

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

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H1/19/01

A Bill

HOUSE BILL 1149

5 By: Representatives Duggar, Holt, Lendall
6 By: *Senator Everett*
7

For An Act To Be Entitled

10 AN ACT TO PROTECT ELECTRIC CONSUMERS; AND FOR OTHER
11 PURPOSES.

Subtitle

14 AN ACT TO PROTECT ELECTRIC CONSUMERS.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code Title 23, Chapter 19 is repealed:

20 ~~23-19-101. Title and legislative policy and purpose.~~

21 ~~(a) This chapter shall be known as the "Electric Consumer Choice Act of~~
22 ~~1999".~~

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

1 certain forms of direct competition through the granting of exclusive service
2 areas and has been required by law to allow utilities an opportunity to earn a
3 fair return on their invested capital.—

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

17 (d) ~~The General Assembly finds that a competitive retail electric~~
18 ~~market that gives retail customers the opportunity to choose the retail~~
19 ~~customer's provider of electricity and that encourages full and fair~~
20 ~~competition among providers of electricity should be established by January 1,~~
21 ~~2002, but no later than June 30, 2003. The General Assembly further finds that~~
22 ~~reciprocity among electric utilities and other providers of electric service~~
23 ~~to the extent permitted in this chapter is necessary to promote fair~~
24 ~~competition and to ensure the benefits of competition to the greatest number~~
25 ~~of consumers, and that reciprocity to the extent authorized in this chapter~~
26 ~~would assist in the transition from regulation to competition.—~~

27 (e) ~~The General Assembly further finds that certain changes and~~
28 ~~additions to existing law are required to permit and facilitate such~~
29 ~~transactions described in subchapter 6 of this chapter. It is the declared~~
30 ~~legislative intent of this chapter to provide a procedure pursuant to which~~
31 ~~the rights of electric utilities to receive future payments associated with~~
32 ~~stranded costs may be established as property, to provide that such property~~
33 ~~and interests therein may be assigned, sold, or otherwise transferred, and to~~
34 ~~provide a procedure and method to accomplish such securitization and provide~~
35 ~~benefits to the citizens of Arkansas.—~~

36 (f) ~~The General Assembly further finds that it should not mandate~~

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

16
17 ~~23-19-102. Definitions.~~

18 ~~As used in this chapter:~~

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

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

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

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

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

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

1 ~~(4) "Assignee" means an entity including, without limitation, a person~~
2 ~~to which an electric utility assigns, sells, or transfers, other than as a~~
3 ~~security, all or a portion of its interest in, or right to, qualified~~
4 ~~intangible property. The term includes an entity that has obtained such an~~
5 ~~assignment, sale, or transfer of qualified intangible property from another~~
6 ~~assignee. An assignee shall not be subject to the jurisdiction of the~~
7 ~~commission solely by virtue of being an assignee of qualified intangible~~
8 ~~property;~~

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

11 ~~(6) "Current cost of service study" means a newly prepared cost of~~
12 ~~service study designed to support unbundled rates, or an existing cost of~~
13 ~~service study used to support a company's existing rate schedules which were~~
14 ~~filed with the commission to become effective within three (3) years of July~~
15 ~~30, 1999, modified as necessary to support unbundled rates;~~

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

21 ~~(8) "Dollar weighted average remaining life" means the quotient of (A)~~
22 ~~the sum, for all generating assets and contracts, of the retail stranded cost~~
23 ~~associated with each asset or contract, multiplied by the estimated remaining~~
24 ~~operating life of that asset or remaining term of that contract, divided by~~
25 ~~(B) the net sum of the stranded costs of all generating assets and contracts;~~

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

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

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

36 ~~(i) Furnishes electricity only to itself, its employees, or~~

1 ~~its tenants as an incident of such employee service or tenancy, when such~~
2 ~~electricity is not resold to or used by others;—~~

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

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

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

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

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

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

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

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

34 ~~(15) "Municipal corporation" means a city of the first class, a city of~~
35 ~~the second class, or a town, incorporated under the laws of this state, or any~~
36 ~~commission, department, division, or agency thereof, including any municipally~~

1 ~~owned or controlled corporation, or any improvement district, consolidated~~
2 ~~public utility system improvement district, or non-profit corporation lessee~~
3 ~~of such entity;~~

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

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

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

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

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

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

33 ~~(22) "Qualified bonds" means bonds, debentures, notes, certificates of~~
34 ~~participation or of beneficial interest, or other evidences of indebtedness or~~
35 ~~ownership that are issued by or on behalf of the electric utility or an~~
36 ~~assignee pursuant to a qualified rate order, the proceeds of which are~~

1 directly or indirectly used to recover, finance, or refinance qualified costs
2 and which are directly or indirectly secured by or payable from qualified
3 intangible property;—

4 (23) ~~"Qualified costs" means qualified stranded costs and qualified~~
5 ~~financing costs;—~~

6 (24) ~~"Qualified financing costs" means:—~~

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

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

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

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

34 (26) ~~"Qualified intangible property" means a fully vested property~~
35 ~~right consisting of the irrevocable right of the electric utility or an~~
36 ~~assignee to charge, collect, receive, and be paid from collections of~~

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

12 (27) ~~"Qualified rate order" means an irrevocable written order issued~~
13 ~~by the commission pursuant to title 23, chapter 19, subchapter 6, which order~~
14 ~~shall, except as otherwise provided in title 23, chapter 19, subchapter 6,~~
15 ~~become final and effective immediately upon receipt by the commission of~~
16 ~~written consent from the related electric utility to the terms of such order;—~~

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

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

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

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

29 (32) ~~"Retail stranded costs" means that part of stranded costs~~
30 ~~associated with the provision of retail service;—~~

31 (33) ~~"Securitization" means a financing of qualified stranded costs~~
32 ~~authorized by the commission pursuant to this chapter through which an~~
33 ~~electric utility receives the proceeds from the sale of qualified bonds~~
34 ~~secured by beneficial interest in, or a pledge of, qualified tangible property~~
35 ~~transferred by the electric utility to an assignee or pledged as security for~~
36 ~~such qualified bonds;—~~

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

4 ~~(35) "Standard service package" means a minimum package of electric~~
5 ~~service, including electric power and energy sufficient to meet the ordinary~~
6 ~~demands of a consumer, offered by an electric utility or willing energy~~
7 ~~service provider in the areas in which, for an electric utility, it provides~~
8 ~~distribution service, and, for an energy service provider, the commission has~~
9 ~~selected such willing provider to offer such package;~~

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

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

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

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

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

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

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

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

32 ~~(D) Any generation related regulatory assets, including costs~~
33 ~~that have been deferred for future recovery as a result of the practice of~~
34 ~~regulatory authorities, or by rule or order of regulatory authorities,~~
35 ~~including unrecovered deferred income taxes recorded under Statement of~~
36 ~~Financial Accounting Standards No. 109, "Accounting for Income Taxes", plant~~

1 ~~accounting deferrals, including costs associated with reacquisition of~~
2 ~~securities, and canceled plants, as offset by the applicable portion of~~
3 ~~investment tax credits permitted under the Internal Revenue Code and any~~
4 ~~regulatory liabilities as determined by the commission. For purposes of this~~
5 ~~chapter, the amount of regulatory assets and liabilities may not exceed the~~
6 ~~amount reported by the electric utility at December 31, 1998, in its annual~~
7 ~~report on Securities and Exchange Commission Form 10-K or its report to the~~
8 ~~Federal Energy Regulatory Commission on Form 1 as regulatory assets and~~
9 ~~liabilities;~~

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

12 ~~(F) In all cases to be eligible for recovery, stranded costs must~~
13 ~~have been found by the commission to be prudently incurred, verifiable, and~~
14 ~~non-mitigable;~~

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

30 ~~(38) "Wholesale" means the sale of electricity to an electric utility,~~
31 ~~an energy service provider or, any other person exclusively for resale.~~

32
33 ~~—23-19-103. Retail open access.~~

34 ~~(a) Retail open access shall be implemented by electric utilities on~~
35 ~~January 1, 2002. As to any particular utility or utilities, the Arkansas~~
36 ~~Public Service Commission may delay the implementation of retail open access~~

1 for ninety (90) days and for successive 90-day periods thereafter, but not
2 beyond June 30, 2003, upon finding that:—

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

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

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

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

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

19 (6) ~~Implementation of retail open access would have a material~~
20 ~~adverse effect upon the public interest, especially including upon residential~~
21 ~~or small business customers in this state.—~~

