

July 1997

## **ELECTRIC INDUSTRY RESTRUCTURING STUDY - BACKGROUND MEMORANDUM**

House Bill No. 1237 (1997), a copy of which is attached as Appendix "A", establishes an electric industry competition committee to study the impact of competition on the generation, transmission, and distribution of electric energy within this state. Section 1 of the bill states that the Legislative Assembly finds that the economy of North Dakota depends on the availability of reliable, low-cost electric energy and that there is a national trend toward competition in the generation, transmission, and distribution of electric energy and that the Legislative Assembly acknowledges that this competition has both potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and the citizens of this state.

Section 2 of the bill outlines the composition of the committee and directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on the state's electric suppliers. As used in the bill, electric suppliers include public utilities, rural electric cooperatives, municipal electric utilities, and power marketers.

Section 3 of the bill outlines the study areas that the committee is to address in carrying out its statutory responsibilities. This section provides that the committee is to study the state's electric industry competition and electric suppliers and financial issues; legal issues; social issues; issues related to system planning, operation, and reliability; and identify and review potential market structures. Also, although many states are studying the restructuring of their electric industry, the bill requires the committee to review two areas unique to North Dakota that other states may not have addressed: (1) to what extent power produced by the Garrison Dam should be taxed by the state, and (2) the source and cost of power supply to the state's Indian reservations.

Proponents of the study testified at the standing committee hearings on the bill that the electric industry is changing rapidly and that if competition is to be introduced into North Dakota it should be done in a fair and equitable manner. Nationally, builders of new technology generating plants, the natural gas industry, and states with high electric rates or excess generating capacity are promoting electric industry restructuring. In summary, arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice, the

possibility that open competition may lower costs, generating efficiency may be encouraged through competition, and capital is allocated by the marketplace. However, risks and challenges of retail competition include maintaining reliability of supply, determining pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs.

### **TRADITIONAL RATIONALE FOR REGULATION**

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies on the provision of electric services within their service territories. Customers with a utilities service territory must purchase all of their electric services from that utility. These services include generation, transmission, distribution, customer service, meter reading, demand-side management, and aggregation and ancillary services.

Generally, three major types of electric utilities exist. These are investor-owned utilities, municipal and other government-owned utilities, and rural electric cooperatives. States regulate investor-owned utilities regarding their profits, operating practices, and pricing to end-use retail customers, while the Federal Energy Regulatory Commission (FERC) governs the pricing of wholesale bulk power sales and transmission services. Although House Bill No. 1237 directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy, nationwide the restructuring debate is over whether and how to separate the generation of electricity from other electric services in order to allow retail customers to shop for the electricity supplier of their choice.

In North Dakota, regulation of electric utilities engaged in the generation and distribution of light, heat, or power is performed by the state's Public Service Commission. North Dakota Century Code (NDCC) Section 49-02-03 grants to the Public Service Commission the power to supervise and establish rates. This section provides:

The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all

public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

Concerning electric utility franchises, NDCC Section 49-03-01 provides that an electric public utility must obtain a certificate of public convenience and necessity from the Public Service Commission before constructing, operating, or extending a plant or system. Similarly, the state's Territorial Integrity Act, codified as Sections 49-03-01.1 through 49-03-01.5, requires an electric public utility to obtain a certificate of public convenience and necessity before constructing, operating, or extending a public utility plant or system beyond or outside of the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement that they obtain a certificate of public convenience and necessity for an extension of electric distribution lines within the corporate limits of a municipality in which it has lawfully commenced operations provided that the extension does not interfere with existing services provided by rural electric cooperatives or another electric public utility within the municipality and that any duplication of services is not deemed unreasonable by the Public Service Commission.

As described briefly above, traditionally, an electricity customer must purchase all of its electric services from the utility serving that customer's service territory, including the three primary services--generation, transmission, and distribution. Generation refers to the actual creation of electricity, which may be generated using a number of methods and fuel such as nuclear, coal, oil, natural gas, hydro, or wind. Transmission refers to the delivery of electricity over distances at high voltage from a generation facility through a transmission network usually to one or more distribution substations, where the electricity is stepped down for distribution to residential, commercial, and industrial customers. For the retail customer, the costs for these functions are bundled into retail rates, along with the cost of distribution. Distribution involves the retail sale of electricity directly to consumers.

Other functions traditionally provided by vertically integrated utilities include customer service, billing, meter reading, demand-side management, research

and development, and aggregation and ancillary services. Aggregation is the development and management of both a power portfolio, combining power from a variety of sources in order to match the demand for power with adequate power supply and a portfolio of customers with combined demands in order to economically serve those customers. Ancillary services are those services necessary to effect a transfer of electricity between a seller and a buyer and to coordinate generation, transmission, and distribution functions to maintain power quality and system stability.

