service package" means a minimum package of~~
11 ~~electric service, including electric power and energy sufficient to meet the~~
12 ~~ordinary demands of a consumer, offered by an electric utility or willing~~
13 ~~energy service provider in the areas in which, for an electric utility, it~~
14 ~~provides distribution service, and, for an energy service provider, the~~
15 ~~commission has selected such willing provider to offer such package;~~

16 ~~(36) "Stranded costs" means:~~

17 ~~(A) Any excess of the net book value for ratemaking~~
18 ~~purposes over the market value of any plant, facilities, equipment, or~~
19 ~~materials owned or leased by the electric utility and used or held for use by~~
20 ~~the electric utility for the generation of electricity and the delivery of~~
21 ~~such generated electricity to the transmission or distribution system of the~~
22 ~~electric utility that would have been eligible for recovery in rates under~~
23 ~~continued rate regulation; and~~

24 ~~(B) Any excess of:~~

25 ~~(i) The cost of electricity that an electric utility~~
26 ~~may utilize under agreements for the purchase of electricity from other~~
27 ~~utilities or other generators or suppliers of electricity and electricity-~~
28 ~~related services, including generation costs that are part of an electric~~
29 ~~utility's rights and obligations under any wholesale power sale agreement or~~
30 ~~tariff approved by a federal regulatory agency, and that would have been~~
31 ~~eligible for recovery in rates under continued rate regulation, over~~

32 ~~(ii) The market value of those agreements; and~~

33 ~~(C) Any excess of:~~

34 ~~(i) Costs arising out of agreements by an electric~~
35 ~~utility to purchase fuel for the generation of electricity that would have~~
36 ~~been eligible for recovery in rates under continued rate regulation, over~~

1 ~~(ii) The market value of those agreements; and~~
2 ~~(D) Any generation related regulatory assets, including~~
3 ~~costs that have been deferred for future recovery as a result of the practice~~
4 ~~of regulatory authorities or by rule or order of regulatory authorities,~~
5 ~~including unrecovered deferred income taxes recorded under Statement of~~
6 ~~Financial Accounting Standards No. 109, "Accounting for Income Taxes", plant~~
7 ~~accounting deferrals, including costs associated with reacquisition of~~
8 ~~securities, and canceled plants, as offset by the applicable portion of~~
9 ~~investment tax credits permitted under the Internal Revenue Code and any~~
10 ~~regulatory liabilities as determined by the commission. For purposes of this~~
11 ~~chapter, the amount of regulatory assets and liabilities may not exceed the~~
12 ~~amount reported by the electric utility on December 31, 1998, in its annual~~
13 ~~report on Securities and Exchange Commission Form 10-K or its report to the~~
14 ~~Federal Energy Regulatory Commission on Form 1 as regulatory assets and~~
15 ~~liabilities;~~

16 ~~(E) Any other comparable costs identified by the~~
17 ~~commission as stranded costs; and~~

18 ~~(F) In all cases to be eligible for recovery, stranded~~
19 ~~costs must have been found by the commission to be prudently incurred,~~
20 ~~verifiable, and nonmitigable;~~

21 ~~(37) "Transition costs" means those costs, investments, or~~
22 ~~unfunded mandates, either recurring or nonrecurring, incurred by an electric~~
23 ~~utility or municipal electric utility after July 30, 1999, that are found to~~
24 ~~be necessary to carry out the electric utility's or municipal electric~~
25 ~~utility's responsibilities associated with the transition to or the~~
26 ~~implementation of, retail open access, or are mandated by statute or~~
27 ~~regulation and are not expected to be recoverable in a competitive retail~~
28 ~~market. Under no circumstances shall transition costs include any cost~~
29 ~~associated with competing to provide a product or service for which~~
30 ~~competition has been authorized by this chapter. In no event shall~~
31 ~~transition costs include retirement or severance programs, marketing or~~
32 ~~promotional activities, professional or advisory services, or legal costs~~
33 ~~associated with any competitive strategy. Additionally, no electric utility~~
34 ~~shall recover transition costs unless approved by the commission pursuant to~~
35 ~~this subdivision (37) and § 23-19-304; and~~

36 ~~(38) "Wholesale" means the sale of electricity to an electric~~

1 utility, an energy service provider, or any other person exclusively for
2 resale.

3
4 ~~23-19-103. Retail open access.~~

5 ~~(a)(1) Retail open access shall be implemented by electric utilities~~
6 ~~on October 1, 2003.~~

7 ~~(2) As to any particular utility or utilities, after notice and~~
8 ~~hearing, the Arkansas Public Service Commission may delay the implementation~~
9 ~~of retail open access for a period not to exceed twelve (12) months and for~~
10 ~~successive periods thereafter, not to exceed twelve (12) months, but not~~
11 ~~beyond October 1, 2005, upon finding that:~~

12 ~~(A) The particular electric utility or electric utilities~~
13 ~~have not had a reasonable opportunity to commence determination of their~~
14 ~~stranded costs, if any, pursuant to § 23-19-303 because of circumstances~~
15 ~~beyond the control of the utility or utilities and shall not include an~~
16 ~~election by the utility to delay filing an application for stranded cost~~
17 ~~recovery until after the implementation of retail open access pursuant to §~~
18 ~~23-19-301(a);~~

19 ~~(B) Necessary approvals from the Federal Energy Regulatory~~
20 ~~Commission, or any successor agency, have not been obtained;~~

21 ~~(C) Implementation of retail open access would have an~~
22 ~~immediate, irreparable, and adverse financial effect on county or municipal~~
23 ~~governments or school districts;~~

24 ~~(D) Appropriate metering, billing, and collection~~
25 ~~procedures have not been established, or all electronic data exchange and~~
26 ~~information systems necessary for implementation of retail open access have~~
27 ~~not been fully developed, installed, and tested;~~

28 ~~(E) Implementation of retail open access would have a~~
29 ~~significant, adverse effect on the reliability of the electric system in~~
30 ~~Arkansas;~~

31 ~~(F) Implementation of retail open access would have a~~
32 ~~material adverse effect upon the public interest, especially including upon~~
33 ~~residential or small business customers in this state;~~

34 ~~(G) Most customers would not have a reasonable opportunity~~
35 ~~to realize net benefits, specifically including relative price benefits for~~
36 ~~residential and small business customers; or~~

1 ~~(H) Demonstrably effective market structures are not in~~
2 ~~place, including, but not limited to:~~

3 ~~(i) All electric utilities have not subjected their~~
4 ~~transmission facilities to control by an independent transmission entity,~~
5 ~~pursuant to subsection (g) of this section, approved by the Federal Energy~~
6 ~~Regulatory Commission; and~~

7 ~~(ii) There is insufficient generation and~~
8 ~~transmission capacity to serve the current and projected demand of Arkansas~~
9 ~~consumers.~~

10 ~~(b)(1)(A) If retail open access implementation is delayed pursuant to~~
11 ~~subsection (a) of this section for one (1) or more utilities that serve, in~~
12 ~~the aggregate, fifty one percent (51%) or more of the total customers served~~
13 ~~by electric utilities in this state, implementation shall be delayed for all~~
14 ~~electric utilities.~~

15 ~~(B) Provided, however, that an electric utility, at the~~
16 ~~utility's election may petition the commission for approval to proceed with~~
17 ~~retail open access implementation for its customers, notwithstanding that~~
18 ~~implementation has been delayed for electric utilities that serve, in the~~
19 ~~aggregate, fifty one percent (51%) or more of the total customers served by~~
20 ~~electric utilities in this state.~~

21 ~~(2) If delayed pursuant to this subsection, retail open access~~
22 ~~implementation shall resume on a utility by utility basis as provided in~~
23 ~~subsection (a) of this section as expeditiously as possible after the~~
24 ~~commission determines that electric utilities serving more than fifty one~~
25 ~~percent (51%) of the electric utility customers in this state are ready to~~
26 ~~proceed with retail open access implementation.~~

27 ~~(3) Except as provided in § 23-19-106(e), in no event shall~~
28 ~~retail open access be delayed beyond October 1, 2005.~~

29 ~~(4) For purposes of this subsection, the number of customers~~
30 ~~served by a particular electric utility shall be determined by the~~
31 ~~commission's most recent annual report to the Governor pursuant to § 23-2-~~
32 ~~315. Each report issued after July 30, 1999, shall include the number of~~
33 ~~customers served by each electric utility.~~

34 ~~(c) No later than ninety (90) days before the date for retail open~~
35 ~~access determined by the commission consistent with subsection (a) of this~~
36 ~~section, the commission shall abolish or repeal any and all commission rules,~~

1 ~~regulations, and orders restricting the efforts of electric utilities and~~
2 ~~energy service providers to market, advertise, or promote the competitive~~
3 ~~sale of electricity at retail except for rules, regulations, and orders~~
4 ~~issued pursuant to this chapter.~~

5 ~~(d) No later than ninety (90) days before the date for retail open~~
6 ~~access determined by the commission consistent with subsection (a) of this~~
7 ~~section, the commission shall have adopted rules requiring every electric~~
8 ~~utility in this state owning or operating distribution facilities to provide~~
9 ~~distribution service to all persons at rates, terms of access, and conditions~~
10 ~~that are just, reasonable, and nondiscriminatory.~~

11 ~~(e) After the implementation of retail open access, unless otherwise~~
12 ~~specified in this chapter, generation assets shall not be subject to the~~
13 ~~ratemaking authority of the commission, and generation service and the rates~~
14 ~~and charges for generation service shall not be regulated by the commission,~~
15 ~~except that the commission shall retain jurisdiction sufficient to authorize~~
16 ~~the recovery of nuclear decommissioning costs, or the refund of any over-~~
17 ~~recovery of such costs, and generation costs that are part of an electric~~
18 ~~utility's rights and obligations under any wholesale power sale agreement or~~
19 ~~tariff approved by a federal regulatory authority as components of a~~
20 ~~competitive transition charge.~~

21 ~~(f) Except as allowed by existing law, no electric utility or energy~~
22 ~~service provider may offer or provide electric service under retail open~~
23 ~~access, directly or indirectly, to any retail customer or retail customer~~
24 ~~location situated in whole or in part within the area allocated to an~~
25 ~~electric utility by the commission.~~

26 ~~(1) Prior to the date determined by the commission for the~~
27 ~~implementation of retail open access; and~~

28 ~~(2) Prior to obtaining a license from the commission pursuant to~~
29 ~~§ 23-19-202, or in the case of an electric utility providing electric service~~
30 ~~to retail customers within the state as of July 30, 1999, prior to~~
31 ~~registering with the commission pursuant to § 23-19-203.~~

32 ~~(g) No later than ninety (90) days before the date for retail open~~
33 ~~access determined by the commission consistent with subsection (a) of this~~
34 ~~section, each electric utility doing business in this state that owns or~~
35 ~~controls facilities for the transmission of electricity or rights to the~~
36 ~~transmission of electricity, or is affiliated with an entity that owns or~~

1 ~~controls transmission facilities shall subject its transmission facilities or~~
2 ~~rights to operation by an independent transmission system operator, an~~
3 ~~independent transmission company, an independent regional transmission group,~~
4 ~~or other independent transmission entity if one or more such organizations~~
5 ~~have been approved by the Federal Energy Regulatory Commission for this state~~
6 ~~or a larger region of which this state is a part. The commission may refuse~~
7 ~~to accept a registration statement filed by an electric utility pursuant to §~~
8 ~~23-19-203 unless and until the utility complies with this subsection, but the~~
9 ~~rejection of the registration of such a utility shall not prevent the~~
10 ~~implementation of retail open access in the utility's service territory.~~

11 ~~(h) Standard service agreements between electric utilities and retail~~
12 ~~customers pursuant to commission approved tariffs as of July 30, 1999, shall~~
13 ~~remain in effect for the terms of those agreements to the extent they impose~~
14 ~~minimum bills on the customer to allow the utility to recover any investment~~
15 ~~in distribution or transmission facilities the utility made to serve that~~
16 ~~customer, but customers will be relieved of any obligation under standard~~
17 ~~service agreements to purchase generation from the utility as of the~~
18 ~~effective date of retail open access and shall be subject only to the then-~~
19 ~~effective tariffs for distribution and transmission service and any customer~~
20 ~~transition charge.~~

21
22 ~~23-19-104. Municipal electric utilities.~~

23 ~~(a) Notwithstanding any other provision of law, including any other~~
24 ~~provision of this chapter, this section will govern the transition to and the~~
25 ~~establishment of a more fully competitive electric power industry for~~
26 ~~municipal electric utilities.~~

27 ~~(b) The governing body of a municipal electric utility shall have the~~
28 ~~discretion to decide when, or if, such municipal electric utility will~~
29 ~~provide retail open access. Municipal electric utilities which choose to~~
30 ~~participate in retail open access may do so under such terms and conditions~~
31 ~~as they, in their sole discretion, deem appropriate at any time, after the~~
32 ~~retail open access date determined by the Arkansas Public Service Commission~~
33 ~~in § 23-19-103, by adoption of an appropriate ordinance or other local~~
34 ~~enabling legislation by its governing body.~~

35 ~~(c) Upon the effective date of the local enabling legislation, retail~~
36 ~~customers within the service area of the municipal electric utility shall~~

1 ~~have the right of retail open access and the municipal electric utility shall~~
2 ~~provide open access to its distribution system to any other provider of~~
3 ~~electricity as defined in this chapter. In addition, the municipal electric~~
4 ~~utility shall have the right to offer service directly to retail customers~~
5 ~~without regard to geographic location. Provided, however, that such~~
6 ~~municipal electric utility offers nondiscriminatory access for the use by any~~
7 ~~other provider of electricity of any distribution facilities that it owns or~~
8 ~~operates.~~

9 ~~(d) In addition to rights within its authority it may reserve in the~~
10 ~~local enabling legislation, the governing body of the municipal electric~~
11 ~~utility shall have exclusive jurisdiction;~~

12 ~~(1) To set terms of access, conditions, and rates applicable to~~
13 ~~services provided by the municipal electric utility, including distribution~~
14 ~~and transmission service which must be reasonable and nondiscriminatory;~~

15 ~~(2) To determine whether to unbundle any energy-related~~
16 ~~activities, and if so, how;~~

17 ~~(3) To determine the amount of its stranded and transition~~
18 ~~costs;~~

19 ~~(4) To recover its stranded and transition costs over an~~
20 ~~appropriate period of time through a customer transition charge applicable to~~
21 ~~all existing or future retail customers within its distribution service area;~~

22 ~~(5) To determine the extent to which it will continue to provide~~
23 ~~various customer services at the distribution level or accept such services~~
24 ~~from other providers;~~

25 ~~(6) To plan, manage, and engineer its electric systems in~~
26 ~~accordance with good utility practice;~~

27 ~~(7) To establish and enforce service quality standards and~~
28 ~~consumer safeguards designed to protect retail electric customers not~~
29 ~~inconsistent with other provisions of this chapter;~~

30 ~~(8) To determine any other utility matters that it believes~~
31 ~~should be included;~~

32 ~~(9) To make any other decision affecting the municipal electric~~
33 ~~utilities' participation in retail open access; and~~

34 ~~(10) To implement appropriate advertising and promotional~~
35 ~~practices not inconsistent with other provisions of this chapter.~~

36 ~~(e) The local enabling legislation must require that a municipal~~

1 ~~electric utility which participates in retail open access adopt an accounting~~
2 ~~method which allows costs associated with generation, transmission, and~~
3 ~~distribution related services to be functionally separated on a~~
4 ~~nondiscriminatory basis so that open access transmission and distribution~~
5 ~~rates, including appropriate margin levels, may be calculated.~~