22 (b) ~~If retail open access implementation is delayed pursuant to~~
23 ~~subsection (a) of this section for one (1) or more utilities that serve, in~~
24 ~~the aggregate, fifty one percent (51%) or more of the total customers served~~
25 ~~by electric utilities in this state, implementation shall be delayed for all~~
26 ~~electric utilities. Provided, however, that an electric utility may, at the~~
27 ~~utility's election, petition the commission for approval to proceed with~~
28 ~~retail open access implementation for its customers notwithstanding that~~
29 ~~implementation has been delayed for electric utilities that serve, in the~~
30 ~~aggregate, fifty one percent (51%) or more of the total customers served by~~
31 ~~electric utilities in this state. If delayed pursuant to this subsection (b),~~
32 ~~retail open access implementation shall resume, on a utility by utility basis~~
33 ~~as provided in subsection (a) of this section, as expeditiously as possible~~
34 ~~after the commission determines that electric utilities serving more than~~
35 ~~fifty one percent (51%) of the electric utility customers in this state are~~
36 ~~ready to proceed with retail open access implementation. Except as provided in~~

1 ~~§ 23-19-106(e), in no event shall retail open access be delayed beyond June~~
2 ~~30, 2003. For purposes of this subsection, the number of customers served by a~~
3 ~~particular electric utility shall be determined by the commission's most~~
4 ~~recent annual report to the Governor pursuant to § 23-2-315. Each such report~~
5 ~~issued after July 30, 1999, shall include the number of customers served by~~
6 ~~each electric utility.—~~

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

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

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

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

35 ~~(1) Prior to the date determined by the commission for the~~
36 ~~implementation of retail open access; and—~~

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

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

20 ~~(h) Standard service agreements between electric utilities and retail~~
21 ~~customers pursuant to commission approved tariffs as of July 30, 1999, shall~~
22 ~~remain in effect for the terms of those agreements to the extent they impose~~
23 ~~minimum bills on the customer to allow the utility to recover any investment~~
24 ~~in distribution or transmission facilities the utility made to serve that~~
25 ~~customer, but customers will be relieved of any obligation under standard~~
26 ~~service agreements to purchase generation from the utility as of the effective~~
27 ~~date of retail open access and shall be subject only to the then effective~~
28 ~~tariffs for distribution and transmission service, and any customer transition~~
29 ~~charge.~~

30 ~~23-19-104. Municipal electric utilities.~~

31 ~~Statute text~~

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

36 ~~(b) The governing body of a municipal electric utility shall have the~~

1 ~~discretion to decide when, or if, such municipal electric utility will provide~~
2 ~~retail open access. Municipal electric utilities which choose to participate~~
3 ~~in retail open access may do so under such terms and conditions as they, in~~
4 ~~their sole discretion, deem appropriate at any time, after the retail open~~
5 ~~access date determined by the Arkansas Public Service Commission in § 23-19-~~
6 ~~103, by adoption of an appropriate ordinance or other local enabling~~
7 ~~legislation by its governing body.—~~

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

18 ~~(d) In addition to rights within its authority it may reserve in the~~
19 ~~local enabling legislation, the governing body of the municipal electric~~
20 ~~utility shall have exclusive jurisdiction:—~~

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

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

26 ~~(3) To determine the amount of its stranded and transition costs;—~~

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

30 ~~(5) To determine the extent to which it will continue to provide~~
31 ~~various customer services at the distribution level or accept such services~~
32 ~~from other providers;—~~

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

35 ~~(7) To establish and enforce service quality standards and~~
36 ~~consumer safeguards designed to protect retail electric customers not~~

1 ~~inconsistent with other provisions of this chapter;~~

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

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

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

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

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

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

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

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

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

32 ~~(k) Municipal corporations owning municipal electric utilities which~~
33 ~~have elected to participate in retail open access shall have the obligation~~
34 ~~and right to provide distribution service, including a standard service~~
35 ~~package, to any customer located within its service area. The standard service~~
36 ~~package and the continuity of service provider obligations within the service~~

1 area of a municipal corporation owning a municipal electric utility electing
2 to participate in retail open access shall be determined by its governing
3 body.—

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

7 (m) ~~Any electric utility or energy service provider shall be required~~
8 ~~to register with any municipal corporation before it undertakes to provide any~~
9 ~~retail electric utility service to retail customers in such municipal~~
10 ~~corporation.—~~

11 (n)(1) ~~A municipal corporation owning a municipal electric utility that~~
12 ~~has not elected to offer retail open access and that annexes territory~~
13 ~~situated in whole or in part within an area allocated to another electric~~
14 ~~utility after the date determined by the commission for the implementation of~~
15 ~~retail open access, shall not provide generation, transmission, or~~
16 ~~distribution service in the annexed area unless and until such time as it~~
17 ~~elects to participate in retail open access and retail open access is~~
18 ~~available in all of the municipal corporation owning a municipal electric~~
19 ~~utility's service area. At the time the municipal corporation owning a~~
20 ~~municipal electric utility elects to offer retail open access, providing such~~
21 ~~option is exercised within three (3) years of the certification of annexation,~~
22 ~~the municipal corporation owning a municipal electric utility may acquire the~~
23 ~~distribution facilities serving the annexed area using the procedures provided~~
24 ~~at §§ 14-207-101—14-207-106 and may thereafter provide generation,~~
25 ~~transmission, or distribution, and other services in the annexed area. Nothing~~
26 ~~in this chapter shall prevent a municipal corporation and an electric utility,~~
27 ~~upon mutual consent, from voluntarily selling or buying facilities upon~~
28 ~~negotiated compensation.—~~

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

36 (3) ~~A municipal corporation owning a municipal electric utility~~

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

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

20 (5)(A) Notwithstanding subdivisions (n)(1)-(4), and except as
21 provided in subdivision (n)(5)(B), a municipal corporation owning a municipal
22 electric utility shall not be entitled to bring a condemnation action to
23 extend its service territory or to acquire the customers or property of an
24 electric utility for a period commencing on July 30, 1999, and continuing for
25 two (2) years after the date of retail open access established by the
26 commission pursuant to § 23-19-103. Such prohibition shall include, but not be
27 limited to, any power of condemnation a municipal corporation owning a
28 municipal electric utility may have pursuant to §§ 14-207-101—14-207-106, §§
29 14-40-301—14-40-503, or §§ 18-15-301—18-15-308. This prohibition does not
30 apply to actions brought for extensions of territories or acquisition of
31 customers or property within areas of annexations completed prior to July 30,
32 1999, as evidenced by a statement filed by the municipality with the Secretary
33 of State prior to July 30, 1999.—

34 (B)(i) During the period from July 30, 1999, until the date
35 of open retail access established by the commission pursuant to § 23-19-103, a
36 municipal corporation owning a municipal electric utility may only bring a

1 ~~condemnation action to extend its service territory or to acquire customers or~~
2 ~~property of an electric utility in the event of a voluntary annexation~~
3 ~~pursuant to §§ 14-40-601—14-40-606.—~~

4 ~~(ii) During the period from the date of retail open~~
5 ~~access established by the commission pursuant to § 23-19-103 and for a two-~~
6 ~~year period thereafter, a municipal corporation owning a municipal electric~~
7 ~~utility that elects to offer retail open access may bring a condemnation~~
8 ~~action to extend its service territory or to acquire customers or property of~~
9 ~~an electric utility, but only in the event of a voluntary annexation pursuant~~
10 ~~to §§ 14-40-601—14-40-606.—~~

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

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

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

21 ~~(q) A municipal corporation owning a municipal electric utility opting~~
22 ~~to offer retail open access under this section shall not be subject to the~~
23 ~~provisions of this chapter, except for §§ 23-19-102, 23-19-104, 23-19-105(c),~~
24 ~~23-19-106(b), 23-19-203, 23-19-401, and 23-19-501(b). In developing rules and~~
25 ~~procedures for registration and consumer protection as required by this~~
26 ~~chapter, the commission shall take into consideration special circumstances~~
27 ~~faced by municipal electric utilities and in all events shall preserve the~~
28 ~~unique nature of municipal electric utilities. A municipal corporation owning~~
29 ~~municipal electric utilities which elects to participate in retail open access~~
30 ~~shall only be required to file, for informational purposes, its unbundled~~
31 ~~distribution rates with the commission. After the municipal corporation files~~
32 ~~its unbundled distribution rates with the commission, the commission shall~~
33 ~~have the limited jurisdiction to hear complaints against the filing municipal~~
34 ~~corporation for non-compliance with such filed distribution rates. This~~
35 ~~limited jurisdiction shall not include authority to review the propriety or~~
36 ~~lawfulness of such filed distribution rates or other municipal operations,—~~