Again, under the current industry structure, the utility serving a service territory provides all of these services and functions, selling them as a single bundle. Nationwide, the restructuring debate centers on whether or how the generation function should be separated from the bundle, allowing retail customers to choose their electricity supplier. If generation is unbundled from transmission and distribution, under this scenario, these services may remain regulated functions.

## **REGULATORY COMPACT**

The provision of electric service has traditionally been considered to exhibit the characteristics of a natural monopoly. According to economic theory, a natural monopoly exists in a market if one service provider in the market can serve customers more efficiently than many competing service providers. A common explanation for electricity provision as a natural monopoly is that allowing competitors to string duplicate transmission and distribution lines and construct excess generation capacity would waste resources and increase electric rates for customers. Generally, the characteristics of a natural monopoly include a high upfront capital investment in technology; limited storability of a provided service or goods; limited transportability, requiring operations near the end users; and cost advantages of large and integrated systems as a result of better utilization of existing capacity or economies of scale and scope.

In markets exhibiting the characteristics of natural monopoly, government intervention in the form of regulation over a single firm is considered necessary to provide the market discipline competition cannot provide. In exchange for this monopoly, each utility is required to serve all customers within its service territory and to provide quality service at just and reasonable rates. The utility is permitted to recover reasonable and prudent expenses associated with its provision of service plus a reasonable rate of return on its investment made to serve customers. This exchange is known as the regulatory compact.

Under the regulatory compact, the traditional method of rate determination has been cost-based,

cost of service, or rate of return regulation. This type of regulation is designed to ensure that utilities offer their services at prices that are based on the cost of the services, rather than on the value customers place on those services. In traditional rate of return regulation, the regulating entity determines the revenue requirement, the reasonable and prudent cost of providing utility service, allocates the requirement among customer classes, and translates the allocated revenue requirement into rates.

Traditional rate of return regulation has been criticized for allowing a utility and its shareholders to pass on all of the utility's costs and risks to ratepayers and because the utility faces minimal risks, the utility has little or no incentive to increase its operating efficiency or to minimize its expenses. One critic has stated that cost-based regulation fails to penalize inefficient producers or reward efficient ones.

As an alternative to traditional rate of return regulation, some commentators have advocated and some states have implemented various forms of incentive regulation, including flexible regulation, targeted incentives plans, external performance indexing, price and revenue caps, and performance-based regulation. However, these forms of incentive-based regulation also have their critics and performance-based regulation opponents have argued that this type of regulation may result in the selection of inappropriate performance benchmarks; the temptation to incorporate too many, or contradictory, societal or regulatory goals, into the performance-based regulation plan; unreasonable returns to shareholders; or exacerbate the information asymmetry between utilities and regulators.

### **FEDERAL ACTIONS TO PROMOTE COMPETITION**

In 1978, Congress enacted the Public Utility Regulatory Policy Act (PURPA). The goals of PURPA were to make the United States self-sufficient in energy, increase energy efficiency, and encourage the use of renewable alternative fuels. The legislation intended to achieve these goals by abandoning the use of natural gas to make electricity, mandating conservation of oil, and encouraging industry to cogenerate electricity using waste heat. The Public Utility Regulatory Policy Act required utilities to purchase bulk power produced from cogeneration facilities to ensure that it was financially attractive. However, states were allowed to determine the avoided costs and quantity of such power. Some states capped the price at the utility's avoided costs (the amount of money that an electric utility would need to spend for the next increment of electric generation that it instead buys from a cogenerator)

and limited the obligation to purchase to the capacity of the utility. Other states allowed prices above the utility's avoided costs and ordered purchases of additional generation whether needed or not.

In 1992, Congress enacted the Energy Policy Act (EPAAct) to encourage the development of a competitive, national, wholesale electricity market with open access to transmission facilities owned by utilities to both new wholesale buyers and new generators of power. In addition, EPAAct reduced the regulatory requirements for new nonutility generators and independent power producers. The Federal Energy Regulatory Commission initiated rulemaking to encourage competition for generation at the wholesale level by assuring that bulk power could be transmitted on existing lines at cost-based prices. Under this legislation and rulemaking, generators of electricity, whether utilities or private producers, could market power from underutilized facilities across state lines to other utilities.

Finally, FERC has taken a number of steps to encourage competition in the wholesale market. These actions include authorizing market-based rates, issuing Section 211 wheeling orders, ordering open access transmission tariffs, and issuing the open access transmission rule (FERC Order No. 888). Market-based rates are those set by willing buyers and sellers of power. This method may be used instead of the more traditional method of ratesetting by regulators pursuant to administrative hearings, with rates based on the costs on producing the power. On April 24, 1996, FERC issued Orders 888 and 889 that essentially require all utilities which own, control, or operate transmission lines to file nondiscriminatory open access transmission tariffs that offer competitors transmission service comparable to the service which the utility provides itself. In addition, FERC Order 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening up the wholesale electricity market, i.e., stranded costs. Finally, FERC Order 888 requires public utilities to functionally unbundle their power and services for wholesale power transactions by requiring the internal separation of transmission from generation marketing services.

