

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 Engrossed: S3/10/99 S3/11/99 S3/15/99

# A Bill

SENATE BILL 585

5 By: Senators Kennedy, Hoofman  
6  
7

## For An Act To Be Entitled

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

## Subtitle

15 "AN ACT TO AUTHORIZE ELECTRIC UTILITY  
16 COMPETITION. "  
17  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

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

24 "CHAPTER 19

25  
26 SUBCHAPTER 1 - General Provisions.  
27

28 23-19-101. Title and legislative policy and purpose.

29 (a) This chapter shall be known as the 'Electric Consumer Choice Act of  
30 1999.'

31 (b) This chapter is intended to protect the public interest as it is  
32 affected by the rates and services of electric utilities and other providers  
33 of electric power. The General Assembly finds that electric service has  
34 traditionally been considered a natural monopoly; that the normal forces of  
35 competition which operate to regulate prices in a free enterprise system have  
36 not been generally applicable to electric service; and that electric rates,

1 operations, and services have been actively regulated by public agencies with  
2 the objective that this regulation shall operate as a substitute for  
3 competition. The State has, by law and regulation, required electric  
4 utilities to serve all retail customers requesting service in their allocated  
5 service territories, to provide safe and reliable service at just and  
6 reasonable rates, and to make the investments necessary to provide the  
7 facilities required to offer such service. In exchange, and to induce  
8 electric utilities to meet these requirements, the State has protected such  
9 utilities from certain forms of direct competition through the granting of  
10 exclusive service areas and has been required by law to allow utilities an  
11 opportunity to earn a fair return on their invested capital.

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

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

35 (e) The General Assembly further intends that:

36 (1) If the Arkansas Public Service Commission has found that

1 certain assets and obligations of an electric utility represent retail  
2 stranded costs for which the electric utility has the right to receive  
3 payments over a period of time, such payments may be reduced to cash by  
4 methods commonly referred to as 'securitization' of the right to receive such  
5 payments;

6 (2) If such methods are applied to the rights of electric  
7 utilities to receive payments of their rates associated with such stranded  
8 costs, substantial savings could result to the ratepayers of Arkansas because  
9 such financing transactions may enable electric utilities to recover stranded  
10 costs at lower carrying costs than would be incurred using conventional  
11 electric utility financing methods;

12 (3) Certain changes and additions to existing law are required to  
13 permit and facilitate such transactions; and

14 (4) It would be in the public interest to authorize the Arkansas  
15 Public Service Commission, as provided in this chapter, to permit electric  
16 utilities to securitize the charges imposed to recover stranded costs. It is  
17 therefore the declared legislative intent of this chapter to provide a  
18 procedure pursuant to which the rights of electric utilities to receive future  
19 payments associated with stranded costs may be established as property, to  
20 provide that such property and interests therein may be assigned, sold or  
21 otherwise transferred, and to provide a procedure and method to accomplish  
22 such securitization and provide benefits to the citizens of Arkansas.

23 (f) The General Assembly further finds that it should not mandate  
24 competition for customers of municipally owned electric utility systems. This  
25 finding arises from the unique nature of such municipally owned systems.  
26 Municipally owned electric utility systems are owned and operated by municipal  
27 governments primarily as a benefit to those who reside within such  
28 municipalities. Their rates and operating practices have historically been  
29 established by the elected officials of such municipalities through their  
30 delegated legislative authority. Municipal utility rates are subject to  
31 reserved initiative and referendum rights of municipal residents which give  
32 them a direct control over the rates and operations of municipally owned  
33 electric utility systems that is not available to customers of utilities  
34 regulated by the Arkansas Public Service Commission. Further, a municipal  
35 electric utility system is likely, as a result of its ability to pool its  
36 customers' loads, to be able to provide lower retail electric rates for its

1 residential, industrial, and commercial customers than individual customers  
2 would be able to secure.

3  
4 23-19-102. Definitions.

5 As used in this chapter:

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

9 (2) 'Affiliate' means a subsidiary, or any company or corporation,  
10 owned or effectively controlled by an electric utility or energy service  
11 provider; or a subsidiary, or any company or corporation owned or effectively  
12 controlled by the same company or corporation that owns or effectively  
13 controls an electric utility or energy service provider or of which an  
14 electric utility or energy service provider is a subsidiary; or in the case of  
15 a cooperative corporation, a member corporation or another cooperative  
16 corporation of which it is a member, or in which it holds or owns an interest.

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

19 (4) 'Assignee' means an entity including, without limitation, a person  
20 to which an electric utility assigns, sells, or transfers, other than as a  
21 security, all or a portion of its interest in, or right to, qualified  
22 intangible property. The term includes an entity that has obtained such an  
23 assignment, sale or transfer of qualified intangible property from another  
24 assignee. An assignee shall not be subject to the jurisdiction of the  
25 commission solely by virtue of being an assignee of qualified intangible  
26 property.

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

29 (6) 'Current cost of service study' means a newly prepared cost of  
30 service study designed to support unbundled rates, or an existing cost of  
31 service study used to support a company's existing rate schedules which were  
32 filed with the commission to become effective within three (3) years of the  
33 effective date of this chapter, modified as necessary to support unbundled  
34 rates.

35 (7) 'Customer transition charge,' sometimes referred to as 'non-  
36 bypassable charge,' means a charge applicable to all retail customers of an

1 electric utility served at either the distribution or transmission level  
2 within the electric utility's distribution service area as it existed prior to  
3 the effective date of this chapter.

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

10 (A) An energy service provider; or

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

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

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

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

23 (iv) Is a municipal corporation owning a municipal electric  
24 utility.

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

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

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

1 commission solely by virtue of being a financing party.

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

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

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

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

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

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

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

36 (19) 'Power marketer' means a person who acquires, purchases, or

1 generates electric energy on its own behalf with the intent of reselling such  
2 electric energy to another person.

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

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

14 (22) 'Qualified costs' means qualified stranded costs and qualified  
15 financing costs.

16 (23) 'Qualified financing costs' means:

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

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

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

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

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

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

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

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

35       (29) 'Retail customer' means any consumer who takes, receives or  
36 consumes electricity.



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

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

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

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

14       (34) 'Standard service package' means a minimum package of electric  
15 service offered by an electric utility or energy service provider to all  
16 residential and small business customers in the areas in which it provides  
17 distribution service, including electric power and energy sufficient to meet  
18 the ordinary demands of a residential or small business consumer.

19       (35) 'Stranded costs' means:

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

27               (B) Any excess of:

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

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

36               (C) Any excess of:

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

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

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

18 (E) Any other comparable costs identified by the commission as  
19 stranded costs.

20 (36) 'Transition Costs' means those costs, investments or unfunded  
21 mandates as more specifically described in § 23-19-304 of this chapter, either  
22 recurring or non-recurring, incurred by an electric utility or municipal  
23 electric utility that are directly caused by the transition to, or the  
24 implementation of, retail open access that are not expected to be recoverable  
25 in a competitive retail market and which are reasonably necessary to the  
26 maintenance of reliability, reasonably necessary to the transition from the  
27 provision of regulated to competitive services, or mandated by statute or  
28 regulation.

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

31  
32 23-19-103. Retail open access.

33 (a) Retail open access shall be implemented by electric utilities on  
34 January 1, 2002. As to any particular utility or utilities, the commission  
35 may delay the implementation of retail open access for 90 days, and for  
36 successive 90 day periods thereafter, but not beyond March 31, 2003, upon

1 finding that:

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

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

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

13 (4) Appropriate metering, billing, and collection procedures have  
14 not been established;

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

18 (6) Implementation of retail open access would have a material  
19 adverse effect upon the public interest.