1 ~~except to the extent necessary to determine whether the municipal corporation~~
2 ~~is offering non discriminatory access to its distribution facilities. The~~
3 ~~commission shall not, except as authorized by this subsection, make any effort~~
4 ~~to regulate a municipal electric utility's operations, limit a municipal~~
5 ~~electric utility's right to serve, or impose any penalty on a municipal~~
6 ~~electric utility.~~

7 ~~23-19-105. Effect on existing certificates and franchises.~~

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

19 ~~(b) An electric utility which does not establish the existence of~~
20 ~~stranded costs or transition costs pursuant to title 23, chapter 19,~~
21 ~~subchapter 3, shall have no right to compensation or other form of relief for~~
22 ~~the waiver of the exclusive right to sell electricity under any certificate of~~
23 ~~convenience and necessity or franchise agreement issued by the commission or~~
24 ~~any municipality, respectively.~~

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

33 ~~(d) Nothing in this chapter shall be deemed to affect the authority of~~
34 ~~the commission to revoke, alter, or amend a certificate of convenience and~~
35 ~~necessity to provide electric distribution service upon the mutual agreement~~
36 ~~of the affected parties, or upon the dissolution or bankruptcy of the holder~~

1 ~~of such certificate, or as otherwise may be allowed by law.—~~

2 ~~23-19-106. Reciprocity.—~~

3 ~~(a) No electric utility providing distribution service may use the~~
4 ~~Arkansas distribution facilities of another electric utility to sell~~
5 ~~electricity to retail customers in the state unless the first electric utility~~
6 ~~offers comparable and nondiscriminatory access, as determined by the Arkansas~~
7 ~~Public Service Commission, to any distribution facilities that it owns or~~
8 ~~operates in this state.—~~

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

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

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

23 ~~(e) An electric utility providing electric service to retail customers~~
24 ~~in this state and in a contiguous service area in an adjacent state whose~~
25 ~~number of customers in this state is less than five percent (5%) of its total~~
26 ~~customers and whose number of customers in a contiguous service area in an~~
27 ~~adjacent state is greater than seventy five percent (75%) of its total~~
28 ~~customers may delay retail open access in its service territory in this state~~
29 ~~until such a time as the electric utility is required by applicable law to~~
30 ~~offer retail open access in the aforementioned adjacent state but no more than~~
31 ~~two years beyond the date for retail open access in this state as provided in~~
32 ~~§ 23-19-103.—~~

33 ~~23-19-107. Reports on scope and impact of competition.—~~

34 ~~(a) Before January 15, 2001, and thereafter before January 15 of each~~
35 ~~odd-numbered year through 2005, the Arkansas Public Service Commission shall~~
36 ~~report to the General Assembly on the progress of the development of~~

1 ~~competition in electric markets and the impact, if any, of competition and~~
2 ~~industry restructuring on retail customers in Arkansas. The report shall~~
3 ~~include:—~~

4 ~~(1) An assessment of the impact of competition on the rates and~~
5 ~~availability of electric service for each class of retail customers in each~~
6 ~~allocated service territory, including, but not limited to, the extent of~~
7 ~~customer choice with regard to each customer class in each service territory,~~
8 ~~or in such other smaller units as may be determined by the commission;—~~

9 ~~(2) A summary of commission actions over the preceding two (2)~~
10 ~~years that reflect changes in the scope of competition in regulated electric~~
11 ~~markets;—~~

12 ~~(3) An analysis of the effect, if any, of competition on the~~
13 ~~reliability of the electric system and on the quality of service provided to~~
14 ~~customers; and—~~

15 ~~(4) Recommendations to the General Assembly for further~~
16 ~~legislation that the commission finds appropriate to promote the public~~
17 ~~interest in a competitive electric market.—~~

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

27 ~~(c) Before January 15, 2003, and before January 15 of each year~~
28 ~~thereafter that the General Assembly convenes in regular sessions through~~
29 ~~2013, the commission shall submit a report to the General Assembly that~~
30 ~~contains such information as the commission determines is necessary to allow~~
31 ~~the General Assembly to determine whether electric utilities or energy service~~
32 ~~providers are charging higher rates or refusing to serve or otherwise~~
33 ~~separating out for disparate treatment customers who live in particular areas~~
34 ~~or neighborhoods. Included in the report will be comparisons of the average~~
35 ~~rates charged by electric utilities or energy service providers to residential~~
36 ~~customers in different regions of the state. The commission shall be empowered~~

1 ~~to demand disclosure of this information from every electric utility or energy~~
2 ~~service provider certified to do business in this state.—~~

3
4 ~~23-19-108. Effect of interstate system agreements.—~~

5 ~~(a) Every electric utility that is a subsidiary of a registered holding~~
6 ~~company under the Public Utility Holding Company Act of 1935 shall report to~~
7 ~~the Arkansas Public Service Commission, within thirty (30) days of July 30,~~
8 ~~1999, whether it is a party to a rate schedule or other filed rate subject to~~
9 ~~the jurisdiction of the Federal Energy Regulatory Commission that allocates~~
10 ~~costs among the electric utility subsidiaries of such holding company. Every~~
11 ~~electric utility that becomes a subsidiary of a registered holding company~~
12 ~~after that time, or that becomes a subsidiary of a registered holding company~~
13 ~~of which it was not previously a subsidiary, shall make such report to the~~
14 ~~Arkansas Public Service Commission within thirty (30) days after becoming such~~
15 ~~a subsidiary.—~~

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

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

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

30
31 ~~23-19-109. Effect of other laws.—~~

32 ~~The provisions of any other law, except as expressly provided in this~~
33 ~~Act, or in such other law by way of express reference to this Act, shall not~~
34 ~~limit or restrict the operation of this Act in any manner. In particular, but~~
35 ~~without limitation, the issuance by any person of qualified bonds shall not be~~
36 ~~deemed to be the issuance of securities of a public utility for purposes of §§~~

1 ~~23-3-103—23-3-106, and the issuance by any person of qualified bonds or the~~
2 ~~acquisition by any person of any interest in qualified intangible property~~
3 ~~shall not be deemed to cause such assignee or financing party to be or become~~
4 ~~a public utility or an electric utility, or otherwise to come within the~~
5 ~~Arkansas Public Service Commission's regulatory jurisdiction.—~~

6
7 ~~Subchapter 2.—~~

8 ~~Regulation of Generation and Energy Service Providers.—~~

9 ~~23-19-201. Jurisdiction over energy service providers.—~~

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

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

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

18 ~~(3) To require the filing of reports the commission may by rule~~
19 ~~prescribe.—~~

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

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

31
32 ~~23-19-202. Licensing of energy service providers.—~~

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

1 provide the service for which it is seeking the license.—

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

7
8 ~~23-19-203. Registration with the Arkansas Public Service Commission.~~

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

29
30 ~~23-19-204. Applicability of anti-trust statutes.~~

31 ~~Nothing in this chapter shall in any way limit the obligations or liability,~~
32 ~~under state or federal anti-trust or consumer protection laws or regulations,~~
33 ~~of an electric utility or energy service provider arising after the~~
34 ~~implementation of retail open access.—~~

35
36 ~~23-19-205. Functional unbundling of tariffs.~~

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

11 ~~(b) Each electric utility shall functionally unbundle its business~~
12 ~~activities from one another as follows:~~

13 ~~(1) Generation facilities, operations, services, and rates;~~

14 ~~(2) Transmission facilities, operations, services, and rates; and~~

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

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

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

26 ~~(1) General rules.~~

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

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

1 of such deviation, and notify such other affected parties as the commission
2 may direct.—

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

11 (2) ~~Rules governing employee conduct.~~—

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

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

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

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

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

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

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

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

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

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

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

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

34 ~~(E) Implementing tariffs.~~

35 ~~(i) Employees of the utility engaged in transmission~~
36 ~~or distribution functions must strictly enforce all tariff provisions relating~~

1 to the sale or purchase of open access retail transmission and distribution
2 service, if these provisions do not provide for the use of discretion.—