Four comprehensive utility restructuring bills have been introduced in the 105th Congress to expand on the initiatives contained in EPAAct and to build on the Federal Energy Regulatory Commission's actions. In general, these comprehensive approaches to utility restructuring have three components--provisions for retail competition, commonly called retail wheeling, which would permit retail customers to choose from whom they obtain their electricity supply; provisions reforming Section 210 of PURPA, which provides

cogenerators and small power producers a guaranteed market for their power; and provisions reforming PUHCA, the Public Utility Holding Company Act of 1935, which regulates various financial transactions of large holding companies having an interest in a public utility company. A summary of the major provisions of these bills, prepared by the Congressional Research Service, is attached as Appendix "B".

## **ELECTRIC INDUSTRY RESTRUCTURING INITIATIVES IN OTHER STATES**

### **California**

In 1996, the California Legislature enacted a major restructuring bill that calls for customer choice no later than January 1, 1998, creates an independent system operator (ISO), a power exchange, and funds stranded cost recovery through bonds. Provisions of the California legislation include:

- Customer choice commencing no later than January 1, 1998. The California Public Utilities Commission will establish a phase-in schedule that is equitable for all customer classes and that must be completed for all customer by January 1, 2002.
- An immediate rate reduction, through use of a bond financing mechanism, of not less than 10 percent for residential and small commercial customers. Additionally, rate savings for these customer classes are expected to be no less than 20 percent by April 1, 2002. Up to \$10 billion in rate reduction bonds will be issued in order to achieve the immediate rate reduction and will spread recovery of a portion of competition transition charge (CTC) for these customers over 10 years.
- A limited transition period, ending December 31, 2001, during which utilities have an opportunity to recover stranded investment through a non-bypassable CTC levied on the usage of electric power. Recovery is limited to certain categories and types of costs and to only that portion that can be recovered under a rate freeze during the transition period.
- A "firewall" to shield residential and small commercial customers from paying for any CTC exemptions granted to industrial users for economic development or retention purposes.
- An ISO and a power exchange subject to the jurisdiction of a five-member oversight board appointed by the Governor and the Legislature. Publicly owned utilities and investor-owned utilities are required to give control of their transmission facilities to the ISO.
- A requirement that utilities continue funding energy conservation and low-income

assistance programs through 2001 and that ratepayers pay for that portion recoverable under the rate freeze. Assistance programs must be funded at levels not less than those authorized for 1996. Funding for energy efficiency and conservation must at least equal \$228 million per year through 2001; during the same period, \$62.5 million must be provided for research, development, and demonstration projects to advance science or technology that would not otherwise be adequately provided for in a competitive market. The amount of \$540 million is provided for renewable resource technologies in this time period.

- A requirement that all electric sellers, marketers, and aggregators register with the California Public Utilities Commission and provide consumers with adequate and reliable information regarding supplier options. Contract rescission provisions and "anti-slammings" or "grid-napping" protections are also included in the legislation.

### **Maine**

Legislation enacted by the Maine Legislature during the 1997 legislative session established retail competition for the purchase and sale of electricity beginning March 1, 2000. The legislation permits electric utilities a reasonable opportunity to recover verifiable and unmitigable stranded costs and also establishes a standard-offer service for customers who do not seek or take power in the competitive marketplace. The law sets a 33 percent market-share cap for Central Maine Power Company and Bangor Hydro-Electric Company and preserves low-income assistance programs funded through transmission and distribution rates. It establishes a 30 percent renewable-resource portfolio requirement for competitive electricity providers and a program for renewable research development funded through voluntary contributions. Finally, it requires the Maine Public Utilities Commission to develop a consumer education program.

### **Montana**

During the 1997 legislative session, the Montana Legislature enacted Senate Bill No. 390, the Montana Electric Utility Industry Restructuring and Consumer Choice Act. This Act established restructuring requirements for Montana's electric utilities industry. Pilot programs will be conducted beginning July 1, 1998, and a report on those programs is due by July 1, 2000. All utility customers must have a choice in their electricity supplier before July 1, 2002. All utilities must submit transmission plans;

certain stranded costs laid out in transition plans will be reviewed and will be paid for by transition bonds. Beginning January 1, 1999, 2.4 percent of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless otherwise modified, this funding level remains in effect until July 1, 2003. The recovery for these programs is authorized through a universal systems benefits charge assessed at each customer meter. One feature of the bill that is relevant to electric industry restructuring in North Dakota is how the bill deals with rural electric cooperatives. Section 20 of the bill provides that rural electric cooperatives have the choice of opting in or out of offering their customers choice. If a cooperative opts in, it must certify to the Montana Public Service Commission that it has adopted a transition plan consistent with the provisions of the Act, but essentially the same as the plans of investor-owned utilities. If a cooperative opts out, the cooperative is precluded from accessing the distribution system, and thus customers, of other utilities that have opened their system up without a preexisting contract. A cooperative must participate in the universal systems benefits program whether it opts in or out. A copy of the Montana Electric Utility Industry Restructuring and Customer Choice Act is attached as Appendix "C", and a copy of a summary of the Act prepared by the Montana Department of Environmental Quality is attached as Appendix "D".

