

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Enrolled: S3/19/99 S3/22/99 H4/7/99

A Bill

Act 1556 of 1999
SENATE BILL 791

5 *By: Senate Committee on Insurance and Commerce, and Senators Fitch, Kennedy, Mahony*
6 *By: Representatives Napper, T. Thomas, Glover, Biggs, Bookout, Carson, Courtway, Dees, Eason,*
7 *Ferguson, Files, Green, Hausam, Hendren, Horn, Jones, King, Magnus, Malone, Milum, Pappas,*
8 *Rodgers, Salmon, L. Thomas, Wilkinson, Willis*
9

For An Act To Be Entitled

10
11
12 " THE ELECTRIC CONSUMER CHOICE ACT OF 1999; AN ACT TO
13 PROVIDE FOR THE INTRODUCTION OF RETAIL COMPETITION
14 INTO THE ELECTRIC UTILITY INDUSTRY, THE REGULATION OF
15 NEW ENERGY SERVICE PROVIDERS, THE RECOVERY OF STRANDED
16 COSTS; AND FOR OTHER PURPOSES. "

Subtitle

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18
19 "AN ACT TO AUTHORIZE ELECTRIC UTILITY
20 COMPETITION. "
21

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 23 is amended to add the following
26 additional chapter:

27 "CHAPTER 19

28
29 SUBCHAPTER 1 - General Provisions.
30

31 23-19-101. Title and legislative policy and purpose.

32 (a) This chapter shall be known as the 'Electric Consumer Choice Act of
33 1999.'

34 (b) This chapter is intended to protect the public interest as it is
35 affected by the rates and services of electric utilities and other providers
36 of electric power. The General Assembly finds that electric service has

1 traditionally been considered a natural monopoly; that the normal forces of
2 competition which operate to regulate prices in a free enterprise system have
3 not been generally applicable to electric service; and that electric rates,
4 operations, and services have been actively regulated by public agencies with
5 the objective that this regulation shall operate as a substitute for
6 competition. The State has, by law and regulation, required electric
7 utilities to serve all retail customers requesting service in their allocated
8 service territories, to provide safe and reliable service at just and
9 reasonable rates, and to make the investments necessary to provide the
10 facilities required to offer such service. In exchange, and to induce
11 electric utilities to meet these requirements, the State has protected such
12 utilities from certain forms of direct competition through the granting of
13 exclusive service areas and has been required by law to allow utilities an
14 opportunity to earn a fair return on their invested capital.

15 (c) However, the General Assembly further finds that recent economic
16 and technological developments in the electric utility industry will make
17 possible the introduction of retail competition in the generation and sale of
18 electric power, which should benefit electric consumers in Arkansas. The
19 General Assembly also finds that introduction of competition into the retail
20 electric market may cause major capital and other investments made by those
21 utilities in the past to be substantially changed in value. The purpose of
22 this chapter is to establish regulatory procedures for the implementation of
23 such competition as may be in the public interest on terms and conditions that
24 are just and reasonable to consumers, electric utilities, and other providers
25 of electric power, and to provide reasonable protection for, and recovery of,
26 the investments made by utilities to carry out their service obligations under
27 the legal and regulatory principles heretofore in force.

28 (d) The General Assembly finds that a competitive retail electric
29 market that gives retail customers the opportunity to choose the retail
30 customer's provider of electricity and that encourages full and fair
31 competition among providers of electricity should be established by January 1,
32 2002, but no later than June 30, 2003. The General Assembly further finds
33 that reciprocity among electric utilities and other providers of electric
34 service to the extent permitted in this chapter is necessary to promote fair
35 competition and to ensure the benefits of competition to the greatest number
36 of consumers, and that reciprocity to the extent authorized in this chapter

1 would assist in the transition from regulation to competition.

2 (e) The General Assembly further finds that certain changes and
3 additions to existing law are required to permit and facilitate such
4 transactions described in subchapter 6 of this chapter. It is the declared
5 legislative intent of this chapter to provide a procedure pursuant to which
6 the rights of electric utilities to receive future payments associated with
7 stranded costs may be established as property, to provide that such property
8 and interests therein may be assigned, sold or otherwise transferred, and to
9 provide a procedure and method to accomplish such securitization and provide
10 benefits to the citizens of Arkansas.

11 (f) The General Assembly further finds that it should not mandate
12 competition for customers of municipally owned electric utility systems. This
13 finding arises from the unique nature of such municipally owned systems.
14 Municipally owned electric utility systems are owned and operated by municipal
15 governments primarily as a benefit to those who reside within such
16 municipalities. Their rates and operating practices have historically been
17 established by the elected officials of such municipalities through their
18 delegated legislative authority. Municipal utility rates are subject to
19 reserved initiative and referendum rights of municipal residents which give
20 them a direct control over the rates and operations of municipally owned
21 electric utility systems that is not available to customers of utilities
22 regulated by the Arkansas Public Service Commission. Further, a municipal
23 electric utility system is likely, as a result of its ability to pool its
24 customers' loads, to be able to provide lower retail electric rates for its
25 residential, industrial, and commercial customers than individual customers
26 would be able to secure.

27
28 23-19-102. Definitions.

29 As used in this chapter:

30 (1) 'Above-market purchased power costs' means wholesale electric costs
31 in excess of the market value of such electric service that an electric
32 utility is obligated to pay under an existing purchased power contract.

33 (2)(A) 'Affiliate' means a subsidiary, or any company or corporation,
34 owned or effectively controlled by an electric utility or energy service
35 provider; or a subsidiary, or any company or corporation owned or effectively
36 controlled by the same company or corporation that owns or effectively

1 controls an electric utility or energy service provider or of which an
2 electric utility or energy service provider is a subsidiary.

3 (B) The commission may also determine, after notice and hearing,
4 that a person is an affiliate as a result of having a financial interest in
5 another electric utility or energy service provider. In making such
6 determination under this subdivision (B) the commission may exempt a person
7 from any or all regulations applicable to such person by virtue of that
8 person's status as an affiliate.

9 (3) 'Aggregator' means an entity that combines retail customers for the
10 purpose of purchasing electric energy and related services.

11 (4) 'Assignee' means an entity including, without limitation, a person
12 to which an electric utility assigns, sells, or transfers, other than as a
13 security, all or a portion of its interest in, or right to, qualified
14 intangible property. The term includes an entity that has obtained such an
15 assignment, sale or transfer of qualified intangible property from another
16 assignee. An assignee shall not be subject to the jurisdiction of the
17 commission solely by virtue of being an assignee of qualified intangible
18 property.

19 (5) 'Commission' means the Arkansas Public Service Commission or any
20 successor agency unless otherwise specifically designated.

21 (6) 'Current cost of service study' means a newly prepared cost of
22 service study designed to support unbundled rates, or an existing cost of
23 service study used to support a company's existing rate schedules which were
24 filed with the commission to become effective within three (3) years of the
25 effective date of this chapter, modified as necessary to support unbundled
26 rates.

27 (7) 'Customer transition charge,' sometimes referred to as 'non-
28 bypassable charge,' means a charge applicable to all retail customers of an
29 electric utility served at either the distribution or transmission level
30 within the electric utility's distribution service area as it existed prior to
31 the effective date of this chapter.

32 (8) 'Dollar weighted average remaining life' means the quotient of (A)
33 the sum, for all generating assets and contracts, of the retail stranded cost
34 associated with each asset or contract, multiplied by the estimated remaining
35 operating life of that asset or remaining term of that contract, divided by
36 (B) the net sum of the stranded costs of all generating assets and contracts.

1 (9) 'Electric utility' means any person, or any combination of persons,
2 or lessees, trustees, and receivers of such person, now or hereafter owning or
3 operating for compensation in this state equipment or facilities for
4 producing, generating, transmitting, distributing, selling, or furnishing
5 electricity to or for the public at retail in this state including an electric
6 cooperative corporation generating or transmitting electricity; provided,
7 however, that the term does not include:

8 (A) An energy service provider; or

9 (B) Any person not otherwise an electric utility or a business
10 unit of an electric utility that:

11 (i) Furnishes electricity only to itself, its employees, or
12 its tenants as an incident of such employee service or tenancy, when such
13 electricity is not resold to or used by others;

14 (ii) Owns or operates in this state equipment or facilities
15 used primarily for the production and generation of electric energy, a portion
16 of which may be consumed by that person and any remainder of which is sold at
17 wholesale;

18 (iii) Owns or operates in this state equipment or
19 facilities used, after the implementation of retail open access, solely for
20 the production and generation of electric energy; or

21 (iv) Is a municipal corporation owning a municipal electric
22 utility.

23 (10) 'Energy service provider' means a qualifying facility, a power
24 broker, a power marketer, any entity, other than an electric utility or a
25 municipal electric utility, or an aggregator other than a municipality or
26 county or group of municipalities or counties, that sells or otherwise
27 provides electricity to or for itself or a retail electric customer,
28 regardless of whether such entity sells other electric services and regardless
29 of whether such entity takes title to the electricity.

30 (11) 'Existing purchased power contract' means a purchased power
31 contract in effect on January 1, 1999.

32 (12) 'Financing party' means a holder of qualified bonds, including a
33 trustee, collateral agent or other entity acting for the benefit of such a
34 holder, or any other person to whom qualified intangible property has been
35 pledged. A financing party shall not be subject to the jurisdiction of the
36 commission solely by virtue of being a financing party.

1 (13) 'Generation assets' mean generation plants and generation-related
2 assets, as so classified by the Uniform System of Accounts, or a succeeding
3 accounting system.

4 (14) 'Market value' means, for generation assets, the value the assets
5 would have brought when or if sold in a bona fide third-party transaction or
6 transactions on the open market, including the transactions described in § 23-
7 19-303(c)(1) through (3), or the value determined under the alternative
8 valuation method provided by § 23-19-303(c)(4).

9 (15) 'Municipal corporation' means a city of the first or second class
10 or a town, incorporated under the laws of this state, or any commission,
11 department, division, or agency thereof, including any municipally owned or
12 controlled corporation, or any improvement district, consolidated public
13 utility system improvement district, or non-profit corporation lessee of such
14 entity.

15 (16) 'Municipal electric utility' means any electric generation,
16 transmission or distribution system owned or operated by any municipal
17 corporation.

18 (17) 'Net retail stranded cost' means the excess, if any, allocable to
19 Arkansas retail customers of the book value for ratemaking purposes of all of
20 an electric utility's generation assets that have been found by the Commission
21 to be prudently incurred, verifiable and non-mitigable and that would have
22 been eligible for recovery in rates under continued rate regulation, and all
23 of the generation related costs associated with an electric utility's
24 purchased power, fuel and fuel transportation agreements that have been found
25 by the Commission to be prudently incurred, verifiable and non-mitigable and
26 that would have been eligible for recovery in rates under continued rate
27 regulation, over the market value of all of those assets and agreements.

28 (18) 'Person' means any individual, partnership, corporation,
29 cooperative association, trust (including a business trust), limited liability
30 company, governmental entity, or any other legal entity. Notwithstanding the
31 above, person as defined herein shall not be considered to include a municipal
32 corporation or municipal electric utility.

33 (19) 'Power broker' means a person who acts as an agent or intermediary
34 on behalf of another person for the purpose of facilitating the sale or
35 purchase of electric energy and who does not purchase the electric energy on
36 his own behalf.

1 (20) 'Power marketer' means a person who acquires, purchases, or
2 generates electric energy on its own behalf with the intent of reselling such
3 electric energy to another person.

4 (21) 'Purchased power' means the purchase of capacity and associated
5 energy by an electric utility or from another provider of electricity
6 including, but not limited to, wholesale power agreements or tariffs approved
7 by a federal regulatory authority allocable to Arkansas retail customers.

8 (22) 'Qualified bonds' means bonds, debentures, notes, certificates of
9 participation or of beneficial interest or other evidences of indebtedness or
10 ownership that are issued by or on behalf of the electric utility or an
11 assignee pursuant to a qualified rate order, the proceeds of which are
12 directly or indirectly used to recover, finance or refinance qualified costs
13 and which are directly or indirectly secured by or payable from qualified
14 intangible property.

15 (23) 'Qualified costs' means qualified stranded costs and qualified
16 financing costs.

17 (24) 'Qualified financing costs' means:

18 (A) The reasonable and prudent costs of retiring then existing
19 debt or equity capital, including, without limitation, accrued interest and
20 acquisition or redemption premiums, costs of defeasance, and other related
21 fees, costs, and charges, through the use of the proceeds of qualified bonds
22 or the assignment, sale or other transfer of qualified intangible property;

23 (B) The reasonable and prudent costs incurred to issue, service,
24 redeem or refinance the qualified bonds, including, without limitation,
25 accrued interest and acquisition or redemption premiums, reserves, credit
26 enhancement costs, hedging or interest rate swap costs, and other related
27 fees, costs and charges; or to assign, sell or otherwise transfer qualified
28 intangible property, including without limitation, professional services and
29 advisory fees; and

30 (C) Any taxes or governmental fees payable by the electric
31 utility as a consequence of the creation or transfer of qualified intangible
32 property, the issuance and sale of qualified bonds or other actions taken by
33 the electric utility with respect thereto or as a consequence thereof. As
34 used in this chapter, the terms 'interest,' 'acquisition or redemption
35 premium,' 'principal' and other terms specific to debt shall also include
36 comparable costs incurred in connection with certificates of participation,

1 certificates of beneficial interest or other evidences of ownership.

2 (25) 'Qualified intangible charges' means those charges authorized to
3 be imposed, charged, collected and received by an electric utility from its
4 retail customers to recover qualified costs pursuant to a qualified rate
5 order, including all adjustments to such charges implemented in accordance
6 with § 23-19-605 (d), which charges shall be separate and apart from charges
7 for the sale and delivery of electricity and electricity-related services by
8 the electric utility.

9 (26) 'Qualified intangible property' means a fully vested property
10 right consisting of the irrevocable right of the electric utility or an
11 assignee to charge, collect, receive and be paid from collections of qualified
12 intangible charges in the amount necessary to recover fully the qualified
13 costs which are determined to be recoverable by the commission pursuant to
14 this chapter, all right, title and interest of the electric utility or
15 assignee in and to the qualified rate order pursuant to which such qualified
16 intangible charges are authorized, including without limitation the right to
17 obtain periodic adjustment of such qualified intangible charges pursuant to §
18 23-19-605 (d), and all revenues, collections, claims, payments, money or
19 proceeds of, or arising from, qualified intangible charges pursuant to such
20 qualified rate order, whether or not the revenues and proceeds arising with
21 respect thereto have accrued. Qualified intangible property shall constitute
22 a contract right.