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

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

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

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

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

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

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

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

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

13
14 Subchapter 3.—

15 Stranded and Transition Cost Recovery.—

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

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

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

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

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

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

12 (2) ~~Stock valuation method.—~~

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

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

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

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

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

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

1 corporation.—

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

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

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

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

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

12 ~~(E) Any commission order approving a transfer of assets~~
13 ~~pursuant to subdivision (c)(2) of this section shall determine a floor market~~
14 ~~value for the assets. The provisions of any other subdivision of (c)(2) of~~
15 ~~this section to the contrary notwithstanding, should the commission determine~~
16 ~~it to be in the public interest to use the method described in subdivision~~
17 ~~(c)(2) of this section, the amount included in calculating any customer~~
18 ~~transition charge as contemplated by subsection (a) of this section or title~~
19 ~~23, chapter 19, subchapter 6, shall be the greater of the floor market value;~~
20 ~~or the value determined pursuant to subdivision (c)(2)(B) of this section, as~~
21 ~~adjusted pursuant to subdivisions (c)(2)(C) and (D) of this section, if~~
22 ~~applicable. However, should the utility show by clear and convincing evidence~~
23 ~~that the value determined pursuant to subdivision (c)(2)(B) of this section,~~
24 ~~as adjusted pursuant to subdivisions (c)(2)(C) and (D) of this section, if~~
25 ~~applicable, accurately reflects the market value of the assets notwithstanding~~
26 ~~that such value is below the floor market value, then the commission shall use~~
27 ~~such value in calculating the amount of any customer transition charge as~~
28 ~~contemplated by subsection (a) of this section or § 23-19-601 et seq.—~~

29 ~~(3) Capacity sale.—~~

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

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

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

36 (A) Generation plant technical and performance

1 characteristics such as capacity ratings, fuel types, heat rates, and cost
2 characteristics;

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

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

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

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

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

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

26 (B) The commission may not approve a transaction proposed
27 by a utility under § 23-19-301(c)(1), (2), or (3) unless the commission first
28 has found that the market in which such transaction is to occur has developed
29 sufficiently to allow a full and accurate determination of the market value of
30 the transaction.

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

35 (3) If the commission approves transactions pursuant to
36 subdivision (c)(1) of this section or subdivision (c)(3) of this section, the

1 ~~commission may condition its approval on the receipt by the utility of a~~
2 ~~specified minimum price for the assets or capacity, and any such minimum price~~
3 ~~shall be consistent with the values indicated by similar market transactions~~
4 ~~for comparable generating units, the value of capacity and energy from such~~
5 ~~units as indicated by published indicators of prices for energy commodities or~~
6 ~~transactions in the energy market, and reasonable estimates of forward looking~~
7 ~~costs of production and continued ownership of the capacity. The floor price~~
8 ~~should be set so as to reflect the public interest in encouraging reasonable~~
9 ~~bids for the capacity or assets being sold.~~

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

15
16 ~~23-19-302. Mitigation of potential stranded costs.~~

17 ~~Statute text~~

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

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

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

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

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

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

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

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

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

15
16 ~~23-19-303. Recovery of stranded costs.—~~

17 ~~(a) An electing electric utility shall have a right to recover through~~
18 ~~a customer transition charge its net retail stranded costs, as may be~~
19 ~~determined by the Arkansas Public Service Commission, over a reasonable period~~
20 ~~of time in accordance with § 23-19-303(h)(1)(A) and all other stranded costs~~
21 ~~as determined by the commission, and any nuclear decommissioning costs, as~~
22 ~~determined by the commission, associated with the utility's generating assets.—~~
23 ~~However, nuclear decommissioning costs shall not be included in determining~~
24 ~~the utility's net retail stranded costs. An electric utility may, but shall~~
25 ~~not be required to, utilize securitization pursuant to title 23, chapter 19,~~
26 ~~subchapter 6, to recover its net retail stranded costs and other stranded~~
27 ~~costs as may be determined by the commission, which costs may also be~~
28 ~~recovered as a component of a customer transition charge.—~~

29 ~~(b) A generation and transmission electric cooperative corporation~~
30 ~~shall be entitled to recover its stranded costs, as determined by the~~
31 ~~commission pursuant to this subchapter. A distribution electric cooperative~~
32 ~~corporation which, prior to the implementation of retail open access,~~
33 ~~purchased power from a generation and transmission electric cooperative~~
34 ~~corporation shall recover on behalf of, and remit to, such generation and~~
35 ~~transmission electric cooperative corporation its net retail stranded costs~~
36 ~~through a customer transition charge pursuant to § 23-19-301 et seq. The~~

1 ~~commission shall determine the manner by which the generation and transmission~~
2 ~~electric cooperative corporation's stranded costs are allocated among those~~
3 ~~distribution electric cooperative corporations and the distribution electric~~
4 ~~cooperative corporations shall further allocate their portion among their~~
5 ~~customers pursuant to subsection (e) of this section.—~~

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

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

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

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

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

29 ~~(d) The commission shall review the application of the utility. For any~~
30 ~~generation assets, purchased power, fuel and fuel transportation agreements~~
31 ~~for which the commission has previously approved a sale of assets, a transfer~~
32 ~~of assets, or a capacity sale pursuant to § 23-19-301(c)(1)–(3), the~~
33 ~~commission shall verify that the transactions were conducted according to the~~
34 ~~procedures previously approved, and that the computations made by the electing~~
35 ~~electric utility are in accordance with the appropriate methodologies~~
36 ~~specified in § 23-19-301(c). If the commission makes such verification, the~~

1 ~~total net value realized from the sale shall establish the market value of the~~
2 ~~generation assets sold. In determining the total net value, transaction costs~~
3 ~~and any related taxes associated with the sale shall be deducted from the~~
4 ~~sales price. For any generation assets, purchased power, fuel and fuel~~
5 ~~transportation agreements for which the commission has not previously approved~~
6 ~~a sale of assets, a transfer of assets, or a capacity sale, if the commission~~
7 ~~determines, after notice and hearing, that a method chosen by the utility~~
8 ~~results in an unreasonable level of stranded costs, the commission may adopt~~
9 ~~some other reasonable method to quantify the utility's stranded costs. In no~~
10 ~~event shall the amount of stranded costs exceed the just and reasonable costs~~
11 ~~that are or would have been included in rates under continued regulation.—~~

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

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

25 ~~(1) Reasonable;—~~

26 ~~(2) Known and measurable; and—~~

27 ~~(3) Directly related to the implementation of retail open access.—~~

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

31 ~~(h)(1) Subsequent to the commission's determination of all of an~~
32 ~~electric utility's net retail stranded costs and other stranded costs, in~~
33 ~~accordance with § 23-19-301 and subsections (c) and (d) of this section, the~~
34 ~~commission shall, after notice and hearing, approve a customer transition~~
35 ~~charge that will allow each applicable electric utility to recover its~~
36 ~~stranded costs that have not been securitized and are not recoverable pursuant~~

1 to ~~§ 23-19-605(d)~~. The commission shall exercise its discretion and judgment
2 to determine the most appropriate structure of such rate for each such
3 electric utility, subject to the following conditions:—

4 (A) ~~The rate shall be designed to provide for recovery of~~
5 ~~applicable stranded costs over a period no longer than the dollar-weighted~~
6 ~~average remaining life of the assets or contracts to which the stranded costs~~
7 ~~are related, and the rate initially established shall remain in effect~~
8 ~~unaltered until the stranded costs have been fully recovered, except for any~~
9 ~~adjustment that may be appropriate as a result of a revision pursuant to § 23-~~
10 ~~19-303(i) to the initial determination of the electric utility's net retail~~
11 ~~stranded costs;—~~

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

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

1 tax proceeds from such transfer or sale and the cost of capital the commission
2 has most recently determined appropriate for that utility. In the event the
3 utility has to purchase capacity (not energy) to replace the sold or
4 transferred capacity, the cost of such replacement capacity shall be applied
5 as an offset to the calculation of the time value of money credit described in
6 this subdivision (h)(3); and—

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

16 (2) ~~The electric utility shall submit quarterly reports showing~~
17 ~~the amount of stranded costs recovered and the balance remaining to be~~
18 ~~recovered.—~~

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

32 (i) ~~For generating assets, existing purchased power and~~
33 ~~fuel transportation agreements valued pursuant to § 23-19-301(c)(4) or the~~
34 ~~last sentence of § 23-19-303(d), the commission may, within thirty-six (36)~~
35 ~~months of the entry of a final order determining an electric utility's net~~
36 ~~retail stranded costs, initiate a proceeding to review the level of stranded~~