20 (b) If retail open access implementation is delayed pursuant to  
21 subsection (a) for one or more utilities that serve, in the aggregate, fifty-  
22 one percent (51%) or more of the total customers served by electric utilities  
23 in this state, implementation shall be delayed for all electric utilities.  
24 Provided, however, that an electric utility may, at the utility's election,  
25 petition the commission for approval to proceed with retail open access  
26 implementation for its customers notwithstanding that implementation has been  
27 delayed for electric utilities that serve, in the aggregate, fifty-one percent  
28 (51%) or more of the total customers served by electric utilities in this  
29 state. If delayed pursuant to this subsection (b), retail open access  
30 implementation shall resume, on a utility-by-utility basis as provided in  
31 subsection (a), as expeditiously as possible after the commission determines  
32 that electric utilities serving more than fifty-one percent (51%) of the  
33 electric utility customers in this state are ready to proceed with retail open  
34 access implementation. In no event shall retail open access be delayed beyond  
35 March 1, 2003. For purposes of this subdivision, the number of customers  
36 served by a particular electric utility shall be determined by the

1 commission's most recent annual report to the Governor pursuant to § 23-2-315.  
2 Each such report issued after the effective date of this chapter shall  
3 include the number of customers served by each electric utility.

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

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

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

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

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

34 (2) Prior to obtaining a license from the commission pursuant to §  
35 23-19-202, or in the case of an electric utility providing electric service to  
36 retail customers within the state as of the effective date of the chapter,

1 prior to registering with the commission pursuant to § 23-19-203.

2 (g) No later than ninety (90) days before the date for retail open  
3 access determined by the commission consistent with subsection (a) of this  
4 section, each electric utility doing business in this state that owns or  
5 controls facilities for the transmission of electricity or rights to the  
6 transmission of electricity, or is affiliated with an entity that owns or  
7 controls transmission facilities shall subject its transmission facilities or  
8 rights to operation by an independent transmission system operator, an  
9 independent transmission company, an independent regional transmission group,  
10 or other independent transmission entity if one or more such organizations  
11 have been approved by the Federal Energy Regulatory Commission for this state  
12 or a larger region of which this state is a part. The commission may refuse  
13 to accept a registration statement filed by an electric utility pursuant to §  
14 23-19-203 unless and until the utility complies with this subsection (g), but  
15 the rejection of the registration of such a utility shall not prevent the  
16 implementation of retail open access in the utility's service territory.

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

27  
28 23-19-104. Municipal electric utilities.

29 (a) Notwithstanding any other provision of law, including any other  
30 provision of this chapter, this section will govern the transition to and the  
31 establishment of a more fully competitive electric power industry for  
32 municipal electric utilities.

33 (b) The governing body of a municipal electric utility shall have the  
34 discretion to decide when, or if, such municipal electric utility will provide  
35 retail open access. Municipal electric utilities which choose to participate  
36 in retail open access may do so under such terms and conditions as they, in

1 their sole discretion, deem appropriate at any time, after the retail open  
2 access date determined by the commission in § 23-19-103, by adoption of an  
3 appropriate ordinance or other local enabling legislation by its governing  
4 body.

5 (c) Upon the effective date of the local enabling legislation, retail  
6 customers within the service area of the municipal electric utility shall have  
7 the right of retail open access and the municipal electric utility shall  
8 provide open access to its distribution system to any other provider of  
9 electricity as defined in this chapter. In addition, the municipal electric  
10 utility shall have the right to offer service directly to retail customers  
11 without regard to geographic location, provided however, that such municipal  
12 electric utility offers nondiscriminatory access for the use by any other  
13 provider of electricity of any distribution facilities that it owns or  
14 operates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           (j) Municipal electric utilities shall be authorized and entitled to  
26 participate in any organization identified in § 23-19-103(g) of this chapter.

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

35           (l) Nothing in this chapter shall modify a municipal corporation's  
36 existing right to use available funds generated by electric utility operations

1 for other municipal purposes.

2 (m) Any electric utility or energy service provider shall be required  
3 to register with any municipal corporation before it undertakes to provide any  
4 retail electric utility service to retail customers in such municipal  
5 corporation.

6 (n)(1) A municipal corporation owning a municipal electric utility that  
7 has not elected to offer retail open access, and that annexes territory  
8 situated in whole or in part within an area allocated to another electric  
9 utility after the date determined by the commission for the implementation of  
10 retail open access, shall not provide generation, transmission, or  
11 distribution service in the annexed area unless and until such time as it  
12 elects to participate in retail open access and retail open access is  
13 available in all of the municipal corporation owning a municipal electric  
14 utility's service area. At the time the municipal corporation owning a  
15 municipal electric utility elects to offer retail open access, providing such  
16 option is exercised within three (3) years of the expiration of the initial or  
17 current term of the municipal corporation owning a municipal electric  
18 utility's wholesale electric supply agreement that was in effect on the  
19 effective date of retail open access, the municipal corporation owning a  
20 municipal electric utility may acquire the distribution facilities serving the  
21 annexed area using the procedures provided at §§ 14-207-101 through 14-207-106  
22 and may thereafter provide generation, transmission, or distribution, and  
23 other services in the annexed area. The three (3) year period of limitation  
24 provided at § 14-207-103 (a)(1) shall commence to run on the date of  
25 expiration of the initial or current term of the municipal corporation owning  
26 a municipal electric utility's wholesale electric supply agreement that was in  
27 effect on the effective date of retail open access. Nothing in this chapter  
28 shall prevent a municipal corporation and an electric utility upon mutual  
29 consent, from voluntarily selling or buying facilities upon negotiated  
30 compensation.

31 (2) A municipal corporation owning a municipal electric utility  
32 that elects to offer retail open access and that subsequently annexes  
33 territory situated in whole or in part within an area allocated to an electric  
34 utility or electric cooperative corporation, may acquire the distribution  
35 facilities serving the annexed area consistent with §§ 14-207-101 through 14-  
36 207-106 and may thereafter provide generation, transmission, or distribution,



1 and other services in the annexed area.

2 (3) A municipal corporation owning a municipal electric utility  
3 which acquires retail customers subsequent to an annexation and acquisition of  
4 electric utility facilities shall not be responsible for such customers'  
5 stranded costs or transition charge, but any municipality that annexes an  
6 electric utility's distribution service area will become responsible for  
7 collecting for the benefit of the electric utility or its successors and  
8 assigns any customer transition charges that would otherwise have been payable  
9 in the service territory annexed by the municipality directly to the electric  
10 utility or its successors or assigns.

11 (4) During the period that the municipal corporation owning a  
12 municipal electric utility opts out of competition and does not provide  
13 distribution services in newly annexed areas, the municipal corporation, at  
14 the discretion of the governing body, shall be entitled to assess any electric  
15 utility or electric cooperative offering distribution services in annexed  
16 areas a franchise fee based on services it provides in newly annexed areas  
17 that would otherwise be compensated in the municipal electric utility's retail  
18 electric rates. This franchise fee shall be included as a separate line item  
19 on the distribution customer's bill labeled 'City Franchise Fee'. The  
20 franchise fee authorized by this section shall be in addition to franchise  
21 fees authorized under § 14-200-101 (a), as it may be amended.

22 (5) Notwithstanding subdivisions (n)(1) through (n)(4), a  
23 municipal corporation owning a municipal electric utility shall not be  
24 entitled to commence any action pursuant to § 14-207-101 through §14-207-106  
25 for a two (2) year period commencing on the date of retail open access  
26 established by the Arkansas Public Service Commission pursuant to § 23-19-103.  
27 The three (3) year period of limitation within § 14-207-103 (a) shall be  
28 tolled during the two (2) year period.