23 (27) 'Qualified rate order' means an irrevocable written order issued
24 by the commission pursuant to subchapter 6 of this chapter, which order shall,
25 except as otherwise provided in such subchapter, become final and effective
26 immediately upon receipt by the commission of written consent from the related
27 electric utility to the terms of such order.

28 (28) 'Qualified stranded costs' means those net retail stranded costs
29 which the commission deems to be eligible for securitization pursuant to this
30 chapter. The amount of any stranded costs that shall be deemed to be eligible
31 for securitization shall not exceed the amount of the utility's stranded costs
32 as determined by the commission.

33 (29) 'Qualifying facility' means a cogeneration or small power
34 production facility entitled to the rights and privileges of a qualifying
35 facility under the Public Utility Regulatory Policies Act of 1978.

36 (30) 'Retail customer' means any consumer who takes, receives or

1 consumes electricity.

2 (31) 'Retail open access' means the obligation of an electric utility
3 to allow retail customers to choose their supplier of electric energy.

4 (32) 'Retail stranded costs' means that part of stranded costs
5 associated with the provision of retail service.

6 (33) 'Securitization' means a financing of qualified stranded costs
7 authorized by the commission pursuant to this chapter through which an
8 electric utility receives the proceeds from the sale of qualified bonds
9 secured by beneficial interest in, or a pledge of, qualified tangible property
10 transferred by the electric utility to an assignee or pledged as security for
11 such qualified bonds.

12 (34) 'Standard service agreement' means an agreement for the sale and
13 purchase of electricity between an electric utility and a retail customer
14 pursuant to an existing commission-approved tariff of general applicability.

15 (35) 'Standard service package' means a minimum package of electric
16 service, including electric power and energy sufficient to meet the ordinary
17 demands of a consumer, offered by an electric utility or willing energy
18 service provider in the areas in which, for an electric utility, it provides
19 distribution service, and, for an energy service provider, the commission has
20 selected such willing provider to offer such package.

21 (36) 'Stranded costs' means:

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

29 (B) Any excess of:

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

1 (ii) The market value of those agreements; and

2 (C) Any excess of:

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

6 (ii) The market value of those agreements; and

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

21 (E) Any other comparable costs identified by the commission as
22 stranded costs; and

23 (F) In all cases to be eligible for recovery, stranded costs must
24 have been found by the Commission to be prudently incurred, verifiable and
25 non-mitigable.

26 (37) 'Transition Costs' mean those costs, investments or unfunded
27 mandates, either recurring or non-recurring, incurred by an electric utility
28 or municipal electric utility after the effective date of this chapter, that
29 are found to be necessary to carry out the electric utility's or municipal
30 electric utility's responsibilities associated with the transition to, or the
31 implementation of, retail open access, or are mandated by statute or
32 regulation; and are not expected to be recoverable in a competitive retail
33 market. Under no circumstances shall transition costs include any cost
34 associated with competing to provide a product or service for which
35 competition has been authorized by this chapter. In no event shall transition
36 costs include retirement or severance programs, marketing or promotional

1 activities, or professional or advisory services or legal costs associated
2 with any competitive strategy. Additionally, no electric utility shall recover
3 transition costs unless approved by the commission pursuant to this
4 subdivision (37) and § 23-19-304.

5 (38) 'Wholesale' means the sale of electricity to an electric utility,
6 an energy service provider or any other person exclusively for resale.

7
8 23-19-103. Retail open access.

9 (a) Retail open access shall be implemented by electric utilities on
10 January 1, 2002. As to any particular utility or utilities, the commission
11 may delay the implementation of retail open access for 90 days, and for
12 successive 90 day periods thereafter, but not beyond June 30, 2003, upon
13 finding that:

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

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

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

25 (4) Appropriate metering, billing, and collection procedures have
26 not been established;

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

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

33 (b) If retail open access implementation is delayed pursuant to
34 subsection (a) for one or more utilities that serve, in the aggregate, fifty-
35 one percent (51%) or more of the total customers served by electric utilities
36 in this state, implementation shall be delayed for all electric utilities.

1 Provided, however, that an electric utility may, at the utility's election,
2 petition the commission for approval to proceed with retail open access
3 implementation for its customers notwithstanding that implementation has been
4 delayed for electric utilities that serve, in the aggregate, fifty-one percent
5 (51%) or more of the total customers served by electric utilities in this
6 state. If delayed pursuant to this subsection (b), retail open access
7 implementation shall resume, on a utility-by-utility basis as provided in
8 subsection (a), as expeditiously as possible after the commission determines
9 that electric utilities serving more than fifty-one percent (51%) of the
10 electric utility customers in this state are ready to proceed with retail open
11 access implementation. Except as provided in § 23-19-106(e), in no event shall
12 retail open access be delayed beyond June 30, 2003. For purposes of this
13 subdivision, the number of customers served by a particular electric utility
14 shall be determined by the commission's most recent annual report to the
15 Governor pursuant to § 23-2-315. Each such report issued after the effective
16 date of this chapter shall include the number of customers served by each
17 electric utility.

18 (c) No later than ninety (90) days before the date for retail open
19 access determined by the commission consistent with subsection (a) of this
20 section, the commission shall abolish or repeal any and all commission rules,
21 regulations, and orders restricting the efforts of electric utilities and
22 energy service providers to market, advertise or promote the competitive sale
23 of electricity at retail except for rules, regulations, and orders issued
24 pursuant to this chapter.

25 (d) No later than ninety (90) days before the date for retail open
26 access determined by the commission consistent with subsection (a) of this
27 section, the commission shall have adopted rules requiring every electric
28 utility in this state owning or operating distribution facilities to provide
29 distribution service to all persons at rates, terms of access, and conditions
30 that are just, reasonable, and non-discriminatory.

31 (e) After the implementation of retail open access, unless otherwise
32 specified in this chapter, generation assets shall not be subject to the
33 ratemaking authority of the commission, and generation service and the rates
34 and charges for generation service shall not be regulated by the commission,
35 except that the commission shall retain jurisdiction sufficient to authorize
36 the recovery of nuclear decommissioning costs, or the refund of any over-

1 recovery of such costs, and generation costs that are part of an electric
2 utility's rights and obligations under any wholesale power sale agreement or
3 tariff approved by a federal regulatory authority as components of a
4 competitive transition charge.

5 (f) Except as allowed by existing law, no electric utility or energy
6 service provider may offer or provide electric service under retail open
7 access, directly or indirectly, to any retail customer or retail customer
8 location situated in whole or in part within the area allocated to an electric
9 utility by the commission:

10 (1) Prior to the date determined by the commission for the
11 implementation of retail open access; and

12 (2) Prior to obtaining a license from the commission pursuant to §
13 23-19-202, or in the case of an electric utility providing electric service to
14 retail customers within the state as of the effective date of the chapter,
15 prior to registering with the commission pursuant to § 23-19-203.

16 (g) No later than ninety (90) days before the date for retail open
17 access determined by the commission consistent with subsection (a) of this
18 section, each electric utility doing business in this state that owns or
19 controls facilities for the transmission of electricity or rights to the
20 transmission of electricity, or is affiliated with an entity that owns or
21 controls transmission facilities shall subject its transmission facilities or
22 rights to operation by an independent transmission system operator, an
23 independent transmission company, an independent regional transmission group,
24 or other independent transmission entity if one or more such organizations
25 have been approved by the Federal Energy Regulatory Commission for this state
26 or a larger region of which this state is a part. The commission may refuse
27 to accept a registration statement filed by an electric utility pursuant to §
28 23-19-203 unless and until the utility complies with this subsection (g), but
29 the rejection of the registration of such a utility shall not prevent the
30 implementation of retail open access in the utility's service territory.

31 (h) Standard service agreements between electric utilities and retail
32 customers pursuant to commission-approved tariffs as of the effective date of
33 this chapter shall remain in effect for the terms of those agreements to the
34 extent they impose minimum bills on the customer to allow the utility to
35 recover any investment in distribution or transmission facilities the utility
36 made to serve that customer, but customers will be relieved of any obligation

1 under standard service agreements to purchase generation from the utility as
2 of the effective date of retail open access and shall be subject only to the
3 then-effective tariffs for distribution and transmission service, and any
4 customer transition charge.

5
6 23-19-104. Municipal electric utilities.

7 (a) Notwithstanding any other provision of law, including any other
8 provision of this chapter, this section will govern the transition to and the
9 establishment of a more fully competitive electric power industry for
10 municipal electric utilities.

11 (b) The governing body of a municipal electric utility shall have the
12 discretion to decide when, or if, such municipal electric utility will provide
13 retail open access. Municipal electric utilities which choose to participate
14 in retail open access may do so under such terms and conditions as they, in
15 their sole discretion, deem appropriate at any time, after the retail open
16 access date determined by the commission in § 23-19-103, by adoption of an
17 appropriate ordinance or other local enabling legislation by its governing
18 body.

19 (c) Upon the effective date of the local enabling legislation, retail
20 customers within the service area of the municipal electric utility shall have
21 the right of retail open access and the municipal electric utility shall
22 provide open access to its distribution system to any other provider of
23 electricity as defined in this chapter. In addition, the municipal electric
24 utility shall have the right to offer service directly to retail customers
25 without regard to geographic location, provided however, that such municipal
26 electric utility offers nondiscriminatory access for the use by any other
27 provider of electricity of any distribution facilities that it owns or
28 operates.

29 (d) In addition to rights within its authority it may reserve in the
30 local enabling legislation, the governing body of the municipal electric
31 utility shall have exclusive jurisdiction:

32 (1) To set terms of access, conditions, and rates applicable to
33 services provided by the municipal electric utility, including distribution
34 and transmission service which must be reasonable and non-discriminatory;

35 (2) To determine whether to unbundle any energy-related
36 activities, and if so, how;

1 (3) To determine the amount of its stranded and transition costs;

2 (4) To recover its stranded and transition costs over an

3 appropriate period of time through a customer transition charge applicable to
4 all existing or future retail customers within its distribution service area;

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

8 (6) To plan, manage, and engineer its electric systems in
9 accordance with good utility practice;

10 (7) To establish and enforce service quality standards and
11 consumer safeguards designed to protect retail electric customers not
12 inconsistent with other provisions of this chapter;

13 (8) To determine any other utility matters that it believes
14 should be included;

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

17 (10) To implement appropriate advertising and promotional
18 practices not inconsistent with other provisions of this chapter.

19 (e) The local enabling legislation must require that a municipal
20 electric utility which participates in retail open access adopt an accounting
21 method which allows costs associated with generation, transmission, and
22 distribution related services to be functionally separated on a non-
23 discriminatory basis so that open access transmission and distribution rates,
24 including appropriate margin levels, may be calculated.

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

29 (g) No provision of this chapter shall interfere with or be deemed to
30 abrogate the rights or obligations of any party, including a retail or
31 wholesale customer, to or arising from a contract with a municipal electric
32 utility.

33 (h) This chapter shall not impair any contracts, covenants or
34 obligations between municipal corporations or consolidated public utility
35 system improvement districts and the bondholders of revenue bonds issued
36 thereby.

1 (i) Nothing in this chapter shall impair the tax-exempt status of any
2 municipal corporation.

3 (j) Municipal electric utilities shall be authorized and entitled to
4 participate in any organization identified in § 23-19-103(g) of this chapter,
5 and those municipal electric utilities which opt to enter into retail open
6 access shall be required to participate in such an organization.

7
8 (k) Municipal corporations owning municipal electric utilities which
9 have elected to participate in retail open access shall have the obligation
10 and right to provide distribution service, including a standard service
11 package, to any customer located within its service area. The standard
12 service package and the continuity of service provider obligations within the
13 service area of a municipal corporation owning a municipal electric utility
14 electing to participate in retail open access shall be determined by its
15 governing body.

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

19 (m) Any electric utility or energy service provider shall be required
20 to register with any municipal corporation before it undertakes to provide any
21 retail electric utility service to retail customers in such municipal
22 corporation.

23 (n)(1) A municipal corporation owning a municipal electric utility that
24 has not elected to offer retail open access, and that annexes territory
25 situated in whole or in part within an area allocated to another electric
26 utility after the date determined by the commission for the implementation of
27 retail open access, shall not provide generation, transmission, or
28 distribution service in the annexed area unless and until such time as it
29 elects to participate in retail open access and retail open access is
30 available in all of the municipal corporations owning a municipal electric
31 utility's service area. At the time the municipal corporation owning a
32 municipal electric utility elects to offer retail open access, providing such
33 option is exercised within three (3) years of the certification of annexation,
34 the municipal corporation owning a municipal electric utility may acquire the
35 distribution facilities serving the annexed area using the procedures provided
36 at §§ 14-207-101 through 14-207-106 and may thereafter provide generation,

1 transmission, or distribution, and other services in the annexed area.
2 Nothing in this chapter shall prevent a municipal corporation and an electric
3 utility, upon mutual consent, from voluntarily selling or buying facilities
4 upon negotiated compensation.

5 (2) A municipal corporation owning a municipal electric utility
6 that elects to offer retail open access and that subsequently annexes
7 territory situated in whole or in part within an area allocated to an electric
8 utility, may acquire the distribution facilities serving the annexed area
9 consistent with §14-207-101 through §14-207-106 and may thereafter provide
10 generation, transmission, or distribution and other services in the annexed
11 area.

12 (3) A municipal corporation owning a municipal electric utility
13 which acquires retail customers subsequent to an annexation and acquisition of
14 electric utility facilities shall not be responsible for such customers'
15 stranded costs or transition charge, but any municipality that annexes an
16 electric utility's distribution service area will become responsible for
17 collecting for the benefit of the electric utility or its successors and
18 assigns any customer transition charges that would otherwise have been payable
19 in the service territory annexed by the municipality directly to the electric
20 utility or its successors or assigns.

21 (4) During the period that the municipal corporation owning a
22 municipal electric utility opts out of competition and does not provide
23 distribution services in newly annexed areas, the municipal corporation, at
24 the discretion of the governing body, shall be entitled to assess any electric
25 utility offering distribution services in annexed areas a franchise fee based
26 on services it provides in newly annexed areas that would otherwise be
27 compensated in the municipal electric utility's retail electric rates. This
28 franchise fee shall be included as a separate line item on the distribution
29 customer's bill labeled 'City Franchise Fee'. The franchise fee authorized by
30 this section shall be in addition to franchise fees authorized under § 14-200-
31 101(a), as it may be amended.