1 ~~costs determined pursuant to § 23-19-301(c)(4) or the last sentence of § 23-~~
2 ~~19-303(d), and the commission may, after notice and hearing, revise the~~
3 ~~electric utility's net retail stranded costs to the extent newly available~~
4 ~~market data support revision of the stranded cost determination under § 23-19-~~
5 ~~301(c)(4) or the last sentence of § 23-19-303(d), applying the criteria set~~
6 ~~forth therein. Newly available market data shall include, but not be limited~~
7 ~~to, the sale of, the transfer of a stock interest in, or the sale of capacity~~
8 ~~from, all or part of the asset being valued, provided such sale or transfer~~
9 ~~has been approved by the commission for purposes of a stranded cost~~
10 ~~determination. The amount of the revised determination of net retail stranded~~
11 ~~cost to be collected from customers shall be limited to the difference,~~
12 ~~positive or negative, between the level of stranded costs the electric utility~~
13 ~~has securitized, if any, and the initial determination of net retail stranded~~
14 ~~cost. In any proceeding under this subsection, the commission shall complete~~
15 ~~its review within one hundred fifty (150) days, but the commission may extend~~
16 ~~the review period up to thirty (30) additional days, for good cause shown.—~~

17
18 ~~23-19-304. Recovery of transition costs.—~~

19 ~~(a) An electric utility shall be allowed to recover, during a period of~~
20 ~~time ending thirty six (36) months after the implementation of retail open~~
21 ~~access, transition costs, incurred no later than twenty four (24) months after~~
22 ~~the implementation of retail open access, as may be determined by the Arkansas~~
23 ~~Public Service Commission after notice and hearing, through a customer~~
24 ~~transition charge. Transition costs surcharges will be subject to annual~~
25 ~~review by the commission and costs included therein shall be prudent,~~
26 ~~reasonable, and directly caused by retail open access.—~~

27 ~~(b) After notice and an opportunity for hearing, the commission shall~~
28 ~~annually adjust the level of the customer transition charge to ensure the~~
29 ~~recovery of undercollections from the previous year and the refund of~~
30 ~~overcollections from the previous year.—~~

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

35 ~~(d) A generation and transmission electric cooperative corporation~~
36 ~~shall be entitled to recover its transition costs, as determined by the~~

1 ~~commission pursuant to this section. A distribution electric cooperative~~
2 ~~corporation which purchases power from a generation and transmission electric~~
3 ~~cooperative corporation shall recover on behalf of, and remit to, such~~
4 ~~generation and transmission electric cooperative corporation its transition~~
5 ~~costs through a customer transition charge pursuant to this section. The~~
6 ~~commission shall determine the manner by which the generation and transmission~~
7 ~~electric cooperative corporation's transition costs are allocated among those~~
8 ~~distribution electric cooperative corporations.~~

9
10 ~~Subchapter 4.~~

11 ~~Consumer Protection.~~

12 ~~23-19-401. Commission rules and regulations.~~

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

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

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

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

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

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

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

31 ~~(7) Retail customers should have access to sufficient information~~
32 ~~to make an informed choice of service provider, including, but not limited to,~~
33 ~~information on rates. The commission shall establish minimum standards for the~~
34 ~~form and content of such information to be disseminated by an electric utility~~
35 ~~or energy service provider, including standards for the disclosure of the~~
36 ~~environmental effects of the generation being supplied, where such disclosure~~

1 would be practical and accurate, provided that such minimum standards:—

2 (A) Shall be just and reasonable;—

3 (B) Shall not unnecessarily inhibit the initiation and
4 development of competition for any service; and—

5 (C) May vary for different services and different classes
6 of customers;—

7 (8) A retail customer should be entitled to truthful and
8 reasonable marketing and sales practices, including abiding by the
9 commission's disclosure requirements related to the environmental effects of
10 the generation being supplied as provided in subdivision (a)(7) of this
11 section, as well as non-discriminatory and non-abusive billing, credit,
12 collection, and service connection practices; and—

13 (9) Evaluate the impact of competition on renewable energy
14 development and on low income and energy efficiency programs.—

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

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

34
35 23-19-402. Continuity of service provider.—

36 (a) On and after the implementation of retail open access, each

1 incumbent electric utility, or a retail affiliate thereof, doing business in
2 this state shall offer a standard service package on such conditions as may be
3 set by the Arkansas Public Service Commission within its distribution service
4 territory and shall have an obligation to provide such service unless and
5 until any such customer has elected an alternative energy service provider, or
6 in the event any such customer has not been able to secure an alternative
7 energy service provider. The commission shall, after notice and hearing,
8 establish procedures and methods by which the electric utility or a retail
9 affiliate thereof shall demonstrate that its rates for such standard service
10 package are consistent with competitive market prices. The commission may
11 require that the electric utility or a retail affiliate thereof use
12 competitive bidding to procure some or all of the generation necessary to
13 fulfill its obligations under this subsection. The previous two (2) sentences
14 shall not apply to an electric utility or retail affiliate thereof which
15 agrees to have its rates for this service established pursuant to §§ 23-4-101
16 —23-4-207 and §§ 23-4-401 —23-4-509, and in the case of a rural electric
17 cooperative, the additional provisions in §§ 23-4-901 —23-4-909.

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

1 hearing.—

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

9

10 ~~23 19 403. Affiliate dealings.—~~

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

20

21 ~~23 19 404. Market power analysis.—~~

22 ~~(a) No later than January 1, 2001, and at such later times as the~~
23 ~~Arkansas Public Service Commission may direct, electric utilities and energy~~
24 ~~services providers that are affiliates of electric utilities shall file with~~
25 ~~the commission market power analyses applicable to each product or service for~~
26 ~~which competition has been authorized by this chapter. Such analyses shall be~~
27 ~~consistent with guidelines, standards, and methods issued or used by the~~
28 ~~United States Department of Justice or the Federal Trade Commission,~~
29 ~~including, but not limited to, methods for defining the relevant market,~~
30 ~~measuring market concentration, identifying entry barriers, and assessing the~~
31 ~~existence of market power. Such analyses shall address the availability of~~
32 ~~transmission import capability, contractual or other mechanisms that would~~
33 ~~affect market concentration, and such other factors as the commission~~
34 ~~prescribes by rule or order.—~~

35 ~~(b) Upon application, complaint, or its own motion, and after notice~~
36 ~~and hearing, the commission shall issue by June 1, 2001, or for good cause~~

1 ~~shown, no later than thirty (30) days thereafter, and at such later times as~~
2 ~~the commission shall determine, an order finding whether any provider of a~~
3 ~~product or service for which competition is authorized by this chapter has~~
4 ~~market power. Within sixty (60) days of the issuance of such order, unless the~~
5 ~~commission grants an extension of time, such provider shall file with the~~
6 ~~commission, consistent with any rules or orders of the commission, a market~~
7 ~~power mitigation plan designed to eliminate the market power found by the~~
8 ~~commission. Such plan may include, without limitation, price caps,~~
9 ~~transitional standard offers, the auction of generation to be sold under long-~~
10 ~~term power contracts, the placement of assets or activities in affiliated~~
11 ~~corporations, and divestiture of assets or activities. After notice and~~
12 ~~hearing considering such plan, along with any alternative plans proposed by~~
13 ~~intervenors or commission staff, the commission shall order such provider to~~
14 ~~implement those measures determined by the commission to be necessary to~~
15 ~~mitigate the market power that it finds to be in the public interest. Such~~
16 ~~mitigation measures shall be implemented by January 1, 2002, or such later~~
17 ~~date as may be authorized by the commission, but such date shall be no later~~
18 ~~than the implementation of retail open access. The measures ordered by the~~
19 ~~commission may include, but are not limited to, price caps, transitional~~
20 ~~standard offers, the auction of generation to be sold under long term power~~
21 ~~contracts, the auction or other competitive selection of the right to serve~~
22 ~~customers who have not made an affirmative selection of an electric utility or~~
23 ~~electric service provider as provided in subsection (c) of this section, and~~
24 ~~divestiture of assets or activities. Provided, the commission may not order an~~
25 ~~electric utility or affiliated energy services provider to divest assets or~~
26 ~~activities without the consent of such utility or affiliated energy services~~
27 ~~provider, unless and until the commission determines that other available~~
28 ~~measures will not adequately mitigate the utility's or affiliated energy~~
29 ~~services provider's market power. Furthermore, the commission may delay~~
30 ~~implementation of divestiture until after the implementation of retail open~~
31 ~~access if implementing divestiture prior thereto would increase the utility's~~
32 ~~stranded costs and would be contrary to the public interest. If the commission~~
33 ~~determines that no mitigation plan proposed or considered pursuant to this~~
34 ~~subsection will adequately mitigate market power, the commission shall notify~~
35 ~~the House and Senate Committees on Insurance and Commerce and may refer its~~
36 ~~findings and any recommendations to appropriate state or federal authorities,~~