### Oklahoma

Senate Bill No. 500, signed by the Governor of Oklahoma on April 25, 1997, creates the Electric Restructuring Act of 1997 and states electric utility industry restructuring goals for that state. The Act establishes customer choice by July 1, 2002. Before that date a series of studies will be conducted on various aspects of restructuring. These studies include:

- Formation of an independent system operator (ISO) for Oklahoma or the region that must have begun by July 1, 1997, and report by February 1, 1998.
- A study of technical issues such as reliability, safety, transmission, etc., that must begin by January 1, 1998, and report findings by December 31, 1998.
- A study of financial issues such as rates, charges, and electric service provider financial obligations. This study must commence on January 1, 1999, and report findings by December 31, 1999.

- A study of consumer issues that must begin by July 1, 1999, and report findings by August 31, 2000.

In addition, the Oklahoma Tax Commission will conduct a study to assess the effect of restructuring on state, county, and local tax revenue and examine the feasibility of establishing a consumption-based tax to provide at least the existing level of revenues. This study must have started by July 1, 1997, and must provide findings by December 31, 1998. The commission is prohibited from adopting any rules or issuing orders without prior authorization from the Oklahoma Legislature or the Joint Electric Utility Task Force.

### New Hampshire

The relevant provisions of the New Hampshire restructuring legislation are:

- The New Hampshire Public Utilities Commission must have issued a final restructuring order by June 30, 1997. Utilities must offer retail access by January 1, 1998. The New Hampshire Public Utilities Commission may delay this date by up to six months without legislative approval.
- Generation must at least be functionally separated from transmission and distribution functions. The Public Utilities Commission may require that distribution and electricity supply services be provided by separate utility affiliates. However, utilities may own small scale generation facilities as a means of minimizing transmission and distribution costs. While divestiture is not required, utilities must mitigate their stranded costs, with the sale of surplus assets identified as one form of mitigation.
- In the implementation of full-fledged retail competition, utilities are allowed recovery of net, nonmitigable environmental costs and costs of legally mandated purchased power contracts. They are allowed to seek recovery of generation-related assets.
- The Act allows the Public Utilities Commission to establish a stranded cost recovery charge, with the burden of proof for recovery on the utility. It also allows the Public Utilities Commission to establish interim charges effective for two years from the date that utilities file plans to comply with the Act. The Act states that entry and exit fees are not preferred recovery mechanisms.

### Pennsylvania

House Bill No. 1509, enacted by the Pennsylvania General Assembly in 1996, addressed electric

industry restructuring in Pennsylvania. The major provisions are:

- By January 1, 1999, utilities must offer retail access to one-third of their peak load for each customer class; two-thirds by January 1, 2000; and all by January 1, 2001. Utilities must provide this opportunity on a first-come, first-served basis except as directed by the Pennsylvania Public Utilities Commission. The Pennsylvania Public Utilities Commission may delay implementation of the initial phase by up to one year.
- The Act requires unbundling of the generation, transmission, and distribution functions. Generation will be deregulated while transmission and distribution will continue to be regulated as natural monopolies. Divestiture is permitted but not required.
- Utilities are statutorily entitled to recover their nuclear decommissioning costs; contracts for power purchased from nonutility generators, and prudently incurred costs associated with buydowns and buyouts of these contracts; and regulatory assets. The Pennsylvania Public Utilities Commission may allow recovery of generation-related costs in addition to those listed above. Utilities must mitigate costs to the extent practicable through such measures as accelerated depreciation and minimize rates while maintaining safe and efficient operations.
- The Act establishes a competitive transition charge (CTC) applied to any customer using the transmission or distribution system. The CTC may not shift costs between or within customer classes. Customers that install onsite generation and significantly reduce their purchases through transmission and distribution systems must pay a fully allocated CTC.
- The Act establishes a cap on total rates for utility company customers for the shorter of 4.5 years or until the utility finishes collecting its stranded costs through transition charges and all customers can choose suppliers. The generation component of rates plus transition charges may not exceed current Public Utilities Commission-approved generation costs for the shorter of nine years or until the utility finishes collecting its stranded costs through transition charges and all customers can choose suppliers. Limited exceptions to these caps exist, for example, if they preclude a utility from earning its Public Utilities Commission-authorized rate of return on its investment.
- Concerning securitization, under the Act, the Public Utilities Commission may issue a

qualified rate order to allow issuance of transition bonds. Bonds may have a maturity of up to 10 years. Proceeds of the bonds must be used to reduce stranded costs and other transition costs. Competitive transition charge must be reduced to the extent stranded costs have been refinanced. Savings and interest costs must be passed on directly to customers through rate reductions.