32 (5)(A) Notwithstanding subdivisions (n)(1) through (n)(4), and
33 except as provided in subdivision (n)(5)(B), a municipal corporation owning a
34 municipal electric utility shall not be entitled to bring a condemnation
35 action to extend its service territory or to acquire the customers or property
36 of an electric utility for a period commencing upon the effective date of this

1 chapter and continuing for two (2) years after the date of retail open access
2 established by the commission pursuant to § 23-19-103. Such prohibition shall
3 include, but not be limited to, any power of condemnation a municipal
4 corporation owning a municipal electric utility may have pursuant to §14-207-
5 101 through § 14-207-106, §14-40-301 through § 14-40-503, or § 18-15-301
6 through § 18-15-308. This prohibition does not apply to actions brought for
7 extensions of territories or acquisition of customers or property within areas
8 of annexations completed prior to the effective date of this chapter as
9 evidenced by a statement filed by the municipality with the Secretary of State
10 prior to the effective date of this chapter.

11 (B)(1) During the period from the effective
12 date of this chapter until the date of open retail access established by the
13 commission pursuant to § 23-19-103, a municipal corporation owning a municipal
14 electric utility may only bring a condemnation action to extend its service
15 territory or to acquire customers or property of an electric utility in the
16 event of a voluntary annexation pursuant to § 14-40-601 through § 14-40-606.

17 (2) During the period from the date of
18 retail open access established by the commission pursuant to § 23-19-103 and
19 for a two (2) year period thereafter, a municipal corporation owning a
20 municipal electric utility that elects to offer retail open access may bring a
21 condemnation action to extend its service territory or to acquire customers or
22 property of an electric utility, but only in the event of a voluntary
23 annexation pursuant to § 14-40-601 through § 14-40-606.

24 (C) This subdivision is not intended to affect
25 any condemnation or related proceedings pending as of the effective date of
26 this chapter.

27 (o) This chapter shall not modify a municipal corporation's right to
28 regulate, restrict, and collect user or franchise fees from and for occupancy
29 and use of its rights-of-way in accordance with other law, including but not
30 limited to § 14-200-101(a), as it may be amended.

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

35 (q) A municipal corporation owning a municipal electric utility opting
36 to offer retail open access under this section shall not be subject to the

1 provisions of this chapter, except for §§ 23-19-102, 23-19-104, 23-19-105 (c),
2 23-19-106 (b), 23-19-203, 23-19-401, and 23-19-501 (b). In developing rules
3 and procedures for registration and consumer protection as required by this
4 chapter, the commission shall take into consideration special circumstances
5 faced by municipal electric utilities and in all events shall preserve the
6 unique nature of municipal electric utilities. A municipal corporation owning
7 municipal electric utilities which elects to participate in retail open access
8 shall only be required to file, for informational purposes, its unbundled
9 distribution rates with the commission. After the municipal corporation files
10 its unbundled distribution rates with the commission, the commission shall
11 have the limited jurisdiction to hear complaints against the filing municipal
12 corporation for non-compliance with such filed distribution rates. This
13 limited jurisdiction shall not include authority to review the propriety or
14 lawfulness of such filed distribution rates or other municipal operations,
15 except to the extent necessary to determine whether the municipal corporation
16 is offering non-discriminatory access to its distribution facilities. The
17 commission shall not, except as authorized by this subsection, make any effort
18 to regulate a municipal electric utility's operations, limit a municipal
19 electric utility's right to serve, or impose any penalty on a municipal
20 electric utility.

21
22 23-19-105. Effect on existing certificates and franchises.

23 (a) Notwithstanding any other provisions of law, or the provisions of
24 any certificate of convenience and necessity allocating exclusive service
25 territory, or any exclusive franchise agreement to provide electric service,
26 issued by the commission or any municipality, respectively, any electric
27 utility which is regulated under this chapter, or accepts any benefit under
28 this chapter, including but not limited to the recovery of stranded or
29 transition costs, or sells or offers to sell electric power at retail outside
30 its existing service area as of the effective date of this chapter shall be
31 deemed to have waived the exclusivity of any right to sell electric power or
32 energy in any territory or municipality to the extent necessary for the
33 implementation of retail open access hereunder, but only to such extent.

34 (b) An electric utility which does not establish the existence of
35 stranded costs or transition costs pursuant to Subchapter 3 of this chapter
36 shall have no right to compensation or other form of relief for the waiver of

1 the exclusive right to sell electricity under any certificate of convenience
2 and necessity or franchise agreement issued by the commission or any
3 municipality, respectively.

4 (c) Nothing in this chapter shall be deemed to modify or amend any
5 provisions of any certificate, order or municipal franchise agreement other
6 than the exclusive right to sell power or energy or to repeal or amend the
7 legal authority of municipal corporations to control the use of streets and
8 other public ways as otherwise provided by law or in any municipal electric
9 franchise agreement, nor shall anything in this chapter be deemed to affect or
10 reduce in any way the rights of real property owners existing as of the date
11 of this chapter.

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

17
18 23-19-106. Reciprocity.

19 (a) No electric utility providing distribution service may use the
20 Arkansas distribution facilities of another electric utility to sell
21 electricity to retail customers in the state unless the first electric utility
22 offers comparable and nondiscriminatory access, as determined by the
23 commission, to any distribution facilities that it owns or operates in this
24 state.

25 (b) A municipal corporation owning a municipal electric utility may not
26 sell electricity to retail customers outside its existing service territory
27 after the date determined by the commission for the implementation of retail
28 open access, if it does not offer customer choice to its own retail customers.

29 (c) An electric utility providing electric service to retail customers
30 in this state and in a contiguous service area in an adjacent state may offer
31 customer choice in its service territory in Arkansas prior to the
32 implementation of retail open access in Arkansas generally if such electric
33 utility is required by applicable law to offer retail open access in its
34 service area in the adjacent state, subject to such interim rules as the
35 commission may adopt pending the implementation of retail open access in the
36 remainder of Arkansas.

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

3 (e) An electric utility providing electric service to retail customers
4 in this state and in a contiguous service area in an adjacent state whose
5 number of customers in this state is less than five percent (5%) of its total
6 customers and whose number of customers in a contiguous service area in an
7 adjacent state is greater than seventy-five percent (75%) of its total
8 customers may delay retail open access in its service territory in this state
9 until such a time as the electric utility is required by applicable law to
10 offer retail open access in the aforementioned adjacent state but no more than
11 two years beyond the date for retail open access in this state as provided in
12 § 23-19-103.

13
14 23-19-107. Reports on scope and impact of competition.

15 (a) Before January 15, 2001, and thereafter before January 15 of each
16 odd-numbered year through 2005, the commission shall report to the General
17 Assembly on the progress of the development of competition in electric markets
18 and the impact, if any, of competition and industry restructuring on retail
19 customers in Arkansas. The report shall include:

20 (1) An assessment of the impact of competition on the rates and
21 availability of electric service for each class of retail customers, in each
22 allocated service territory, including but not limited to the extent of
23 customer choice with regard to each customer class in each service territory,
24 or in such other smaller units as may be determined by the commission;

25 (2) A summary of commission actions over the preceding two (2)
26 years that reflect changes in the scope of competition in regulated electric
27 markets;

28 (3) An analysis of the effect, if any, of competition on the
29 reliability of the electric system and on the quality of service provided to
30 customers; and

31 (4) Recommendations to the General Assembly for further
32 legislation that the commission finds appropriate to promote the public
33 interest in a competitive electric market.

34 (b) The Tax Division of the commission and the Department of Finance
35 and Administration shall conduct a joint study of the potential financial
36 impact, if any, of retail open access upon county or municipal governments,

1 including the methods of collection of municipal franchise fees, or school
2 districts, and consider ways and means to mitigate any significant adverse
3 impact thereon, and such other issues of public finance as they deem relevant,
4 and submit a report setting forth their findings and recommendations to the
5 commission and the General Assembly on or before June 30, 2000.

6 (c) Before January 15, 2003, and thereafter before January 15 of each
7 year that the General Assembly convenes in regular sessions through 2013, the
8 commission shall submit a report to the General Assembly that contains such
9 information as the commission determines is necessary to allow the General
10 Assembly to determine whether electric utilities or energy service providers
11 are charging higher rates or refusing to serve or otherwise separating out for
12 disparate treatment customers who live in particular areas or neighborhoods.
13 Included in the report will be comparisons of the average rates charged by
14 electric utilities or energy service providers to residential customers in
15 different regions of the state. The commission shall be empowered to demand
16 disclosure of this information from every electric utility or energy service
17 provider certified to do business in this state.

18 23-19-108. Effect of inter-state system agreements

19 (a) Every electric utility that is a subsidiary of a registered holding
20 company under the Public Utility Holding Company Act shall report to the
21 commission, within thirty (30) days of the effective date of this chapter,
22 whether it is a party to a rate schedule or other filed rate subject to the
23 jurisdiction of the Federal Energy Regulatory Commission that allocates costs
24 among the electric utility subsidiaries of such holding company. Every
25 electric utility that becomes a subsidiary of a registered holding company
26 after that time, or that becomes a subsidiary of a registered holding company
27 of which it was not previously a subsidiary, shall make such report to the
28 commission within thirty (30) days after becoming such a subsidiary.

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

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

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

7
8
9 SUBCHAPTER 2 - Regulation of Generation and Energy Service Providers.

10
11 23-19-201. Jurisdiction over energy service providers.

12 (a) The commission shall have jurisdiction and authority over energy
13 service providers who sell, broker, market or aggregate electricity to or for
14 the public for consumption in Arkansas. In addition, any person may
15 voluntarily submit to the commission's jurisdiction. The commission's
16 jurisdiction shall be:

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

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

20 (3) To require the filing of reports the commission may by rule
21 prescribe.

22 (b) Notwithstanding subsection (a), the commission shall not have
23 jurisdiction over the rates or charges of any energy service provider, but the
24 commission may exercise jurisdiction over an energy service provider pursuant
25 to § 23-1-101 and §§ 23-18-501 through 23-18-529, to the extent the energy
26 service provider may be defined as a public utility for purposes of those
27 laws.

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

33
34 23-19-202. Licensing of energy service providers.

35 (a) The commission shall issue a license to an energy service provider
36 only upon a finding that the public interest will be served thereby, including

1 but not limited to findings of the reliability, financial ability, and the
2 technical competence of the license applicant to provide the service for which
3 it is seeking the license.

4 (b) The commission shall, no later than one hundred eighty (180) days
5 prior to the implementation of retail open access, issue rules and regulations
6 establishing appropriate standards and procedures for licensing energy service
7 providers. Included in these rules and regulations will be procedures for
8 enforcing these standards.

9
10 23-19-203. Registration with the commission.

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

31
32 23-19-204. Applicability of antitrust statutes.

33 Nothing in this chapter shall in any way limit the obligations or
34 liability, under state or federal antitrust or consumer protection laws or
35 regulations, of an electric utility or energy service provider arising after
36 the implementation of retail open access.

1
2 23-19-205. Functional unbundling of tariffs.

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

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

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

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

17 (3) Distribution and customer services facilities, operations,
18 services, and rates.

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

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

28 (1) General Rules.

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

34 (B) Notwithstanding any other provisions in this
35 subsection, in emergency circumstances affecting system reliability, utilities
36 may take whatever steps are necessary to keep the system in operation.

1 Electric utilities must report to the commission each emergency that resulted
2 in any deviation from the standards of conduct, within 24 hours of such
3 deviation, and notify such other affected parties as the commission may
4 direct.

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

13 (2) Rules governing employee conduct.

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

17 (i) Participating in distribution or transmission
18 functions; and

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

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

1 service interruption.

2 (C) Information Access. Any employee of the utility, or of
3 any of its affiliates, engaged in retail sales or marketing of electricity:

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

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

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

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

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

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

36 (E) Implementing Tariffs.

1 (i) Employees of the utility engaged in transmission
2 or distribution functions must strictly enforce all tariff provisions relating
3 to the sale or purchase of open access retail transmission and distribution
4 service, if these provisions do not provide for the use of discretion;

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

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

14 (iv) The utility may not, through its tariffs or
15 otherwise, 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 interest
17 of any other customer in matters relating to the sale or purchase of retail
18 transmission or distribution service, including issues of price, curtailments,
19 scheduling, priority, and ancillary services; and

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 available
27 for commission inspection.

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

33 (e) In addition to its proposed tariffs, the utility may file
34 supporting cost data for costs, if any, that have been found to exist as of
35 that date, to be recovered through a customer transition charge that has been
36 determined pursuant to §§ 23-19-303 and 23-19-304, and information specifying

1 the rate of its qualified intangible charge or charges, if any, resulting from
2 a securitization of stranded costs. On or before July 1, 2001, and in
3 accordance with a schedule and the procedures it may establish, the commission
4 shall, after hearing, approve or modify and make effective as of that date,
5 each electric utility's proposed tariffs for distribution services and any
6 other services that will remain subject to rate regulation, and shall require
7 electric utilities to show separate rates and charges for their unbundled
8 services on bills to retail electric customers.

9 (f) The commission shall have authority to grant exceptions to any or
10 all of the requirements set forth in § 23-19-205(c) and § 23-19-205(d) for
11 small systems, as defined by the commission, if the commission determines the
12 cost of compliance with such requirements exceeds the public benefits which
13 may be derived therefrom.

14
15 SUBCHAPTER 3 - Stranded and Transition Cost Recovery.

16 23-19-301. Utility election for stranded cost recovery and recovery of
17 nuclear decommissioning costs.

18 (a) No later than December 31, 1999, any electric utility that intends
19 to seek recovery of stranded costs shall file notice of such intent with the
20 commission. Any electric utility that does not file its election by that date
21 shall not be eligible for such recovery. Such election shall be at the sole
22 discretion of the electric utility. Following receipt of such notice, the
23 commission shall, at the earliest practicable date, direct the electric
24 utility to file an application setting forth the methods that the utility
25 proposes to determine its stranded costs. In no event shall the commission
26 direct that the electric utility file such application any later than one
27 hundred eighty (180) days following the implementation of retail open access.
28 Commission proceedings on such application shall be pursuant to notice and
29 hearing.