1 ~~file an action or actions under applicable laws in any court of competent~~
2 ~~jurisdiction, or take such other action as is authorized by law. Nothing in~~
3 ~~this subsection shall in any way limit the obligations or liability, under~~
4 ~~state or federal anti-trust or consumer protection laws or regulations, of an~~
5 ~~electric utility or energy service provider for conduct arising after~~
6 ~~implementation of retail open access. In addition, a proceeding pursuant to~~
7 ~~this subsection shall not be a condition precedent to an action pursuant to~~
8 ~~state or federal anti-trust or consumer protection laws or regulations.~~

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

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

29 ~~(e) No later than July 1, 2008, and annually thereafter, the commission~~
30 ~~shall submit to the General Assembly a report assessing the competitiveness of~~
31 ~~those markets for which competition has been authorized by this chapter. Each~~
32 ~~such report shall include a recommendation as to whether the authority granted~~
33 ~~to the commission under this section should be continued, revised, or~~
34 ~~repealed. Upon receipt of such report, the House and Senate Committees on~~
35 ~~Insurance and Commerce shall make a recommendation to the General Assembly as~~
36 ~~to whether to revise or repeal this section.~~

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

8
9 ~~Subchapter 5.—~~

10 ~~Regulation of Distribution and Transmission Services.—~~

11
12 ~~23-19-501. Authority of the Arkansas Public Service Commission.—~~

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

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

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

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

35 ~~(b) All electric utilities shall retain all existing rights and~~
36 ~~obligations to provide exclusive electric distribution service in their~~

1 ~~service territories. Each electric utility shall connect and deliver~~
2 ~~electricity to all retail electric customers or other consumers in its service~~
3 ~~territory at rates and on terms and conditions that:—~~

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

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

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

13 ~~(1) Establish rates for unbundled transmission service;—~~

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

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

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

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

33
34 ~~Subchapter 6—~~

35 ~~Securitization of Stranded Costs.—~~

36

1 ~~23-19-601. Determination of qualified stranded costs.~~

2 ~~No proceeding seeking a qualified rate order shall commence until after~~
3 ~~the Arkansas Public Service Commission has determined the amount of net retail~~
4 ~~stranded costs that the electric utility is entitled to recover from its~~
5 ~~retail customers pursuant to § 23-19-303(a)-(f).~~

6
7 ~~23-19-602. Application for qualified rate order.~~

8 ~~(a) Notwithstanding any other provision of law, the Arkansas Public~~
9 ~~Service Commission is authorized to issue qualified rate orders under § 23-19-~~
10 ~~601 et seq. to facilitate the recovery or financing of all or any portion of~~
11 ~~the qualified costs of an electric utility or its assignee.~~

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

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

21 ~~(1) The qualified stranded costs the electric utility seeks to~~
22 ~~recover;~~

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

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

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

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

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

35 ~~(7) The description of professionals to be utilized in the~~
36 ~~securitization, including securities counsel, investment banker and~~

1 consultants, the selection of which shall have been previously jointly
2 approved by the electric utility and the commission.—

3
4 ~~23-19-603. Proceeding before the Arkansas Public Service Commission.~~

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

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

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

24 ~~(2) The qualified intangible charges will be imposed until the~~
25 ~~payment in full of the principal of, and the interest and any acquisition or~~
26 ~~redemption premium on, all outstanding qualified bonds and any other related~~
27 ~~qualified financing costs; and—~~

28 ~~(3) The qualified stranded costs do not exceed the amount of~~
29 ~~stranded cost of the utility determined by the commission pursuant to § 23-19-~~
30 ~~303.—~~

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

34 ~~(d) The qualified rate order shall state:—~~

35 ~~(1) The amount of qualified costs to be recovered, which, unless~~
36 ~~approved by the commission, shall not exceed eighty percent (80%) of the~~

1 amount of net retail stranded costs of the utility as determined by the
2 commission pursuant to § 23-19-303(a) (f), but the commission shall not, in
3 any event, order securitization of an amount in excess of the amount of
4 qualified stranded costs the utility proposed to securitize;

5 (2) The qualified intangible charge, which:

6 (A) Must be a non-bypassable charge, consistent with § 23-
7 19-605, sufficient to pay the principal of and interest on qualified bonds and
8 assure full recovery of the qualified costs in the period over which the
9 qualified intangible charges will be collected;

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

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

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

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

31 (5) The qualified bonds shall be issued within two (2) years
32 after the date the qualified rate order becomes final, including all appeals
33 of the qualified rate order. Provided, however:

34 (A) Nothing in this subchapter shall require an electric
35 utility or any assignee thereof to issue qualified bonds; and

36 (B) Should the issuance of the qualified bonds be delayed

1 ~~more than one hundred twenty (120) days after the entry of the qualified rate~~
2 ~~order, before the issuance of such qualified bonds, the electric utility shall~~
3 ~~update current financial information by filing with the commission the~~
4 ~~proposed final terms of issuance, including a description of all financial~~
5 ~~terms, anticipated repayment schedule, and proposed financing costs on which~~
6 ~~the commission's review shall be completed within fourteen (14) days; and~~

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

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

6
7 ~~23-19-605. Qualified intangible charges.—~~

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

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

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

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

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

16
17 ~~23-19-606. Qualified intangible property.—~~

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

27
28 ~~23-19-607. Assignment of rights in qualified intangible property.—~~

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

1 ~~changes to the qualified rate order establishing the qualified intangible~~
2 ~~property.—~~

3 ~~(b) Except to the extent inconsistent with this subchapter, any sale,~~
4 ~~assignment, pledge, or security interest in or to qualified intangible~~
5 ~~property shall be governed by the Uniform Commercial Code of this state, § 4-~~
6 ~~1-101 et seq. In the event of any inconsistency, the provisions of this~~
7 ~~subchapter shall prevail.—~~

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

13
14 ~~23-19-608. Refunding of qualified bonds.—~~

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

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

20 ~~(2) Increases the present value of the revenue stream of the~~
21 ~~qualified intangible charges relating to the qualified bonds.—~~

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

26
27 ~~23-19-609. No alteration of rights.—~~

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

1 ~~qualified rate order.—~~

2
3 ~~23-19-610. Security interest in qualified intangible property.—~~

4 ~~(a) When a qualified rate order becomes effective in accordance with~~
5 ~~the provisions of this subchapter, the electric utility shall have rights in~~
6 ~~the qualified intangible property within the meaning of § 4-9-203 or any~~
7 ~~successor provision and such qualified intangible property shall constitute~~
8 ~~presently existing, fully vested property rights for all purposes, including~~
9 ~~for contracts securing qualified bonds, whether or not the revenues and~~
10 ~~proceeds arising with respect thereto have accrued. The validity and relative~~
11 ~~priority of any sale, assignment, pledge, security interest, or other transfer~~
12 ~~of qualified intangible property shall not be defeated or adversely affected~~
13 ~~by the commingling by the electric utility of revenues received from amounts~~
14 ~~charged, collected, and received under qualified intangible charges with other~~
15 ~~funds of the electric utility. Any description of the qualified intangible~~
16 ~~property in a security agreement, indenture, sale agreement, or other~~
17 ~~agreement relating to the sale, assignment, or granting of a security interest~~
18 ~~in such qualified intangible property; or the filing of a financing statement~~
19 ~~in accordance with § 4-9-401 or any successor provision shall be sufficient if~~
20 ~~it refers to the qualified rate order establishing the qualified intangible~~
21 ~~property.—~~

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

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

1 the debtor, pledgor, or transferor of the qualified intangible property. For
2 purposes of this section, the calculation of the amount of revenues received
3 by the electric utility with respect to the qualified intangible property
4 shall be determined pro rata based upon the percentage that total intangible
5 charges with respect to such qualified intangible property billed to retail
6 customers of the electric utility during a given time interval or billing
7 cycle bears to the total amount billed to retail customers of the electric
8 utility for electricity and electricity related services during such time
9 interval or billing cycle.—

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

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

31
32 ~~23-19-611. True sale.—~~

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

36 (1) ~~The transfer is a sale by the electric utility or the assignee of~~

1 ~~all right, title, and interest of the electric utility or the assignee, as~~
2 ~~applicable, in and to such qualified intangible property;—~~

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 ~~23-19-612. Exemption from taxes.—~~

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

14
15 ~~23-19-613. Action with respect to qualified intangible charges.—~~

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

19
20 ~~23-19-614. Duties of successors.—~~

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

32
33 ~~23-19-615. Provisions permissive.—~~

34 ~~Notwithstanding any of the provisions of this subchapter, no electric~~
35 ~~utility shall be obligated under this subchapter to apply to the Arkansas~~
36 ~~Public Service Commission for any qualified rate order, consent to the terms~~

1 of any qualified rate order, or sell, transfer, or pledge any qualified
2 intangible property or issue qualified bonds in connection therewith.