- Concerning taxation, the Act requires continuation of gross receipts and other state utility taxes with a formula to maintain revenue neutrality through 2003. The gross receipts tax applies to nonutility electric suppliers.

### **Rhode Island**

The 1996 Rhode Island electric restructuring initiative, codified as Rhode Island General Laws § 39-1-27 et seq., provides:

- As of July 1, 1997, utilities must offer retail access to all new commercial and industrial customers, all existing manufacturing customers with average annual demand of 1,500 kilowatts or more, and all accounts of the state government, subject to an overall cap of 10 percent of the utility's total sales.
- As of January 1, 1998, utilities must offer retail access to all existing manufacturing customers with average annual demand of 200 kilowatts or more and all accounts of municipal governments. Utilities are not required to provide retail access to customers accounting for more than 20 percent of their total sales under this and the preceding provision.
- As of July 1, 1998, utilities must offer retail access to all of their remaining customers. This deadline is moved up if retail access is available to 40 percent or more of total sales in New England. The Rhode Island Public Utilities Commission may delay this deadline by up to six months to permit extension of retail access on reasonable terms.
- The Act requires unbundling of generation, transmission, and distribution functions. Generation will be deregulated, while transmission and distribution will continue to be regulated by the federal Energy Regulatory Commission and Rhode Island Public Utilities Commission, respectively. Any utility recovering a stranded cost through the transition charge must determine the market value of its fossil fuel and hydrogenerating assets by the sale or spinoff of these facilities. The market value is then deducted from the utility's stranded costs. Utilities must also attempt to sell their portion of their purchase power

contracts that exceed market rates to reduce their stranded costs.

- Under the Act, stranded costs include nuclear decommissioning costs and nuclear operation and maintenance costs that would continue if the plant were shut down; above-market costs of purchase power contracts and the reasonable costs of buying out or buying down these contracts; regulatory assets; and the net unrecovered capital costs of all of the generating plants owned by the utility or its wholesale power distributor as of December 31, 1995, whether or not plants are operating.
- The Act establishes a transition charge applied to any customer using the transmission or distribution system. A nonutility electric supplier may pay part or all of its customer's transition charges. The charge is set at 2.8 cents per kilowatt hour for the period between July 1, 1997, and December 31, 2000. The charge is subject to adjustment to account for the disposition, pursuant to the Act, of nonnuclear generating assets by wholesale power suppliers. From January 1, 2001, the Public Utilities Commission sets the charge. After January 1, 2010, there is no allowance for costs associated with regulatory assets and unamortized capital investments in generating plants.
- Rate increases generally must hold to the rate of inflation from January 1, 1997, through December 31, 1998. These increases do not apply to low-income customers. Utilities must file performance-based rate plans with the Public Utilities Commission.

- The Act establishes a commission that was required to submit a plan to the General Assembly by January 1, 1997, on assessing and taxing utilities and nonregulated power producers.

### **POSSIBLE STUDY APPROACH**

In carrying out its statutory responsibilities under House Bill No. 1237, the committee will need to address a number of complex issues in addition to those enumerated in House Bill No. 1237. These include market structure; competitive parity; utility taxation; stranded costs, which may be defined as prudent costs incurred by a utility which may not be recoverable under market-based retail competition; universal service; integrated resource planning; stranded benefits, which may be defined as benefits associated with regulated retail electric service that may be at risk under open market retail competition; unbundling; merchant plants; antitrust issues; pilot programs; cost-shifting; safety and reliability; and environmental issues. The committee will also wish to monitor federal electric industry restructuring initiatives and follow electric industry restructuring developments in other states. In conducting this study, the committee could solicit testimony from a number of sources. These include the Public Service Commission and its staff, representatives of the state's investor owned utilities, representatives of the state's generation and transmission cooperatives, representatives of the state's distribution cooperatives, the North Dakota Association of Rural Electric Cooperatives, power marketers, and large commercial and industrial power users.

ATTACH:4

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Monday, the sixth day of January,  
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1237  
(Representative Dorso)  
(Senator G. Nelson)

AN ACT to establish an electric industry competition committee; to provide an expiration date; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Electric industry competition - Need for study.** The legislative council shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The legislative assembly finds that the economy of this state depends on the availability of reliable, low cost, electric energy. There is a national trend toward competition in the generation, transmission, and distribution of electric energy and the legislative assembly acknowledges that this competition has both potential benefits and adverse impacts on this state's electric suppliers as well as on their shareholders and customers and the citizens of this state. The legislative assembly determines that it is in the best interests of the citizens of this state to study the effects of competition on the generation, transmission, and distribution of electric energy.