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

33 (c) In its application to the commission, the electing electric utility
34 shall, for all of its generation assets, purchased power, and fuel and fuel
35 transportation costs, identify the methods and procedures which it proposes to
36 use to value its stranded costs and request all necessary commission approvals

1 to implement such methods. The electric utility may propose, without
2 limitation, any of the following methods or any combination thereof:

3 (1) Sale of Assets. The electing utility may request commission
4 approval of the sale of some or all of its generation assets, including any
5 agreements to sell electricity or any purchased power or fuel and fuel
6 transportation agreements related to those assets. The electing electric
7 utility shall propose procedures to ensure a bona fide arms-length transaction
8 under a competitive offering. If the electing electric utility proposes to
9 sell only part of an asset, it shall specify one or more of the other methods
10 in this subsection that it proposes to be used to establish the market value
11 of the remaining portion of the asset.

12 (2) Stock Valuation Method.

13 (A) The electing electric utility may request commission
14 approval of a procedure whereby the utility transfers generation assets,
15 including any related agreements to purchase fuel, fuel transportation
16 agreements or agreements to sell electricity or any purchased power contracts,
17 to a separate affiliated or nonaffiliated corporation; and:

18 (i) At least nineteen percent (19%) of the common
19 stock of the corporation is divested and listed with a national stock exchange
20 for sale to public investors;

21 (ii) The common stock of the transferee corporation
22 has been traded for not less than 180 days;

23 (iii) Ninety five percent (95%) or more of the book
24 value of the transferee corporation's assets consist of generation assets or
25 purchased power obligations transferred from the electric utility and which
26 are includable in the determination of stranded costs allocable to Arkansas
27 ratepayers;

28 (iv) The transferee corporation's assets do not
29 include regulatory assets; and

30 (v) The assets transferred to the transferee
31 corporation were owned by, or were obligations of, the electric utility on
32 December 31, 1998; then the resulting average daily closing price of the
33 common stock over sixty (60) consecutive trading days chosen by the commission
34 out of the one hundred twenty (120) consecutive trading days before the filing
35 by the electric utility of its application under this section would be used to
36 establish the market value of the common stock equity in the transferee

1 corporation.

2 (B) Should the commission determine it to be in the public
3 interest to use the method described in subdivision (c)(2), the book value of
4 the transferee corporation's debt and preferred stock securities shall be
5 added to the market value of the transferee corporation's common stock equity
6 in determining the market value of its assets. The resulting market value of
7 the assets shall be used to establish the market value of the generation
8 assets transferred by the electric utility to the separate corporation.

9 (C) (1) If less than fifty-one percent (51%) of the
10 common stock of the transferee corporation described in subdivision (c)(2)(A)
11 is divested and listed with a national stock exchange for sale to public
12 investors, then the commission shall convene a valuation panel of five
13 independent financial experts to recommend whether the common stock held by
14 the public is fairly representative of the total common stock equity or
15 whether a control premium exists for the retained interest. The panel shall
16 recommend the amount of any control premium, which amount shall be presumed to
17 be appropriate unless the commission determines by clear and convincing
18 evidence that the recommended amount is unreasonable. The reasonable costs
19 and expenses of the panel shall be paid by the utility whose assets are being
20 valued. These costs and expenses may not be recoverable from ratepayers by
21 the electric utility.

22 (2) The valuation panel must consist of financial
23 experts chosen from proposals submitted in response to commission requests
24 from the top thirty investment banks as measured by the dollar amount of
25 domestic public offerings of long-term debt and equity over the immediately
26 preceding three (3) calendar years as ranked by the publications Securities
27 Data or Institutional Investor. An investment bank shall not be eligible to
28 submit a proposal if it has been retained by the electric utility, whose
29 assets are being valued, for purposes of underwriting the transfer of the
30 assets being valued, or if the bank was among the top two (2) primary
31 providers of investment services to the utility during the last two (2) years
32 as measured by the fees paid by the utility and its affiliates for investment
33 services. Two (2) panel members shall be chosen by the utility whose assets
34 are being valued. Two (2) panel members shall be chosen collectively by the
35 commission's general staff and any non-utility parties to the proceeding. The
36 four (4) panel members so chosen shall choose the fifth panel member. If the

1 commission's general staff and any non-utility parties to the proceeding are
2 unable to agree on two (2) panel members, each non-utility party shall be
3 entitled to propose a panel member and the commission shall choose the two (2)
4 panel members.

5 (D) Should the commission determine that then-current
6 market conditions do not reflect the value of the underlying stock, the
7 commission may extend the one hundred twenty (120) day period described in
8 subdivision (c)(2)(A) to include up to three hundred sixty-five (365) days
9 after the filing by the electric utility of its application under this
10 section.

11 (E) Any commission order approving a transfer of assets
12 pursuant to subdivision (c)(2) shall determine a floor market value for the
13 assets. The provisions of any other subdivision of (c)(2) to the contrary
14 notwithstanding, should the Commission determine it to be in the public
15 interest to use the method described in subdivision (c)(2), the amount
16 included in calculating any customer transition charge as contemplated by
17 subdivision (a) or Subchapter 6 of this chapter shall be the greater of the
18 floor market value; or the value determined pursuant to subdivision (c)(2)(B),
19 as adjusted pursuant to subdivisions (c)(2)(C) and (D), if applicable.
20 However, should the utility show by clear and convincing evidence that the
21 value determined pursuant to subdivision (c)(2)(B), as adjusted pursuant to
22 subdivisions (c)(2)(C) and (D) if applicable, accurately reflects the market
23 value of the assets notwithstanding that such value is below the floor market
24 value, then the commission shall use such value in calculating the amount of
25 any customer transition charge as contemplated by subsection (a) or Subchapter
26 6 of this chapter.

27 (3) Capacity sale.

28 (A) The electing electric utility may request commission
29 approval of a proposal to solicit to sell an amount of power equal to at least
30 ten percent (10%) of the electric output of the generating asset(s) being
31 valued under this section, for a period of not less than ten (10) years, in a
32 bona fide arms-length transaction under a competitive wholesale offering, so
33 that the price realized from the sale of such wholesale purchased power would
34 be the discounted net present value of the expected revenues resulting from
35 the purchased power sale reduced by all generating costs of the generating
36 asset(s) being valued using this method. In this process, the commission shall

1 assure that in this or in any other method chosen, there are credited against
2 stranded costs all SO₂ allowances and deferred tax balances. The utility may
3 propose that the price realized from the sale of a portion of the output of a
4 generating facility be imputed to the remaining portion of the facility.
5 Generating costs include all fuel, operating and maintenance expenses, future
6 capital investments required to maintain plant operations, to meet regulatory
7 and safety requirements or expenditures that result in a net reduction of
8 stranded costs, and all applicable taxes. The expected output of the
9 generating asset(s) and representative generating costs will be based upon at
10 least three (3) years of recent operating experience at the same plant or
11 plants, adjusted for known and measurable changes. If the expected life of
12 the generating asset(s) is greater than the term of the purchased power sale,
13 then the average of the expected revenues in the final three (3) years of the
14 purchased power sale reduced by the estimated generating costs shall be
15 escalated at the rate of inflation as measured by the Gross Domestic Product
16 Implicit Price Deflator, published by the United States Department of
17 Commerce, or any successor index, as determined by a recognized forecasting
18 service for the remaining years of the plant life.

19 (4) The electing electric utility may request commission approval
20 to establish the value of assets, purchased power, and fuel and fuel
21 transportation agreements through other valuation methods not specified in
22 subdivisions (c)(1) through (c)(3). To the extent reasonable and practical,
23 such other methods must be based on and consistent with publicly available
24 market data of bona fide arms-length transactions involving sales of
25 generation assets or long-term power sales, or be reasonable projections of
26 such market data. To the extent reasonable and practical, any alternative
27 analysis or forecast shall be based on and consistent with publicly available
28 market-based data generally accepted within the industry or be a reasonable
29 projection of market data. In addition to such data, without limitation, the
30 following data may be incorporated in the analyses, to the extent necessary to
31 yield a reasonable market valuation of the assets or agreements being valued
32 using subdivision (c)(4):

33 (A) Generation plant technical and performance
34 characteristics such as capacity ratings, fuel types, heat rates and cost
35 characteristics;

36 (B) Reasonable forecasts of the supply of, demand for and

1 price of electricity in relevant regional power markets;

2 (C) Reasonable forecasts of the supply of, demand for and
3 price of fuels used to generate electricity; and

4 (D) Reasonable estimates of the cost of constructing, owning
5 and operating new generation plants. The utility may, with the consent of the
6 commission, use one of the other methods specified in this subsection to
7 determine the utility's stranded costs.

8 (d) The commission shall review the application submitted by an
9 electing electric utility as directed by the commission pursuant to subsection
10 (a) to determine whether the methods and procedures the utility has proposed
11 to determine its stranded costs comply with the requirements of this chapter
12 and are reasonably structured to ensure that the proposed methods will result
13 in bona fide arms-length transactions or estimates, utilizing market data or
14 reasonable projections of market data, of the value that would be achieved in
15 bona fide arms-length transactions, and whether the proposed valuation
16 methods would have an undue impact on the determination of the utility's
17 stranded costs and on the public interest.

18 (e) Following its review pursuant to subsection (d), the commission may
19 approve, disapprove, or modify the utility's proposals; provided, however,
20 that such modifications shall not require transactions or estimates other than
21 those specified in subsection (c); provided further, that the commission may
22 not approve a transaction proposed by a utility under § 23-19-301 (c)(1), (2)
23 or (3) unless the commission first has found that the market in which such
24 transaction is to occur has developed sufficiently to allow a full and
25 accurate determination of the market value of the transaction. If the
26 commission approves a sale of assets under subsection (c)(1) or a capacity
27 sale under subsection (c)(3), the commission may approve or modify the
28 proposed procedures to ensure that they result in bona fide arms-length
29 transactions. If the commission approves transactions pursuant to subsection
30 (c)(1) or subsection(c)(3), the commission may condition its approval on the
31 receipt by the utility of a specified minimum price for the assets or
32 capacity, and any such minimum price shall be consistent with the values
33 indicated by similar market transactions for comparable generating units, and
34 the value of capacity and energy from such units as indicated by published
35 indicators of prices for energy commodities or transactions in the energy
36 market, and reasonable estimates of forward looking costs of production and

1 continued ownership of the capacity. The floor price should be set so as to
2 reflect the public interest in encouraging reasonable bids for the capacity or
3 assets being sold.

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

9
10
11 23-19-302. Mitigation of potential stranded costs.

12 (a) An electing electric utility shall have a duty to mitigate its
13 potential stranded costs by making its reasonable best efforts to reduce the
14 costs of its existing contracts with qualifying facilities, and its fuel, fuel
15 transportation, and purchased power agreements; by making its reasonable best
16 efforts to maintain its generation assets in accordance with prudent practices
17 in the electric utility industry; and, if directed by the commission, by
18 submitting to annual earnings reviews by the commission and using its earnings
19 above the utility's authorized rate of return to reduce the book value of
20 generation assets until the date of retail open access. An electing electric
21 utility shall also consider seeking Commission approval of:

22 (1) Acceleration of depreciation on and amortization of the
23 utility's investment in generation assets;

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

26 (3) Sale of excess generating capacity;

27 (4) Securitization of stranded costs;

28 (5) Extending the operational life of generating facilities and
29 exercising any option the utility may have to extend commercially prudent
30 contracts; and

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

34 (b) To the extent an electing electric utility has not made its
35 reasonable best efforts to mitigate its stranded costs pursuant to subsection
36 (a), its stranded costs as determined by the commission pursuant to § 23-19-

1 303 may be reduced by an amount commensurate with the utility's failure to
2 make such efforts.

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

9
10 23-19-303. Recovery of stranded costs.

11 (a) An electing electric utility shall have a right to recover through
12 a customer transition charge its net retail stranded costs, as may be
13 determined by the commission, over a reasonable period of time in accordance
14 with § 23-19-303 (g)(1) and all other stranded costs as determined by the
15 commission, and any nuclear decommissioning costs, as determined by the
16 commission, associated with the utility's generating assets, but nuclear
17 decommissioning costs shall not be included in determining the utility's net
18 retail stranded costs. An electric utility may, but shall not be required to,
19 utilize securitization pursuant to subchapter 6 to recover its net retail
20 stranded costs and other stranded costs as may be determined by the
21 commission, which costs may also be recovered as a component of a customer
22 transition charge.

23 (b) A generation and transmission electric cooperative corporation
24 shall be entitled to recover its stranded costs, as determined by the
25 commission pursuant to this subchapter 3. A distribution electric cooperative
26 corporation which, prior to the implementation of retail open access,
27 purchased power from a generation and transmission electric cooperative
28 corporation shall recover on behalf of, and remit to, such generation and
29 transmission electric cooperative corporation its net retail stranded costs
30 through a customer transition charge pursuant to this subchapter 3. The
31 commission shall determine the manner by which the generation and transmission
32 electric cooperative corporation's stranded costs are allocated among those
33 distribution electric cooperative corporations and the distribution electric
34 cooperative corporations shall further allocate their portion among their
35 customers pursuant to subsection (e) of this section.

36 (c) After the electing electric utility has completed all transfers of

1 assets or sale of capacity authorized by the commission pursuant to § 23-19-
2 301, the utility shall file with the commission for a determination of its net
3 retail stranded costs, if any, including stranded costs associated with any
4 assets it may have retained, and all other stranded costs. After notice and
5 hearing, the commission shall determine the amount of net retail stranded
6 costs. The filing shall consist of the following information, in such form as
7 may be adopted by the commission, in addition to such other relevant
8 information as the commission may reasonably require:

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

13 (2) The market value of all of the electric utility's generating
14 assets, existing purchased power, fuel and fuel transportation agreements
15 allocable to Arkansas for which the commission has previously approved the
16 procedures for a sale of assets, a transfer of assets, or a capacity sale in
17 accordance with § 23-19-301 calculated in accordance with the methodologies
18 specified therein;

19 (3) The amount of any stranded costs the utility seeks to recover
20 pursuant to Section 23-19-301(c)(4); and

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

23 (d) The commission shall review the application of the utility. For
24 any generation assets, purchased power, fuel and fuel transportation
25 agreements for which the commission has previously approved a sale of assets,
26 a transfer of assets, or a capacity sale pursuant to with § 23-19-301 (c)(1)
27 through (c)(3), the commission shall verify that the transactions were
28 conducted according to the procedures previously approved, and that the
29 computations made by the electing electric utility are in accordance with the
30 appropriate methodologies specified in § 23-19-301 (c). If the commission
31 makes such verification, the total net value realized from the sale shall
32 establish the market value of the generation assets sold. In determining the
33 total net value, transaction costs and any related taxes associated with the
34 sale shall be deducted from the sales price. For any generation assets,
35 purchased power, fuel and fuel transportation agreements for which the
36 commission has not previously approved a sale of assets, a transfer of assets,

1 or a capacity sale, if the commission determines, after notice and hearing,
2 that a method chosen by the utility results in an unreasonable level of
3 stranded costs, the commission may adopt some other reasonable method to
4 quantify the utility's stranded costs. In no event shall the amount of
5 stranded costs exceed the just and reasonable costs that are or would have
6 been included in rates under continued regulation.