6 ~~(f) The local enabling legislation must require that distribution~~
7 ~~rates for any municipal electric utility which participates in retail open~~
8 ~~access shall be filed for informational purposes with the appropriate city~~
9 ~~clerk and the commission.~~

10 ~~(g) No provision of this chapter shall interfere with or be deemed to~~
11 ~~abrogate the rights or obligations of any party, including a retail or~~
12 ~~wholesale customer, to or arising from a contract with a municipal electric~~
13 ~~utility.~~

14 ~~(h) This chapter shall not impair any contracts, covenants, or~~
15 ~~obligations between municipal corporations or consolidated public utility~~
16 ~~system improvement districts and the bondholders of revenue bonds issued~~
17 ~~thereby.~~

18 ~~(i) Nothing in this chapter shall impair the tax exempt status of any~~
19 ~~municipal corporation.~~

20 ~~(j) Municipal electric utilities shall be authorized and entitled to~~
21 ~~participate in any organization identified in § 23-19-103(g), and those~~
22 ~~municipal electric utilities which opt to enter into retail open access shall~~
23 ~~be required to participate in such an organization.~~

24 ~~(k) Municipal corporations owning municipal electric utilities which~~
25 ~~have elected to participate in retail open access shall have the obligation~~
26 ~~and right to provide distribution service, including a standard service~~
27 ~~package, to any customer located within its service area. The standard~~
28 ~~service package and the continuity of service provider obligations within the~~
29 ~~service area of a municipal corporation owning a municipal electric utility~~
30 ~~electing to participate in retail open access shall be determined by its~~
31 ~~governing body.~~

32 ~~(l) Nothing in this chapter shall modify a municipal corporation's~~
33 ~~existing right to use available funds generated by electric utility~~
34 ~~operations for other municipal purposes.~~

35 ~~(m) Any electric utility or energy service provider shall be required~~
36 ~~to register with any municipal corporation before it undertakes to provide~~

1 ~~any retail electric utility service to retail customers in such municipal~~
2 ~~corporation.~~

3 ~~(n)(1)—A municipal corporation owning a municipal electric utility~~
4 ~~that has not elected to offer retail open access and that annexes territory~~
5 ~~situated in whole or in part within an area allocated to another electric~~
6 ~~utility after the date determined by the commission for the implementation of~~
7 ~~retail open access shall not provide generation, transmission, or~~
8 ~~distribution service in the annexed area, unless and until such time as it~~
9 ~~elects to participate in retail open access and retail open access is~~
10 ~~available in all of the municipal corporation owning a municipal electric~~
11 ~~utility's service area. At the time the municipal corporation owning a~~
12 ~~municipal electric utility elects to offer retail open access, providing such~~
13 ~~option is exercised within three (3) years of the certification of~~
14 ~~annexation, the municipal corporation owning a municipal electric utility may~~
15 ~~acquire the distribution facilities serving the annexed area using the~~
16 ~~procedures provided at § 14-207-101 et seq. and may thereafter provide~~
17 ~~generation, transmission, or distribution and other services in the annexed~~
18 ~~area. Nothing in this chapter shall prevent a municipal corporation and an~~
19 ~~electric utility, upon mutual consent, from voluntarily selling or buying~~
20 ~~facilities upon negotiated compensation.~~

21 ~~(2)—A municipal corporation owning a municipal electric utility~~
22 ~~that elects to offer retail open access and that subsequently annexes~~
23 ~~territory situated in whole or in part within an area allocated to an~~
24 ~~electric utility may acquire the distribution facilities serving the annexed~~
25 ~~area consistent with § 14-207-101 et seq. and may thereafter provide~~
26 ~~generation, transmission, or distribution and other services in the annexed~~
27 ~~area.~~

28 ~~(3)—A municipal corporation owning a municipal electric utility~~
29 ~~which acquires retail customers subsequent to an annexation and acquisition~~
30 ~~of electric utility facilities shall not be responsible for such customers'~~
31 ~~stranded costs or transition charge, but any municipality that annexes an~~
32 ~~electric utility's distribution service area will become responsible for~~
33 ~~collecting for the benefit of the electric utility or its successors and~~
34 ~~assigns any customer transition charges that would otherwise have been~~
35 ~~payable in the service territory annexed by the municipality directly to the~~
36 ~~electric utility or its successors or assigns.~~

1 ~~(4) During the period that the municipal corporation owning a~~
2 ~~municipal electric utility opts out of competition and does not provide~~
3 ~~distribution services in newly annexed areas, the municipal corporation, at~~
4 ~~the discretion of the governing body, shall be entitled to assess any~~
5 ~~electric utility offering distribution services in annexed areas a franchise~~
6 ~~fee based on services it provides in newly annexed areas that would otherwise~~
7 ~~be compensated in the municipal electric utility's retail electric rates.~~
8 ~~This franchise fee shall be included as a separate line item on the~~
9 ~~distribution customer's bill labeled "City Franchise Fee". The franchise fee~~
10 ~~authorized by this section shall be in addition to franchise fees authorized~~
11 ~~under § 14-200-101(a).~~

12 ~~(5)(A) Notwithstanding subdivisions (n)(1)-(4) of this section,~~
13 ~~and except as provided in subdivision (n)(5)(B) of this section, a municipal~~
14 ~~corporation owning a municipal electric utility shall not be entitled to~~
15 ~~bring a condemnation action to extend its service territory or to acquire the~~
16 ~~customers or property of an electric utility for a period commencing on July~~
17 ~~30, 1999, and continuing for two (2) years after the date of retail open~~
18 ~~access established by the commission pursuant to § 23-19-103. Such~~
19 ~~prohibition shall include, but not be limited to, any power of condemnation a~~
20 ~~municipal corporation owning a municipal electric utility may have pursuant~~
21 ~~to § 14-207-101 et seq., §§ 14-40-301—14-40-503, or §§ 18-15-301—18-15-~~
22 ~~308. This prohibition does not apply to actions brought for extensions of~~
23 ~~territories or acquisition of customers or property within areas of~~
24 ~~annexations completed prior to July 30, 1999, as evidenced by a statement~~
25 ~~filed by the municipality with the Secretary of State prior to July 30, 1999.~~

26 ~~(B)(i) During the period from July 30, 1999, until the~~
27 ~~date of open retail access established by the commission pursuant to § 23-19-~~
28 ~~103, a municipal corporation owning a municipal electric utility may only~~
29 ~~bring a condemnation action to extend its service territory or to acquire~~
30 ~~customers or property of an electric utility in the event of a voluntary~~
31 ~~annexation pursuant to §§ 14-40-601—14-40-606.~~

32 ~~(ii) During the period from the date of retail open~~
33 ~~access established by the commission pursuant to § 23-19-103 and for a two-~~
34 ~~year period thereafter, a municipal corporation owning a municipal electric~~
35 ~~utility that elects to offer retail open access may bring a condemnation~~
36 ~~action to extend its service territory or to acquire customers or property of~~

1 an electric utility, but only in the event of a voluntary annexation pursuant
2 to §§ 14-40-601—14-40-606.

3 (C) ~~This subdivision (n)(5) is not intended to affect any~~
4 ~~condemnation or related proceedings pending as of July 30, 1999.~~

5 (o) ~~This chapter shall not modify a municipal corporation's right to~~
6 ~~regulate, restrict, and collect user or franchise fees from and for occupancy~~
7 ~~and use of its rights of way in accordance with other law, including, but not~~
8 ~~limited to, § 14-200-101(a).~~

9 (p) ~~Any municipal corporation, county, or group of municipal~~
10 ~~corporations or counties acting together is hereby authorized to aggregate~~
11 ~~the electric load of interested electricity consumers upon registering with~~
12 ~~the commission pursuant to § 23-19-203.~~

13 (q) ~~A municipal corporation owning a municipal electric utility opting~~
14 ~~to offer retail open access under this section shall not be subject to the~~
15 ~~provisions of this chapter, except for this section and §§ 23-19-102, 23-19-~~
16 ~~105(e), 23-19-106(b), 23-19-203, 23-19-401, and 23-19-501(b). In developing~~
17 ~~rules and procedures for registration and consumer protection as required by~~
18 ~~this chapter, the commission shall take into consideration special~~
19 ~~circumstances faced by municipal electric utilities and in all events shall~~
20 ~~preserve the unique nature of municipal electric utilities. A municipal~~
21 ~~corporation owning municipal electric utilities which elects to participate~~
22 ~~in retail open access shall only be required to file, for informational~~
23 ~~purposes, its unbundled distribution rates with the commission. After the~~
24 ~~municipal corporation files its unbundled distribution rates with the~~
25 ~~commission, the commission shall have the limited jurisdiction to hear~~
26 ~~complaints against the filing municipal corporation for noncompliance with~~
27 ~~such filed distribution rates. This limited jurisdiction shall not include~~
28 ~~authority to review the propriety or lawfulness of such filed distribution~~
29 ~~rates or other municipal operations, except to the extent necessary to~~
30 ~~determine whether the municipal corporation is offering nondiscriminatory~~
31 ~~access to its distribution facilities. Except as authorized by this~~
32 ~~subsection, the commission shall not make any effort to regulate a municipal~~
33 ~~electric utility's operations, limit a municipal electric utility's right to~~
34 ~~serve, or impose any penalty on a municipal electric utility.~~

35
36 ~~23-19-105. Effect on existing certificates and franchises.~~

1 ~~(a) Notwithstanding any other provisions of law or the provisions of~~
2 ~~any certificate of convenience and necessity allocating exclusive service~~
3 ~~territory or any exclusive franchise agreement to provide electric service~~
4 ~~issued by the Arkansas Public Service Commission or any municipality,~~
5 ~~respectively, any electric utility which is regulated under this chapter, or~~
6 ~~accepts any benefit under this chapter, including, but not limited to, the~~
7 ~~recovery of stranded or transition costs, or sells or offers to sell electric~~
8 ~~power at retail outside its existing service area as of July 30, 1999, shall~~
9 ~~be deemed to have waived the exclusivity of any right to sell electric power~~
10 ~~or energy in any territory or municipality to the extent necessary for the~~
11 ~~implementation of retail open access hereunder, but only to such extent.~~

12 ~~(b) An electric utility which does not establish the existence of~~
13 ~~stranded costs or transition costs pursuant to § 23-19-301 et seq., shall~~
14 ~~have no right to compensation or other form of relief for the waiver of the~~
15 ~~exclusive right to sell electricity under any certificate of convenience and~~
16 ~~necessity or franchise agreement issued by the commission or any~~
17 ~~municipality, respectively.~~

18 ~~(c) Nothing in this chapter shall be deemed to modify or amend any~~
19 ~~provisions of any certificate, order, or municipal franchise agreement other~~
20 ~~than the exclusive right to sell power or energy or to repeal or amend the~~
21 ~~legal authority of municipal corporations to control the use of streets and~~
22 ~~other public ways as otherwise provided by law or in any municipal electric~~
23 ~~franchise agreement, nor shall anything in this chapter be deemed to affect~~
24 ~~or reduce in any way the rights of real property owners existing as of the~~
25 ~~date of this chapter.~~

26 ~~(d) Nothing in this chapter shall be deemed to affect the authority of~~
27 ~~the commission to revoke, alter, or amend a certificate of convenience and~~
28 ~~necessity to provide electric distribution service upon the mutual agreement~~
29 ~~of the affected parties, or upon the dissolution or bankruptcy of the holder~~
30 ~~of such certificate, or as otherwise may be allowed by law.~~

31
32 ~~23-19-106. Reciprocity.~~

33 ~~(a) No electric utility providing distribution service may use the~~
34 ~~Arkansas distribution facilities of another electric utility to sell~~
35 ~~electricity to retail customers in the state unless the first electric~~
36 ~~utility offers comparable and nondiscriminatory access, as determined by the~~

1 ~~Arkansas Public Service Commission, to any distribution facilities that it~~
2 ~~owns or operates in this state.~~

3 ~~(b) A municipal corporation owning a municipal electric utility may~~
4 ~~not sell electricity to retail customers outside its existing service~~
5 ~~territory after the date determined by the commission for the implementation~~
6 ~~of retail open access if it does not offer customer choice to its own retail~~
7 ~~customers.~~

8 ~~(c) An electric utility providing electric service to retail customers~~
9 ~~in this state and in a contiguous service area in an adjacent state may offer~~
10 ~~customer choice in its service territory in Arkansas prior to the~~
11 ~~implementation of retail open access in Arkansas generally if such electric~~
12 ~~utility is required by applicable law to offer retail open access in its~~
13 ~~service area in the adjacent state, subject to such interim rules as the~~
14 ~~commission may adopt pending the implementation of retail open access in the~~
15 ~~remainder of Arkansas.~~

16 ~~(d) The commission shall require interstate reciprocity to the extent~~
17 ~~it may be authorized by future federal legislation.~~

18 ~~(e) An electric utility providing electric service to retail customers~~
19 ~~in this state and in a contiguous service area in an adjacent state whose~~
20 ~~number of customers in this state is less than five percent (5%) of its total~~
21 ~~customers and whose number of customers in a contiguous service area in an~~
22 ~~adjacent state is greater than seventy five percent (75%) of its total~~
23 ~~customers may delay retail open access in its service territory in this state~~
24 ~~until such a time as the electric utility is required by applicable law to~~
25 ~~offer retail open access in the aforementioned adjacent state but no more~~
26 ~~than two (2) years beyond the date for retail open access in this state as~~
27 ~~provided in § 23-19-103.~~

28
29 ~~23-19-107. Reports on scope and impact of competition.~~

30 ~~(a) Before January 15, 2001, and thereafter before January 15 of each~~
31 ~~odd-numbered year through 2007, the Arkansas Public Service Commission shall~~
32 ~~report to the General Assembly on the progress of the development of~~
33 ~~competition in electric markets and the impact, if any, of competition and~~
34 ~~industry restructuring on retail customers in Arkansas. The report shall~~
35 ~~include:~~

36 ~~(1) An assessment of the impact of competition on the rates and~~

1 ~~availability of electric service for each class of retail customers in each~~
2 ~~allocated service territory, including, but not limited to, the extent of~~
3 ~~customer choice with regard to each customer class in each service territory,~~
4 ~~or in such other smaller units as may be determined by the commission;~~

5 ~~(2) A summary of commission actions over the preceding two (2)~~
6 ~~years that reflect changes in the scope of competition in regulated electric~~
7 ~~markets;~~

8 ~~(3) An analysis of the effect, if any, of competition on the~~
9 ~~reliability of the electric system and on the quality of service provided to~~
10 ~~customers; and~~

11 ~~(4) Recommendations to the General Assembly for further~~
12 ~~legislation that the commission finds appropriate to promote the public~~
13 ~~interest in a competitive electric market.~~

14 ~~(b) The Tax Division of the Arkansas Public Service Commission and the~~
15 ~~Department of Finance and Administration shall conduct a joint study of the~~
16 ~~potential financial impact, if any, of retail open access upon county or~~
17 ~~municipal governments, including the methods of collection of municipal~~
18 ~~franchise fees, or school districts, and consider ways and means to mitigate~~
19 ~~any significant adverse impact thereon, and such other issues of public~~
20 ~~finance as they deem relevant, and submit a report setting forth their~~
21 ~~findings and recommendations to the commission and the General Assembly on or~~
22 ~~before June 30, 2000.~~

23 ~~(c)(1) Before January 15, 2003, and before January 15 of each year~~
24 ~~thereafter that the General Assembly convenes in regular sessions through~~
25 ~~2017, the commission shall submit a report to the General Assembly that~~
26 ~~contains such information as the commission determines is necessary to allow~~
27 ~~the General Assembly to determine whether electric utilities or energy~~
28 ~~service providers are charging higher rates or refusing to serve or otherwise~~
29 ~~separating out for disparate treatment customers who live in particular areas~~
30 ~~or neighborhoods.~~