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

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

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

23  
24       23-19-105. Effect on existing certificates and franchises.

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

36       (b) An electric utility which does not establish the existence of

1 stranded costs or transition costs pursuant to Subchapter 3 of this chapter  
2 shall have no right to compensation or other form of relief for the waiver of  
3 the exclusive right to sell electricity under any certificate of convenience  
4 and necessity or franchise agreement issued by the commission or any  
5 municipality, respectively.

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

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

19  
20 23-19-106. Reciprocity.

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

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

31 Notwithstanding the above, a municipal corporation owning a municipal  
32 electric utility may expand its service territory as provided in § 23-19-104.

33 (c) An electricity utility providing electric service to retail  
34 customers in this state and in a contiguous service area in an adjacent state  
35 may offer customer choice in its service territory in Arkansas prior to the  
36 implementation of retail open access in Arkansas generally if such electric

1 utility is required by applicable law to offer retail open access in its  
2 service area in the adjacent state, subject to such interim rules as the  
3 commission may adopt pending the implementation of retail open access in the  
4 remainder of Arkansas.

5 (d) The commission shall require interstate reciprocity to the extent  
6 interstate reciprocity has been authorized by federal law.

7 (e) An electric utility providing electric service to retail customers  
8 in this state and in a contiguous service area in an adjacent state whose  
9 number of customers in this state is less than five percent (5%) of its total  
10 customers and whose number of customers in a contiguous service area in an  
11 adjacent state is greater than seventy-five percent (75%) of its total  
12 customers may delay retail open access in its service territory in this state  
13 until such a time as the electric utility is required by applicable law to  
14 offer retail open access in the aforementioned adjacent state but no more than  
15 two years beyond the date for retail open access in this state as provided in  
16 § 23-19-103.

17  
18 23-19-107. Reports on scope and impact of competition.

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

24 (1) An assessment of the impact of competition on the rates and  
25 availability of electric services for each class of retail customers;

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

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

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

35 (b) The Tax Division of the commission and the Department of Finance  
36 and Administration shall conduct a joint study of the potential financial

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

7  
8 23-19-108. Effect of inter-state system agreements

9 (a) Every electric utility that is a subsidiary of a registered holding  
10 company under the Public Utility Holding Company Act shall report to the  
11 commission, within thirty (30) days of the effective date of this chapter,  
12 whether it is a party to a rate schedule or other filed rate subject to the  
13 jurisdiction of the Federal Energy Regulatory Commission that allocates costs  
14 among the electric utility subsidiaries of such holding company. Every  
15 electric utility that becomes a subsidiary of a registered holding company  
16 after that time, or that becomes a subsidiary of a registered holding company  
17 of which it was not previously a subsidiary, shall make such report to the  
18 commission within thirty (30) days after becoming such a subsidiary.

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

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

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

33  
34  
35 SUBCHAPTER 2 - Regulation of Generation and Energy Service Providers.  
36

1       23-19-201. Jurisdiction over energy service providers.

2       (a) The commission shall have jurisdiction and authority over energy  
3 service providers who use the facilities of a jurisdictional electric utility  
4 to deliver electricity for sale to retail customers in this state:

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

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

8           (3) To require the filing of reports the commission may by rule  
9 prescribe.

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

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

21  
22       23-19-202. Licensing of energy service providers.

23       (a) The commission shall issue a license to an energy service provider  
24 only upon a finding that the public interest will be served thereby, including  
25 but not limited to findings of the reliability, financial ability, and the  
26 technical competence of the license applicant to provide the service for which  
27 it is seeking the license.

28       (b) The commission shall, no later than one hundred eighty (180) days  
29 prior to the implementation of retail open access, issue rules and regulations  
30 establishing appropriate standards and procedures for licensing energy service  
31 providers.

32  
33       23-19-203. Registration with the commission.

34       On and after the implementation of retail open access, any electric  
35 utility providing electric service to retail customers within the state as of  
36 the effective date of this chapter pursuant to a certificate of convenience

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

18  
19 23-19-204. Applicability of antitrust statutes.

20 Nothing in this chapter shall in any way limit the obligations or  
21 liability, under state or federal antitrust or consumer protection laws or  
22 regulations, of an electric utility or energy service provider for conduct  
23 arising from the sale of electricity after the implementation of retail open  
24 access.

25  
26 23-19-205. Functional unbundling of tariffs.

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

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

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

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

5           (3) Distribution and customer services facilities, operations,  
6 services, and rates.

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

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

16           (1) General Rules.

17           (A) Except as provided in subdivision (1)(B) of this  
18 subsection, the employees of the utility engaged in transmission and  
19 distribution system operations must function independently of its employees,  
20 or the employees of any of its affiliates, who engage in the marketing or sale  
21 of electricity at retail.

22           (B) Notwithstanding any other provisions in this  
23 subsection, in emergency circumstances affecting system reliability, utilities  
24 may take whatever steps are necessary to keep the system in operation.  
25 Electric utilities must report to the commission each emergency that resulted  
26 in any deviation from the standards of conduct, within 24 hours of such  
27 deviation, and notify such other affected parties as the commission may  
28 direct.

29           (C) Transmission. Any electric utility providing  
30 transmission service within the State of Arkansas whose transmission services  
31 are subject to the jurisdiction of the Federal Energy Regulatory Commission  
32 shall comply with the standards of conduct and related regulations established  
33 by such Commission and shall be exempt from the provisions of this section  
34 with respect to transmission and related functions.

35           (2) Rules governing employee conduct.

36           (A) Prohibitions. Any employee of the electric utility, or



1 any employee of an affiliate, who is engaged in the retail marketing or sale  
2 of electricity is prohibited from:

3 (i) Participating in distribution or transmission  
4 functions; and

5 (ii) Having access to the system control center or  
6 similar facilities used for transmission or distribution functions that  
7 differs in any way from the access available to other energy service  
8 providers.

9 (B) Transfers. Employees engaged in retail marketing or  
10 sales functions or transmission or distribution functions are not precluded  
11 from transferring between such functions as long as such transfer is not used  
12 as a means to circumvent the standards of conduct of this section. Reports of  
13 all employee transfers between retail sales or marketing functions and  
14 transmission or distribution functions must be filed with the commission  
15 annually. The information to be reported must include the name of the  
16 transferring employee, the respective titles held while performing each  
17 function, the effective date of the transfer, and such other information as  
18 the commission may direct. Temporary or intermittent transfers or short-term  
19 transfers of less than one year of employees between the retail marketing or  
20 sales functions and the transmission or distribution functions are prohibited;  
21 provided, however, that employees may be temporarily assigned between and  
22 among such functions to assist in restoring power in the event of a major  
23 service interruption.

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

26 (i) shall have access to only that information  
27 available to all other energy service providers and must not have preferential  
28 access to any information about the utility's transmission and distributions  
29 systems, including additions to those systems, that is not available to all  
30 energy service providers; and

31 (ii) is prohibited from obtaining information about  
32 the utility's transmission and distribution systems including but not limited  
33 to information about available transmission capability, price, curtailments,  
34 and ancillary services, through access to information that is not otherwise  
35 also available to the general public without restrictions.