7 (e) Net retail stranded costs and all other stranded costs shall be
8 allocated between wholesale and retail customers and further allocated among
9 retail customer classes. Such costs shall be allocated between wholesale and
10 retail customers in accordance with the methodologies or ratios used in the
11 commission's most recent general rate order fixing rates for the electric
12 utility. Such costs shall be further allocated among retail customer classes
13 in accordance with the methodologies or ratios used to allocate production
14 demand related costs in the commission's most recent general rate order fixing
15 rates for the utility.

16 (f) The electing electric utility shall be authorized to collect
17 generation-related regulatory assets and other stranded costs not consisting
18 of generation assets, purchased power or fuel or fuel transportation costs as
19 the commission determines to be:

20 (1) Reasonable;

21 (2) Known and measurable; and

22 (3) Directly related to the implementation of retail open access.

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

26 (h) Subsequent to the commission's determination of all of an electric
27 utility's net retail stranded costs and other stranded costs, in accordance
28 with § 23-19-301(b) and subsections (c) and (d) of this section, the
29 commission shall, after notice and hearing, approve a customer transition
30 charge that will allow each applicable electric utility to recover its
31 stranded costs that have not been securitized and are not recoverable pursuant
32 to § 23-19-605 (d). The commission shall exercise its discretion and judgment
33 to determine the most appropriate structure of such rate for each such
34 electric utility, subject to the following conditions:

35 (1) The rate shall be designed to provide for recovery of
36 applicable stranded costs over a period no longer than the dollar-weighted

1 average remaining life of the assets or contracts to which the stranded costs
2 are related, and the rate initially established shall remain in effect
3 unaltered until the stranded costs have been fully recovered, except for any
4 adjustment that may be appropriate as a result of a revision pursuant to §23-
5 19-303(i) to the initial determination of the electric utility's net retail
6 stranded costs;

7 (2) The rate shall reflect a return on the utility's unrecovered
8 stranded costs based on the cost of capital the commission has most recently
9 determined appropriate for that utility at the time the customer transition
10 charge becomes initially effective, except that, in the event the commission
11 authorizes the recovery of purchased power costs or other periodically
12 recurring stranded costs, through a separate rate or rider, any such costs
13 shall be excluded from the calculation of the cost of capital on the utility's
14 unrecovered stranded costs. This cost of capital shall remain fixed for the
15 duration of the stranded cost recovery period for purposes of determining the
16 amount of stranded cost to be amortized each month during the recovery period;
17 and

18 (3) The rate shall be designed to reflect a credit for the time
19 value of money related to the net proceeds from the sale or transfer by the
20 utility of any asset includable in the calculation of the utility's stranded
21 costs after December 31, 1998 and prior to the time that the customer
22 transition charge is determined. However, such credit shall be included only
23 to the extent that the time value of such money is not credited to customers
24 in an appropriate accounting adjustment in an annual review of the utility's
25 earnings by the commission. In the event the utility sells or transfers an
26 asset for more than the asset's net book value, a credit for the time value of
27 money shall be made to the extent that the net proceeds from the sale or
28 transfer exceed the net book value of the asset sold or transferred and such
29 excess is not reflected in an annual review of the utility's earnings by the
30 commission and credited to customers in an appropriate accounting adjustment.
31 Such credit shall be computed utilizing the utility's net after-tax proceeds
32 from such transfer or sale and the cost of capital the commission has most
33 recently determined appropriate for that utility. In the event the utility
34 has to purchase capacity (not energy) to replace the sold or transferred
35 capacity, the cost of such replacement capacity shall be applied as an offset
36 to the calculation of the time value of money credit described above.

1 (4) The rate shall be designed to reflect a credit for the time
2 value of money related to purchased power costs or other recurring stranded
3 costs that are not recovered through a separate rate or rider and are included
4 in the calculation of the utility's stranded costs, to the extent the utility
5 receives stranded cost recovery payment from ratepayers prior to the time that
6 the utility is required to make payment under the purchased power contract or
7 other periodically recurring obligation. Such credit shall be computed
8 utilizing the utility's cost of capital the commission has most recently
9 determined appropriate for that utility.

10 (5) The electric utility shall submit quarterly reports showing
11 the amount of stranded costs recovered and the balance remaining to be
12 recovered.

13 (6) If, after notice and hearing, the commission determines that
14 the level of stranded costs actually collected by the electric utility
15 pursuant to subdivision (e)(1), exceeded the commission's previous
16 determination of the utility's stranded costs, the commission shall order a
17 refund of the difference between the amount authorized to be collected and the
18 amount actually collected to Arkansas jurisdictional retail customers subject
19 to the electric utility's customer transition charge over a reasonable period.
20 Any such refund ordered by the commission shall not affect revenues that have
21 been securitized pursuant to subchapter 6, and, if a refund is ordered to be
22 paid by an electric utility that has securitized such revenues pursuant to
23 subchapter 6, such refund shall be made from funds other than revenues
24 collected pursuant to subchapter 6.

25 (i) For generating assets, existing purchased power and fuel
26 transportation agreements valued pursuant to § 23-19-301(c)(4) or the last
27 sentence of § 23-19-303(d), the commission may, within thirty-six (36) months
28 of the entry of a final order determining an electric utility's net retail
29 stranded costs, initiate a proceeding to review the level of stranded costs
30 determined pursuant to § 23-19-301(c)(4) or the last sentence of § 23-19-
31 303(d), and the commission may, after notice and hearing, revise the electric
32 utility's net retail stranded costs to the extent newly available market data
33 support revision of the stranded cost determination under § 23-19-301(c)(4) or
34 the last sentence of § 23-19-303(d), applying the criteria set forth therein.
35 Newly available market data shall include, but not be limited to, the sale of,
36 the transfer of a stock interest in, or the sale of capacity from, all or part

1 of the asset being valued, provided such sale or transfer has been approved by
2 the commission for purposes of a stranded cost determination. The amount of
3 the revised determination of net retail stranded cost to be collected from
4 customers shall be limited to the difference, positive or negative, between
5 the level of stranded costs the electric utility has securitized, if any, and
6 the initial determination of net retail stranded cost. In any proceeding
7 under this subdivision, the commission shall complete its review within one
8 hundred fifty (150) days, but the commission may extend the review period up
9 to thirty (30) additional days, for good cause shown.

10
11 29-19-304. Recovery of transition costs.

12 (a) An electric utility shall be allowed to recover, during a period of
13 time ending thirty-six (36) months after the implementation of retail open
14 access, transition costs, incurred no later than twenty-four (24) months after
15 the implementation of retail open access, as may be determined by the
16 commission after notice and hearing, through a customer transition charge.
17 Transition costs surcharges will be subject to annual review by the commission
18 and costs included therein shall be prudent, reasonable, and directly caused
19 by retail open access.

20 (b) After notice and an opportunity for hearing, the commission shall
21 annually adjust the level of the customer transition charge to ensure the
22 recovery of undercollections from the previous year and the refund of
23 overcollections from the previous year.

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

28 (d) A generation and transmission electric cooperative corporation
29 shall be entitled to recover its transition costs, as determined by the
30 commission pursuant to this section. A distribution electric cooperative
31 corporation which purchases power from a generation and transmission electric
32 cooperative corporation shall recover on behalf of, and remit to, such
33 generation and transmission electric cooperative corporation its transition
34 costs through a customer transition charge pursuant to this section. The
35 commission shall determine the manner by which the generation and transmission
36 electric cooperative corporation's transition costs are allocated among those

1 distribution electric cooperative corporations.

2
3 SUBCHAPTER 4 - Consumer Protection.

4
5 23-19-401. Commission rules and regulations.

6 (a) The commission shall adopt appropriate rules on or before the date
7 determined by the commission for the implementation of retail open access to
8 promote the following goals:

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

12 (2) Retail customers should have access to safe, reliable, and
13 affordable electricity, including protection against service disconnections in
14 extreme weather or in cases of medical emergency or nonpayment for unrelated
15 services;

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

19 (4) Bills should be accurate and understandable;

20 (5) A retail customer's chosen provider should not be changed
21 without the retail customer's informed consent;

22 (6) A retail customer should have access to a continuity of
23 service provider;

24 (7) Retail customers should have access to sufficient information
25 to make an informed choice of service provider, including but not limited to
26 information on rates. The commission shall establish minimum standards for
27 the form and content of such information to be disseminated by an electric
28 utility or energy service provider, including standards for the disclosure of
29 the environmental effects of the generation being supplied, where such
30 disclosure would be practical and accurate, provided that such minimum
31 standards: (A) shall be just and reasonable; (B) shall not unnecessarily
32 inhibit the initiation and development of competition for any service; and (C)
33 may vary for different services and different classes of customers; and

34 (8) A retail customer should be entitled to truthful and reasonable
35 marketing and sales practices, including abiding by the commission's
36 disclosure requirements related to the environmental effects of the generation

1 being supplied as provided in the previous subdivision, as well as non-
2 discriminatory and non-abusive billing, credit, collection and service
3 connection practices; and

4 (9) Evaluate the impact of competition on renewable energy development
5 and on low income and energy efficiency programs.

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

11 (c) The commission shall have jurisdiction over all electric utilities,
12 municipal corporations owning municipal electric utilities which elect to
13 offer retail open access, and energy service providers in enforcing rules
14 adopted pursuant to subsection (a). The commission may begin a proceeding, on
15 its own motion, or upon the complaint of a retail customer or other affected
16 party, to impose, after notice and hearing, a civil sanction not to exceed ten
17 thousand dollars (\$10,000), for failure to comply with rules or orders adopted
18 pursuant to this chapter for each day such violation should continue, or in
19 the case of repeated and substantial violations of such rules or orders, to
20 revoke or suspend the registration or certificate of convenience and necessity
21 of an electric utility or the license of an energy service provider. The
22 proceeds from the civil sanctions imposed under this subdivision shall be
23 deposited into the State Treasury as special revenues and shall be credited to
24 the Public Service Commission Fund.

25
26 23-19-402. Continuity of service provider.

27 (a) On and after the implementation of retail open access, each
28 incumbent electric utility, or a retail affiliate thereof, doing business in
29 this state, shall offer a standard service package on such conditions as may
30 be set by the commission within its distribution service territory and shall
31 have an obligation to provide such service unless and until any such customer
32 has elected an alternative energy service provider, or in the event any such
33 customer has not been able to secure an alternative energy service provider.
34 The commission shall, after notice and hearing, establish procedures and
35 methods by which the electric utility or a retail affiliate thereof shall
36 demonstrate that its rates for such standard service package are consistent

1 with competitive market prices. The commission may require that the electric
2 utility or a retail affiliate thereof use competitive bidding to procure some
3 or all of the generation necessary to fulfill its obligations under this
4 subsection. The previous two (2) sentences shall not apply to an electric
5 utility or retail affiliate thereof which agrees to have its rates for this
6 service established pursuant to §§ 23-4-101 through 23-4-207 and §§ 23-4-401
7 through 23-4-509, and in the case of a rural electric cooperative, the
8 additional provisions in §§ 23-4-901 through 23-4-909.

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

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

36

1 23-19-403. Affiliate dealings.

2 All transactions among or between the regulated and any unregulated
3 divisions, components or affiliates of an electric utility shall be conducted
4 at arm's length, subject to such rules as may be promulgated by the
5 commission. All such transactions that involve regulated services shall be
6 subject to the rates, terms and conditions specified in tariffs approved by
7 the commission. An electric utility shall not use any revenue from any
8 regulated asset, operation or service to subsidize the provision of any
9 unregulated electric service or any other unregulated activity.

10
11 23-19-404. Market power analysis.

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

25 (b) Upon application, complaint or its own motion, and after notice
26 and hearing, the commission shall issue by June 1, 2001, or for good cause
27 shown, no later than thirty (30) days thereafter, and at such later times as
28 the commission shall determine, an order finding whether any provider of a
29 product or service for which competition is authorized by this chapter has
30 market power. Within sixty (60) days of the issuance of such order, unless
31 the commission grants an extension of time, such provider shall file with the
32 commission, consistent with any rules or orders of the commission, a market
33 power mitigation plan designed to eliminate the market power found by the
34 commission. Such plan may include, without limitation, price caps,
35 transitional standard offers, the auction of generation to be sold under long-
36 term power contracts, the placement of assets or activities in affiliated

1 corporations, and divestiture of assets or activities. After notice and
2 hearing considering such plan, along with any alternative plans proposed by
3 intervenors or commission staff, the commission shall order such provider to
4 implement those measures determined by the commission to be necessary to
5 mitigate the market power that it finds to be in the public interest. Such
6 mitigation measures shall be implemented by January 1, 2002, or such later
7 date as may be authorized by the commission, but such date shall be no later
8 than the implementation of retail open access. The measures ordered by the
9 commission may include, but are not limited to, price caps, transitional
10 standard offers, the auction of generation to be sold under long-term power
11 contracts, the auction or other competitive selection of the right to serve
12 customers who have not made an affirmative selection of an electric utility or
13 electric service provider as provided in subsection (c) of this section, and
14 divestiture of assets or activities; provided, that the commission may not
15 order an electric utility or affiliated energy services provider to divest
16 assets or activities without the consent of such utility or affiliated energy
17 services provider, unless and until the commission determines that other
18 available measures will not adequately mitigate the utility's or affiliated
19 energy services provider's market power. Furthermore, the commission may delay
20 implementation of divestiture until after the implementation of retail open
21 access if implementing divestiture prior thereto would increase the utility's
22 stranded costs and would be contrary to the public interest. If the
23 commission determines that no mitigation plan proposed or considered pursuant
24 to this subdivision will adequately mitigate market power, the commission
25 shall notify the House and Senate Committees on Insurance and Commerce and may
26 refer its findings and any recommendations to appropriate state or federal
27 authorities, file action(s) under applicable laws in any court of competent
28 jurisdiction or take such other action as is authorized by law. Nothing in
29 this subdivision shall in any way limit the obligations or liability, under
30 state or federal antitrust or consumer protection laws or regulations, of an
31 electric utility or energy service provider for conduct arising after
32 implementation of retail open access. In addition, a proceeding pursuant to
33 this subdivision shall not be a condition precedent to an action pursuant to
34 state or federal antitrust or consumer protection laws or regulations.