31 ~~(2)(A) Included in the report will be comparisons of the average~~
32 ~~rates charged by electric utilities or energy service providers to~~
33 ~~residential customers in different regions of the state.~~

34 ~~(B) The commission shall be empowered to demand disclosure~~
35 ~~of this information from every electric utility or energy service provider~~
36 ~~certified to do business in this state.~~

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~~23-19-108. Effect of interstate system agreements.~~

~~(a) Every electric utility that is a subsidiary of a registered holding company under the Public Utility Holding Company Act of 1935 shall report to the Arkansas Public Service Commission, within thirty (30) days of July 30, 1999, whether it is a party to a rate schedule or other filed rate subject to the jurisdiction of the Federal Energy Regulatory Commission that allocates costs among the electric utility subsidiaries of such holding company. Every electric utility that becomes a subsidiary of a registered holding company after that time or that becomes a subsidiary of a registered holding company of which it was not previously a subsidiary shall make such report to the Arkansas Public Service Commission within thirty (30) days after becoming such a subsidiary.~~

~~(b) All electric utilities that are required to make such reports pursuant to subsection (a) of this section are hereby directed to consult with the commission and its staff regarding what changes, if any, may be necessary or appropriate to such rate schedule or filed rate as a result of the implementation of retail open access in Arkansas or any other affected state.~~

~~(c) The commission is hereby authorized to communicate, consult, and cooperate with the appropriate regulatory agencies of other affected states as it deems appropriate.~~

~~(d) The commission shall make quarterly reports to the House and Senate Interim Committees on Insurance and Commerce on the status of the discussions held pursuant to this section until such time as the commission determines that the matter has been appropriately resolved or that further consultations will not be productive. Such reports shall not disclose any matters subject to any applicable settlement privilege.~~

~~23-19-109. Effect of other laws.~~

~~The provisions of any other law, except as expressly provided in this chapter, or in such other law by way of express reference to this chapter, shall not limit or restrict the operation of this chapter in any manner. In particular, but without limitation, the issuance by any person of qualified bonds shall not be deemed to be the issuance of securities of a public utility for purposes of §§ 23-3-103—23-3-106, and the issuance by any~~

1 ~~person of qualified bonds or the acquisition by any person of any interest in~~
2 ~~qualified intangible property shall not be deemed to cause such assignee or~~
3 ~~financing party to be or become a public utility or an electric utility or~~
4 ~~otherwise to come within the Arkansas Public Service Commission's regulatory~~
5 ~~jurisdiction.~~

6
7 ~~23-19-201. Jurisdiction over energy service providers.~~

8 ~~(a) The Arkansas Public Service Commission shall have jurisdiction and~~
9 ~~authority over energy service providers who sell, broker, market, or~~
10 ~~aggregate electricity to or for the public for consumption in Arkansas. In~~
11 ~~addition, any person may voluntarily submit to the commission's jurisdiction.~~
12 ~~The commission's jurisdiction shall be:~~

13 ~~(1) To require that they obtain a license from the commission~~
14 ~~pursuant to § 23-19-202 as a condition of doing business in this state;~~

15 ~~(2) To enforce the provisions of § 23-19-401; and~~

16 ~~(3) To require the filing of reports the commission may by rule~~
17 ~~prescribe.~~

18 ~~(b) Notwithstanding subsection (a) of this section, the commission~~
19 ~~shall not have jurisdiction over the rates or charges of any energy service~~
20 ~~provider, but the commission may exercise jurisdiction over an energy service~~
21 ~~provider pursuant to §§ 23-1-101 and 23-18-501 et seq., to the extent the~~
22 ~~energy service provider may be defined as a public utility for purposes of~~
23 ~~those laws.~~

24 ~~(c) Nothing in this chapter shall impair or restrict the ability of~~
25 ~~the commission under other applicable laws to inspect, audit, or compel the~~
26 ~~production of the books and records of any person or persons subject to its~~
27 ~~jurisdiction when necessary to the discharge of its duties as prescribed by~~
28 ~~law.~~

29
30 ~~23-19-202. Licensing of energy service providers.~~

31 ~~(a) The Arkansas Public Service Commission shall issue a license to an~~
32 ~~energy service provider only upon a finding that the public interest will be~~
33 ~~served thereby, including, but not limited to, findings of the reliability,~~
34 ~~financial ability, and the technical competence of the license applicant to~~
35 ~~provide the service for which it is seeking the license.~~

36 ~~(b) No later than one hundred eighty (180) days prior to the~~

1 ~~implementation of retail open access, the commission shall issue rules and~~
2 ~~regulations establishing appropriate standards and procedures for licensing~~
3 ~~energy service providers. Included in these rules and regulations will be~~
4 ~~procedures for enforcing these standards.~~

5
6 ~~23-19-203. Registration with the Arkansas Public Service Commission.~~
7 ~~On and after the implementation of retail open access, any electric utility~~
8 ~~providing electric service to retail customers within the state as of July~~
9 ~~30, 1999, pursuant to a certificate of convenience and necessity issued by~~
10 ~~the Arkansas Public Service Commission, and any municipal corporation owning~~
11 ~~a municipal electric utility which elects to participate in retail open~~
12 ~~access pursuant to this chapter, may provide generation service to retail~~
13 ~~customers outside their service territories as they existed prior to the~~
14 ~~implementation of retail open access, and at any location within the state,~~
15 ~~except for customers of municipal corporations owning municipal electric~~
16 ~~utilities that have not elected to offer customer choice. Electric utilities~~
17 ~~shall be required to register with the commission ninety (90) days prior to~~
18 ~~offering the service, giving the commission notice of its intent to offer~~
19 ~~such service, the areas to be served, and its compliance with all other~~
20 ~~applicable provisions of this chapter. A municipal corporation owning a~~
21 ~~municipal electric utility or an aggregator as authorized by § 23-19-104(p)~~
22 ~~shall be deemed to have registered with the commission upon complying with~~
23 ~~the informational filing requirement contained in § 23-19-104. The commission~~
24 ~~may refuse to accept any such registration if it finds after notice and~~
25 ~~hearing that such filing is deficient and that the electric utility or~~
26 ~~municipal corporation is not in compliance with this chapter.~~

27
28 ~~23-19-204. Applicability of antitrust statutes.~~
29 ~~Nothing in this chapter shall in any way limit the obligations or liability~~
30 ~~under state or federal antitrust or consumer protection laws or regulations~~
31 ~~of an electric utility or energy service provider arising after the~~
32 ~~implementation of retail open access.~~

33
34 ~~23-19-205. Functional unbundling of tariffs.~~

35 ~~(a) On or before January 1, 2000, as ordered by the Arkansas Public~~
36 ~~Service Commission, each electric utility shall file rates and tariffs~~

1 supported by a current cost of service study that unbundle its then-effective
2 rates into the minimum functional components of generation, transmission,
3 distribution, and customer service operations, except for electric utilities
4 having a majority of their retail customers in another state which has not
5 mandated such unbundling by January 1, 2000, in which case the utility shall
6 file unbundled rates and tariffs with the commission no later than July 1,
7 2000. At its discretion, any utility may seek commission approval to further
8 unbundle any of the above categories.

9 (b) Each electric utility shall functionally unbundle its business
10 activities from one another as follows:

11 (1) Generation facilities, operations, services, and rates;

12 (2) Transmission facilities, operations, services, and rates;

13 and

14 (3) Distribution and customer services facilities, operations,
15 services, and rates.

16 (c) An electric utility shall accomplish this functional separation
17 through creation of separate divisions or departments, nonaffiliated
18 companies, separate affiliated companies owned by a common holding company,
19 or through a sale of assets to a third party.

20 (d) The Arkansas Public Service Commission shall establish regulations
21 to ensure that any electric utility that elects to accomplish functional
22 separation through creation of separate divisions or departments, or through
23 separate affiliated companies owned by a common holding company, must conduct
24 its business to conform with the following standards:

25 (1) General Rules.

26 (A) Except as provided in subdivision (d)(1)(B) of this
27 section, the employees of the utility engaged in transmission and
28 distribution system operations must function independently of its employees,
29 or the employees of any of its affiliates, who engage in the marketing or
30 sale of electricity at retail.

31 (B) Notwithstanding any other provisions in this
32 subsection, in emergency circumstances affecting system reliability,
33 utilities may take whatever steps are necessary to keep the system in
34 operation. Electric utilities must report to the commission each emergency
35 that resulted in any deviation from the standards of conduct, within twenty-
36 four (24) hours of such deviation, and notify such other affected parties as

1 ~~the commission may direct.~~

2 ~~(C) Transmission.—Any electric utility providing~~
3 ~~transmission service within the State of Arkansas whose transmission services~~
4 ~~are subject to the jurisdiction of the Federal Energy Regulatory Commission~~
5 ~~shall comply with the standards of conduct and related regulations~~
6 ~~established by the Federal Energy Regulatory Commission and shall be exempt~~
7 ~~from the provisions of this section with respect to transmission and related~~
8 ~~functions to the extent that such functions are subject to the exclusive~~
9 ~~jurisdiction of the Federal Energy Regulatory Commission or other federal~~
10 ~~agency;~~

11 ~~(2) Rules Governing Employee Conduct.~~

12 ~~(A) Prohibitions.—Any employee of the electric utility,~~
13 ~~or any employee of an affiliate, who is engaged in the retail marketing or~~
14 ~~sale of electricity is prohibited from:~~

15 ~~(i) Participating in distribution or transmission~~
16 ~~functions; and~~

17 ~~(ii) Having access to the system control center or~~
18 ~~similar facilities used for transmission or distribution functions that~~
19 ~~differs in any way from the access available to other energy service~~
20 ~~providers.~~

21 ~~(B) Transfers.—Employees engaged in retail marketing or~~
22 ~~sales functions or transmission or distribution functions are not precluded~~
23 ~~from transferring between such functions as long as such transfer is not used~~
24 ~~as a means to circumvent the standards of conduct of this section.—Reports~~
25 ~~of all employee transfers between retail sales or marketing functions and~~
26 ~~transmission or distribution functions must be filed with the Arkansas Public~~
27 ~~Service Commission annually.—The information to be reported must include the~~
28 ~~name of the transferring employee, the respective titles held while~~
29 ~~performing each function, the effective date of the transfer, and such other~~
30 ~~information as the Arkansas Public Service Commission may direct.—Temporary~~
31 ~~or intermittent transfers or short term transfers of less than one (1) year~~
32 ~~of employees between the retail marketing or sales functions and the~~
33 ~~transmission or distribution functions are prohibited.—Provided, however,~~
34 ~~employees may be temporarily assigned between and among such functions to~~
35 ~~assist in restoring power in the event of a major service interruption.~~

36 ~~(C) Information Access.—Any employee of the utility, or~~

1 of any of its affiliates, engaged in retail sales or marketing of
2 electricity;

3 (i) ~~Shall have access to only that information~~
4 ~~available to all other energy service providers and must not have~~
5 ~~preferential access to any information about the utility's transmission and~~
6 ~~distribution systems, including additions to those systems, that is not~~
7 ~~available to all energy service providers; and~~

8 (ii) ~~Is prohibited from obtaining information about~~
9 ~~the utility's transmission and distribution systems, including, but not~~
10 ~~limited to, information about available transmission capability, price,~~
11 ~~curtailments, and ancillary services, through access to information that is~~
12 ~~not otherwise also available to the general public without restrictions.~~

13 (D) ~~Disclosure.~~ ~~An electric utility is responsible for~~
14 ~~ensuring compliance with the following provisions:~~

15 (i) ~~Any employee of the utility or any employee of~~
16 ~~an affiliate engaged in transmission or distribution functions may not~~
17 ~~disclose to employees of the utility or any of its affiliates engaged in~~
18 ~~retail sales or marketing any information concerning the distribution and~~
19 ~~transmission systems of the utility or the transmission system of another,~~
20 ~~including, without limitation, information received from nonaffiliates or~~
21 ~~information about available transmission capability, price, curtailments,~~
22 ~~ancillary services, or outages through nonpublic communications that are not~~
23 ~~at the same time available to the general public without restriction;~~

24 (ii) ~~If an employee of the utility engaged in~~
25 ~~distribution or transmission functions discloses information not publicly~~
26 ~~available in a manner contrary to the requirements of these standards of~~
27 ~~conduct, the utility must immediately notify the Arkansas Public Service~~
28 ~~Commission of such disclosure and provide such other notice to third parties~~
29 ~~as the Arkansas Public Service Commission may direct; and~~

30 (iii) ~~A utility may not share any market information~~
31 ~~acquired from nonaffiliated energy service providers or potential~~
32 ~~nonaffiliated energy service providers, or developed in the course of~~
33 ~~responding to requests for transmission or distribution service with its own~~
34 ~~employees, or those of an affiliate, engaged in retail marketing or sales.~~

35 (E) ~~Implementing Tariffs.~~

36 (i) ~~Employees of the utility engaged in transmission~~

1 ~~or distribution functions must strictly enforce all tariff provisions~~
2 ~~relating to the sale or purchase of open access retail transmission and~~
3 ~~distribution service, if these provisions do not provide for the use of~~
4 ~~discretion.~~

5 ~~(ii) Employees of the utility engaged in~~
6 ~~transmission and distribution operations must apply all tariff provisions~~
7 ~~relating to the sale or purchase of open access retail transmission and~~
8 ~~distribution service in a fair and impartial manner that treats all~~
9 ~~customers, including the utility and any affiliate, in a nondiscriminatory~~
10 ~~manner, if these provisions involve discretion.~~

11 ~~(iii) The utility must keep a log, available for~~
12 ~~Arkansas Public Service Commission audit, detailing the circumstances and~~
13 ~~manner in which it exercised its discretion under any terms of its tariffs.~~

14 ~~(iv) The utility, through its tariffs or otherwise,~~
15 ~~may not give preference to wholesale or retail purchases or sales made on~~
16 ~~behalf of its own power customers, or those of an affiliate, over the~~
17 ~~interest of any other customer in matters relating to the sale or purchase of~~
18 ~~retail transmission or distribution service, including issues of price,~~
19 ~~curtailments, scheduling, priority, and ancillary services.~~

20 ~~(v) If the utility offers a discount on purchases of~~
21 ~~retail transmission or distribution service made on behalf of its own power~~
22 ~~customers or those of any affiliate, then, at the same time, it must publicly~~
23 ~~offer to provide the same discount to all customers on the same path.~~

24 ~~(F) Books and Records. A utility must maintain its books~~
25 ~~of account and records separately from those of its affiliates, and the books~~
26 ~~and records of any affiliate doing business with the utility must be~~
27 ~~available for Arkansas Public Service Commission inspection;~~

28 ~~(3) Maintenance of Written Procedures. The utility must~~
29 ~~maintain in a public place and file with the Arkansas Public Service~~
30 ~~Commission current written procedures implementing the standards of conduct~~
31 ~~in such detail as will enable other electric service providers, customers,~~
32 ~~and the Arkansas Public Service Commission to determine that the utility is~~
33 ~~in compliance with the requirements of this section.~~

34 ~~(e)(1) In addition to its proposed tariffs, the utility may file~~
35 ~~supporting cost data for costs, if any, that have been found to exist as of~~
36 ~~that date, to be recovered through a customer transition charge that has been~~

1 ~~determined pursuant to §§ 23-19-303 and 23-19-304, and information specifying~~
2 ~~the rate of its qualified intangible charge or charges, if any, resulting~~
3 ~~from a securitization of stranded costs.~~