**SECTION 2. Electric industry competition committee - Composition.**

1. The legislative council shall appoint a committee to study electric industry competition.
2. The committee shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on the state's electric suppliers.
3. As used in this Act, "electric suppliers" means public utilities regulated under title 49, rural electric cooperatives organized under chapter 10-13, municipal electric utilities organized under chapters 40-33 and 40-33.2, and power marketers.
4. The committee consists of:
  - a. Three or four members of the house of representatives, no more than two of whom may be from the same political party.
  - b. Three or four members of the senate, no more than two of whom may be from the same political party.
5. The chairman of the legislative council shall name one of the members as chairman.

**SECTION 3. Electric industry competition committee - Study areas.** The electric industry competition committee shall study this state's electric industry competition and electric suppliers and shall report to the legislative council in the same manner as do other interim legislative council committees, concerning the following issues:

1. Financial issues, including:
  - a. The interests of residential customers, including:
    - (1) Fairness of rates, terms, and conditions of service for services chosen.
    - (2) Affordability of rates, bills, and services.
    - (3) Stability and predictability of rates and bills.

- (4) Reliability and quality of power supply.
  - (5) Assurance that rates, terms, and conditions are nondiscriminatory.
  - (6) Ability of customers to understand potential energy choices.
  - (7) Importance of a fair dispute resolution process.
  - (8) Potential for rates to reflect the customer's desired level of energy reliability and availability.
- b. The interests of small business customers, large business customers, shareholders, and other stakeholders, including:
- (1) Fairness of rates, terms, and conditions of service for the services chosen by customers.
  - (2) Affordability of rates, bills, and services for customers.
  - (3) Stability and predictability of customers' rates and bills.
  - (4) Assurance that rates, terms, and conditions are nondiscriminatory for all customers.
  - (5) Ability of customers to understand potential energy choices and the implications of these choices.
  - (6) Importance of a fair dispute resolution process for customers.
  - (7) Potential for rates to reflect the customer's desired level of energy reliability and availability.
- c. Financial integrity of and cost of capital to electric power suppliers.
- d. Taxes paid by electric suppliers, including franchise taxes, excise taxes, income taxes, ad valorem taxes, in lieu taxes, and real and personal property taxes.
- e. Tax implications to local governments.
- f. Quantification and recovery of stranded investments by electric power suppliers, including those resulting from:
- (1) Customers who have a legal obligation to bear certain costs, who find a way to avoid those obligations, and who leave without paying costs incurred on the customer's behalf; and
  - (2) The costs of investments that exceed their value in the competitive market.
- g. Pricing of transmission and distribution services.
- h. Pricing and rate subsidies for all classes of customers.
- i. Unbundling of costs of services.
2. Legal issues, including:
- a. State, tribal, and federal jurisdiction.
  - b. State statutory and regulatory constraints and oversight of the electric industry.
  - c. Those related to the federal energy regulatory commission.
  - d. Commerce clause constraints.

- e. Review of existing state laws, rules, and constitutional provisions that affect the generation, transmission, and distribution of electric energy, including the need and appropriateness of regulatory reforms for services that will continue to be provided by a regulated utility.
  - f. Interstate reciprocity and the regional nature of the industry.
  - g. Continuing obligations of an electric supplier to serve customers.
  - h. Use and protection of proprietary information in a competitive market.
3. Social issues, including:
- a. Planning and operation of electric suppliers, including integrated resource planning.
  - b. Efficiency and sufficiency of an aggregate supply of energy.
  - c. Environmental impacts.
  - d. Impact on the development and use of renewable resources.
  - e. Appropriate and proper method of recovery of the cost of social, low income, and noneconomic renewable energy programs in order to ensure that costs are fairly and equitably shared among all customers of electric energy.
4. Issues related to system planning, operation, and reliability, including:
- a. Electric system reliability.
  - b. Provisions by which customers would be permitted to have a choice of generation providers.
  - c. Applicability of regulatory reliability criteria to nonutility market participants.
  - d. Form and requirements of contracts for the sale and purchase of electric energy.
  - e. Requirements for metering energy usage at the customer's location.
  - f. Designation and regulation of ancillary services.
5. Identification and review of potential market structures, including:
- a. Possible market structures for a deregulated generation market and transmission market and whether these structures should be mandated or allowed to form voluntarily.
  - b. Formation of market segments in response to customer requirements.
  - c. Impact on the investment stability of the electric utility industry.
  - d. Impact on multipurpose entities.
  - e. Potential to improve economic efficiency.
  - f. Size of the market and the extent to which its size impacts the level of benefits for customers or groups of customers.
  - g. Ability of participants with control over the electricity generation and transmission system to exercise market power over pricing or the need for controls to prevent the exercise of market power.
  - h. Controls or bans on corporate relationships between regulated utilities and emerging competitive sectors.