3
4 ~~23-19-616. Judicial review.~~

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

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

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

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

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

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) (5) of this section.~~

2
3 SECTION 2. Arkansas Code 4-9-102(1), concerning the policy and subject
4 matter of the chapter, is amended to read as follows:

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

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

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

13
14 SECTION 3. Arkansas Code 4-9-103(7), concerning perfection of security
15 interests in multiple state transactions, is repealed.

16 ~~(7) Qualified Intangible Property.~~

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

19
20 SECTION 4. Arkansas Code 4-9-105(1)(o), concerning definitions and
21 index of definitions, is repealed.

22 ~~(o) "Qualified intangible property" shall have the meaning set~~
23 ~~forth in § 23-19-102 (26). Qualified intangible property is not an account or~~
24 ~~general intangible.~~

25
26 SECTION 5. Arkansas Code 4-9-403(6), concerning filing of financing
27 statement, is amended to read as follows:

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

1 ~~so states, it is effective until a termination statement is filed.~~

2
3 SECTION 6. (a) Arkansas Code 23-3-201 [Effective January 1, 2002] as it
4 appears on page 33 of the 1999 supplement to Volume 22 of the Arkansas Code,
5 is repealed.

6 ~~23-3-201. Requirement for new construction or extension. [Effective~~
7 ~~January 1, 2002.]~~

8 ~~(a) No new construction or operation of any equipment or facilities for~~
9 ~~supplying a public service, or extension thereof, shall be undertaken without~~
10 ~~first obtaining from the Arkansas Public Service Commission a certificate that~~
11 ~~public convenience and necessity require, or will require, such construction~~
12 ~~or operation. Provided, however, no such certificate shall be required for~~
13 ~~electric generation facilities.—~~

14 ~~(b) If the construction or operation has been commenced under a limited~~
15 ~~or conditional certificate, or authority as provided in §§ 23-3-203—23-3-~~
16 ~~205, this section shall not be construed to require the certificate, nor shall~~
17 ~~the certificate be required for an extension within any municipality or~~
18 ~~district within which service has been lawfully supplied, or for any extension~~
19 ~~within, or to territory then being served, or necessary in the ordinary~~
20 ~~course.—~~

21
22 (b) Therefore, Arkansas Code 23-3-201 as it appears on page 78 of
23 Volume 22 of the Arkansas Code is reenacted and shall read as follows:

24 23-3-201. Requirement for new construction or extension.

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

29 (b) If the construction or operation has been commenced under a limited
30 or conditional certificate, or authority as provided in §§ 23-3-203 - 23-3-
31 205, this section shall not be construed to require the certificate, nor shall
32 the certificate be required for an extension within any municipality or
33 district within which service has been lawfully supplied, or for any extension
34 within, or to territory then being served, or necessary in the ordinary
35 course.

36

1 SECTION 7. (a) Section 7 of Act 1556 of 1999 which would repeal
2 Arkansas Code 23-18-103 effective January 1, 2002 is repealed.

3 ~~Section 7. Effective January 1, 2002, Arkansas Code 23-18-103 is~~
4 ~~repealed.~~

5
6 (b) Therefore, Arkansas Code 23-18-103 is reenacted to read as follows:
7 23-18-103. Purchase of electricity from affiliated company.

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

9 (1) "Affiliated company" means any business entity which is owned
10 wholly or partly by an electric utility or which wholly or partly owns an
11 electric utility, or any business entity which is owned by another business
12 entity which wholly or partly owns an electric utility;

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

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

18 (c) Any agreement entered into in violation of this section shall be
19 void.

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

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

24
25 SECTION 8. (a) Section 8 of Act 1556 of 1999 which would repeal
26 Arkansas Code 23-18-104 effective January 1, 2002 is repealed.

27 ~~SECTION 8. Effective January 1, 2002, Arkansas Code 23-18-104 is~~
28 ~~repealed.~~

29
30 (b) Therefore, Arkansas Code 23-18-104 is reenacted to read as follows:
31 23-18-104. Construction of power-generating facilities outside the
32 state.

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

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

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

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

15 SECTION 9. (a) Arkansas Code 23-18-511 [Effective January 1, 2002] as
 16 it appears on pages 171 through 173 of the 1999 Supplement to Volume 22 of the
 17 Arkansas Code is repealed.

18 ~~23-18-511. Application for certificate—Contents generally. [Effective~~
 19 ~~January 1, 2002.]~~

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

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

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

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

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

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

36 ~~(B) A description of the comparative merits and detriments~~

1 of each alternate financing method considered;—

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

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

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

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

23 (B) The environmental impact statement shall set out:—

24 (i) The environmental impact of the proposed action;—

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

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

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

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

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

4
5 (b) Therefore, Arkansas Code 23-18-511 as it appears on pages 502
6 through 503 of Volume 22 of the Arkansas Code is reenacted and it shall read
7 as follows:

8 23-18-511. Application for certificate – Contents generally.

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

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

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

16 (3) A statement of the need and reasons for construction of the
17 facility;

18 (4) A statement of the estimated costs of the facility and the
19 proposed method of financing the construction of the facility;

20 (5)(A) A general description of any reasonable alternate methods
21 of financing the construction of the facility;

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

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

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

33 (7) An analysis of the estimated effects on energy costs to the
34 consumer as a result of the construction and operation of the proposed
35 facility;

36 (8)(A) An exhibit containing an environmental impact statement,

1 which shall fully develop the four (4) factors listed in subdivision (8)(B),
 2 treating in reasonable detail such consideration, if applicable, as the
 3 proposed facility's direct and indirect effect on the ecology of the land, air
 4 and water environment, established park and recreational areas, and on any
 5 sites of natural, historic, and scenic values and resources of the area in
 6 which the facility is to be located, and any other relevant environmental
 7 effects.

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

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

10 (ii) Any adverse environmental effects which cannot
 11 be avoided;

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

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

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

22
 23 SECTION 10. (a) Arkansas Code 23-18-519 [Effective January 1, 2002] as
 24 it appears on pages 175 through 177 of the 1999 Supplement to Volume 22 of the
 25 Arkansas Code is repealed.

26 ~~23-18-519. Decision of commission—Modifications of application—~~
 27 ~~[Effective January 1, 2002.]~~

28 ~~(a) The Arkansas Public Service Commission shall render a decision upon~~
 29 ~~the record either granting or denying the application as filed, or granting it~~
 30 ~~upon such terms, conditions, or modifications of the location, financing,~~
 31 ~~construction, operation, or maintenance of the major utility facility as the~~
 32 ~~commission may deem appropriate.—~~

33 ~~(b) The Arkansas Public Service Commission may not grant a certificate~~
 34 ~~for the location, financing, construction, operation, and maintenance of a~~
 35 ~~major utility facility, either as proposed or as modified by the commission,~~
 36 ~~unless it shall find and determine:—~~

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

3 ~~(2) Except in the case of a major utility facility as defined by~~
4 ~~§ 23-18-503(2)(A), that the facility will serve the public interest,~~
5 ~~convenience, and necessity;—~~

6 ~~(3) The nature of the probable environmental impact of the~~
7 ~~facility;—~~

8 ~~(4) That the facility represents an acceptable adverse~~
9 ~~environmental impact, considering the state of available technology, the~~
10 ~~requirements of the customers of the applicant for utility service, the nature~~
11 ~~and economics of the proposal, and the various alternatives, if any, and other~~
12 ~~pertinent considerations;—~~

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

14 ~~(6) Except in the case of a major utility facility as defined by~~
15 ~~§ 23-18-503(2)(A), that the facility financing method either as proposed or as~~
16 ~~modified by the commission represents an acceptable economic impact,~~
17 ~~considering economic conditions and the need for and cost of additional public~~
18 ~~utility services;—~~

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

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

25 ~~(9) In the case of a major utility facility, as defined by § 23-~~
26 ~~18-503(2)(B), the effect of the proposed facility on competition for the sale~~
27 ~~of electric generation in the state or region; and—~~

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

36 ~~(c)(1) If the commission determines that the location or design of all~~

1 ~~or a part of the proposed facility should be modified, it may condition its~~
2 ~~certificate upon the modification, provided that the municipalities, counties,~~
3 ~~and persons residing therein affected by the modification shall have been~~
4 ~~given reasonable notice thereof, if the persons, municipalities, or counties~~
5 ~~have not previously been served with notice of the application.—~~

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

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

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

25 ~~(e) A copy of the decision and any order issued therewith shall be~~
26 ~~served upon each party within sixty (60) days after the conclusion of each~~
27 ~~hearing held under this subchapter.—~~

28
29 (b) Therefore, Arkansas Code 23-18-519 as it appears on pages 508
30 through 510 of Volume 22 of Arkansas Code is reenacted and shall read as
31 follows:

32 23-18-519. Decision of commission - Modifications of application.