4 ~~(2) Not later than one hundred eighty (180) days before the~~
5 ~~implementation of retail open access, and in accordance with a schedule and~~
6 ~~the procedures it may establish, the Arkansas Public Service Commission,~~
7 ~~after a hearing, shall:~~

8 ~~(A) Approve or modify and make effective as of that date~~
9 ~~each electric utility's proposed tariffs for distribution services and any~~
10 ~~other services that will remain subject to rate regulation; and~~

11 ~~(B) Require electric utilities to show separate rates and~~
12 ~~charges for their unbundled services on bills to retail electric customers.~~

13 ~~(f) The Arkansas Public Service Commission shall have authority to~~
14 ~~grant exceptions to any or all of the requirements set forth in subsections~~
15 ~~(c) and (d) of this section for small systems, as defined by the Arkansas~~
16 ~~Public Service Commission, if the Arkansas Public Service Commission~~
17 ~~determines that the cost of compliance with such requirements exceeds the~~
18 ~~public benefits which may be derived therefrom.~~

19
20 ~~23-19-301. Utility election for stranded cost recovery and recovery of~~
21 ~~nuclear decommissioning costs.~~

22 ~~(a)(1)(A) No later than December 31, 1999, any electric utility that~~
23 ~~intends to seek recovery of stranded costs shall file notice of its intent~~
24 ~~with the Arkansas Public Service Commission.~~

25 ~~(B) The notice may subsequently be withdrawn by the~~
26 ~~electric utility prior to filing its application pursuant to this subsection,~~
27 ~~but no later than December 31, 2001, thereby precluding any recovery of~~
28 ~~stranded costs through a customer transition charge.~~

29 ~~(2)(A) Any electric utility that does not file its election by~~
30 ~~December 31, 1999, shall not be eligible for recovery of stranded costs.~~

31 ~~(B) The election shall be at the sole discretion of the~~
32 ~~electric utility.~~

33 ~~(3)(A) Following receipt of the notice, the commission, at the~~
34 ~~earliest practicable date, shall direct the electric utility to file an~~
35 ~~application setting forth the methods that the utility proposes to determine~~
36 ~~its stranded costs.~~

1 ~~(B) In no event shall the commission direct that the~~
2 ~~electric utility file such an application any later than one hundred eighty~~
3 ~~(180) days following the implementation of retail open access. Commission~~
4 ~~proceedings on the application shall be pursuant to notice and hearing.~~

5 ~~(b) An electric utility that does not elect to recover stranded costs~~
6 ~~under this subchapter shall have no claim for stranded costs recovery under~~
7 ~~this chapter, or otherwise.~~

8 ~~(c) In its application to the commission, the electing electric~~
9 ~~utility, for all of its generation assets, purchased power, and fuel and fuel~~
10 ~~transportation costs, shall identify the methods and procedures which it~~
11 ~~proposes to use to value its stranded costs and request all necessary~~
12 ~~commission approvals to implement such methods. The electric utility may~~
13 ~~propose, without limitation, any of the following methods or any combination~~
14 ~~thereof.~~

15 ~~(1) Sale of Assets. The electing utility may request commission~~
16 ~~approval of the sale of some or all of its generation assets, including any~~
17 ~~agreements to sell electricity or any purchased power or fuel and fuel~~
18 ~~transportation agreements related to those assets. The electing electric~~
19 ~~utility shall propose procedures to ensure a bona fide arms-length~~
20 ~~transaction under a competitive offering. If the electing electric utility~~
21 ~~proposes to sell only part of an asset, it shall specify one (1) or more of~~
22 ~~the other methods in this subsection that it proposes to be used to establish~~
23 ~~the market value of the remaining portion of the asset.~~

24 ~~(2) Stock Valuation Method.~~

25 ~~(A) The electing electric utility may request commission~~
26 ~~approval of a procedure whereby the utility transfers generation assets,~~
27 ~~including any related agreements to purchase fuel, fuel transportation~~
28 ~~agreements, or agreements to sell electricity or any purchased power~~
29 ~~contracts, to a separate affiliated or nonaffiliated corporation, and.~~

30 ~~(i) At least nineteen percent (19%) of the common~~
31 ~~stock of the corporation is divested and listed with a national stock~~
32 ~~exchange for sale to public investors.~~

33 ~~(ii) The common stock of the transferee corporation~~
34 ~~has been traded for not less than one hundred eighty (180) days.~~

35 ~~(iii) Ninety five percent (95%) or more of the book~~
36 ~~value of the transferee corporation's assets consist of generation assets or~~

1 ~~purchased power obligations transferred from the electric utility and which~~
2 ~~are includable in the determination of stranded costs allocable to Arkansas~~
3 ~~ratepayers;~~

4 ~~(iv) The transferee corporation's assets do not~~
5 ~~include regulatory assets; and~~

6 ~~(v) The assets transferred to the transferee~~
7 ~~corporation were owned by, or were obligations of, the electric utility on~~
8 ~~December 31, 1998; then the resulting average daily closing price of the~~
9 ~~common stock over sixty (60) consecutive trading days chosen by the~~
10 ~~commission out of the one hundred twenty (120) consecutive trading days~~
11 ~~before the filing by the electric utility of its application under this~~
12 ~~section would be used to establish the market value of the common stock~~
13 ~~equity in the transferee corporation.~~

14 ~~(B) Should the commission determine it to be in the public~~
15 ~~interest to use the method described in subdivision (c)(2) of this section,~~
16 ~~the book value of the transferee corporation's debt and preferred stock~~
17 ~~securities shall be added to the market value of the transferee corporation's~~
18 ~~common stock equity in determining the market value of its assets. The~~
19 ~~resulting market value of the assets shall be used to establish the market~~
20 ~~value of the generation assets transferred by the electric utility to the~~
21 ~~separate corporation.~~

22 ~~(C)(i) If less than fifty one percent (51%) of the common~~
23 ~~stock of the transferee corporation described in subdivision (c)(2)(A) of~~
24 ~~this section is divested and listed with a national stock exchange for sale~~
25 ~~to public investors, then the commission shall convene a valuation panel of~~
26 ~~five (5) independent financial experts to recommend whether the common stock~~
27 ~~held by the public is fairly representative of the total common stock equity~~
28 ~~or whether a control premium exists for the retained interest. The panel~~
29 ~~shall recommend the amount of any control premium, which amount shall be~~
30 ~~presumed to be appropriate unless the commission determines by clear and~~
31 ~~convincing evidence that the recommended amount is unreasonable. The~~
32 ~~reasonable costs and expenses of the panel shall be paid by the utility whose~~
33 ~~assets are being valued. These costs and expenses may not be recoverable~~
34 ~~from ratepayers by the electric utility.~~

35 ~~(ii) The valuation panel must consist of financial~~
36 ~~experts chosen from proposals submitted in response to commission requests~~

1 from the top thirty (30) investment banks as measured by the dollar amount of
2 domestic public offerings of long term debt and equity over the immediately
3 preceding three (3) calendar years as ranked by the publications "Securities
4 Data" or "Institutional Investor". An investment bank shall not be eligible
5 to submit a proposal if it has been retained by the electric utility, whose
6 assets are being valued, for purposes of underwriting the transfer of the
7 assets being valued, or if the bank was among the top two (2) primary
8 providers of investment services to the utility during the last two (2) years
9 as measured by the fees paid by the utility and its affiliates for investment
10 services. Two (2) panel members shall be chosen by the utility whose assets
11 are being valued. Two (2) panel members shall be chosen collectively by the
12 commission's general staff and any nonutility parties to the proceeding. The
13 four (4) panel members so chosen shall choose the fifth panel member. If the
14 commission's general staff and any nonutility parties to the proceeding are
15 unable to agree on two (2) panel members, each nonutility party shall be
16 entitled to propose a panel member and the commission shall choose the two
17 (2) panel members.

18 (D) Should the commission determine that then current
19 market conditions do not reflect the value of the underlying stock, the
20 commission may extend the one hundred twenty day period described in
21 subdivision (c)(2)(A)(v) of this section to include up to three hundred
22 sixty five (365) days after the filing by the electric utility of its
23 application under this section.

24 (E) Any commission order approving a transfer of assets
25 pursuant to subdivision (c)(2) of this section shall determine a floor market
26 value for the assets. The provisions of any other subdivision of (c)(2) of
27 this section to the contrary notwithstanding, should the commission determine
28 it to be in the public interest to use the method described in subdivision
29 (c)(2) of this section, the amount included in calculating any customer
30 transition charge as contemplated by subsection (a) of this section or § 23-
31 19-601 et seq., shall be the greater of the floor market value; or the value
32 determined pursuant to subdivision (c)(2)(B) of this section, as adjusted
33 pursuant to subdivisions (c)(2)(C) and (D) of this section, if applicable.
34 However, should the utility show by clear and convincing evidence that the
35 value determined pursuant to subdivision (c)(2)(B) of this section, as
36 adjusted pursuant to subdivisions (c)(2)(C) and (D) of this section, if

1 applicable, accurately reflects the market value of the assets
2 notwithstanding that such value is below the floor market value, then the
3 commission shall use such value in calculating the amount of any customer
4 transition charge as contemplated by subsection (a) of this section or § 23-
5 19-601 et seq.

6 (3) ~~Capacity Sale.~~

7 (A) ~~The electing electric utility may request commission~~
8 ~~approval of a proposal to solicit to sell an amount of power equal to at~~
9 ~~least ten percent (10%) of the electric output of the generating asset or~~
10 ~~assets being valued under this section, for a period of not less than ten~~
11 ~~(10) years, in a bona fide arms length transaction under a competitive~~
12 ~~wholesale offering, so that the price realized from the sale of such~~
13 ~~wholesale purchased power would be the discounted net present value of the~~
14 ~~expected revenues resulting from the purchased power sale reduced by all~~
15 ~~generating costs of the generating asset or assets being valued using this~~
16 ~~method. In this process, the commission shall assure that in this or in any~~
17 ~~other method chosen, there are credited against stranded costs all SO2~~
18 ~~allowances and deferred tax balances. The utility may propose that the price~~
19 ~~realized from the sale of a portion of the output of a generating facility be~~
20 ~~imputed to the remaining portion of the facility. Generating costs include~~
21 ~~all fuel, operating and maintenance expenses, future capital investments~~
22 ~~required to maintain plant operations to meet regulatory and safety~~
23 ~~requirements or expenditures that result in a net reduction of stranded~~
24 ~~costs, and all applicable taxes. The expected output of the generating asset~~
25 ~~or assets and representative generating costs will be based upon at least~~
26 ~~three (3) years of recent operating experience at the same plant or plants,~~
27 ~~adjusted for known and measurable changes. If the expected life of the~~
28 ~~generating asset or assets is greater than the term of the purchased power~~
29 ~~sale, then the average of the expected revenues in the final three (3) years~~
30 ~~of the purchased power sale reduced by the estimated generating costs shall~~
31 ~~be escalated at the rate of inflation as measured by the Gross Domestic~~
32 ~~Product Implicit Price Deflator, published by the United States Department of~~
33 ~~Commerce or any successor index, as determined by a recognized forecasting~~
34 ~~service for the remaining years of the plant life.~~

35 (4) ~~The electing electric utility may request commission~~
36 ~~approval to establish the value of assets, purchased power, fuel, and fuel~~

1 ~~transportation agreements through other valuation methods not specified in~~
2 ~~subdivisions (c)(1) (3) of this section. To the extent reasonable and~~
3 ~~practical, such other methods must be based on and consistent with publicly~~
4 ~~available market data of bona fide arms length transactions involving sales~~
5 ~~of generation assets or long term power sales, or be reasonable projections~~
6 ~~of such market data. To the extent reasonable and practical, any alternative~~
7 ~~analysis or forecast shall be based on and consistent with publicly available~~
8 ~~market based data generally accepted within the industry or be a reasonable~~
9 ~~projection of market data. In addition to such data, without limitation, the~~
10 ~~following data may be incorporated in the analyses, to the extent necessary~~
11 ~~to yield a reasonable market valuation of the assets or agreements being~~
12 ~~valued using this subdivision (c)(4):~~

13 ~~(A) Generation plant technical and performance~~
14 ~~characteristics such as capacity ratings, fuel types, heat rates, and cost~~
15 ~~characteristics;~~

16 ~~(B) Reasonable forecasts of the supply of, demand for, and~~
17 ~~price of electricity in relevant regional power markets;~~

18 ~~(C) Reasonable forecasts of the supply of, demand for, and~~
19 ~~price of fuels used to generate electricity; and~~

20 ~~(D) Reasonable estimates of the cost of constructing,~~
21 ~~owning, and operating new generation plants. With the consent of the~~
22 ~~commission, the utility may use one of the other methods specified in this~~
23 ~~subsection to determine the utility's stranded costs.~~

24 ~~(d) The commission shall review the application submitted by an~~
25 ~~electing electric utility as directed by the commission pursuant to~~
26 ~~subsection (a) of this section to determine whether the methods and~~
27 ~~procedures the utility has proposed to determine its stranded costs comply~~
28 ~~with the requirements of this chapter and are reasonably structured to ensure~~
29 ~~that the proposed methods will result in bona fide arms length transactions~~
30 ~~or estimates, utilizing market data or reasonable projections of market data,~~
31 ~~of the value that would be achieved in bona fide arms length transactions and~~
32 ~~whether the proposed valuation methods would have an undue impact on the~~
33 ~~determination of the utility's stranded costs and on the public interest.~~

34 ~~(e)(1) Following its review pursuant to subsection (d) of this~~
35 ~~section, the commission may approve, disapprove, or modify the utility's~~
36 ~~proposals. Provided, however, that:~~

1 (A) ~~Such modifications shall not require transactions or~~
2 ~~estimates other than those specified in subsection (c) of this section; and~~

3 (B) ~~The commission may not approve a transaction proposed~~
4 ~~by a utility under subdivisions (c)(1), (2), or (3) of this section unless~~
5 ~~the commission first has found that the market in which such a transaction is~~
6 ~~to occur has developed sufficiently to allow a full and accurate~~
7 ~~determination of the market value of the transaction.~~

8 (2) ~~If the commission approves a sale of assets under~~
9 ~~subdivision (c)(1) of this section or a capacity sale under subdivision~~
10 ~~(c)(3) of this section, the commission may approve or modify the proposed~~
11 ~~procedures to ensure that they result in bona fide arms-length transactions.~~

12 (3) ~~If the commission approves transactions pursuant to~~
13 ~~subdivision (c)(1) of this section or subdivision (c)(3) of this section, the~~
14 ~~commission may condition its approval on the receipt by the utility of a~~
15 ~~specified minimum price for the assets or capacity, and any such minimum~~
16 ~~price shall be consistent with the values indicated by similar market~~
17 ~~transactions for comparable generating units, the value of capacity and~~
18 ~~energy from such units as indicated by published indicators of prices for~~
19 ~~energy commodities or transactions in the energy market, and reasonable~~
20 ~~estimates of forward looking costs of production and continued ownership of~~
21 ~~the capacity. The floor price should be set so as to reflect the public~~
22 ~~interest in encouraging reasonable bids for the capacity or assets being~~
23 ~~sold.~~

24 (f) ~~In any proceeding under this section, the commission within at~~
25 ~~least one hundred eighty (180) days after the filing of the utility's~~
26 ~~application shall enter an order on the procedures to implement the proposed~~
27 ~~transactions. The commission may extend this period up to ninety (90)~~
28 ~~additional days, for good cause shown.~~

29
30 23-19-302. Mitigation of potential stranded costs.