- i. Barriers to achieving nondiscriminatory competition among electric suppliers, including review of federal and state tax issues, availability of federal subsidies to certain energy suppliers, application of federal laws that impose regulatory requirements on the electric utility industry, and jurisdiction of the federal energy regulatory commission over competitors.
- j. Viability of all customers to participate in and benefit from a competitive electricity market, including:
  - (1) Risks and responsibilities that customers or classes of customers incur by participating in a competitive market.
  - (2) Costs of gathering, processing, and managing information on the price and quality of electricity.
  - (3) Benefits to customers or classes of customers from participation in a competitive electricity market.
- 6. Whether and to what extent power produced by the Garrison dam should be taxed by the state.
- 7. The source and cost of power supplied to the state's Indian reservations.
- 8. Other issues related to the generation, transmission, and distribution of electric energy.

**SECTION 4. EXPIRATION DATE.** This Act is effective through August 1, 2003, and after that date is ineffective.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 23, 1997  
Filed March 24, 1997

**Table 1: Summary of Major Provisions of S. 237, H.R. 655, H.R. 1230, and S. 722**

<b>Provision</b>	<b>S. 237</b>	<b>H.R. 655</b>	<b>H.R. 1230</b>	<b>S. 722</b>
<b>Deadline for Retail Competition</b>	December 15, 2003	December 15, 2000	January 1, 1999	No federally imposed deadline
<b>Federal Role in Implementing Retail Competition</b>	Federal mandate enforceable in federal courts	Federal mandate enforceable by FERC	Federal mandate enforceable by FERC	No federal mandate. Retains role in interstate transmission
<b>State Role in Implementing Retail Competition</b>	Retains role in protecting the public interest, and regulating distribution and retail transmission service	Detailed state implementation requirements for retail competition along with retaining role in local distribution and consumer protection	Retains role in protecting the public interest, and regulating local distribution service	Lead role in deciding on retail competition reforms. Retains role in protecting public health and safety
<b>Transitional Concerns — Stranded Costs</b>	Detailed requirements for stranded cost recovery with FERC serving as a backstop	No requirement. States may choose to impose a charge to provide for such recovery	No requirement. States may not impose an exit charge to provide for such a recovery	No requirement. States may choose to impose a charge to provide for such recovery
<b>Structuring the Market — Reliability</b>	Detailed provisions for ISOs, along with state authority to ensure reliability	State authority to ensure reliability	FERC to ensure transmission reliability; states to ensure local distribution reliability	State authority to ensure reliability

Provision	S. 237	H.R. 655	H.R. 1230	S. 722
Structuring the Industry — Corporate Structure (including PUHCA)	<p>ISOs must be independent</p> <p>PUHCA repealed 1 year after enactment, replaced by enhanced federal and state access to company records</p> <p>“Ohio Power” provision to permit state review of affiliate transactions</p>	<p>PUHCA ceases to apply to a company when the affected states determine the company offers effective retail competition. Replaced by enhanced federal and state access to company records</p>	<p>Functional divestiture of transmission /distribution and generation components.</p> <p>PUHCA ceases to apply to a company when the affected states determine the company offers effective retail competition.</p>	<p>PUHCA repealed 18 months after enactment and replaced by enhanced federal and state access to company records</p>
Structuring the Industry — Corporate Transactions (including PURPA)	<p>Sec. 210 of PURPA does not apply to new facilities after December 15, 2003</p> <p>Existing contracts are unaffected</p>	<p>Sec. 210 of PURPA does not apply to a utility the state determines provides effective retail competition</p> <p>Existing contracts are unaffected</p>	<p>Sec. 210 of PURPA does not apply to a utility the state determines provides effective retail competition</p> <p>Contracts as of the date of enactment are unaffected</p>	<p>Sec. 210 of PURPA does not apply to new facilities after the date of enactment unless a power purchase contract had been entered into beforehand</p> <p>Existing contracts are unaffected</p>

<b>Provision</b>	<b>S. 237</b>	<b>H.R. 655</b>	<b>H.R. 1230</b>	<b>S. 722</b>
<b>Structuring the Industry — Public Power</b>	TVA fence is removed if in U.S. interests	Purchasers of PMA power may not resell that power outside their distribution area	No specific provisions	All transmitting utilities are subject to FERC with respect to any wholesale transmission service  Study of tax benefits of public and investor-owned power
<b>Non-economic Issues — Environment</b>	EPA study of air pollution standards and electricity restructuring by January 1, 2000	States may assess charges to fund environmental programs	No specific provisions	States may assess charges to fund environmental programs
<b>Non-economic Issues — Renewable Energy</b>	Renewable set-aside requirement and trading program	Renewable set-aside requirement and trading program	States may permit consumer choice with regard to renewable energy	States may assess charges to fund renewable energy programs

Provision	S. 237	H.R. 655	H.R. 1230	S. 722
Non-economic Issues — Other	States may assess charges to fund public benefit programs, such as universal service protection for customers, low-income energy assistance, R&D programs, and energy efficiency and conservation	States may assess charges to fund public benefit programs, such as universal service protection for customers, low-income energy assistance, and/or environmental, renewable, efficiency, conservation, or other such programs	States may assess charges to continue universal service protection for customers  States retain authority over conservation, R&D, and other programs deemed appropriate by the state.	States may assess charges to fund public benefit programs, such as universal service protection for customers, low-income energy assistance, R&D efforts, and environmental, renewable energy, energy efficiency or conservation programs