35 (c) For that period of time subsequent to the one (1) or three (3) year
36 periods referenced in Section 23-19-402(b), each incumbent electric utility or

1 its retail affiliate shall continue to have the obligation to provide a
2 standard service package pursuant to § 23-19-402 (a) to those of its
3 distribution customers that have not elected or are unable to secure an
4 alternative energy service provider, provided that the commission has first
5 found that neither the incumbent utility nor any affiliate thereof has market
6 power over the sale to any customer class of any component of such bundled
7 service for which competition has been authorized by this chapter. If the
8 commission finds that such market power exists, the commission shall determine
9 the most appropriate method of providing the electric service needs of such
10 distribution customers on a fair and equitable basis, including but not
11 limited to allowing energy service providers to compete for the opportunity to
12 serve some or all such customers pursuant to reasonable rates, terms, and
13 conditions. The Commission may adopt such method only after notice and
14 hearing and finding that such method is in the public interest.

15 (d) 'Market power' means the ability to impose on customers a
16 significant and nontransitory price increase on a product or service in a
17 market above the price level which would prevail in a competitive market or
18 exclude competition in the relevant market.

19 (e) No later than July 1, 2008, and annually thereafter, the commission
20 shall submit to the General Assembly a report assessing the competitiveness of
21 those markets for which competition has been authorized by this chapter. Each
22 such report shall include a recommendation as to whether the authority granted
23 to the commission under this section should be continued, revised, or
24 repealed. Upon receipt of such report, the House and Senate Committees on
25 Insurance and Commerce shall make a recommendation to the General Assembly as
26 to whether to revise or repeal this section.

27 (f) Upon a petition filed or on its own motion, the commission may
28 find, after notice and opportunity for hearing, that one or more markets for
29 which competition has been authorized by this chapter is subject to effective
30 competition. After such finding, the commission shall revoke or revise such
31 market power mitigation measures, previously ordered by the commission, to the
32 extent such revocation or modification is consistent with the maintenance of
33 effective competition.

34
35 SUBCHAPTER 5 - Regulation of Distribution and Transmission Services.
36

1 23-19-501. Authority of the commission.

2 (a) At any time on or after the implementation of retail open access,
3 the commission, after notice and hearing and a finding that it is in the
4 public interest, may declare billing, metering, collection, and any customer
5 service offered by an electric utility as a regulated service to be
6 competitive and exempt from rate regulation. This subsection shall not be
7 construed to require that the commission declare such services to be
8 competitive or to limit the commission's ability to declare such services
9 competitive only in certain areas or only when offered by a particular type of
10 electric utility.

11 (b) Notwithstanding subsection (a), no electric utility or energy
12 service provider shall furnish, or offer to furnish, to or for the public,
13 connections to facilities to obtain electricity, or shall provide billing,
14 metering, or collection services related to the provision of electricity to or
15 for the public in any service territory in which such services are being
16 provided by a municipal corporation owning a municipal electric utility
17 without the consent of such municipal corporation.

18
19 23-19-502. Rates, terms and conditions of electric distribution and
20 transmission service.

21 (a) The commission shall continue to regulate the rates, terms and
22 conditions applicable to the provision of jurisdictional electric distribution
23 service.

24 (b) All electric utilities shall retain all existing rights and
25 obligations to provide exclusive electric distribution service in their
26 service territories. Each electric utility shall connect and deliver
27 electricity to all retail electric customers or other consumers in its service
28 territory at rates and on terms and conditions that:

29 (1) Do not discriminate among electric suppliers, retail electric
30 customers or other consumers; and

31 (2) Are, at a minimum, equivalent to the rates, terms and
32 conditions on which the electric utility provides service to itself or any
33 affiliates.

34 (c) To the extent not subject to the exclusive jurisdiction of the
35 Federal Energy Regulatory Commission or other federal agency, the commission
36 shall have the authority to establish the rates, terms, and conditions of

1 transmission in this state. Such authority shall include the authority to:

2 (1) establish rates for unbundled transmission service;

3 (2) direct any utility that owns transmission facilities to
4 modify those facilities located within the state in order to relieve
5 transmission constraints that are shown to impede the development of effective
6 competition in the state; and

7 (3) promulgate rules for interconnection to distribution and
8 transmission facilities located within the state.

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

14 (e) The commission is hereby authorized to coordinate, consult, and
15 cooperate as it deems necessary and appropriate with the regulatory
16 commissions of other States and the United States, and with any independent
17 transmission entity providing services in Arkansas, in its restructuring of
18 electric utility services, in the determination of appropriate methods of
19 unbundling costs, in planning to ensure adequate transmission capacity for
20 regional markets, and in the determination of the appropriate method of owning
21 and operating regional, multi-state transmission grids.

22
23 SUBCHAPTER 6 - Securitization of Stranded Costs.

24
25 23-19-601. Determination of qualified stranded costs.

26 No proceeding seeking a qualified rate order shall commence until after
27 the commission has determined the amount of net retail stranded costs that the
28 electric utility is entitled to recover from its retail customers pursuant to
29 § 23-19-303(a) through (f).

30 23-19-602. Application for qualified rate order.

31 (a) Notwithstanding any other provision of law, the commission is
32 authorized to issue qualified rate orders under this subchapter 6 to
33 facilitate the recovery or financing of all or any portion of the qualified
34 costs of an electric utility or its assignee.

35 (b) A proceeding seeking a qualified rate order may be initiated only
36 by an electric utility seeking to collect and securitize qualified intangible

1 charges to recover qualified costs, and an electric utility may initiate one
2 or more such proceedings. Nothing herein shall give any other party,
3 including, without limitation, the commission, the right to initiate a
4 qualified rate order proceeding, or to initiate any proceeding establishing
5 utility-specific stranded costs under any section of this chapter.

6 (c) Each application for a qualified rate order shall describe and
7 quantify:

8 (1) The qualified stranded costs the electric utility seeks to
9 recover;

10 (2) The estimated qualified financing costs that will result from
11 the securitization of the qualified intangible charges;

12 (3) The qualified intangible charges required to assure recovery
13 of the qualified costs;

14 (4) A schedule showing the period over which the qualified
15 intangible charges will be collected;

16 (5) The electric utility's proposal for the pledge, assignment,
17 sale or other transfer of qualified intangible property or the issuance of
18 qualified bonds;

19 (6) The use of the net proceeds of the qualified bonds proposed
20 by the electric utility, which uses shall be limited to reduction of
21 outstanding debt and equity capital of the electric utility; and

22 (7) The description of professionals to be utilized in the
23 securitization, including securities counsel, investment banker and
24 consultants, the selection of which shall have been previously jointly
25 approved by the electric utility and the commission.

26
27 23-19-603. Proceeding before commission.

28 (a) Upon application by an electric utility for a qualified rate order,
29 the commission shall give public notice of such application pursuant to any
30 applicable provisions of the commission's rules of practice and procedure.
31 The qualified rate order proceeding shall not be considered a proceeding to
32 change rates under applicable law or to amend the amount or extent of
33 qualified stranded costs previously determined in proceedings pursuant to §
34 23-19-303. The commission may not consider any other changes to the rates or
35 revenue requirement of the electric utility, including but not limited to its
36 cost of capital, expenses, rate base, or revenues, and the qualified rate

1 order proceeding shall be limited to those matters related to the qualified
2 rate order described in this section.

3 (b) If the commission determines (1) that the application contains the
4 information specified in Section 23-19-602 and (2) that the total amount of
5 qualified intangible charges to be recovered pursuant to the qualified rate
6 order is less than the amount that would be recovered using conventional
7 financing methods, then the commission shall issue a qualified rate order on
8 the terms requested by the electric utility if:

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

11 (2) The qualified intangible charges will be imposed until the
12 payment in full of the principal of, and the interest and any acquisition or
13 redemption premium on, all outstanding qualified bonds and any other related
14 qualified financing costs; and

15 (3) The qualified stranded costs do not exceed the amount of
16 stranded cost of the utility determined by the commission pursuant to § 23-19-
17 303.

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

21 (d) The qualified rate order shall state:

22 (1) The amount of qualified costs to be recovered, which, unless
23 approved by the commission, shall not exceed eighty (80) percent of the amount
24 of net retail stranded costs of the utility as determined by the commission
25 pursuant to § 23-19-303 (a) through (f), but the commission shall not, in any
26 event, order securitization of an amount in excess of the amount of qualified
27 stranded costs the utility proposed to securitize;

28 (2) The qualified intangible charge, which:

29 (A) Must be a non-bypassable charge, consistent with § 23-
30 19-605, sufficient to pay the principal of and interest on, qualified bonds
31 and assure full recovery of the qualified costs in the period over which the
32 qualified intangible charges will be collected;

33 (B) Shall be allocated among the electric utility's retail
34 customer classes in accordance with the methodologies or ratios used to
35 allocate production demand related costs in the commission's most recent
36 general rate order fixing rates for the electric utility; and

1 (C) Shall be designed in accordance with the methodology
2 used to design rates for such retail customer classes;

3 (3) The procedures for periodic adjustment of the qualified
4 intangible charges under § 23-19-605 (d) to ensure that all qualified costs
5 approved in the qualified rate order are being recovered in accordance with
6 the schedule filed by the electric utility with the commission pursuant to §
7 23-19-602;

8 (4) In its qualified rate order, the commission shall afford the
9 electric utility flexibility in establishing the terms and conditions of the
10 qualified bonds, including transaction structure, repayment schedules,
11 interest rates and other financing costs, provided, that prior to the issuance
12 of the qualified bonds and the entry of the qualified rate order, the electric
13 utility shall file with the commission the proposed final terms of issuance
14 including a description of all financial terms, anticipated repayment
15 schedule, and proposed financing costs. The commission, in its review, may
16 disallow the recovery of any financing costs it deems unreasonable and must
17 find that the proposed transaction represents acceptable savings to the
18 public;

19 (5) The qualified bonds shall be issued within two (2) years after
20 the date the qualified rate order becomes final, including all appeals of the
21 qualified rate order, provided, however, that nothing in this subchapter shall
22 require an electric utility or any assignee thereof to issue qualified bonds,
23 but provided further that should the issuance of the qualified bonds be
24 delayed more than one hundred twenty (120) days after the entry of the
25 qualified rate order, before the issuance of such qualified bonds, the
26 electric utility shall update current financial information by filing with the
27 commission the proposed final terms of issuance, including a description of
28 all financial terms, anticipated repayment schedule and proposed financing
29 costs on which the commission's review shall be completed within fourteen (14)
30 days; and

31 (6) Within fourteen (14) days after the issuance of the qualified
32 bonds, the electric utility shall file the final terms of issuance with the
33 commission, including a schedule of principal and interest payment on the
34 qualified bonds.

35
36 23-19-604. Qualified rate order to be irrevocable.

1 Notwithstanding any other provision of law, and subject to modification
2 pursuant to the provisions of this section, each qualified rate order and the
3 qualified intangible charges specified in such order, as adjusted under § 23-
4 19-605 (d), shall be irrevocable upon issuance of the qualified bonds
5 authorized in the order. The related qualified intangible property shall,
6 upon the qualified rate order becoming effective pursuant to the provisions of
7 this subchapter, constitute a presently existing, fully vested property right
8 for all purposes, including for contracts securing qualified bonds, whether or
9 not the revenues and proceeds arising with respect thereto have accrued. The
10 commission shall not in any manner whatsoever, directly or indirectly, legally
11 or equitably, rescind, alter, repeal, modify or amend a qualified rate order
12 to revalue or revise the amount of qualified intangible property, qualified
13 costs or qualified intangible charges (except as such qualified intangible
14 charges may be adjusted pursuant to § 23-19-605 (d)), or the revenues required
15 to recover qualified costs or pay qualified bonds, determine that the
16 qualified costs or the qualified intangible charges are unjust or unreasonable
17 in any way, or reduce or impair the value of the qualified intangible
18 property, and the revenues arising with respect to the qualified intangible
19 property shall not be subject to reduction, impairment, postponement or
20 termination until the related qualified costs have been fully recovered over
21 the term of the qualified bonds and the principal of and interest on the
22 qualified bonds issued to finance such qualified costs have been fully paid in
23 accordance with the schedule filed by the electric utility with the commission
24 pursuant to § 23-19-603 (d)(6). Notwithstanding the foregoing, before the
25 issuance of qualified bonds pursuant to the applicable qualified rate order,
26 the qualified rate order may be modified, but only with the express written
27 consent of both the commission and the electric utility. Any qualified rate
28 order so modified shall be irrevocable as provided for in this section.

29
30 23-19-605. Qualified intangible charges.

31 (a) The qualified intangible charges shall be separately recorded and
32 tracked on the books and records of the electric utility. The qualified
33 intangible charge shall be a separate, customer transition charge, consistent
34 with the qualified rate order and the schedule to be filed by the electric
35 utility with the commission pursuant to § 23-19-603 (d)(6). Any order by the
36 commission or a regulatory authority setting the electric utility's rates in

1 the future shall include the qualified intangible charge as a separate
2 customer transition charge.

3 (b) Except as provided in this subchapter, the electric utility shall
4 have the exclusive right to directly charge, collect, receive and be paid from
5 collections of qualified intangible charges, which right shall be assignable
6 solely within the discretion of the electric utility.

7 (c) Qualified intangible charges shall be customer transition charges
8 collectible by the electric utility or its successors and assigns, which
9 collection may be on behalf of an assignee. It is the intent of this chapter
10 that each retail customer shall have an obligation to pay all customer
11 transition charges so long as the customer is still connected to the
12 distribution or transmission systems of the electric utility imposing the
13 customer transition charge, regardless of which persons supply the retail
14 customer with electricity.

15 (d) At the intervals provided for in the qualified rate order, which
16 shall be not less frequent than once each year, the electric utility shall
17 calculate and implement adjustments to the qualified intangible charges to
18 ensure that all qualified costs included in the qualified rate order are being
19 recovered consistent with the schedule to be filed by the electric utility
20 with the commission pursuant to § 23-19-603 (d)(6) and that any over-recovery
21 or under-recovery from prior periods is corrected within twelve (12) months.
22 When all qualified costs as determined by the commission with respect to an
23 electric utility have been recovered, any unapplied over-recovery shall be
24 used as a credit to reduce future distribution-related charges for retail
25 customers of the electric utility, provided, however, that for purposes of
26 determining when and if all qualified costs as determined by the commission
27 with respect to an electric utility shall have been recovered, the amount of
28 qualified costs determined in all qualified rate orders with respect to such
29 electric utility shall be aggregated for purposes of determining whether
30 qualified intangible charges collected by such electric utility exceed the
31 total recoverable qualified costs as determined in all qualified rate orders
32 issued with respect to such electric utility. The adjustment shall be
33 determined pursuant to this chapter and in the manner specified in the
34 qualified rate order. The electric utility shall submit a report showing the
35 calculation of each adjustment. The report must include certification by an
36 independent nationally recognized accounting firm with experience in electric

1 utility accounting that the adjustment was computed as required by the
2 qualified rate order.