31 (a) ~~An electing electric utility shall have a duty to mitigate its~~
32 ~~potential stranded costs by making its reasonable best efforts to reduce the~~
33 ~~costs of its existing contracts with qualifying facilities and its fuel, fuel~~
34 ~~transportation, and purchased power agreements by making its reasonable best~~
35 ~~efforts to maintain its generation assets in accordance with prudent~~
36 ~~practices in the electric utility industry and, if directed by the Arkansas~~

1 ~~Public Service Commission, by submitting to annual earnings reviews by the~~
2 ~~commission and using its earnings above the utility's authorized rate of~~
3 ~~return to reduce the book value of generation assets until the date of retail~~
4 ~~open access. An electing electric utility shall also consider seeking~~
5 ~~commission approval of:~~

6 ~~(1) Acceleration of depreciation on and amortization of the~~
7 ~~utility's investment in generation assets;~~

8 ~~(2) Use of the utility's earnings above the utility's authorized~~
9 ~~rate of return to reduce the book value of generation assets;~~

10 ~~(3) Sale of excess generating capacity;~~

11 ~~(4) Securitization of stranded costs;~~

12 ~~(5) Extending the operational life of generating facilities and~~
13 ~~exercising any option the utility may have to extend commercially prudent~~
14 ~~contracts; and~~

15 ~~(6) Other mitigation measures as were reasonably known and~~
16 ~~generally accepted within the electric utility industry prior to the filing~~
17 ~~by the utility for a stranded cost determination.~~

18 ~~(b) To the extent an electing electric utility has not made its~~
19 ~~reasonable best efforts to mitigate its stranded costs pursuant to subsection~~
20 ~~(a) of this section, its stranded costs as determined by the commission~~
21 ~~pursuant to § 23-19-303 may be reduced by an amount commensurate with the~~
22 ~~utility's failure to make such efforts.~~

23 ~~(c) Except as provided in § 23-19-404, accounting write-downs or~~
24 ~~write-offs of assets, mandatory divestiture of assets, and the allocation of~~
25 ~~income from business activities of an electric utility or an affiliate not~~
26 ~~reasonably related to the sale of electricity to retail customers in this~~
27 ~~state or to the electric utility's regulated activities, shall not be~~
28 ~~required to be used to mitigate stranded costs.~~

29
30 ~~23-19-303. Recovery of stranded costs.~~

31 ~~(a) An electing electric utility shall have a right to recover through~~
32 ~~a customer transition charge its net retail stranded costs, as may be~~
33 ~~determined by the Arkansas Public Service Commission, over a reasonable~~
34 ~~period of time in accordance with subdivision (h)(1)(A) of this section and~~
35 ~~all other stranded costs as determined by the commission and any nuclear~~
36 ~~decommissioning costs, as determined by the commission, associated with the~~

1 utility's generating assets. However, nuclear decommissioning costs shall
2 not be included in determining the utility's net retail stranded costs. An
3 electric utility may utilize securitization pursuant to § 23-19-601 et seq.,
4 but shall not be required to, to recover its net retail stranded costs and
5 other stranded costs as may be determined by the commission. The costs may
6 also be recovered as a component of a customer transition charge.

7 (b) A generation and transmission electric cooperative corporation
8 shall be entitled to recover its stranded costs, as determined by the
9 commission pursuant to this subchapter. A distribution electric cooperative
10 corporation which, prior to the implementation of retail open access,
11 purchased power from a generation and transmission electric cooperative
12 corporation shall recover on behalf of, and remit to, such generation and
13 transmission electric cooperative corporation its net retail stranded costs
14 through a customer transition charge pursuant to this subchapter. The
15 commission shall determine the manner by which the generation and
16 transmission electric cooperative corporation's stranded costs are allocated
17 among those distribution electric cooperative corporations, and the
18 distribution electric cooperative corporations shall further allocate their
19 portion among their customers pursuant to subsection (c) of this section.

20 (c) After the electing electric utility has completed all transfers of
21 assets or sale of capacity authorized by the commission pursuant to § 23-19-
22 301, the utility shall file with the commission for a determination of its
23 net retail stranded costs, if any, including stranded costs associated with
24 any assets it may have retained, and all other stranded costs. After notice
25 and hearing, the commission shall determine the amount of net retail stranded
26 costs. The filing shall consist of the following information, in such form
27 as may be adopted by the commission, in addition to such other relevant
28 information as the commission may reasonably require:

29 (1) All of its net generation asset book value allocable to
30 Arkansas and all of the costs of its existing purchased power, fuel, and fuel
31 transportation agreements allocable to Arkansas, as of a date no earlier than
32 ninety (90) days prior to the date of the filing of its application;

33 (2) The market value of all of the electric utility's generating
34 assets, existing purchased power, fuel and fuel transportation agreements
35 allocable to Arkansas for which the commission has previously approved the
36 procedures for a sale of assets, a transfer of assets, or a capacity sale in

1 ~~accordance with § 23-19-301 calculated in accordance with the methodologies~~
2 ~~specified therein;~~

3 ~~(3) The amount of any stranded costs the utility seeks to~~
4 ~~recover pursuant to § 23-19-301(e)(4); and~~

5 ~~(4) Any mechanism or mechanisms, including securitization, the~~
6 ~~electric utility proposes to use to recover any stranded costs.~~

7 ~~(d) The commission shall review the application of the utility. For~~
8 ~~any generation assets, purchased power, fuel and fuel transportation~~
9 ~~agreements for which the commission has previously approved a sale of assets,~~
10 ~~a transfer of assets, or a capacity sale pursuant to § 23-19-301(e)(1)-(3),~~
11 ~~the commission shall verify that the transactions were conducted according to~~
12 ~~the procedures previously approved, and that the computations made by the~~
13 ~~electing electric utility are in accordance with the appropriate~~
14 ~~methodologies specified in § 23-19-301(e). If the commission makes such~~
15 ~~verification, the total net value realized from the sale shall establish the~~
16 ~~market value of the generation assets sold. In determining the total net~~
17 ~~value, transaction costs and any related taxes associated with the sale shall~~
18 ~~be deducted from the sales price. For any generation assets, purchased~~
19 ~~power, fuel and fuel transportation agreements for which the commission has~~
20 ~~not previously approved a sale of assets, a transfer of assets, or a capacity~~
21 ~~sale, if the commission determines after notice and hearing that a method~~
22 ~~chosen by the utility results in an unreasonable level of stranded costs, the~~
23 ~~commission may adopt some other reasonable method to quantify the utility's~~
24 ~~stranded costs. In no event shall the amount of stranded costs exceed the~~
25 ~~just and reasonable costs that are or would have been included in rates under~~
26 ~~continued regulation.~~

27 ~~(e) Net retail stranded costs and all other stranded costs shall be~~
28 ~~allocated between wholesale and retail customers and further allocated among~~
29 ~~retail customer classes. Such costs shall be allocated between wholesale and~~
30 ~~retail customers in accordance with the methodologies or ratios used in the~~
31 ~~commission's most recent general rate order fixing rates for the electric~~
32 ~~utility. Such costs shall be further allocated among retail customer classes~~
33 ~~in accordance with the methodologies or ratios used to allocate production~~
34 ~~demand related costs in the commission's most recent general rate order~~
35 ~~fixing rates for the utility.~~

36 ~~(f) The electing electric utility shall be authorized to collect~~

1 ~~generation related regulatory assets and other stranded costs not consisting~~
2 ~~of generation assets, purchased power or fuel or fuel transportation costs as~~
3 ~~the commission determines to be:~~

4 ~~(1) Reasonable;~~

5 ~~(2) Known and measurable; and~~

6 ~~(3) Directly related to the implementation of retail open~~
7 ~~access.~~

8 ~~(g) The commission shall enter a final order in any proceeding~~
9 ~~necessary to the determination of an electing electric utility's stranded~~
10 ~~cost in a timely manner.~~

11 ~~(h)(1) Subsequent to the commission's determination of all of an~~
12 ~~electric utility's net retail stranded costs and other stranded costs, in~~
13 ~~accordance with § 23 19 301 and subsections (c) and (d) of this section, the~~
14 ~~commission after notice and hearing shall approve a customer transition~~
15 ~~charge that will allow each applicable electric utility to recover its~~
16 ~~stranded costs that have not been securitized and are not recoverable~~
17 ~~pursuant to § 23 19 605(d). The commission shall exercise its discretion and~~
18 ~~judgment to determine the most appropriate structure of such rate for each~~
19 ~~such electric utility, subject to the following conditions:~~

20 ~~(A) The rate shall be designed to provide for recovery of~~
21 ~~applicable stranded costs over a period no longer than the dollar weighted~~
22 ~~average remaining life of the assets or contracts to which the stranded costs~~
23 ~~are related, and the rate initially established shall remain in effect~~
24 ~~unaltered until the stranded costs have been fully recovered, except for any~~
25 ~~adjustment that may be appropriate as a result of a revision pursuant to~~
26 ~~subsection (i) of this section to the initial determination of the electric~~
27 ~~utility's net retail stranded costs;~~

28 ~~(B) The rate shall reflect a return on the utility's~~
29 ~~unrecovered stranded costs based on the cost of capital the commission has~~
30 ~~most recently determined appropriate for that utility at the time the~~
31 ~~customer transition charge becomes initially effective, except that, in the~~
32 ~~event the commission authorizes the recovery of purchased power costs or~~
33 ~~other periodically recurring stranded costs, through a separate rate or~~
34 ~~rider, any such costs shall be excluded from the calculation of the cost of~~
35 ~~capital on the utility's unrecovered stranded costs. This cost of capital~~
36 ~~shall remain fixed for the duration of the stranded cost recovery period for~~

1 ~~purposes of determining the amount of stranded cost to be amortized each~~
2 ~~month during the recovery period;~~

3 ~~(C) The rate shall be designed to reflect a credit for the~~
4 ~~time value of money related to the net proceeds from the sale or transfer by~~
5 ~~the utility of any asset includable in the calculation of the utility's~~
6 ~~stranded costs after December 31, 1998, and prior to the time that the~~
7 ~~customer transition charge is determined. However, such credit shall be~~
8 ~~included only to the extent that the time value of such money is not credited~~
9 ~~to customers in an appropriate accounting adjustment in an annual review of~~
10 ~~the utility's earnings by the commission. In the event the utility sells or~~
11 ~~transfers an asset for more than the asset's net book value, a credit for the~~
12 ~~time value of money shall be made to the extent that the net proceeds from~~
13 ~~the sale or transfer exceed the net book value of the asset sold or~~
14 ~~transferred and such excess is not reflected in an annual review of the~~
15 ~~utility's earnings by the commission and credited to customers in an~~
16 ~~appropriate accounting adjustment. Such credit shall be computed utilizing~~
17 ~~the utility's net after tax proceeds from such transfer or sale and the cost~~
18 ~~of capital the commission has most recently determined appropriate for that~~
19 ~~utility. In the event the utility has to purchase capacity, not energy, to~~
20 ~~replace the sold or transferred capacity, the cost of such replacement~~
21 ~~capacity shall be applied as an offset to the calculation of the time value~~
22 ~~of money credit described in this subdivision (h)(3); and~~

23 ~~(D) The rate shall be designed to reflect a credit for the~~
24 ~~time value of money related to purchased power costs or other recurring~~
25 ~~stranded costs that are not recovered through a separate rate or rider and~~
26 ~~are included in the calculation of the utility's stranded costs, to the~~
27 ~~extent the utility receives stranded cost recovery payment from ratepayers~~
28 ~~prior to the time that the utility is required to make payment under the~~
29 ~~purchased power contract or other periodically recurring obligation. Such~~
30 ~~credit shall be computed utilizing the utility's cost of capital the~~
31 ~~commission has most recently determined appropriate for that utility.~~

32 ~~(2) The electric utility shall submit quarterly reports showing~~
33 ~~the amount of stranded costs recovered and the balance remaining to be~~
34 ~~recovered.~~

35 ~~(3) If, after notice and hearing, the commission determines that~~
36 ~~the level of stranded costs actually collected by the electric utility~~

1 ~~pursuant to subdivision (e)(1) of this section exceeded the commission's~~
2 ~~previous determination of the utility's stranded costs, the commission shall~~
3 ~~order a refund of the difference between the amount authorized to be~~
4 ~~collected and the amount actually collected to Arkansas jurisdictional retail~~
5 ~~customers subject to the electric utility's customer transition charge over a~~
6 ~~reasonable period. Any such refund ordered by the commission shall not~~
7 ~~affect revenues that have been securitized pursuant to § 23-19-601 et seq.,~~
8 ~~and, if a refund is ordered to be paid by an electric utility that has~~
9 ~~securitized such revenues pursuant to § 23-19-601 et seq., such refund shall~~
10 ~~be made from funds other than revenues collected pursuant to § 23-19-601 et~~
11 ~~seq.~~

12 ~~(i) For generating assets, existing purchased power and fuel~~
13 ~~transportation agreements valued pursuant to § 23-19-301(e)(4) or the last~~
14 ~~sentence of subsection (d) of this section, the commission, within thirty-six~~
15 ~~(36) months of the entry of a final order determining an electric utility's~~
16 ~~net retail stranded costs may initiate a proceeding to review the level of~~
17 ~~stranded costs determined pursuant to § 23-19-301(e)(4) or the last sentence~~
18 ~~of subsection (d) of this section, and the commission after notice and~~
19 ~~hearing may revise the electric utility's net retail stranded costs to the~~
20 ~~extent newly available market data support revision of the stranded cost~~
21 ~~determination under § 23-19-301(e)(4) or the last sentence of subsection (d)~~
22 ~~of this section, applying the criteria set forth therein. Newly available~~
23 ~~market data shall include, but not be limited to, the sale of, the transfer~~
24 ~~of a stock interest in, or the sale of capacity from, all or part of the~~
25 ~~asset being valued, provided such sale or transfer has been approved by the~~
26 ~~commission for purposes of a stranded cost determination. The amount of the~~
27 ~~revised determination of net retail stranded cost to be collected from~~
28 ~~customers shall be limited to the difference, positive or negative, between~~
29 ~~the level of stranded costs the electric utility has securitized, if any, and~~
30 ~~the initial determination of net retail stranded cost. In any proceeding~~
31 ~~under this subsection, the commission shall complete its review within one~~
32 ~~hundred fifty (150) days, but the commission may extend the review period up~~
33 ~~to thirty (30) additional days, for good cause shown.~~

34
35 ~~23-19-304. Recovery of transition costs.~~

36 ~~(a) During a period of time ending thirty-six (36) months after the~~

1 ~~implementation of retail open access, an electric utility shall be allowed to~~
2 ~~recover transition costs incurred no later than twenty four (24) months after~~
3 ~~the implementation of retail open access as may be determined by the Arkansas~~
4 ~~Public Service Commission after notice and hearing, through a customer~~
5 ~~transition charge. Transition costs surcharges will be subject to annual~~
6 ~~review by the commission and costs included therein shall be prudent,~~
7 ~~reasonable, and directly caused by retail open access.~~

8 ~~(b) After notice and an opportunity for hearing, the commission shall~~
9 ~~annually adjust the level of the customer transition charge to ensure the~~
10 ~~recovery of undercollections from the previous year and the refund of~~
11 ~~overcollections from the previous year.~~

12 ~~(c) An application for recovery of transition costs shall not be~~
13 ~~treated as an application for recovery of stranded costs or as an application~~
14 ~~for a qualified rate order. Transition costs shall not include costs~~
15 ~~includable in the determination of stranded costs pursuant to § 23-19-303.~~