36 (D) Disclosure. An electric utility is responsible for

1 ensuring compliance with the following provisions:

2 (i) Any employee of the utility, or any employee of  
3 an affiliate, engaged in transmission or distribution functions may not  
4 disclose to employees of the utility, or any of its affiliates, engaged in  
5 retail sales or marketing any information concerning the distribution and  
6 transmission systems of the utility or the transmission system of another,  
7 including without limitation information received from non-affiliates or  
8 information about available transmission capability, price, curtailments,  
9 ancillary services, or outages through non-public communications that are not  
10 at the same time available to the general public without restriction;

11 (ii) If an employee of the utility engaged in  
12 distribution or transmission functions discloses information not publicly  
13 available in a manner contrary to the requirements of these standards of  
14 conduct, the utility must immediately notify the commission of such disclosure  
15 and provide such other notice to third parties as the commission may direct;  
16 and

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

22 (E) Implementing Tariffs.

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

27 (ii) Employees of the utility engaged in transmission  
28 and distribution operations must apply all tariff provisions relating to the  
29 sale or purchase of open access retail transmission and distribution service  
30 in a fair and impartial manner that treats all customers, including the  
31 utility and any affiliate, in a non-discriminatory manner, if these provision  
32 involve discretion;

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

36 (iv) The utility may not, through its tariffs or

1 otherwise, give preference to wholesale or retail purchases or sales made on  
2 behalf of its own power customers, or those of an affiliate, over the interest  
3 of any other customer in matters relating to the sale or purchase of retail  
4 transmission or distribution service, including issues of price, curtailments,  
5 scheduling, priority, and ancillary services; and

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

10 (F) Books and Records. A utility must maintain its books  
11 of account and records separately from those of its affiliates, and the books  
12 and records of any affiliate doing business with the utility must be available  
13 for commission inspection.

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

19 (e) In addition to its proposed tariffs, the utility may file  
20 supporting cost data for costs, if any, that have been found to exist as of  
21 that date, to be recovered through a customer transition charge that has been  
22 determined pursuant to §§ 23-19-303 and 23-19-304, and information specifying  
23 the rate of its qualified intangible charge or charges, if any, resulting from  
24 a securitization of stranded costs. On or before July 1, 2001, and in  
25 accordance with a schedule and the procedures it may establish, the commission  
26 shall, after hearing, approve or modify and make effective as of that date,  
27 each electric utility's proposed tariffs for distribution services and any  
28 other services that will remain subject to rate regulation, and shall require  
29 electric utilities to show separate rates and charges for their unbundled  
30 services on bills to retail electric customers.

31  
32 SUBCHAPTER 3 - Stranded and Transition Cost Recovery.

33  
34 23-19-301. Utility election for stranded cost recovery and recovery of  
35 nuclear decommissioning costs.

36 (a) No later than December 31, 1999, any electric utility that intends

1 to seek recovery of stranded costs shall file notice of such intent with the  
2 commission. Any electric utility that does not file its election by that date  
3 shall not be eligible for such recovery. Such election shall be at the sole  
4 discretion of the electric utility. Following receipt of such notice, the  
5 commission shall, at the earliest practicable date, direct the electric  
6 utility to file an application setting forth the methods that the utility  
7 proposes to determine its stranded costs. In no event shall the commission  
8 direct that the electric utility file such application any later than one  
9 hundred eighty (180) days following the implementation of retail open access.  
10 Commission proceedings on such application shall be pursuant to notice and  
11 hearing.

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

15 (c) In its application to the commission, the electing electric utility  
16 shall, for all of its generation assets, purchased power, and fuel and fuel  
17 transportation costs, identify the methods and procedures which it proposes to  
18 use to value its stranded costs and request all necessary commission approvals  
19 to implement such methods. The electric utility may propose, without  
20 limitation, any of the following methods or any combination thereof:

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

30 (2) Stock Valuation Method.

31 (A) The electing electric utility may request commission  
32 approval of a procedure whereby the utility transfers generation assets,  
33 including any related agreements to purchase fuel, fuel transportation  
34 agreements or agreements to sell electricity or any purchased power contracts,  
35 to a separate affiliated or nonaffiliated corporation; and if:

36 (i) At least nineteen percent (19%) of the common

1 stock of the corporation is divested and listed with a national stock exchange  
2 for sale to public investors;

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

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

10 (iv) The transferee corporation's assets do not  
11 include regulatory assets; and

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

20 (B) Should the commission determine it to be in the public  
21 interest to use the method described in subdivision (c)(2), the book value of  
22 the transferee corporation's debt and preferred stock securities shall be  
23 added to the market value of the transferee corporation's common stock equity  
24 in determining the market value of its assets. The resulting market value of  
25 the assets shall be used to establish the market value of the generation  
26 assets transferred by the electric utility to the separate corporation.

27 (C)(i) If less than fifty-one percent (51%) of the common  
28 stock of the transferee corporation described in subdivision (c)(2)(A) is  
29 divested and listed with a national stock exchange for sale to public  
30 investors, then the commission shall convene a valuation panel of five (5)  
31 independent financial experts to recommend whether the common stock held by  
32 the public is fairly representative of the total common stock equity or  
33 whether a control premium exists for the retained interest. The panel shall  
34 recommend the amount of any control premium, which amount shall be presumed to  
35 be appropriate unless the commission determines by clear and convincing  
36 evidence that the recommended amount is unreasonable. The reasonable costs

1 and expenses of the panel shall be paid by the utility whose assets are being  
2 valued.

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

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

28 (E) Any commission order approving a transfer of assets  
29 pursuant to subdivision (c)(2) shall determine a floor market value for the  
30 assets. The provisions of any other subdivision of (c)(2) to the contrary  
31 notwithstanding, should the Commission determine it to be in the public  
32 interest to use the method described in subdivision (c)(2), the amount  
33 included in calculating any customer transition charge as contemplated by  
34 subdivision (a) or Subchapter 6 of this chapter shall be the greater of the  
35 floor market value, or the value determined pursuant to subdivision (c)(2)(B),  
36 as adjusted pursuant to subdivisions (c)(2)(C) and (D), if applicable.

1 However, should the utility show by clear and convincing evidence that the  
2 value determined pursuant to subdivision (c)(2)(B), as adjusted pursuant to  
3 subdivisions (c)(2)(C) and (D) if applicable, accurately reflects the market  
4 value of the assets notwithstanding that such value is below the floor market  
5 value, then the commission shall use such value in calculating the amount of  
6 any customer transition charge as contemplated by subsection (a) or Subchapter  
7 6 of this chapter.

8 (3) Capacity sale.

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

34 (4) The electing electric utility may request commission approval  
35 to establish the value of assets, purchased power, and fuel and fuel  
36 transportation agreements through other valuation methods not specified in

1 subdivisions (c)(1) through (c)(3). To the extent reasonable and practical,  
2 such other methods must be based on and consistent with publicly available  
3 market data of bona fide arms-length transactions involving sales of  
4 generation assets or long-term power sales, or be reasonable projections of  
5 such market data. To the extent reasonable and practical, any alternative  
6 analysis or forecast shall be based on and consistent with publicly available  
7 market based data generally accepted within the industry or be a reasonable  
8 projection of market data. In addition to such data, without limitation, the  
9 following data may be incorporated in the analyses, to the extent necessary to  
10 yield a reasonable market valuation of the assets or agreements being valued  
11 using subdivision (c)(4):

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

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

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

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

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

33 (e) Following its review pursuant to subsection (d), the  
34 commission may approve or disapprove the utility's proposals.