3
4 23-19-606. Qualified intangible property.

5 Qualified intangible property is created upon the qualified rate order
6 becoming effective pursuant to the provisions of this chapter; and upon such
7 creation shall constitute a presently existing, fully vested property right
8 under the laws of Arkansas for all purposes, including for contracts securing
9 qualified bonds, whether or not the revenues and proceeds arising with respect
10 thereto have accrued. Qualified intangible property shall thereafter exist
11 continuously and until all qualified costs and all principal of and redemption
12 and acquisition premiums and interest on the related qualified bonds have been
13 paid in full.

14
15 23-19-607. Assignment of rights in qualified intangible property.

16 (a) An electric utility or its assignee may sell, assign and otherwise
17 transfer all or portions of its interest in qualified intangible property to
18 assignees in connection with the issuance of qualified bonds or otherwise. In
19 addition, an electric utility or an assignee may pledge, grant a security
20 interest or encumber qualified intangible property as collateral for qualified
21 bonds or other obligations. The ownership interest of an assignee of, or the
22 validity, perfection or priority of any security interest in, qualified
23 intangible property, shall not be defeated or adversely affected by changes to
24 the qualified rate order establishing the qualified intangible property.

25 (b) Except to the extent inconsistent with this subchapter, any sale,
26 assignment, pledge or security interest in or to qualified intangible property
27 shall be governed by the Uniform Commercial Code of this state. In the event
28 of any inconsistency, the provisions of this subchapter shall prevail.

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

34
35 23-19-608. Refunding of qualified bonds.

36 (a) Qualified bonds may be refinanced, refunded or defeased, provided,

1 however, that qualified bonds may not be refinanced, refunded, or defeased if
2 such refinancing, refunding, or defeasance:

3 (1) Extends the duration of the recovery period for the qualified
4 intangible charges relating to such qualified bonds; or

5 (2) Increases the present value of the revenue stream of the
6 qualified intangible charges relating to the qualified bonds.

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

11
12 23-19-609. No alteration of rights.

13 Qualified bonds shall not be backed by the credit of the State of
14 Arkansas. The State of Arkansas, however, pledges to and agrees with the
15 holders of any qualified bonds issued under this subchapter and with any
16 assignee or pledgee of qualified intangible property or financing party and
17 with any other person who may enter into contracts with an electric utility
18 under this subchapter that the state will not limit, alter or in any way
19 impair or reduce the value of qualified intangible property or qualified
20 intangible charges, or rights with respect to such qualified intangible
21 property or qualified intangible charges established by or arising out of a
22 qualified rate order.

23
24 23-19-610. Security interest in qualified intangible property.

25 (a) When a qualified rate order becomes effective in accordance with
26 the provisions of this subchapter, the electric utility shall have rights in
27 the qualified intangible property within the meaning of § 4-9-203 or any
28 successor provision and such qualified intangible property shall constitute
29 presently existing, fully vested property rights for all purposes, including
30 for contracts securing qualified bonds, whether or not the revenues and
31 proceeds arising with respect thereto have accrued. The validity and relative
32 priority of any sale, assignment, pledge, security interest or other transfer
33 of qualified intangible property shall not be defeated or adversely affected
34 by the commingling by the electric utility of revenues received from amounts
35 charged, collected and received under qualified intangible charges with other
36 funds of the electric utility. Any description of the qualified intangible

1 property in:

2 (1) A security agreement, indenture, sale agreement or other
3 agreement relating to the sale, assignment or granting of a security interest
4 in such qualified intangible property; or

5 (2) The filing of a financing statement in accordance with § 4-9-
6 401 or any successor provision shall be sufficient if it refers to the
7 qualified rate order establishing the qualified intangible property.

8 (b) A perfected security interest in qualified intangible property is a
9 continuously perfected security interest in all revenues and proceeds arising
10 with respect thereto, whether or not the revenues and proceeds have accrued.

11 (c) In addition to any other rights available to pledgees or
12 transferees of qualified intangible property under the Uniform Commercial
13 Code, as now existing or as subsequently amended, or other applicable law, in
14 the event of default by the electric utility or an assignee in payment of
15 revenues arising with respect to the qualified intangible property, and upon
16 the application by an assignee or a financing party of the qualified
17 intangible property, any court of competent jurisdiction shall order the
18 sequestration and payment to the assignee or financing party of revenues
19 arising with respect to the qualified intangible property, which application
20 shall not limit any other remedies available to the assignee or financing
21 party by reason of the default. Any such order shall remain in full force and
22 effect notwithstanding any bankruptcy, reorganization or other insolvency
23 proceedings with respect to the debtor, pledgor or transferor of the qualified
24 intangible property. For purposes of this section, the calculation of the
25 amount of revenues received by the electric utility with respect to the
26 qualified intangible property shall be determined pro rata based upon the
27 percentage that total intangible charges with respect to such qualified
28 intangible property billed to retail customers of the electric utility during
29 a given time interval or billing cycle bears to the total amount billed to
30 retail customers of the electric utility for electricity and electricity-
31 related services during such time interval or billing cycle.

32 (d) To the extent that any such interest in qualified intangible
33 property is so sold or assigned, or is so pledged as collateral, the electric
34 utility shall be authorized to enter into a contract with the secured party,
35 the assignee or the financing party, providing that the electric utility shall
36 impose, charge, collect and receive qualified intangible charges in respect of

1 the qualified intangible property for the benefit and account of the secured
2 party, the assignee or the financing party, and shall account for and remit
3 such amounts to and for the account of the secured party, the assignee or the
4 financing party. In the event of a default by the electric utility in respect
5 of charging, collecting and receiving revenues derived from qualified
6 intangible charges and upon the application by the secured party, the assignee
7 or the financing party, the commission or any court of competent jurisdiction
8 shall by order designate a trustee or other entity to act in the place of the
9 electric utility to impose, charge, collect and receive qualified intangible
10 charges in respect of the qualified intangible property for the benefit and
11 account of the pledgee, the assignee or the financing party.

12 (e) An agreement by an assignor or qualified intangible property not to
13 assert any defense, claim or set-off against an assignee of the qualified
14 intangible property shall be enforceable against the assignor by the assignee
15 and by any successor or subsequent assignee thereof.

16
17 23-19-611. True sale.

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

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

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

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

31 (4) The characterization of a transfer as a sale or other absolute
32 transfer is not affected or impaired in any manner by, among other things:

33 (A) The assignor's retention as part of the assignment
34 transaction or otherwise, of a pari-passu equity interest in qualified
35 intangible property or the fact that only a portion of the qualified
36 intangible property is otherwise transferred;

1 (B) The transferor's retention of or acquisition as part of the
2 assignment transaction or otherwise of a subordinate equity interest or other
3 provision of credit enhancement on terms substantially commensurate with
4 market practices;

5 (C) The fact that the electric utility acts as the collector of
6 qualified intangible charges;

7 (D) The electric utility's retention of bare legal title to
8 qualified intangible property for the purpose of servicing or supervising the
9 servicing of the property and collections with respect to such property; or

10 (E) Treatment of the transfer as a financing for tax or financial
11 accounting purposes.

12 (5) The characterization of a sale, assignment or transfer of qualified
13 property as a true sale or absolute assignment or transfer in the governing
14 documentation of the sale, assignment or transfer is not intended to prejudice
15 the characterization of the sale, assignment, or transfer as a pledge or other
16 financing for state or federal tax purposes.

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

19 (A) The commission has issued the qualified rate order creating
20 qualified intangible property and such order has become effective in
21 accordance with the provisions of this subchapter; and

22 (B) Documentation evidencing the assignment, sale or other
23 transfer of the qualified intangible property has been executed and delivered
24 to the assignee.

25 (7) A transfer of qualified intangible property shall be perfected
26 against any third party when a financing statement has been filed with respect
27 to the transfer of such qualified intangible property in accordance with § 4-
28 9-401 or any successor provision.

29
30 23-19-612. Exemption from taxes.

31 A sale, assignment or other transfer of qualified intangible property or
32 any pledge or assignment for security of qualified intangible property shall
33 be exempt from any state or local sales, income, franchise, transfer, gains,
34 receipts, or similar taxes.

35
36 23-19-613. Action with respect to qualified intangible charges.

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

4
5 23-19-614. Duties of successors.

6 Any successor to an electric utility, whether pursuant to any
7 bankruptcy, reorganization or other insolvency proceedings or pursuant to any
8 merger, consolidation or sale or transfer of assets of the electric utility,
9 by operation of law, as a result of electric power industry restructuring or
10 otherwise, shall perform and satisfy all obligations of its predecessor
11 electric utility under this subchapter or any qualified rate order or any
12 contract entered into pursuant to this subchapter in the same manner and to
13 the same extent as such predecessor electric utility, including but not
14 limited to charging, collecting, receiving and paying to the person entitled
15 thereto the revenues in respect of the qualified intangible charges relating
16 to the qualified intangible property.

17
18 23-19-615. Provisions permissive.

19 Notwithstanding any of the provisions of this subchapter, no electric
20 utility shall be obligated under this subchapter to apply to the commission
21 for any qualified rate order, consent to the terms of any qualified rate
22 order, or sell, transfer or pledge any qualified intangible property or issue
23 qualified bonds in connection therewith.

24
25 23-19-616. Judicial review.

26 Judicial review of a qualified rate order shall be expedited pursuant to
27 the following procedures:

28 (1) Any party to the process or proceedings involving commission
29 actions under this subchapter who is aggrieved by the actions shall not
30 petition the commission for rehearing, but may obtain judicial review of such
31 qualified rate order only in a proceeding as provided in this subchapter,
32 which shall be brought directly in the Arkansas Court of Appeals.

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

36 (3) On receipt of the petition, the commission shall promptly deliver

1 to the court a copy of its qualified rate order, any related transcript, and
 2 any accompanying findings or conclusions. The copies shall be available for
 3 examination at all reasonable times by all parties without cost. The Court of
 4 Appeals shall permit the electric utility to be a party to the appeal.

5 (4) The appeal shall be based on the record before the commission and
 6 on briefs to the court. An argument that has not been urged in the
 7 appellant's appearance before or submission to the commission may not be
 8 considered by the court, unless the failure or neglect to urge the objection
 9 is excused because of extraordinary circumstances.

10 (5) Judicial review shall be made and determined as expeditiously as
 11 possible and with lawful precedence over other matters, recognizing that time
 12 is of the essence for financings pursuant to the qualified rate order.

13 (6) In the event that the terms and conditions of a qualified rate
 14 order are required to be modified in any part as a result of judicial review,
 15 other than in any manner provided in the original terms of the qualified rate
 16 order, the qualified rate order takes effect only after the commission shall
 17 have adopted the terms and conditions as modified, and the electric utility
 18 shall have filed with the commission its written consent to all terms and
 19 conditions of the order as modified. The modified qualified rate order is
 20 subject to judicial review only in accordance with the same procedures stated
 21 in subdivisions (1) through (5) of this section.'

22
 23 SECTION 2. Arkansas Code 4-9-102(1) is amended to read as follows:

24 "(1) Except as otherwise provided in § 4-9-104 on excluded
 25 transactions, this chapter applies:

26 (a) To any transaction (regardless of its form) which is intended
 27 to create a security interest in personal property or fixtures including
 28 goods, documents, instruments, general intangibles, chattel paper, or
 29 accounts; and also

30 (b) To any sale of accounts, ~~or~~ chattel paper or qualified
 31 intangible property."

32
 33 SECTION 3. Arkansas Code 4-9-103 is amended by adding a new subdivision
 34 as follows:

35 "(7) Qualified intangible property.

36 The law of this State shall govern the perfection and the effect

1 of perfection of any security interest in qualified intangible property."

2
3 SECTION 4. Arkansas Code 4-9-105 (1) is amended by adding a new
4 subdivision as follows:

5 "(o) 'Qualified intangible property' shall have the meaning set
6 forth in Section 1 of the Electric Consumers Choice Act of 1999, § 23-19-102
7 (26). Qualified intangible property is not an account or general intangible."

8
9 SECTION 5. Arkansas Code 4-9-403 (6) is amended to read as follows:

10 "(6) If the debtor is a transmitting utility (§ 4-9-401(5)) and a filed
11 financing statement so states, or if a consignor complies with the filing
12 provision with respect to consignments under § 4-2-326(3)(c) and the filing
13 states it is between consignment parties, it is effective until a termination
14 statement is filed. A real estate mortgage which is effective as a fixture
15 filing under § 4-9-402(6) remains effective as a fixture filing until the
16 mortgage is released or satisfied of record or its effectiveness otherwise
17 terminates as to the real estate. If a filed financing statement relates to a
18 security interest in qualified intangible property and the financing statement
19 so states, it is effective until a termination statement is filed."

20
21 SECTION 6. Effective January 1, 2002, Arkansas Code 23-3-201 (a) is
22 amended to read as follows:

23 "(a) No new construction or operation of any equipment or facilities
24 for supplying a public service, or extension thereof, shall be undertaken
25 without first obtaining from the commission a certificate that public
26 convenience and necessity require, or will require, such construction or
27 operation. Provided, however, that no such certificate shall be required for
28 electric generation facilities."

29
30 SECTION 7. Effective January 1, 2002, Arkansas Code 23-18-103 is
31 repealed.

32 ~~23-18-103. Purchase of electricity from affiliated company.~~

33 ~~(a) As used in this section, unless the context otherwise requires:~~

34 ~~(1) "Affiliated company" means any business entity which is owned~~
35 ~~wholly or partly by an electric utility or which wholly or partly owns an~~
36 ~~electric utility, or any business entity which is owned by another business~~

1 ~~entity which wholly or partly owns an electric utility;~~

2 ~~(2) "Electric utility" means an electric utility subject to the~~
3 ~~jurisdiction of the Arkansas Public Service Commission.~~

4 ~~(b) Without the prior approval of the Arkansas Public Service~~
5 ~~Commission, no electric utility shall enter into any agreement for the~~
6 ~~purchase of electricity from an affiliated company.~~

7 ~~(c) Any agreement entered into in violation of this section shall be~~
8 ~~void.~~

9 ~~(d) The Arkansas Public Service Commission shall promulgate such~~
10 ~~regulations as are necessary to implement this section.~~

11 ~~(e) This section shall apply to agreements entered into on or after~~
12 ~~June 28, 1985.~~

13
14 SECTION 8. Effective January 1, 2002, Arkansas Code 23-18-104 is
15 repealed.