16 ~~(d) A generation and transmission electric cooperative corporation~~
17 ~~shall be entitled to recover its transition costs, as determined by the~~
18 ~~commission pursuant to this section. A distribution electric cooperative~~
19 ~~corporation which purchases power from a generation and transmission electric~~
20 ~~cooperative corporation shall recover on behalf of, and remit to, such~~
21 ~~generation and transmission electric cooperative corporation its transition~~
22 ~~costs through a customer transition charge pursuant to this section. The~~
23 ~~commission shall determine the manner by which the generation and~~
24 ~~transmission electric cooperative corporation's transition costs are~~
25 ~~allocated among those distribution electric cooperative corporations.~~

26
27 ~~23-19-401. Commission rules and regulations.~~

28 ~~(a) The Arkansas Public Service Commission shall adopt appropriate~~
29 ~~rules on or before the date determined by the commission for the~~
30 ~~implementation of retail open access to promote the following goals:~~

31 ~~(1) All electric utilities doing business in this state should~~
32 ~~retain their historical obligations to connect customers to the electric~~
33 ~~utility grid upon reasonable terms and conditions;~~

34 ~~(2) Retail customers should have access to safe, reliable, and~~
35 ~~affordable electricity, including protection against service disconnections~~
36 ~~in extreme weather or in cases of medical emergency or nonpayment for~~

1 ~~unrelated services;~~

2 ~~(3) Electric utility bills, usage, and payment records should be~~
3 ~~treated as confidential, unless the retail customer consents to their release~~
4 ~~or the information is provided only in the aggregate;~~

5 ~~(4) Bills should be accurate and understandable;~~

6 ~~(5) A retail customer's chosen provider should not be changed~~
7 ~~without the retail customer's informed consent;~~

8 ~~(6) A retail customer should have access to a continuity of~~
9 ~~service provider;~~

10 ~~(7) Retail customers should have access to sufficient~~
11 ~~information to make an informed choice of service provider, including, but~~
12 ~~not limited to, information on rates. The commission shall establish minimum~~
13 ~~standards for the form and content of such information to be disseminated by~~
14 ~~an electric utility or energy service provider, including standards for the~~
15 ~~disclosure of the environmental effects of the generation being supplied,~~
16 ~~where such disclosure would be practical and accurate, provided that such~~
17 ~~minimum standards;~~

18 ~~(A) Shall be just and reasonable;~~

19 ~~(B) Shall not unnecessarily inhibit the initiation and~~
20 ~~development of competition for any service; and~~

21 ~~(C) May vary for different services and different classes~~
22 ~~of customers;~~

23 ~~(8) A retail customer should be entitled to truthful and~~
24 ~~reasonable marketing and sales practices, including abiding by the~~
25 ~~commission's disclosure requirements related to the environmental effects of~~
26 ~~the generation being supplied as provided in subdivision (a)(7) of this~~
27 ~~section, as well as nondiscriminatory and nonabusive billing, credit,~~
28 ~~collection, and service connection practices; and~~

29 ~~(9) Evaluate the impact of competition on renewable energy~~
30 ~~development and on low income and energy efficiency programs.~~

31 ~~(b) The commission shall adopt after notice and hearing such other~~
32 ~~rules and regulations as it deems appropriate for the purposes of this~~
33 ~~chapter, including, without limitation, rules governing promotional practices~~
34 ~~relating to regulated services offered by electric utilities and rules for~~
35 ~~interconnection to transmission and distribution facilities.~~

36 ~~(c) The commission shall have jurisdiction over all electric~~

1 ~~utilities, municipal corporations owning municipal electric utilities which~~
2 ~~elect to offer retail open access, and energy service providers in enforcing~~
3 ~~rules adopted pursuant to subsection (a) of this section. The commission may~~
4 ~~begin a proceeding, on its own motion, or upon the complaint of a retail~~
5 ~~customer or other affected party, to impose after notice and hearing a civil~~
6 ~~sanction not to exceed ten thousand dollars (\$10,000), for failure to comply~~
7 ~~with rules or orders adopted pursuant to this chapter for each day such~~
8 ~~violation should continue, or in the case of repeated and substantial~~
9 ~~violations of such rules or orders, to revoke or suspend the registration or~~
10 ~~certificate of convenience and necessity of an electric utility or the~~
11 ~~license of an energy service provider. The proceeds from the civil sanctions~~
12 ~~imposed under this subsection shall be deposited into the State Treasury as~~
13 ~~special revenues and shall be credited to the Public Service Commission Fund.~~

14
15 ~~23-19-402. Continuity of service provider.~~

16 ~~(a)(1)(A) On and after the implementation of retail open access, each~~
17 ~~incumbent electric utility or a retail affiliate thereof doing business in~~
18 ~~this state shall offer a standard service package on such conditions as may~~
19 ~~be set by the Arkansas Public Service Commission within its distribution~~
20 ~~service territory and shall have an obligation to provide that service to any~~
21 ~~customer who chooses to receive the service, when any such customer has not~~
22 ~~selected an alternative energy service provider, or in the event any such~~
23 ~~customer has not been able to secure an alternative energy service provider.~~

24 ~~(B) The obligation to offer the standard service package~~
25 ~~shall be continuous, and any customer may choose to receive service or to~~
26 ~~return to service under the standard service package, subject to terms and~~
27 ~~conditions which the commission may establish in the interest of maintaining~~
28 ~~a stable competitive market.~~

29 ~~(2)(A) After notice and hearing, the commission shall establish~~
30 ~~procedures and methods by which the electric utility or a retail affiliate~~
31 ~~thereof shall demonstrate that its rates for the standard service package are~~
32 ~~consistent with competitive market prices.~~

33 ~~(B) The commission may require that the electric utility~~
34 ~~or a retail affiliate thereof use competitive bidding to procure some or all~~
35 ~~of the generation necessary to fulfill its obligations under this subsection.~~

36 ~~(C) The provisions of subdivisions (a)(2)(A) and (B) of~~

1 ~~this section shall not apply to an electric utility or retail affiliate~~
2 ~~thereof which agrees to have its rates for this service established pursuant~~
3 ~~to §§ 23-4-101—23-4-207 and 23-4-401—23-4-509, and in the case of a rural~~
4 ~~electric cooperative, the additional provisions in § 23-4-901 et seq.~~

5 ~~(b) Rates and charges for electricity and electric service provided as~~
6 ~~part of a standard service package to residential and small business~~
7 ~~customers for one (1) year following the implementation of retail open access~~
8 ~~shall be the same as the rates and charges for any comparable service~~
9 ~~provided by the electric utility to such customers immediately prior to the~~
10 ~~implementation of retail open access. In the event an electric utility~~
11 ~~recovers stranded costs pursuant to § 23-19-303, rates and charges for~~
12 ~~electricity and electric service, including any stranded costs and nuclear~~
13 ~~decommissioning costs included in a customer transition charge, provided as~~
14 ~~part of its standard service package to residential and small business~~
15 ~~customers, for three (3) years following the implementation of retail open~~
16 ~~access shall be the same as the rates and charges for any comparable service~~
17 ~~provided by the electric utility to such customers immediately prior to the~~
18 ~~implementation of retail open access. In no event shall customers receiving~~
19 ~~service under the standard service package during the one year or three year~~
20 ~~periods set forth in this subsection experience an increase in rates~~
21 ~~resulting from their allocation of customer transition charges. For purposes~~
22 ~~of this subsection, a small business customer is one whose maximum peak~~
23 ~~demand does not exceed one hundred kilowatts (100 kW), unless designated at a~~
24 ~~lower kilowatt level by the commission after notice and hearing.~~

25 ~~(c) The restrictions in subsection (b) of this section shall not apply~~
26 ~~to any fuel adjustment clause or energy cost recovery rider approved by the~~
27 ~~commission and in effect as of the effective date of this chapter, and the~~
28 ~~commission shall permit any electric utility subject to the restrictions in~~
29 ~~subsection (b) of this section to recover fuel and fuel-related costs through~~
30 ~~such clauses or riders during the period the electric utility is subject to~~
31 ~~the restrictions in subsection (b) of this section, but not thereafter.~~

32
33 ~~23-19-403. Affiliate dealings.~~

34 ~~All transactions among or between the regulated and any unregulated~~
35 ~~divisions, components, or affiliates of an electric utility shall be~~
36 ~~conducted at arm's length, subject to such rules as may be promulgated by the~~

1 ~~Arkansas Public Service Commission. All such transactions that involve~~
2 ~~regulated services shall be subject to the rates, terms, and conditions~~
3 ~~specified in tariffs approved by the commission. An electric utility shall~~
4 ~~not use any revenue from any regulated asset, operation, or service to~~
5 ~~subsidize the provision of any unregulated electric service or any other~~
6 ~~unregulated activity.~~

7
8 ~~23-19-404. Market power analysis.~~

9 ~~(a) No later than January 1, 2001, and at such later times as the~~
10 ~~Arkansas Public Service Commission may direct, electric utilities and energy~~
11 ~~services providers that are affiliates of electric utilities shall file with~~
12 ~~the commission market power analyses applicable to each product or service~~
13 ~~for which competition has been authorized by this chapter. Such analyses~~
14 ~~shall be consistent with guidelines, standards, and methods issued or used by~~
15 ~~the United States Department of Justice or the Federal Trade Commission,~~
16 ~~including, but not limited to, methods for defining the relevant market,~~
17 ~~measuring market concentration, identifying entry barriers, and assessing the~~
18 ~~existence of market power. Such analyses shall address the availability of~~
19 ~~transmission import capability, contractual or other mechanisms that would~~
20 ~~affect market concentration, and such other factors as the commission~~
21 ~~prescribes by rule or order.~~

22 ~~(b)(1) Upon application, complaint, or its own motion, and after~~
23 ~~notice and hearing, the commission shall issue an order finding whether any~~
24 ~~provider of a product or service for which competition is authorized by this~~
25 ~~chapter has market power.~~

26 ~~(2)(A) Within sixty (60) days of the issuance of the order,~~
27 ~~unless the commission grants an extension of time, the provider shall file~~
28 ~~with the commission, consistent with any rules or orders of the commission, a~~
29 ~~market power mitigation plan designed to eliminate the market power found by~~
30 ~~the commission.~~

31 ~~(B) The plan may include, without limitation, price caps,~~
32 ~~transitional standard offers, the auction of generation to be sold under~~
33 ~~long-term power contracts, the placement of assets or activities in~~
34 ~~affiliated corporations, and divestiture of assets or activities.~~

35 ~~(3)(A) After notice and hearing considering the plan, along with~~
36 ~~any alternative plans proposed by intervenors or commission staff, the~~

1 ~~commission shall order the provider to implement those measures determined by~~
2 ~~the commission to be necessary to mitigate the market power that it finds to~~
3 ~~be in the public interest.~~

4 ~~(B) The mitigation measures shall be implemented as soon~~
5 ~~as practicable, in accordance with a schedule established by the commission,~~
6 ~~taking into account the planned date for the implementation of retail open~~
7 ~~access.~~

8 ~~(C)(i) The measures ordered by the commission may include,~~
9 ~~but are not limited to:~~

10 ~~(a) Price caps;~~
11 ~~(b) Transitional standard offers;~~
12 ~~(c) The auction of generation to be sold under~~
13 ~~long-term power contracts;~~

14 ~~(d) The auction or other competitive selection~~
15 ~~of the right to serve customers who have not made an affirmative selection of~~
16 ~~an electric utility or electric service provider as provided in subsection~~
17 ~~(e) of this section; and~~

18 ~~(e) Divestiture of assets or activities.~~

19 ~~(ii)(a) Provided, the commission may not order an~~
20 ~~electric utility or affiliated energy services provider to divest assets or~~
21 ~~activities without the consent of the utility or affiliated energy services~~
22 ~~provider, unless and until the commission determines that other available~~
23 ~~measures will not adequately mitigate the utility's or affiliated energy~~
24 ~~services provider's market power.~~

25 ~~(b) Furthermore, the commission may delay~~
26 ~~implementation of divestiture until after the implementation of retail open~~
27 ~~access if implementing divestiture prior thereto would increase the utility's~~
28 ~~stranded costs and would be contrary to the public interest.~~

29 ~~(D) If the commission determines that no mitigation plan~~
30 ~~proposed or considered pursuant to this subsection will adequately mitigate~~
31 ~~market power, the commission:~~

32 ~~(i) Shall notify the House and Senate Committees on~~
33 ~~Insurance and Commerce; and~~

34 ~~(ii) May refer its findings and any recommendations~~
35 ~~to appropriate state or federal authorities, file an action or actions under~~
36 ~~applicable laws in any court of competent jurisdiction, or take such other~~

1 ~~action as is authorized by law.~~

2 ~~(4)(A) Nothing in this subsection shall in any way limit the~~
3 ~~obligations or liability under state or federal antitrust or consumer~~
4 ~~protection laws or regulations of an electric utility or energy service~~
5 ~~provider for conduct arising after implementation of retail open access.~~

6 ~~(B) In addition, a proceeding pursuant to this subsection~~
7 ~~shall not be a condition precedent to an action pursuant to state or federal~~
8 ~~antitrust or consumer protection laws or regulations.~~

9 ~~(c) For that period of time subsequent to the one year or three year~~
10 ~~periods referenced in § 23-19-402(b), each incumbent electric utility or its~~
11 ~~retail affiliate shall continue to have the obligation to provide a standard~~
12 ~~service package pursuant to § 23-19-402(a) to those of its distribution~~
13 ~~customers that have not elected or are unable to secure an alternative energy~~
14 ~~service provider, provided that the commission has first found that neither~~
15 ~~the incumbent utility nor any affiliate thereof has market power over the~~
16 ~~sale to any customer class of any component of such bundled service for which~~
17 ~~competition has been authorized by this chapter. If the commission finds~~
18 ~~that such market power exists, the commission shall determine the most~~
19 ~~appropriate method of providing the electric service needs of such~~
20 ~~distribution customers on a fair and equitable basis, including, but not~~
21 ~~limited to, allowing energy service providers to compete for the opportunity~~
22 ~~to serve some or all such customers pursuant to reasonable rates, terms, and~~
23 ~~conditions. The commission may adopt such method only after notice and~~
24 ~~hearing and finding that such method is in the public interest.~~

25 ~~(d) "Market power" means the ability to impose on customers a~~
26 ~~significant and nontransitory price increase on a product or service in a~~
27 ~~market above the price level which would prevail in a competitive market or~~
28 ~~exclude competition in the relevant market.~~

29 ~~(e)(1)(A) No later than April 1, 2009, and annually thereafter, the~~
30 ~~commission shall submit to the General Assembly a report assessing the~~
31 ~~competitiveness of those markets for which competition has been authorized by~~
32 ~~this chapter.~~

33 ~~(B) Each report shall include a recommendation as to~~
34 ~~whether the authority granted to the commission under this section should be~~
35 ~~continued, revised, or repealed.~~

36 ~~(2) Upon receipt of the report, the House and Senate Committees~~

1 on Insurance and Commerce shall make a recommendation to the General Assembly
2 as to whether to revise or repeal this section.

3 (f) Upon a petition filed or on its own motion, the commission may
4 find, after notice and opportunity for hearing, that one (1) or more markets
5 for which competition has been authorized by this chapter is subject to
6 effective competition. After such a finding, the commission shall revoke or
7 revise such market power mitigation measures, previously ordered by the
8 commission, to the extent such revocation or modification is consistent with
9 the maintenance of effective competition.

10
11 ~~23-19-501. Authority of the Arkansas Public Service Commission.~~

12 (a) At any time on or after the implementation of retail open access,
13 the Arkansas Public Service Commission after notice and hearing and a finding
14 that it is in the public interest may declare billing, metering, collection,
15 and any customer service offered by an electric utility as a regulated
16 service to be competitive and exempt from rate regulation. This subsection
17 shall not be construed to require that the commission declare such services
18 to be competitive or to limit the commission's ability to declare such
19 services competitive only in certain areas or only when offered by a
20 particular type of electric utility.