35 (1) If the commission approves a sale of assets under subdivision  
36 (c)(1), a stock transfer under subdivision (c)(2), or a capacity sale under



1 subdivision (c)(3), the commission may approve or modify the proposed  
2 procedures to ensure that they result in bona fide arms-length transactions.  
3 If the commission approves transactions pursuant to subdivision (c)(1) or  
4 subdivision (c)(3), the commission may condition its approval on the receipt  
5 by the utility of a specified minimum price for the assets or capacity, and  
6 any such minimum price shall be consistent with the values indicated by  
7 similar market transactions for comparable generating units, and the value of  
8 capacity and energy from such units as indicated by published indicators of  
9 prices for energy commodities or transactions in the energy market, and  
10 reasonable estimates of forward looking costs of production and continued  
11 ownership of the capacity. The floor price should be set so as to reflect the  
12 public interest in encouraging reasonable bids for the capacity or assets  
13 being sold.

14 (2) If the commission disapproves a sale of assets proposed by  
15 the utility under subdivision (c)(1), a stock transfer under subdivision  
16 (c)(2), or a capacity sale proposed by the utility under subdivision (c)(3),  
17 or if the commission approves a proposed transaction under subdivision (c)(1),  
18 (c)(2) or (c)(3) and includes modified procedures to which the utility does  
19 not consent, the utility shall not be required to proceed with any such  
20 transaction, and may propose another method or combination of methods, as  
21 provided for in subsection (c), to value all or any part of its stranded  
22 costs.

23 (f) In any proceeding under this section, the commission shall, within  
24 at least one hundred eighty (180) days after the filing of the utility's  
25 application, enter an order on the procedures to implement the proposed  
26 transactions. For purposes of this subsection, a filing made by a utility  
27 pursuant to subdivision (e)(2) shall be considered a new proceeding. The  
28 commission may, with the consent of the utility, extend by a reasonable  
29 period, any deadline for commission action established in §§ 23-19-301, 23-19-  
30 303 or 23-19-603.

31  
32 23-19-302. Mitigation of potential stranded costs.

33 (a) An electing electric utility shall have a duty to mitigate its  
34 potential stranded costs by making its reasonable best efforts to reduce the  
35 costs of its existing contracts with qualifying facilities, and its fuel, fuel  
36 transportation, and purchased power agreements; by making its reasonable best

1 efforts to maintain its generation assets in accordance with prudent practices  
2 in the electric utility industry; and shall consider seeking commission  
3 approval of:

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

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

8 (3) Sale of excess generating capacity;

9 (4) Securitization of stranded costs;

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

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

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

21 (c) Accounting write-downs or write-offs of assets, mandatory  
22 divestiture of assets, and the allocation of income from business activities  
23 of an electric utility, or an affiliate, not reasonably related to the sale of  
24 electricity to retail customers in this state or to the electric utility's  
25 regulated activities, shall not be required to be used to mitigate stranded  
26 costs.

27  
28 23-19-303. Recovery of stranded costs.

29 (a) An electing electric utility shall have a right to recover through  
30 a customer transition charge its net retail stranded costs, as may be  
31 determined by the commission, over a reasonable period of time in accordance  
32 with § 23-19-303 (g)(1) and all other stranded costs as determined by the  
33 commission, and any nuclear decommissioning costs, as determined by the  
34 commission, associated with the utility's generating assets, but nuclear  
35 decommissioning costs shall not be included in determining the utility's net  
36 retail stranded costs. An electric utility may, but shall not be required to,

1 utilize securitization pursuant to subchapter 6 to recover its net retail  
2 stranded costs and other stranded costs as may be determined by the  
3 commission, which costs may also be recovered as a component of a customer  
4 transition charge.

5 (b) A generation and transmission cooperative corporation having  
6 stranded costs, as determined by the commission, shall be allowed to recover  
7 those costs from its wholesale customers pursuant to this subchapter.

8 (c) After the electing electric utility has completed all transfers of  
9 assets or sale of capacity authorized by the commission pursuant to § 23-19-  
10 301, the utility shall file with the commission for a determination of its net  
11 retail stranded costs, if any, including stranded costs associated with any  
12 assets it may have retained, and all other stranded costs. After notice and  
13 hearing, the commission shall determine the amount of net retail stranded  
14 costs. The filing shall consist of the following information, in such form as  
15 may be adopted by the commission, in addition to such other relevant  
16 information as the commission may reasonably require:

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

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

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

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

31 (d) The commission shall review the application of the utility. For  
32 any generation assets, purchased power, fuel and fuel transportation  
33 agreements for which the commission has previously approved a sale of assets,  
34 a transfer of assets, or a capacity sale pursuant to with § 23-19-301 (c)(1)  
35 through (c)(3), the commission shall verify that the transactions were  
36 conducted according to the procedures previously approved, and that the

1 computations made by the electing electric utility are in accordance with the  
2 appropriate methodologies specified in § 23-19-301 (c). If the commission  
3 makes such verification, the total net value realized from the sale shall  
4 establish the market value of the generation assets sold. In determining the  
5 total net value, transaction costs and any related taxes associated with the  
6 sale shall be deducted from the sales price. For any generation assets,  
7 purchased power, fuel and fuel transportation agreements for which the  
8 commission has not previously approved a sale of assets, a transfer of assets,  
9 or a capacity sale, if the commission determines, after notice and hearing,  
10 that a method chosen by the utility pursuant to § 23-19-301 (c)(4) results in  
11 an unreasonable level of stranded costs, the commission may adopt some other  
12 reasonable method to quantify the utility's stranded costs.

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

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

26 (1) Reasonable;

27 (2) Known and measurable; and

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

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

32 (h) Subsequent to the commission's determination of all of an electric  
33 utility's net retail stranded costs and other stranded costs, in accordance  
34 with § 23-19-301(b) and subsections (c) and (d) of this section, the  
35 commission shall, after notice and hearing, approve a customer transition  
36 charge that will allow each applicable electric utility to recover its

1 stranded costs that have not been securitized and are not recoverable pursuant  
2 to § 23-19-605 (d). The commission shall exercise its discretion and judgment  
3 to determine the most appropriate structure of such rate for each such  
4 electric utility, subject to the following conditions:

5 (1) The rate shall be designed to provide for recovery of  
6 applicable stranded costs over a period no longer than the dollar-weighted  
7 average remaining life of the assets or contracts to which the stranded costs  
8 are related, and the rate initially established shall remain in effect  
9 unaltered until the stranded costs have been fully recovered;

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

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

1 has to purchase capacity (not energy) to replace the sold or transferred  
2 capacity, the cost of such replacement capacity shall be applied as an offset  
3 to the calculation of the time value of money credit described above.

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

13 (5) The electric utility shall submit quarterly reports showing  
14 the amount of stranded costs recovered and the balance remaining to be  
15 recovered.

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

28  
29 23-19-304. Recovery of transition costs.

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

1 by retail open access.

2 (b) After notice and an opportunity for hearing, the commission shall  
3 annually adjust the level of the customer transition charge to ensure the  
4 recovery of undercollections from any previous years and the refund of  
5 overcollections from any previous years.