16 ~~23-18-104. Construction of power-generating facilities outside the~~
17 ~~state.~~

18 ~~(a) No public utility subject to the jurisdiction of the Arkansas~~
19 ~~Public Service Commission shall commence construction of any power-generating~~
20 ~~facility to be located outside the boundaries of this state without the~~
21 ~~express written approval of the Arkansas Public Service Commission.~~

22 ~~(b) Any public utility proposing such construction shall render~~
23 ~~adequate written notice to the commission of its intent in order that the~~
24 ~~commission may conduct any germane inspection, investigation, public hearing,~~
25 ~~or take any other action deemed appropriate by the commission.~~

26 ~~(c) Failure on the part of any public utility to obtain prior approval~~
27 ~~of the commission, as established in this section, shall constitute grounds~~
28 ~~for disallowance, by the commission, of all costs and expenses associated with~~
29 ~~the construction and subsequent operation of the facility when computing the~~
30 ~~utility's cost of service for purposes of any rate-making proceedings.~~

31 ~~(d) Any electric utility which does not own in whole or part another~~
32 ~~electric utility and which is not owned in whole or part by a holding company~~
33 ~~and which derives less than twenty-five percent (25%) of its total revenues~~
34 ~~from Arkansas customers is exempt from the provisions of this section.~~

35
36 SECTION 9. Effective January 1, 2002, Arkansas Code 23-18-511 is

1 amended to read as follows:

2 "23-18-511. Application for certificate - Contents generally.

3 An applicant for a certificate shall file with the Arkansas Public
4 Service Commission a verified application in such form as the Arkansas Public
5 Service Commission may prescribe and containing the following information:

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

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

10 (3) A Except in the case of a major facility as defined by § 23-
11 18-503(2)(A), a statement of the need and reasons for construction of the
12 facility;

13 (4) A Except in the case of a major facility as defined by § 23-
14 18-503(2)(A), a statement of the estimated costs of the facility and the
15 proposed method of financing the construction of the facility;

16 (5)(A) A Except in the case of a major facility as defined by §
17 23-18-503(2)(A), a general description of any reasonable alternate methods of
18 financing the construction of the facility;

19 (B) A description of the comparative merits and detriments
20 of each alternate financing method considered;

21 (C) If, at the time of filing of the application, the
22 federal income tax laws and the state laws would permit the issuance of tax-
23 exempt bonds to finance the construction of the proposed facility for the
24 applicant by a state financing agency, the application shall also include a
25 discussion of the merits and detriments of financing the facility with such
26 bonds;

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

30 (7) A Except in the case of a major facility as defined by § 23-
31 18-503(2)(A), an analysis of the estimated effects on energy costs to the
32 consumer as a result of the construction and operation of the proposed
33 facility;

34 (8)(A) An exhibit containing an environmental impact statement,
35 which shall fully develop the four (4) factors listed in subdivision (8)(B),
36 treating in reasonable detail such considerations, if applicable, as the

1 proposed facility's direct and indirect effect on the ecology of the land, air
2 and water environment, established park and recreational areas, and on any
3 sites of natural, historic, and scenic values and resources of the area in
4 which the facility is to be located, and any other relevant environmental
5 effects.

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

7 (i) The environmental impact of the proposed action;

8 (ii) Any adverse environmental effects which cannot
9 be avoided;

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

14 (iv) Any irreversible and irretrievable commitments
15 of resources which would be involved in the proposed action should it be
16 implemented;

17 (9) In the case of a major facility as defined by § 23-18-503
18 (2)(B), the affect of the proposed facility on competition for the sale of
19 electric generation in the state or region; and

20 ~~(9)(10)~~ Such other information of an environmental or economic
21 nature as the applicant may consider relevant or as the commission may by
22 regulation or order require.”

23
24 SECTION 10. Effective January 1, 2002, Arkansas Code 23-18-519(b) is
25 amended to read as follows:

26 “(b) The commission may not grant a certificate for the location,
27 financing, construction, operation, and maintenance of a major utility
28 facility, either as proposed or as modified by the commission, unless it shall
29 find and determine:

30 (1) ~~The~~ Except in the case of a major facility as defined by § 23-
31 18-503(2)(A), the basis of the need for the facility;

32 (2) ~~That~~ Except in the case of a major facility as defined by §
33 23-18-503(2)(A), that the facility will serve the public interest,
34 convenience, and necessity;

35 (3) The nature of the probable environmental impact of the
36 facility;

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

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

7 (6) ~~That~~ Except in the case of a major facility as defined by §
8 23-18-503(2)(A), that the facility financing method either as proposed or as
9 modified by the commission represents an acceptable economic impact,
10 considering economic conditions and the need for and cost of additional public
11 utility services;

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

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

18 (9) ~~That the energy efficiency of the power production facility~~
19 ~~has been given significant weight in the decision-making process~~ In the case
20 of a major facility, as defined by § 23-18-503 (2)(B), the affect of the
21 proposed facility on competition for the sale of electric generation in the
22 state or region; and

23 (10) That the location of the facility as proposed conforms as
24 closely as practicable to applicable state, regional, and local laws and
25 regulations issued thereunder, except that the commission may refuse to apply
26 all or any part of any regional or local law or regulation if it finds that,
27 as applied to the proposed facility, that law or regulation is unreasonably
28 restrictive in view of the existing technology, or of factors of cost or
29 economics, or of the needs of consumers whether located inside or outside of
30 the directly affected government subdivisions."

31
32 SECTION 11. Arkansas Code 23-18-302(8) is repealed.

33 ~~(8) "Rural area" means any area not included within the boundaries of~~
34 ~~any incorporated or unincorporated city, town, or village having a population~~
35 ~~in excess of two thousand five hundred (2,500) inhabitants and includes both~~
36 ~~the farm and nonfarm population thereof. The determination of a rural area~~

1 ~~shall be made as of the time the Arkansas Public Service Commission or~~
 2 ~~predecessor commission or Department of Public Utilities grants a certificate~~
 3 ~~of convenience and necessity to a rural electric cooperative corporation~~
 4 ~~organized under this subchapter. The corporation shall not be ousted from~~
 5 ~~service in the rural area or deprived of the right to continue to provide~~
 6 ~~electric service in the rural area subsequent to the granting of a certificate~~
 7 ~~of convenience and necessity by the Arkansas Public Service Commission.~~

8
 9 SECTION 12. Arkansas Code 23-18-306 is amended to read as follows:

10 "23-18-306. Purposes of cooperatives.

11 (a) Organization. Cooperative, nonprofit, membership corporations may
 12 be organized under this subchapter for the purpose of ~~engaging in rural~~
 13 ~~electrification by any one (1) or more of the following methods:~~

14 (1) The furnishing of ~~electric energy~~ electricity to persons ~~in~~
 15 ~~rural areas who are not receiving central station service;~~

16 (2) Assisting in the wiring of the premises of persons in rural
 17 areas or the acquisition, supply, or installation of electrical or plumbing
 18 equipment therein;

19 (3) The furnishing of ~~electric energy~~ electricity, wiring
 20 facilities, or electrical or plumbing equipment or services to any other
 21 corporation organized under this subchapter or to the members thereof.

22 (b) Powers. Once properly organized pursuant to subsection (a) of this
 23 section, a corporation may engage in any other lawful business activity,
 24 directly or through one or more affiliates, which its Board of Directors
 25 determines to be beneficial to its members or non-members."

26
 27 SECTION 13. Arkansas Code 23-18-307 (4) is amended to read as follows:

28 "(4) To generate, manufacture, purchase, acquire, ~~and~~ accumulate
 29 ~~electric power and energy and to transmit, distribute, sell, furnish, and~~
 30 ~~dispose of electric power and energy in areas allocated to rural electric~~
 31 ~~cooperative corporations but not to customers of regulated utilities in~~
 32 ~~territories allocated to or served by regulated utilities;"~~

33
 34 SECTION 14. Arkansas Code 23-18-307(6) is amended to read as follows:

35 "(6) To enter into sale or interchange agreements for surplus power and
 36 energy ~~only~~ with any and all other persons, ~~individual corporations~~ business

1 ~~entities, or public bodies or agencies, including any federal agency or any~~
2 ~~agency of the state or city governments or any subdivision of state, county,~~
3 ~~or city government.~~ The electric power and energy may be resold at wholesale
4 or retail and may be sold or disposed of by the other party to the agreement
5 as provided in the contract or agreement, ~~provided that the other party to any~~
6 ~~sale or interchange agreement shall covenant and agree that the surplus power~~
7 ~~and energy shall not be interchanged, consumed, or resold in territories or to~~
8 ~~customers served by regulated utilities, except that this restriction shall~~
9 ~~not apply to the United States Department of the Interior or any successor~~
10 ~~marketing agency for electric power and energy thereof subject to the~~
11 ~~provisions covered by § 5 of the Flood Control Act of 1944;”~~
12

13 SECTION 15. Arkansas Code 23-18-307 is amended by adding an additional
14 subdivision to read as follows:

15 “(23) To engage in any lawful business activity.”
16

17 SECTION 16. Arkansas Code 23-18-318 (a)(1) is amended to read as
18 follows:

19 ~~“(1) All persons in rural areas proposed to be served by a corporation,~~
20 ~~who are not receiving central station service, shall be eligible to membership~~
21 ~~in a corporation.”~~
22

23 SECTION 17. Arkansas Code 23-18-330 is amended to read as follows:

24 “23-18-330. Exemptions from Securities Act.

25 Whenever any corporation organized under this subchapter shall have
26 borrowed money from any federal agency, the obligations issued to secure the
27 payment of such money shall be exempt from the provisions of the ~~Securities~~
28 ~~Act, Acts 1947, No. 397, as amended [repealed], neither shall the Arkansas~~
29 Securities Act, as amended. The provisions of that act the Arkansas
30 Securities Act shall not apply to the issuance of membership certificates by
31 any corporation organized under this subchapter.”
32

33 SECTION 18. Arkansas Code 23-18-331 is amended to read as follows:

34 “23-18-331. Service in incorporated areas.

35 (a)(1) The inclusion by incorporation, annexation, or otherwise of any
36 portion of a rural area, ~~as defined in this subchapter,~~ assigned to

1 corporations within the limits of an incorporated or unincorporated city,
2 town, or village, regardless of its population, shall not in any respect
3 impair or affect the rights of the corporations under their certificates of
4 convenience and necessity to continue and extend electric service in the
5 included areas.

6 (2) Notwithstanding any other provisions of law, the corporations
7 shall be entitled to continue and extend service therein under the same terms
8 and conditions as those contained in the franchise or indeterminate permit of
9 any other supplier of electric service in the city, town, or village the same
10 as though it were a party to the franchise or indeterminate permit.

11 (b)(1) A ~~rural electric cooperative~~ corporation which serves an area
12 within the limits of any municipality under the terms of this subchapter shall
13 as to that area be subject in all respects to the jurisdiction of the Arkansas
14 Public Service Commission to the same extent and in the same manner as a
15 ~~commercial electric utility serving within the municipality it is subject to~~
16 such jurisdiction in areas outside the limits of municipalities.

17 (2) Any such city, town, or village shall have the same authority
18 to impose taxes, charges, or fees in respect to the business of a corporation
19 conducted within the corporate limits of such city, town, or village as it has
20 in respect to business conducted by other suppliers of electric service.

21 ~~(c) Where a corporation continues and extends its electric service in~~
22 ~~areas which are so included within the limits of a city, town, or village~~
23 ~~which is also receiving electric service at retail from another supplier of~~
24 ~~the service, the retail rates charged by a corporation to its various classes~~
25 ~~of consumers shall be comparable to those charges by such other supplier for~~
26 ~~comparable retail service to comparable classes of consumers.~~

27 ~~(d)(c)~~ Nothing in this section shall in any manner restrict or impair
28 the right of any municipality to acquire, construct, expand, maintain, or
29 operate any electric generation, transmission, or distribution facilities
30 within the corporate limits of the city, town, or village in Arkansas as such
31 limits may now exist or as such limits may exist upon the extension or
32 expansion of the city limits of the city, town, or village.”

33
34 SECTION 19. Nothing in Arkansas Code 23-19-104, as added by this act,
35 or Sections 11 through 16 of this act shall affect any litigation pending on
36 the effective date of this act.

1
2 SECTION 20. Effect of Other Laws.

3 The provisions of any other law, except as expressly provided in this
4 Act, or in such other law by way of express reference to this Act, shall not
5 limit or restrict the operation of this Act in any manner. In particular, but
6 without limitation, the issuance by any person of qualified bonds shall not be
7 deemed to be the issuance of securities of a public utility for purposes of §§
8 23-3-103 through 23-3-106; and the issuance by any person of qualified bonds
9 or the acquisition by any person of any interest in qualified intangible
10 property shall not be deemed to cause such assignee or financing party to be
11 or become a public utility or an electric utility, or otherwise to come within
12 the commission's regulatory jurisdiction.

13
14 SECTION 21. Whereas the primary motivation for electric deregulation is
15 achieving the lowest possible electric rates for all consumers, in order to
16 secure this objective, a just and reasonable mandated rate reduction for
17 residential and small business customers of electric utilities, taking service
18 under a standard service package to be implemented at the beginning of retail
19 open access for the duration of the freeze periods specified in Arkansas Code
20 23-19-402(b), as added by this act, will be the subject of hearings conducted
21 by the House Insurance and Commerce Committee and the Senate Insurance and
22 Commerce Committee meeting jointly or separately, in which the members will
23 receive input from the Public Service Commission, the Attorney General's
24 Office, and other interested parties, with findings reported to the House and
25 Senate of the 83rd General Assembly so that appropriate measures can be
26 approved to assure rate goals inherent in this act are met.

27
28 SECTION 22. All provisions of this Act of a general and permanent
29 nature are amendatory of the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

31
32 SECTION 23. If any provisions of this Act or the application thereof to
33 any person or circumstance is held invalid, such invalidity shall not affect
34 the other provisions or applications of the Act which can be given effect
35 without the invalid provisions or application, and to this end the provisions
36 of this Act are declared severable.

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SECTION 24. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/ Senate Insurance and Commerce

APPROVED: 4/15/1999

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