33 (a) The Arkansas Public Service Commission shall render a decision upon
34 the record either granting or denying the application as filed, or granting it
35 upon such terms, conditions, or modifications of the location, financing,
36 construction, operation, or maintenance of the major utility facility as the

1 commission may deem appropriate.

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

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

7 (2) That the facility will serve the public interest,
8 convenience, and necessity;

9 (3) The nature of the probable environmental impact of the
10 facility;

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

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

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

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

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

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

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

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

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

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

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

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

29
 30 SECTION 11. Arkansas Code 23-18-302 is amended to read as follows:

31 23-18-302. Definitions.

32 As used in this subchapter, unless the context otherwise requires:

33 (1) "Corporation" means a corporation organized pursuant to the
 34 provisions of this subchapter;

35 (2) "Board" means a board of directors of a corporation organized under
 36 this subchapter;

1 (3) "Member" means the incorporators of a corporation and each person
2 thereafter lawfully admitted to membership therein;

3 (4) "Federal agency" includes the United States of America and any
4 department, administration, commission, board, bureau, office, establishment,
5 agency, authority, or instrumentality of the United States of America;

6 (5) "Person" includes any natural person, firm, association,
7 corporation, business trust, partnership, federal agency, state or political
8 subdivision thereof, or any body politic;

9 (6) "Acquire" means and includes to construct or acquire by purchase,
10 lease, devise, gift, or other mode of acquisition; ~~and~~

11 (7) "Obligations" includes bonds, notes, debentures, interim
12 certificates or receipts, and all other evidences of indebtedness issued by a
13 corporation; and

14 (8) ~~[Repealed.]~~ "Rural area" means any area not included within the
15 boundaries of any incorporated or unincorporated city, town, or village having
16 a population in excess of two thousand five hundred (2,500) inhabitants and
17 includes both the farm and nonfarm population thereof. The determination of a
18 rural area shall be made as of the time the Arkansas Public Service Commission
19 or predecessor commission or Department of Public Utilities grants a
20 certificate of convenience and necessity to a rural electric cooperative
21 corporation organized under this subchapter. The corporation shall not be
22 ousted from service in the rural area or deprived of the right to continue to
23 provide electric service in the rural area subsequent to the granting of a
24 certificate of convenience and necessity by the Arkansas Public Service
25 Commission.

26
27 SECTION 12. Arkansas Code 23-18-306 is amended to read as follows:

28 23-18-306. Purposes of cooperatives.

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

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

34 (2) Assisting in the wiring of the premises of persons in rural
35 areas or the acquisition, supply, or installation of electrical or plumbing
36 equipment therein; ~~and~~

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

4 ~~(b) Powers. Once properly organized pursuant to subsection (a) of this~~
5 ~~section, a corporation may engage in any other lawful business activity,~~
6 ~~directly or through one or more affiliates, which its board of directors~~
7 ~~determines to be beneficial to its members or non members.~~

8
9 SECTION 13. Arkansas Code 23-18-307(4), concerning powers of electric
10 cooperative corporations, is amended to read as follows:

11 (4) To generate, manufacture, purchase, acquire, and accumulate
12 electric power and energy and to transmit, distribute, sell, furnish, and
13 dispose of electric power and energy in areas allocated to rural electric
14 cooperative corporations but not to customers of regulated utilities in
15 territories allocated to or served by regulated utilities;

16
17 SECTION 14. Arkansas Code 23-18-307(6), concerning powers of electric
18 cooperative corporations, is amended to read as follows:

19 (6) To enter into sale or interchange agreements for surplus power and
20 energy only with any and all other persons, ~~business entities,~~ individual
21 corporations, or public bodies or agencies, including any federal agency or
22 any agency of the state or city governments or any subdivision of state,
23 county, or city government. The electric power and energy may be resold at
24 wholesale or retail and may be sold or disposed of by the other party to the
25 agreement as provided in the contract or agreement, provided that the other
26 party to any sale or interchange agreement shall covenant and agree that the
27 surplus power and energy shall not be interchanged, consumed, or resold in
28 territories or to customers served by regulated utilities, except that this
29 restriction shall not apply to the United States Department of the Interior or
30 any successor marketing agency for electric power and energy thereof subject
31 to the provisions covered by § 5 of the Flood Control Act of 1944;

32
33 SECTION 15. Arkansas Code 23-18-307(23), concerning powers of electric
34 cooperative corporations, is repealed.

35 ~~(23) To engage in any lawful business activity.~~

36

1 SECTION 16. Arkansas Code 23-18-318 (a)(1), concerning persons proposed
2 to be served by a corporation, being eligible to membership in a corporation,
3 is amended to read as follows:

4 (a)(1) All persons in rural areas proposed to be served by a
5 corporation, who are not receiving central station service, shall be eligible
6 to membership in a corporation.

7
8 SECTION 17. Arkansas Code 23-18-331 is amended to read as follows:
9 23-18-331. Service in incorporated areas.

10 (a)(1) The inclusion by incorporation, annexation, or otherwise of any
11 portion of a rural area ~~assigned to corporations~~, as defined in this
12 subchapter, within the limits of an incorporated or unincorporated city, town,
13 or village, regardless of its population, shall not in any respect impair or
14 affect the rights of the corporations under their certificates of convenience
15 and necessity to continue and extend electric service in the included areas.

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

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

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

31 (c) Where a corporation continues and extends its electric service in
32 areas which are so included within the limits of a city, town, or village
33 which is also receiving electric service at retail from another supplier of
34 the service, the retail rates charged by a corporation to its various classes
35 of consumers shall be comparable to those charges by such other supplier for
36 comparable retail service to comparable classes of consumers.

1 ~~(e)(d)~~ Nothing in this section shall in any manner restrict or impair
2 the right of any municipality to acquire, construct, expand, maintain, or
3 operate any electric generation, transmission, or distribution facilities
4 within the corporate limits of the city, town, or village in Arkansas as such
5 limits may now exist or as such limits may exist upon the extension or
6 expansion of the city limits of the city, town, or village.

7
8 SECTION 18. Arkansas Code 29-30-186 is repealed.

9 ~~29-30-186. Applicability of Acts 1999, No. 1556.~~

10 ~~Nothing in Arkansas Code 23-19-104, as added by this act, or Sections 11~~
11 ~~through 16 of this act shall affect any litigation pending on the effective~~
12 ~~date of this act.~~

13
14 SECTION 19. Arkansas Code 29-30-187 is repealed.

15 ~~29-30-187. Effect of other laws on Acts 1999, No. 1556.~~

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

26
27 SECTION 20. Arkansas Code 29-30-188 is repealed.

28 ~~29-30-188. Rate reduction hearings pursuant to Acts 1999, No. 1556.~~

29 ~~Whereas the primary motivation for electric deregulation is achieving~~
30 ~~the lowest possible electric rates for all consumers, in order to secure this~~
31 ~~objective, a just and reasonable mandated rate reduction for residential and~~
32 ~~small business customers of electric utilities, taking service under a~~
33 ~~standard service package to be implemented at the beginning of retail open~~
34 ~~access for the duration of the freeze periods specified in Arkansas Code 23-~~
35 ~~19-402(b), as added by this act, will be the subject of hearings conducted by~~
36 ~~the House Insurance and Commerce Committee and the Senate Insurance and~~

1 ~~Commerce Committee meeting jointly or separately, in which the members will~~
2 ~~receive input from the Public Service Commission, the Attorney General's~~
3 ~~Office, and other interested parties, with findings reported to the House and~~
4 ~~Senate of the 83rd General Assembly so that appropriate measures can be~~
5 ~~approved to assure rate goals inherent in this act are met.~~

6 */s/ Duggar, et al.*

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