6 (c) The term transition costs shall include the following types of  
7 costs, investments, and unfunded mandates incurred after the effective date of  
8 this chapter:

9 (1)(A) Restructuring of a utility's facilities, non-fuel and  
10 purchase power contracts, other contracts and operations;

11 (B) Implementation of electric industry restructuring rules  
12 applicable to distribution or transmission service providers;

13 (C) Implementation of education or informational activities  
14 for the utility's customers that have been specifically mandated and approved  
15 by the commission;

16 (D) Creation or installation of new metering,  
17 communications, and information systems, including development, testing, and  
18 operational support for other necessary hardware and software computer systems  
19 directly necessary to the implementation of retail open access; provided,  
20 however, that no transition costs shall be allowed for the creation or  
21 development of such systems if the electric utility or any affiliate thereof  
22 has marketed such systems to non-affiliates or transferred such systems to  
23 generation or transmission affiliates; and further provided that if the  
24 electric utility or any affiliate thereof markets such systems to non-  
25 affiliates or transfers them to generation or transmission affiliates  
26 following recovery of such costs through a transition charge, the full amount  
27 of such transition charge shall be refunded to the electric utility's  
28 customers through a credit to stranded costs, to distribution costs, or to  
29 such other jurisdictional costs as the commission may direct; and

30 (E) Professional and advisory services, litigation and  
31 settlement costs, and voluntary retirement and severance programs, plans and  
32 administrative expenses directly caused by the transition to a competitive  
33 market; and

34 (2) Any other prudent and verifiable cost of an electric utility,  
35 as determined or approved by the commission, which is caused directly by the  
36 transition to competition; provided, however, that under no circumstance shall

1 an electric utility recover as transition costs the costs associated with  
2 competing in the generation and sale of retail electricity.

3 (d) An application for recovery of transition costs shall not be  
4 treated as an application for recovery of stranded costs or as an application  
5 for a qualified rate order. Transition costs shall not include costs  
6 includable in the determination of stranded costs pursuant to § 23-19-303.

7  
8 SUBCHAPTER 4 - Consumer Protection.

9  
10 23-19-401. Commission rules and regulations.

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

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

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

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

24 (4) Bills should be accurate and understandable;

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

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

29 (7) Retail customers should have access to sufficient information  
30 to make an informed choice of service provider; and

31 (8) A retail customer should be entitled to truthful and  
32 reasonable marketing and sales practices and non-discriminatory and non-  
33 abusive billing, credit, collection, and service connection practices.

34 (b) The commission shall adopt, after notice and hearing, such other  
35 rules and regulations as it deems appropriate for the purposes of this  
36 chapter, including without limitation, rules governing promotional practices



1 of jurisdictional distribution system owners or operators, and rules for  
2 interconnection to transmission and distribution facilities.

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

17  
18 23-19-402. Continuity of service provider.

19 (a) On and after the implementation of retail open access, each  
20 incumbent electric utility, or a retail affiliate thereof, doing business in  
21 this state, shall offer a standard service package on such conditions as may  
22 be set by the commission within its distribution service territory and shall  
23 have an obligation to provide such service unless and until any such customer  
24 has elected an alternative energy service provider, or in the event any such  
25 customer has not been able to secure an alternative energy service provider.

26 (b) Rates and charges for electricity and electric service provided as  
27 part of a standard service package shall, for one (1) year following the  
28 implementation of retail open access, be the same as the rates and charges for  
29 any comparable service provided by the electric utility immediately prior to  
30 the implementation of retail open access. In the event an electric utility  
31 recovers stranded costs pursuant to § 23-19-303, rates and charges for  
32 electricity and electric service provided as part of its standard service  
33 package shall, for two (2) years following the implementation of retail open  
34 access, be the same as the rates and charges for any comparable service  
35 provided by the electric utility immediately prior to the implementation of  
36 retail open access. In no event shall customers receiving service under the

1 standard service package during the one (1) or two (2) year periods set forth  
2 in this subsection experience an increase in rates resulting from their  
3 allocation of customer transition charges.

4 (c) The restrictions in subsection (b) above shall not apply to any  
5 fuel adjustment clause or energy cost recovery rider approved by the  
6 commission and in effect as of the effective date of this chapter, and the  
7 commission shall permit any electric utility subject to the restrictions in  
8 subsection (b) to recover fuel and fuel-related costs through such clauses or  
9 riders during the period the electric utility is subject to the restrictions  
10 in subsection (b), but not thereafter.

11  
12 23-19-403. Affiliate dealings.

13 All transactions among or between the regulated and any unregulated  
14 divisions, components or affiliates of an electric utility shall be conducted  
15 at arm's length, subject to such rules as may be promulgated by the  
16 commission. All such transactions that involve regulated services shall be  
17 subject to the rates, terms and conditions specified in tariffs approved by  
18 the commission. An electric utility shall not use any revenue from any  
19 regulated asset, operation or service to subsidize the provision of any  
20 unregulated electric service or any other unregulated activity.

21  
22 23-19-404. Market power analysis.

23 (a) No later than one (1) year before the start of retail open access,  
24 electric utilities must file with the commission a market power analysis  
25 consistent with Department of Justice and Federal Trade Commission standards  
26 for evaluating generation market power, including but not limited to methods  
27 for defining the relevant market, measuring market concentration, and  
28 assessing the existence of market power. Consistent with those standards, the  
29 market power analysis shall address the availability of import capability from  
30 transmission interconnections in the relevant power market, and any proposed  
31 or existing contractual or other mechanisms that would affect market  
32 concentration.

33 (b) If, at any time after the utility has filed its market power  
34 analysis, and upon application, complaint or its own motion, after notice and  
35 hearing, the commission determines that the utility has an undue level of  
36 market power, the electric utility shall file a market power mitigation plan

1 that would fully remedy the commission's finding of undue market power. The  
2 utility's market power mitigation plan must be filed within sixty (60) days of  
3 the commission's order finding the existence of undue market power. The  
4 mitigation plan proposed by the utility may include, but is not limited to,  
5 price caps, transitional standard offers, the auction of generation to be sold  
6 under long-term power contracts, and divestiture. The mitigation plan  
7 ordered by the commission may include, but is not limited to, price caps,  
8 transitional standard offers or the auction of generation to be sold under  
9 long-term power contracts. Unless the utility consents, the commission may  
10 not order an auction of generation to be sold under long-term power contracts  
11 if such order would result in the total nameplate generation capacity of  
12 generation facilities voluntarily divested by the utility after December 31,  
13 1998, and generation capacity ordered to be sold under long-term power  
14 contracts after December 31, 1998, being more than twenty-five percent (25%)  
15 of the nameplate generation capacity owned by the utility on December 31,  
16 1998. Neither the utility's mitigation plan nor the commission's order may  
17 result in insufficient capacity to meet the utility's obligations under  
18 regulated franchises, pre-existing contractual commitments and any pre-  
19 existing transitional standard offers. If the commission determines that  
20 neither the utility's mitigation plan nor the commission's order pursuant to  
21 this subdivision adequately mitigates the utility's market power, then the  
22 commission may refer its findings and recommendations to appropriate state or  
23 federal authorities. Nothing in this subdivision grants the commission  
24 authority to order divestiture of generating assets without the utility's  
25 consent. Further, nothing in this subdivision shall in any way limit the  
26 obligations or liability, under state or federal antitrust or consumer  
27 protection laws or regulations, of an electric utility or energy service  
28 provider for conduct arising from the sale of electricity after implementation  
29 of retail open access. In addition, a proceeding pursuant to this subdivision  
30 shall not be a condition precedent to an action pursuant to state or federal  
31 antitrust or consumer protection laws or regulations.

32  
33 SUBCHAPTER 5 - Regulation of Distribution and Transmission Services.

34  
35 23-19-501. Authority of the commission.

36 (a) At any time on or after the implementation of retail open access,

1 the commission, after notice and hearing and a finding that it is in the  
2 public interest, may declare billing, metering, collection, and any customer  
3 service offered by an electric utility as a regulated service to be  
4 competitive and exempt from rate regulation.

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

12  
13 23-19-502. Rates, terms and conditions of electric distribution and  
14 transmission service.

15 (a) The commission shall continue to regulate the rates, terms and  
16 conditions applicable to the provision of jurisdictional electric distribution  
17 service.