21 (b) Notwithstanding subsection (a) of this section, no electric
22 utility or energy service provider shall furnish or offer to furnish to or
23 for the public, connections to facilities to obtain electricity or shall
24 provide billing, metering, or collection services related to the provision of
25 electricity to or for the public in any service territory in which such
26 services are being provided by a municipal corporation owning a municipal
27 electric utility without the consent of such municipal corporation.

28
29 ~~23-19-502. Rates, terms, and conditions of electric distribution and~~
30 ~~transmission service.~~

31 (a) The Arkansas Public Service Commission shall continue to regulate
32 the rates, terms, and conditions applicable to the provision of
33 jurisdictional electric distribution service.

34 (b) All electric utilities shall retain all existing rights and
35 obligations to provide exclusive electric distribution service in their
36 service territories. Each electric utility shall connect and deliver

1 ~~electricity to all retail electric customers or other consumers in its~~
2 ~~service territory at rates and on terms and conditions that:~~

3 ~~(1) Do not discriminate among electric suppliers, retail~~
4 ~~electric customers, or other consumers; and~~

5 ~~(2) Are, at a minimum, equivalent to the rates, terms, and~~
6 ~~conditions on which the electric utility provides service to itself or any~~
7 ~~affiliates.~~

8 ~~(c) To the extent not subject to the exclusive jurisdiction of the~~
9 ~~Federal Energy Regulatory Commission or other federal agency, the commission~~
10 ~~shall have the authority to establish the rates, terms, and conditions of~~
11 ~~transmission in this state. Such authority shall include the authority to:~~

12 ~~(1) Establish rates for unbundled transmission service;~~

13 ~~(2) Direct any utility that owns transmission facilities to~~
14 ~~modify those facilities located within the state in order to relieve~~
15 ~~transmission constraints that are shown to impede the development of~~
16 ~~effective competition in the state; and~~

17 ~~(3) Promulgate rules for interconnection to distribution and~~
18 ~~transmission facilities located within the state.~~

19 ~~(d) No utility shall sell, lease, rent, or otherwise transfer in any~~
20 ~~manner control of transmission facilities in the state without the approval~~
21 ~~of the commission, provided that such approval shall be required only to the~~
22 ~~extent not subject to the exclusive jurisdiction of the Federal Energy~~
23 ~~Regulatory Commission or other federal agency.~~

24 ~~(e) The commission is hereby authorized to coordinate, consult, and~~
25 ~~cooperate as it deems necessary and appropriate with the regulatory~~
26 ~~commissions of other states and the United States, and with any independent~~
27 ~~transmission entity providing services in Arkansas, in its restructuring of~~
28 ~~electric utility services, in the determination of appropriate methods of~~
29 ~~unbundling costs, in planning to ensure adequate transmission capacity for~~
30 ~~regional markets, and in the determination of the appropriate method of~~
31 ~~owning and operating regional, multistate transmission grids.~~

32
33 ~~23-19-601. Determination of qualified stranded costs.~~

34 ~~No proceeding seeking a qualified rate order shall commence until after the~~
35 ~~Arkansas Public Service Commission has determined the amount of net retail~~
36 ~~stranded costs that the electric utility is entitled to recover from its~~

1 ~~retail customers pursuant to § 23-19-303(a)-(f).~~

2
3 ~~23-19-602. Application for qualified rate order.~~

4 ~~(a) Notwithstanding any other provision of law, the Arkansas Public~~
5 ~~Service Commission is authorized to issue qualified rate orders under this~~
6 ~~subchapter to facilitate the recovery or financing of all or any portion of~~
7 ~~the qualified costs of an electric utility or its assignee.~~

8 ~~(b) A proceeding seeking a qualified rate order may be initiated only~~
9 ~~by an electric utility seeking to collect and securitize qualified intangible~~
10 ~~charges to recover qualified costs, and an electric utility may initiate one~~
11 ~~(1) or more such proceedings. Nothing herein shall give any other party,~~
12 ~~including, without limitation, the commission, the right to initiate a~~
13 ~~qualified rate order proceeding or to initiate any proceeding establishing~~
14 ~~utility specific stranded costs under any section of this chapter.~~

15 ~~(c) Each application for a qualified rate order shall describe and~~
16 ~~quantify:~~

17 ~~(1) The qualified stranded costs the electric utility seeks to~~
18 ~~recover;~~

19 ~~(2) The estimated qualified financing costs that will result~~
20 ~~from the securitization of the qualified intangible charges;~~

21 ~~(3) The qualified intangible charges required to assure recovery~~
22 ~~of the qualified costs;~~

23 ~~(4) A schedule showing the period over which the qualified~~
24 ~~intangible charges will be collected;~~

25 ~~(5) The electric utility's proposal for the pledge, assignment,~~
26 ~~sale, or other transfer of qualified intangible property or the issuance of~~
27 ~~qualified bonds;~~

28 ~~(6) The use of the net proceeds of the qualified bonds proposed~~
29 ~~by the electric utility. The uses shall be limited to reduction of~~
30 ~~outstanding debt and equity capital of the electric utility; and~~

31 ~~(7) The description of professionals to be utilized in the~~
32 ~~securitization, including securities counsel, investment banker and~~
33 ~~consultants, the selection of which shall have been previously jointly~~
34 ~~approved by the electric utility and the commission.~~

35
36 ~~23-19-603. Proceeding before the Arkansas Public Service Commission.~~

1 ~~(a) Upon application by an electric utility for a qualified rate~~
2 ~~order, the Arkansas Public Service Commission shall give public notice of~~
3 ~~such application pursuant to any applicable provisions of the commission's~~
4 ~~rules of practice and procedure. The qualified rate order proceeding shall~~
5 ~~not be considered a proceeding to change rates under applicable law or to~~
6 ~~amend the amount or extent of qualified stranded costs previously determined~~
7 ~~in proceedings pursuant to § 23-19-303. The commission may not consider any~~
8 ~~other changes to the rates or revenue requirement of the electric utility,~~
9 ~~including, but not limited to, its cost of capital, expenses, rate base, or~~
10 ~~revenues, and the qualified rate order proceeding shall be limited to those~~
11 ~~matters related to the qualified rate order described in this section.~~

12 ~~(b) If the commission determines that the application contains the~~
13 ~~information specified in § 23-19-602 and that the total amount of qualified~~
14 ~~intangible charges to be recovered pursuant to the qualified rate order is~~
15 ~~less than the amount that would be recovered using conventional financing~~
16 ~~methods, then the commission shall issue a qualified rate order on the terms~~
17 ~~requested by the electric utility if:~~

18 ~~(1) The qualified bonds will have a term of fifteen (15) years~~
19 ~~or less from the date of issue;~~

20 ~~(2) The qualified intangible charges will be imposed until the~~
21 ~~payment in full of the principal of, and the interest and any acquisition or~~
22 ~~redemption premium on, all outstanding qualified bonds and any other related~~
23 ~~qualified financing costs; and~~

24 ~~(3) The qualified stranded costs do not exceed the amount of~~
25 ~~stranded cost of the utility determined by the commission pursuant to § 23-~~
26 ~~19-303.~~

27 ~~(c) The commission shall complete its review of the application and~~
28 ~~issue its final determination not later than one hundred twenty (120) days~~
29 ~~after the date of the filing.~~

30 ~~(d)(1) The qualified rate order shall state:~~

31 ~~(A) The amount of qualified costs to be recovered, which,~~
32 ~~unless approved by the commission, shall not exceed eighty percent (80%) of~~
33 ~~the amount of net retail stranded costs of the utility as determined by the~~
34 ~~commission pursuant to § 23-19-303(a)-(f), but the commission shall not, in~~
35 ~~any event, order securitization of an amount in excess of the amount of~~
36 ~~qualified stranded costs the utility proposed to securitize;~~

1 ~~(B) The qualified intangible charge, which:~~

2 ~~(i) Must be a nonbypassable charge, consistent with~~
3 ~~§ 23-19-605, sufficient to pay the principal of and interest on qualified~~
4 ~~bonds and assure full recovery of the qualified costs in the period over~~
5 ~~which the qualified intangible charges will be collected;~~

6 ~~(ii) Shall be allocated among the electric utility's~~
7 ~~retail customer classes in accordance with the methodologies or ratios used~~
8 ~~to allocate production demand related costs in the commission's most recent~~
9 ~~general rate order fixing rates for the electric utility; and~~

10 ~~(iii) Shall be designed in accordance with the~~
11 ~~methodology used to design rates for such retail customer classes; and~~

12 ~~(C) The procedures for periodic adjustment of the~~
13 ~~qualified intangible charges under § 23-19-605(d) to ensure that all~~
14 ~~qualified costs approved in the qualified rate order are being recovered in~~
15 ~~accordance with the schedule filed by the electric utility with the~~
16 ~~commission pursuant to § 23-19-602.~~

17 ~~(2)(A) In its qualified rate order, the commission shall afford~~
18 ~~the electric utility flexibility in establishing the terms and conditions of~~
19 ~~the qualified bonds, including transaction structure, repayment schedules,~~
20 ~~interest rates, and other financing costs, provided that prior to the~~
21 ~~issuance of the qualified bonds and the entry of the qualified rate order,~~
22 ~~the electric utility shall file with the commission the proposed final terms~~
23 ~~of issuance including a description of all financial terms, anticipated~~
24 ~~repayment schedule, and proposed financing costs. The commission in its~~
25 ~~review may disallow the recovery of any financing costs it deems unreasonable~~
26 ~~and must find that the proposed transaction represents acceptable savings to~~
27 ~~the public.~~

28 ~~(B) The qualified bonds shall be issued within two (2)~~
29 ~~years after the date the qualified rate order becomes final, including all~~
30 ~~appeals of the qualified rate order. Provided, however:~~

31 ~~(i) Nothing in this subchapter shall require an~~
32 ~~electric utility or any assignee thereof to issue qualified bonds; and~~

33 ~~(ii) Should the issuance of the qualified bonds be~~
34 ~~delayed more than one hundred twenty (120) days after the entry of the~~
35 ~~qualified rate order, before the issuance of such qualified bonds, the~~
36 ~~electric utility shall update current financial information by filing with~~

1 ~~the commission the proposed final terms of issuance, including a description~~
2 ~~of all financial terms, anticipated repayment schedule, and proposed~~
3 ~~financing costs on which the commission's review shall be completed within~~
4 ~~fourteen (14) days.~~

5 ~~(C) Within fourteen (14) days after the issuance of the~~
6 ~~qualified bonds, the electric utility shall file the final terms of issuance~~
7 ~~with the commission, including a schedule of principal and interest payment~~
8 ~~on the qualified bonds.~~

9
10 ~~23-19-604. Qualified rate order to be irrevocable.~~
11 ~~Notwithstanding any other provision of law and subject to modification~~
12 ~~pursuant to the provisions of this section, each qualified rate order and the~~
13 ~~qualified intangible charges specified in such order, as adjusted under § 23-~~
14 ~~19-605(d), shall be irrevocable upon issuance of the qualified bonds~~
15 ~~authorized in the order. The related qualified intangible property upon the~~
16 ~~qualified rate order becoming effective pursuant to the provisions of this~~
17 ~~subchapter shall constitute a presently existing, fully vested property right~~
18 ~~for all purposes, including for contracts securing qualified bonds, whether~~
19 ~~or not the revenues and proceeds arising with respect thereto have accrued.~~
20 ~~The Arkansas Public Service Commission shall not in any manner whatsoever,~~
21 ~~directly or indirectly, legally or equitably, rescind, alter, repeal, modify,~~
22 ~~or amend a qualified rate order to revalue or revise the amount of qualified~~
23 ~~intangible property, qualified costs, or qualified intangible charges, except~~
24 ~~as such qualified intangible charges may be adjusted pursuant to § 23-19-~~
25 ~~605(d), or the revenues required to recover qualified costs or pay qualified~~
26 ~~bonds, determine that the qualified costs or the qualified intangible charges~~
27 ~~are unjust or unreasonable in any way, or reduce or impair the value of the~~
28 ~~qualified intangible property. The revenues arising with respect to the~~
29 ~~qualified intangible property shall not be subject to reduction, impairment,~~
30 ~~postponement or termination until the related qualified costs have been fully~~
31 ~~recovered over the term of the qualified bonds and the principal of and~~
32 ~~interest on the qualified bonds issued to finance such qualified costs have~~
33 ~~been fully paid in accordance with the schedule filed by the electric utility~~
34 ~~with the commission pursuant to § 23-19-603(d)(2)(C). Notwithstanding the~~
35 ~~foregoing provisions of this section, before the issuance of qualified bonds~~
36 ~~pursuant to the applicable qualified rate order, the qualified rate order may~~

1 ~~be modified, but only with the express written consent of both the commission~~
2 ~~and the electric utility. Any qualified rate order so modified shall be~~
3 ~~irrevocable as provided for in this section.~~

4
5 ~~23-19-605. Qualified intangible charges.~~

6 ~~(a) The qualified intangible charges shall be separately recorded and~~
7 ~~tracked on the books and records of the electric utility. The qualified~~
8 ~~intangible charge shall be a separate customer transition charge, consistent~~
9 ~~with the qualified rate order and the schedule to be filed by the electric~~
10 ~~utility with the Arkansas Public Service Commission pursuant to § 23-19-~~
11 ~~603(d)(2)(C). Any order by the commission or a regulatory authority setting~~
12 ~~the electric utility's rates in the future shall include the qualified~~
13 ~~intangible charge as a separate customer transition charge.~~

14 ~~(b) Except as provided in this subchapter, the electric utility shall~~
15 ~~have the exclusive right to directly charge, collect, receive, and be paid~~
16 ~~from collections of qualified intangible charges. The right shall be~~
17 ~~assignable solely within the discretion of the electric utility.~~

18 ~~(c) Qualified intangible charges shall be customer transition charges~~
19 ~~collectible by the electric utility or its successors and assigns. The~~
20 ~~collection may be on behalf of an assignee. It is the intent of this chapter~~
21 ~~that each retail customer shall have an obligation to pay all customer~~
22 ~~transition charges so long as the customer is still connected to the~~
23 ~~distribution or transmission systems of the electric utility imposing the~~
24 ~~customer transition charge, regardless of which persons supply the retail~~
25 ~~customer with electricity.~~

26 ~~(d) At the intervals provided for in the qualified rate order, which~~
27 ~~shall be not less frequent than once each year, the electric utility shall~~
28 ~~calculate and implement adjustments to the qualified intangible charges to~~
29 ~~ensure that all qualified costs included in the qualified rate order are~~
30 ~~being recovered consistent with the schedule to be filed by the electric~~
31 ~~utility with the commission pursuant to § 23-19-603(d)(2)(C) and that any~~
32 ~~over-recovery or under-recovery from prior periods is corrected within twelve~~
33 ~~(12) months. When all qualified costs as determined by the commission with~~
34 ~~respect to an electric utility have been recovered, any unapplied over-~~
35 ~~recovery shall be used as a credit to reduce future distribution-related~~
36 ~~charges for retail customers of the electric utility. Provided, however, for~~

1 purposes of determining when and if all qualified costs as determined by the
2 commission with respect to an electric utility shall have been recovered, the
3 amount of qualified costs determined in all qualified rate orders with
4 respect to such electric utility shall be aggregated for purposes of
5 determining whether qualified intangible charges collected by such electric
6 utility exceed the total recoverable qualified costs as determined in all
7 qualified rate orders issued with respect to such electric utility. The
8 adjustment shall be determined pursuant to this chapter and in the manner
9 specified in the qualified rate order. The electric utility shall submit a
10 report showing the calculation of each adjustment. The report must include
11 certification by an independent nationally recognized accounting firm with
12 experience in electric utility accounting that the adjustment was computed as
13 required by the qualified rate order.