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

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

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

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

32 (1) establish rates for unbundled transmission service;

33 (2) direct any utility that owns transmission facilities to  
34 modify those facilities located within the state in order to relieve  
35 transmission constraints that are shown to impede the development of effective  
36 competition in the state; and

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

3           (d) No utility shall sell, lease, rent, or otherwise transfer, in any  
4 manner, control of transmission facilities in the state without the approval  
5 of the commission, provided that such approval shall be required only to the  
6 extent not subject to otherwise applicable federal law or jurisdiction.

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

15  
16  
17 SUBCHAPTER 6 - Securitization of Stranded Costs.

18  
19           23-19-601. Determination of qualified stranded costs.

20           No proceeding seeking a qualified rate order shall commence until after  
21 the commission has determined the amount of net retail stranded costs that the  
22 electric utility is entitled to recover from its retail customers pursuant to  
23 § 23-19-303.

24  
25           23-19-602. Application for qualified rate order.

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

30           (b) A proceeding seeking a qualified rate order may be initiated only  
31 by an electric utility seeking to collect and securitize qualified intangible  
32 charges to recover qualified costs. Nothing herein shall give any other  
33 party, including, without limitation, the commission, the right to initiate a  
34 qualified rate order proceeding, or to initiate any proceeding establishing  
35 utility-specific stranded costs under any section of this chapter.

36           (c) Each application for a qualified rate order shall describe and

1 quantify:

2 (1) The qualified stranded costs the electric utility seeks to  
3 recover;

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

6 (3) The qualified intangible charges required to assure recovery  
7 of the qualified costs;

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

10 (5) The electric utility's proposal for the pledge, assignment,  
11 sale or other transfer of qualified intangible property or the issuance of  
12 qualified bonds; and

13 (6) The use of the net proceeds of the qualified bonds proposed  
14 by the electric utility, which uses shall be limited to reduction of  
15 outstanding debt and equity capital of the electric utility.

16  
17 23-19-603. Proceeding before commission.

18 (a) Upon application by an electric utility for a qualified rate order,  
19 the commission shall give public notice of such application pursuant to any  
20 applicable provisions of the commission's rules of practice and procedure.  
21 The qualified rate order proceeding shall not be considered a proceeding to  
22 change rates under applicable law or to amend the amount or extent of  
23 qualified stranded costs previously determined in proceedings pursuant to §  
24 23-19-303. The commission may not consider any other changes to the rates or  
25 revenue requirement of the electric utility, including but not limited to its  
26 cost of capital, expenses, rate base, or revenues, and the qualified rate  
27 order proceeding shall be limited to those matters related to the qualified  
28 rate order described in this section.

29 (b) The commission shall determine if the application filed by the  
30 electric utility contains the information specified in § 23-19-602, and if so,  
31 the commission shall issue a qualified rate order on the terms requested by  
32 the electric utility if:

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

35 (2) The qualified intangible charges will be imposed until the  
36 payment in full of the principal of, and the interest and any acquisition or

1 redemption premium on, all outstanding qualified bonds and any other related  
2 qualified financing costs;

3 (3) The qualified stranded costs do not exceed the amount of  
4 stranded cost of the utility determined by the commission pursuant to § 23-19-  
5 303; and

6 (4) The proposed use of qualified intangible charges and  
7 qualified bonds or other securitization is less costly than other available  
8 and practical methods for stranded cost recovery.

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

12 (d) The qualified rate order shall state:

13 (1) The amount of qualified costs to be recovered, which, unless  
14 approved by the commission, shall not exceed eighty (80) percent of the amount  
15 of net retail stranded costs of the utility as determined by the commission  
16 pursuant to § 23-19-303, but the commission shall not, in any event, order  
17 securitization of an amount in excess of the amount of qualified stranded  
18 costs the utility proposed to securitize;

19 (2) The qualified intangible charge, which:

20 (A) Must be a non-bypassable charge, consistent with § 23-  
21 19-605, sufficient to pay the principal of and interest on, qualified bonds  
22 and assure full recovery of the qualified costs in the period over which the  
23 qualified intangible charges will be collected;

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

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

30 (3) The procedures for periodic adjustment of the qualified  
31 intangible charges under § 23-19-605 (d) to ensure that all qualified costs  
32 approved in the qualified rate order are being recovered in accordance with  
33 the schedule filed by the electric utility with the commission pursuant to §  
34 23-19-602;

35 (4) That the qualified bonds shall be issued within two (2) years  
36 after the date the qualified rate order becomes final, including all appeals

1 of the qualified rate order, provided, however, that nothing in this  
2 subchapter shall require an electric utility or any assignee thereof to issue  
3 qualified bonds; and

4 (5) In its qualified rate order, the commission shall afford the  
5 electric utility flexibility in establishing the terms and conditions of the  
6 qualified bonds, including transaction structure, repayment schedules,  
7 interest rates and other financing costs. Within thirty (30) days after  
8 issuance of the qualified bonds, the electric utility shall file the final  
9 terms of issuance with the commission, including a schedule of principal and  
10 interest payments on the qualified bonds.

11  
12 23-19-604. Qualified rate order to be irrevocable.

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



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

5  
6 23-19-605. Qualified intangible charges.

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

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

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

27 (d) At the intervals provided for in the qualified rate order, which  
28 shall be not less frequent than once each year, the electric utility shall  
29 calculate and implement adjustments to the qualified intangible charges to  
30 ensure that all qualified costs included in the qualified rate order are being  
31 recovered consistent with the schedule to be filed by the electric utility  
32 with the commission pursuant to § 23-19-603 (d)(6) and that any over-recovery  
33 or under-recovery from prior periods is corrected within twelve (12) months.  
34 When all qualified costs as determined by the commission with respect to an  
35 electric utility have been recovered, any unapplied over-recovery shall be  
36 used as a credit to reduce future distribution-related charges for retail

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

15  
16 23-19-606. Qualified intangible property.

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

26  
27 23-19-607. Assignment of rights in qualified intangible property.

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

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

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

10  
11       23-19-608. Refunding of qualified bonds.

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

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

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

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

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

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

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

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

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

17               (2) The filing of a financing statement in accordance with § 4-9-  
18 401 or any successor provision shall be sufficient if it refers to the  
19 qualified rate order establishing the qualified intangible property.

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

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

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

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

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

28  
29 23-19-611. True sale.

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

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

36 (2) The transfer is a sale or other absolute transfer of, and not the

1 granting of a lien or security interest in, such qualified intangible  
2 property;

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

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

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

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

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

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

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

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

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

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

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

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

5  
6       23-19-612. Exemption from taxes.

7       A sale, assignment or other transfer of qualified intangible property or  
8 any pledge or assignment for security of qualified intangible property shall  
9 be exempt from any state or local sales, income, franchise, transfer, gains,  
10 receipts, or similar taxes.

11  
12       23-19-613. Action with respect to qualified intangible charges.

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

16  
17       23-19-614. Duties of successors.

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

29  
30       23-19-615. Provisions permissive.

31       Notwithstanding any of the provisions of this subchapter, no electric  
32 utility shall be obligated under this subchapter to apply to the commission  
33 for any qualified rate order, consent to the terms of any qualified rate  
34 order, or sell, transfer or pledge any qualified intangible property or issue  
35 qualified bonds in connection therewith.

36

1       23-19-616. Judicial review.

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

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

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

12       (3) On receipt of the petition, the commission shall promptly deliver  
13 to the court a copy of its qualified rate order, any related transcript, and  
14 any accompanying findings or conclusions. The copies shall be available for  
15 examination at all reasonable times by all parties without cost. The Court of  
16 Appeals shall permit the electric utility to be a party to the appeal.

17       (4) The appeal shall be based on the record before the commission and  
18 on briefs to the court. An argument that has not been urged in the  
19 appellant's appearance before or submission to the commission may not be  
20 considered by the court, unless the failure or neglect to urge the objection  
21 is excused because of extraordinary circumstances. The review by the Court of  
22 Appeals shall be limited to determining whether the electric utility properly  
23 applied for a qualified rate order pursuant to § 23-19-602 and whether the  
24 commission properly applied the standards for granting a qualified rate order  
25 pursuant to § 23-19-603.

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

29       (6) In the event that the terms and conditions of a qualified rate  
30 order are required to be modified in any part as a result of judicial review,  
31 other than in any manner provided in the original terms of the qualified rate  
32 order, the qualified rate order takes effect only after the commission shall  
33 have adopted the terms and conditions as modified, and the electric utility  
34 shall have filed with the commission its written consent to all terms and  
35 conditions of the order as modified. The modified qualified rate order is  
36 subject to judicial review only in accordance with the same procedures stated



1 in subdivisions (1) through (5) of this section.'  
2

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

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

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

10 (b) To any sale of accounts, ~~or~~ chattel paper or qualified  
11 intangible property.'  
12

13 SECTION 3. Arkansas Code 4-9-103 is amended by adding a new subdivision  
14 as follows:

15 '(7) Qualified intangible property.

16 The law of this State shall govern the perfection and the effect  
17 of perfection of any security interest in qualified intangible property.'  
18

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

21 '(o) 'Qualified intangible property' shall have the meaning set  
22 forth in Section 1 of the Electric Consumers Choice Act of 1999, § 23-19-102  
23 (25). Qualified intangible property is not an account or general intangible.'  
24

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

26 '(6) If the debtor is a transmitting utility (§ 4-9-401(5)) and a filed  
27 financing statement so states, or if a consignor complies with the filing  
28 provision with respect to consignments under § 4-2-326(3)(c) and the filing  
29 states it is between consignment parties, it is effective until a termination  
30 statement is filed. A real estate mortgage which is effective as a fixture  
31 filing under § 4-9-402(6) remains effective as a fixture filing until the  
32 mortgage is released or satisfied of record or its effectiveness otherwise  
33 terminates as to the real estate. If a filed financing statement relates to a  
34 security interest in qualified intangible property and the financing statement  
35 so states, it is effective until a termination statement is filed.'  
36

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

3 '(a) No new construction or operation of any equipment or facilities  
4 for supplying a public service, or extension thereof, shall be undertaken  
5 without first obtaining from the commission a certificate that public  
6 convenience and necessity require, or will require, such construction or  
7 operation. Provided, however, that no such certificate shall be required for  
8 electric generation facilities.'

9  
10 SECTION 7. Effective January 1, 2002, Arkansas Code 23-18-103 is  
11 repealed.

12 ~~23-18-103. Purchase of electricity from affiliated company.~~

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

14 ~~(1) "Affiliated company" means any business entity which is owned~~  
15 ~~wholly or partly by an electric utility or which wholly or partly owns an~~  
16 ~~electric utility, or any business entity which is owned by another business~~  
17 ~~entity which wholly or partly owns an electric utility;~~

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

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

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

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

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

29  
30 SECTION 8. Effective January 1, 2002, Arkansas Code 23-18-104 is  
31 repealed.

32 ~~23-18-104. Construction of power-generating facilities outside the~~  
33 ~~state.~~

34 ~~(a) No public utility subject to the jurisdiction of the Arkansas~~  
35 ~~Public Service Commission shall commence construction of any power-generating~~  
36 ~~facility to be located outside the boundaries of this state without the~~

1 ~~express written approval of the Arkansas Public Service Commission.~~

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

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

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

15  
16 SECTION 9. Effective January 1, 2002, Arkansas Code 23-18-511 is  
17 amended to read as follows:

18 '23-18-511. Application for certificate - Contents generally.

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

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

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

26 (3) A Except in the case of a major facility as defined by § 23-  
27 18-503(2)(A), a statement of the need and reasons for construction of the  
28 facility;

29 (4) A Except in the case of a major facility as defined by § 23-  
30 18-503(2)(A), a statement of the estimated costs of the facility and the  
31 proposed method of financing the construction of the facility;

32 (5)(A) A Except in the case of a major facility as defined by §  
33 23-18-503(2)(A), a general description of any reasonable alternate methods of  
34 financing the construction of the facility;

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

1 (C) If, at the time of filing of the application, the  
2 federal income tax laws and the state laws would permit the issuance of tax-  
3 exempt bonds to finance the construction of the proposed facility for the  
4 applicant by a state financing agency, the application shall also include a  
5 discussion of the merits and detriments of financing the facility with such  
6 bonds;

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

10 (7) Except in the case of a major facility as defined by § 23-  
11 18-503(2)(A), an analysis of the estimated effects on energy costs to the  
12 consumer as a result of the construction and operation of the proposed  
13 facility;

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

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

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

24 (ii) Any adverse environmental effects which cannot  
25 be avoided;

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

30 (iv) Any irreversible and irretrievable commitments  
31 of resources which would be involved in the proposed action should it be  
32 implemented;

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

36 ~~(9)(10)~~ Such other information of an environmental or economic

1 nature as the applicant may consider relevant or as the commission may by  
2 regulation or order require.'

3  
4 SECTION 10. Effective January 1, 2002, Arkansas Code 23-18-519(b) is  
5 amended to read as follows:

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

10 (1) ~~The~~ Except in the case of a major facility as defined by § 23-  
11 18-503(2)(A), the basis of the need for the facility;

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

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

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

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

23 (6) ~~That~~ Except in the case of a major facility as defined by §  
24 23-18-503(2)(A), that the facility financing method either as proposed or as  
25 modified by the commission represents an acceptable economic impact,  
26 considering economic conditions and the need for and cost of additional public  
27 utility services;

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

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

34 (9) ~~That the energy efficiency of the power production facility~~  
35 ~~has been given significant weight in the decision-making process~~ In the case  
36 of a major facility, as defined by § 23-18-503 (2)(B), the affect of the

1 proposed facility on competition for the sale of electric generation in the  
2 state or region; and

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

11  
12 SECTION 11. Effect of Other Laws.

13 The provisions of any other law, except as expressly provided in this  
14 Act, or in such other law by way of express reference to this Act, shall not  
15 limit or restrict the operation of this Act in any manner. In particular, but  
16 without limitation, the issuance by any person of qualified bonds shall not be  
17 deemed to be the issuance of securities of a public utility for purposes of §§  
18 23-3-103 through 23-3-106; and the issuance by any person of qualified bonds  
19 or the acquisition by any person of any interest in qualified intangible  
20 property shall not be deemed to cause such assignee or financing party to be  
21 or become a public utility or an electric utility, or otherwise to come within  
22 the commission's regulatory jurisdiction.

23  
24 SECTION 12. All provisions of this Act of a general and permanent  
25 nature are amendatory of the Arkansas Code of 1987 Annotated and the Arkansas  
26 Code Revision Commission shall incorporate the same in the Code.

27  
28 SECTION 13. If any provisions of this Act or the application thereof to  
29 any person or circumstance is held invalid, such invalidity shall not affect  
30 the other provisions or applications of the Act which can be given effect  
31 without the invalid provisions or application, and to this end the provisions  
32 of this Act are declared severable.

33  
34 SECTION 14. All laws and parts of laws in conflict with this Act are  
35 hereby repealed.

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/s/ Kennedy