14
15 ~~23-19-606. Qualified intangible property.~~

16 ~~Qualified intangible property is created upon the qualified rate order~~
17 ~~becoming effective pursuant to the provisions of this chapter and upon such~~
18 ~~creation shall constitute a presently existing, fully vested property right~~
19 ~~under the laws of Arkansas for all purposes, including for contracts securing~~
20 ~~qualified bonds, whether or not the revenues and proceeds arising with~~
21 ~~respect thereto have accrued. Qualified intangible property shall thereafter~~
22 ~~exist continuously and until all qualified costs and all principal of and~~
23 ~~redemption and acquisition premiums and interest on the related qualified~~
24 ~~bonds have been paid in full.~~

25
26 ~~23-19-607. Assignment of rights in qualified intangible property.~~

27 ~~(a) An electric utility or its assignee may sell, assign, and~~
28 ~~otherwise transfer all or portions of its interest in qualified intangible~~
29 ~~property to assignees in connection with the issuance of qualified bonds or~~
30 ~~otherwise. In addition, an electric utility or an assignee may pledge, grant~~
31 ~~a security interest, or encumber qualified intangible property as collateral~~
32 ~~for qualified bonds or other obligations. The ownership interest of an~~
33 ~~assignee of, or the validity, perfection, or priority of any security~~
34 ~~interest in, qualified intangible property shall not be defeated or adversely~~
35 ~~affected by changes to the qualified rate order establishing the qualified~~
36 ~~intangible property.~~

1 ~~(b) Except to the extent inconsistent with this subchapter, any sale,~~
2 ~~assignment, pledge, or security interest in or to qualified intangible~~
3 ~~property shall be governed by the Uniform Commercial Code, § 4-1-101 et seq.~~
4 ~~In the event of any inconsistency, the provisions of this subchapter shall~~
5 ~~prevail.~~

6 ~~(c) After a qualified rate order shall become effective pursuant to~~
7 ~~the provisions of this subchapter, the electric utility shall retain sole~~
8 ~~discretion to assign, sell, or otherwise transfer qualified intangible~~
9 ~~property or to cause qualified bonds to be issued, including the right to~~
10 ~~defer or postpone such assignment, sale, transfer, or issuance.~~

11
12 ~~23-19-608. Refunding of qualified bonds.~~

13 ~~(a) Qualified bonds may be refinanced, refunded, or defeased,~~
14 ~~provided, however, that qualified bonds may not be refinanced, refunded, or~~
15 ~~defeased if such refinancing, refunding, or defeasance:~~

16 ~~(1) Extends the duration of the recovery period for the~~
17 ~~qualified intangible charges relating to such qualified bonds; or~~

18 ~~(2) Increases the present value of the revenue stream of the~~
19 ~~qualified intangible charges relating to the qualified bonds.~~

20 ~~(b) If the electric utility refinances its qualified bonds in a~~
21 ~~fashion that reduces the net present value of the revenue stream required to~~
22 ~~service the resulting bonds, any savings realized shall be used to reduce the~~
23 ~~future qualified intangible charges recovered from retail customers.~~

24
25 ~~23-19-609. No alteration of rights.~~

26 ~~Qualified bonds shall not be backed by the credit of the State of Arkansas.~~
27 ~~The State of Arkansas, however, pledges to and agrees with the holders of any~~
28 ~~qualified bonds issued under this subchapter and with any assignee or pledgee~~
29 ~~of qualified intangible property or financing party and with any other person~~
30 ~~who may enter into contracts with an electric utility under this subchapter~~
31 ~~that the state will not limit, alter, or in any way impair or reduce the~~
32 ~~value of qualified intangible property or qualified intangible charges or~~
33 ~~rights with respect to such qualified intangible property or qualified~~
34 ~~intangible charges established by or arising out of a qualified rate order.~~

35
36 ~~23-19-610. Security interest in qualified intangible property.~~

1 ~~(a) When a qualified rate order becomes effective in accordance with~~
2 ~~the provisions of this subchapter, the electric utility shall have rights in~~
3 ~~the qualified intangible property within the meaning of § 4-9-203 or any~~
4 ~~successor provision and such qualified intangible property shall constitute~~
5 ~~presently existing, fully vested property rights for all purposes, including~~
6 ~~for contracts securing qualified bonds, whether or not the revenues and~~
7 ~~proceeds arising with respect thereto have accrued. The validity and~~
8 ~~relative priority of any sale, assignment, pledge, security interest, or~~
9 ~~other transfer of qualified intangible property shall not be defeated or~~
10 ~~adversely affected by the commingling by the electric utility of revenues~~
11 ~~received from amounts charged, collected, and received under qualified~~
12 ~~intangible charges with other funds of the electric utility. Any description~~
13 ~~of the qualified intangible property in a security agreement, indenture, sale~~
14 ~~agreement, or other agreement relating to the sale, assignment, or granting~~
15 ~~of a security interest in such qualified intangible property; or the filing~~
16 ~~of a financing statement in accordance with § 4-9-501 or any successor~~
17 ~~provision shall be sufficient if it refers to the qualified rate order~~
18 ~~establishing the qualified intangible property.~~

19 ~~(b) A perfected security interest in qualified intangible property is~~
20 ~~a continuously perfected security interest in all revenues and proceeds~~
21 ~~arising with respect thereto, whether or not the revenues and proceeds have~~
22 ~~accrued.~~

23 ~~(c) In addition to any other rights available to pledgees or~~
24 ~~transferees of qualified intangible property under the Uniform Commercial~~
25 ~~Code, § 4-1-101 et seq., or other applicable law, in the event of default by~~
26 ~~the electric utility or an assignee in payment of revenues arising with~~
27 ~~respect to the qualified intangible property, and upon the application by an~~
28 ~~assignee or a financing party of the qualified intangible property, any court~~
29 ~~of competent jurisdiction shall order the sequestration and payment to the~~
30 ~~assignee or financing party of revenues arising with respect to the qualified~~
31 ~~intangible property. The application shall not limit any other remedies~~
32 ~~available to the assignee or financing party by reason of the default. Any~~
33 ~~such order shall remain in full force and effect notwithstanding any~~
34 ~~bankruptcy, reorganization, or other insolvency proceedings with respect to~~
35 ~~the debtor, pledgor, or transferor of the qualified intangible property. For~~
36 ~~purposes of this section, the calculation of the amount of revenues received~~

1 ~~by the electric utility with respect to the qualified intangible property~~
2 ~~shall be determined pro rata based upon the percentage that total intangible~~
3 ~~charges with respect to such qualified intangible property billed to retail~~
4 ~~customers of the electric utility during a given time interval or billing~~
5 ~~cycle bears to the total amount billed to retail customers of the electric~~
6 ~~utility for electricity and electricity related services during such time~~
7 ~~interval or billing cycle.~~

8 ~~(d) To the extent that any such interest in qualified intangible~~
9 ~~property is so sold or assigned or is so pledged as collateral, the electric~~
10 ~~utility shall be authorized to enter into a contract with the secured party,~~
11 ~~the assignee, or the financing party, providing that the electric utility~~
12 ~~shall impose, charge, collect, and receive qualified intangible charges in~~
13 ~~respect of the qualified intangible property for the benefit and account of~~
14 ~~the secured party, the assignee, or the financing party, and shall account~~
15 ~~for and remit such amounts to and for the account of the secured party, the~~
16 ~~assignee, or the financing party. In the event of a default by the electric~~
17 ~~utility in respect of charging, collecting, and receiving revenues derived~~
18 ~~from qualified intangible charges and upon the application by the secured~~
19 ~~party, the assignee, or the financing party, the Arkansas Public Service~~
20 ~~Commission or any court of competent jurisdiction shall by order designate a~~
21 ~~trustee or other entity to act in the place of the electric utility to~~
22 ~~impose, charge, collect, and receive qualified intangible charges in respect~~
23 ~~of the qualified intangible property for the benefit and account of the~~
24 ~~pledgee, the assignee, or the financing party.~~

25 ~~(e) An agreement by an assignor of the qualified intangible property~~
26 ~~not to assert any defense, claim, or set-off against an assignee of the~~
27 ~~qualified intangible property shall be enforceable against the assignor by~~
28 ~~the assignee and by any successor or subsequent assignee thereof.~~

29
30 ~~23-19-611. True sale.~~

31 ~~If an agreement by an electric utility or any assignee to transfer qualified~~
32 ~~intangible property expressly states that the transfer is a sale or other~~
33 ~~absolute transfer, notwithstanding any other provisions of law:~~

34 ~~(1) The transfer is a sale by the electric utility or the~~
35 ~~assignee of all right, title, and interest of the electric utility or the~~
36 ~~assignee, as applicable, in and to such qualified intangible property;~~

1 ~~(2) The transfer is a sale or other absolute transfer of, and~~
2 ~~not the granting of a lien or security interest in, such qualified intangible~~
3 ~~property;~~

4 ~~(3) On execution and delivery of such agreement, the electric~~
5 ~~utility or the assignee making the transfer has no right, title, or interest~~
6 ~~in or to the qualified intangible property, except to the extent of any~~
7 ~~retained equity interest permitted by this subchapter;~~

8 ~~(4) The characterization of a transfer as a sale or other~~
9 ~~absolute transfer is not affected or impaired in any manner by, among other~~
10 ~~things;~~

11 ~~(A) The assignor's retention as part of the assignment~~
12 ~~transaction or otherwise, of a pari passu equity interest in qualified~~
13 ~~intangible property or the fact that only a portion of the qualified~~
14 ~~intangible property is otherwise transferred;~~

15 ~~(B) The transferor's retention of or acquisition as part~~
16 ~~of the assignment transaction or otherwise of a subordinate equity interest~~
17 ~~or other provision of credit enhancement on terms substantially commensurate~~
18 ~~with market practices;~~

19 ~~(C) The fact that the electric utility acts as the~~
20 ~~collector of qualified intangible charges;~~

21 ~~(D) The electric utility's retention of bare legal title~~
22 ~~to qualified intangible property for the purpose of servicing or supervising~~
23 ~~the servicing of the property and collections with respect to such property;~~
24 ~~or~~

25 ~~(E) Treatment of the transfer as a financing for tax or~~
26 ~~financial accounting purposes.~~

27 ~~(5) The characterization of a sale, assignment, or transfer of~~
28 ~~qualified property as a true sale, absolute assignment, or transfer in the~~
29 ~~governing documentation of the sale, assignment, or transfer is not intended~~
30 ~~to prejudice the characterization of the sale, assignment, or transfer as a~~
31 ~~pledge or other financing for state or federal tax purposes;~~

32 ~~(6) A transfer of qualified intangible property is considered to~~
33 ~~be valid and enforceable against the assignor when:~~

34 ~~(A) The Arkansas Public Service Commission has issued the~~
35 ~~qualified rate order creating qualified intangible property and such order~~
36 ~~has become effective in accordance with the provisions of this subchapter;~~

1 and

2 ~~(B) Documentation evidencing the assignment, sale, or~~
3 ~~other transfer of the qualified intangible property has been executed and~~
4 ~~delivered to the assignee; and~~

5 ~~(7) A transfer of qualified intangible property shall be~~
6 ~~perfected against any third party when a financing statement has been filed~~
7 ~~with respect to the transfer of such qualified intangible property in~~
8 ~~accordance with § 4-9-501 or any successor provision.~~

9

10 ~~23-19-612. Exemption from taxes.~~

11 ~~A sale, assignment, or other transfer of qualified intangible property or any~~
12 ~~pledge or assignment for security of qualified intangible property shall be~~
13 ~~exempt from any state or local sales, income, franchise, transfer, gains,~~
14 ~~receipts, or similar taxes.~~

15

16 ~~23-19-613. Action with respect to qualified intangible charges.~~

17 ~~This chapter does not entitle any person to bring an action against a retail~~
18 ~~customer for nonpayment of qualified intangible charges, other than the~~
19 ~~electric utility, its successors, or assigns.~~

20

21 ~~23-19-614. Duties of successors.~~

22 ~~Any successor to an electric utility, whether pursuant to any bankruptcy,~~
23 ~~reorganization, or other insolvency proceedings or pursuant to any merger,~~
24 ~~consolidation, or sale or transfer of assets of the electric utility, by~~
25 ~~operation of law, as a result of electric power industry restructuring or~~
26 ~~otherwise, shall perform and satisfy all obligations of its predecessor~~
27 ~~electric utility under this subchapter or any qualified rate order or any~~
28 ~~contract entered into pursuant to this subchapter in the same manner and to~~
29 ~~the same extent as such predecessor electric utility, including, but not~~
30 ~~limited to, charging, collecting, receiving, and paying to the person~~
31 ~~entitled thereto the revenues in respect of the qualified intangible charges~~
32 ~~relating to the qualified intangible property.~~

33

34 ~~23-19-615. Provisions permissive.~~

35 ~~Notwithstanding any of the provisions of this subchapter, no electric utility~~
36 ~~shall be obligated under this subchapter to apply to the Arkansas Public~~

1 ~~Service Commission for any qualified rate order, consent to the terms of any~~
2 ~~qualified rate order, or sell, transfer, or pledge any qualified intangible~~
3 ~~property or issue qualified bonds in connection therewith.~~

4
5 ~~23-19-616. Judicial review.~~

6 ~~Judicial review of a qualified rate order shall be expedited pursuant to the~~
7 ~~following procedures:~~

8 ~~(1) Any party to the process or proceedings involving Arkansas~~
9 ~~Public Service Commission actions under this subchapter who is aggrieved by~~
10 ~~the actions shall not petition the commission for rehearing, but may obtain~~
11 ~~judicial review of such qualified rate order only in a proceeding as provided~~
12 ~~in this subchapter, which shall be brought directly in the Arkansas Court of~~
13 ~~Appeals;~~

14 ~~(2) Appeal shall be initiated by the filing of a petition not~~
15 ~~later than fifteen (15) days after the entry of the qualified rate order.~~
16 ~~The petition shall be served on the commission;~~

17 ~~(3) On receipt of the petition, the commission shall promptly~~
18 ~~deliver to the court a copy of its qualified rate order, any related~~
19 ~~transcript, and any accompanying findings or conclusions. The copies shall~~
20 ~~be available for examination at all reasonable times by all parties without~~
21 ~~cost. The court shall permit the electric utility to be a party to the~~
22 ~~appeal;~~

23 ~~(4) The appeal shall be based on the record before the~~
24 ~~commission and on briefs to the court. An argument that has not been urged~~
25 ~~in the appellant's appearance before or submission to the commission may not~~
26 ~~be considered by the court, unless the failure or neglect to urge the~~
27 ~~objection is excused because of extraordinary circumstances;~~

28 ~~(5) Judicial review shall be made and determined as~~
29 ~~expeditiously as possible and with lawful precedence over other matters,~~
30 ~~recognizing that time is of the essence for financings pursuant to the~~
31 ~~qualified rate order;~~

32 ~~(6) In the event that the terms and conditions of a qualified~~
33 ~~rate order are required to be modified in any part as a result of judicial~~
34 ~~review, other than in any manner provided in the original terms of the~~
35 ~~qualified rate order, the qualified rate order takes effect only after the~~
36 ~~commission shall have adopted the terms and conditions as modified and the~~

1 ~~electric utility shall have filed with the commission its written consent to~~
2 ~~all terms and conditions of the order as modified. The modified qualified~~
3 ~~rate order is subject to judicial review only in accordance with the same~~
4 ~~procedures stated in subdivisions (1) (5) of this section.~~

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6 */s/ Napper, et al*
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