Bill Information

AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

**Section 2. Legislative findings and policy.** The legislature finds and declares the following:

- (1) The generation and sale of electricity is becoming a competitive industry.
- (2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.
- (3) The interests of Montana consumers should be protected and the financial integrity of electrical utilities should be fostered.
- (4) The public interest requires the continued protection of consumers through:
  - (a) licensure of electricity suppliers;
  - (b) provision of information to consumers regarding electricity supply service;
  - (c) provision of a process for investigating and resolving complaints;
  - (d) continued funding for public purpose programs for:
    - (i) cost-effective local energy conservation;
    - (ii) low-income customer weatherization;
    - (iii) renewable resource projects and applications;
    - (iv) research and development programs related to energy conservation and renewables;
    - (v) market transformation; and
    - (vi) low-income energy assistance;
  - (e) assurance of service reliability and quality; and
  - (f) prevention of anticompetitive and abusive activities.
- (5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana.

**Section 3. Definitions.** As used in [sections 1 through 31], unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of [the effective date of this act].

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with [section 31] that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Local governing body" means a local board of trustees of a rural electric cooperative.

(14) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(15) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(16) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

(17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

(18) "Transition bondholder" means a holder of transition bonds including trustees, collateral agents, and other entities acting for the benefit of that holder.

(19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act] and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other

right created under this section or created in the financing order and assignable under [sections 1 through 31] or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(28) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(29) "Utility" means any public utility or cooperative utility.

**Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20], beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in [section 29] on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers.

**Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection (3), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

- (i) implementation would not be administratively feasible;
- (ii) implementation would materially affect the reliability of the electric system; or
- (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) Except as provided in [sections 22 and 34 through 44], a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with [sections 1 through 31] until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of [sections 4, 6 through 12, 22, and this section].

**Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirements of [sections 1 through 31].

(2) The commission shall develop a procedural schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition plan before 9 months after the date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order.

**Section 7. Public utility -- customer choice -- continued service -- education of customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in [section 5]. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in [section 5].

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

**Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.** (1) To the

extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

**Section 9. Public utility – distribution services.** (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

**Section 10. Public utilities – transmission services.** For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers.

**Section 11. Public utilities – electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to [section 6], the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to [section 24].

**Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to [section 6(3)]; and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the

commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by [sections 1 through 31] may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:

(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.

(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of [section 5(1)(b)], public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) portions of the increase or decrease in the annual state and local property tax expense that are greater than the payment or adjustment that results from applying the industry-recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of [the effective date of this act].

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under [section 31] toward the rate moratorium pursuant to subsection (6).

(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.

**Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with [sections 1 through 31].

**Section 14. Cooperative utility – customer choice – education of customers – continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier.

(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment.

(3) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

(4) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility.

**Section 15. Cooperative utility – functional separation.** (1) To the extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

(2) A cooperative utility shall describe in the transition plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any.

(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commission's code of conduct established in 18 CFR, part 37.

**Section 16. Cooperative utility – distribution services.** (1) A cooperative utility transition plan must include distribution facility tariffs that must be established by the cooperative utility's local governing body and must include the obligation for the cooperative utility to:

(a) make distribution services available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations

shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting statements and may reflect comparable rates of return of other utilities.

**Section 17. Cooperative utility – transmission services.** Transition plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs.

**Section 18. Cooperative utility – electricity supply.** (1) A transition plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of [section 24].

(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers.

**Section 19. Cooperative utility – transition costs and charges.** (1) For the purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service.

(2) Transition costs eligible for treatment include but are not limited to:

(a) regulatory assets and deferred charges typically recoverable in rates;

(b) nonutility and utility power purchase contracts;

(c) existing commitments or obligations incurred before [the effective date of this act] and other cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1 through 31] or the introduction of retail wheeling through federal legislation or regulation;

(d) costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts;

(e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements, including any coverage amounts required by any mortgage, indenture, or other financing document;

(f) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers; and

(g) all costs, expenses, and reasonable fees related to transition bonds.

(3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition costs.

(4) Cooperative utilities may not collect any more costs, including costs reallocated to transition costs,

at a level higher than would otherwise be anticipated had the current regulatory system remained intact, with the exception of:

- (a) increased costs related to universal system benefits charges; and
  - (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.
- (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.
- (6) A cooperative utility may not collect transition costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.
- (7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through any other means may not collect transition charges.

**Section 20. Cooperative utility – exemption.** (1) Within 1 year after [the effective date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and requirements of [sections 1 through 31].

(2) A cooperative utility filing a notice under this section:

- (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and
- (b) may not use a public utility's distribution facilities unless preexisting contracts exist.

**Section 21. Maintaining safety and reliability.** Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

**Section 22. Universal system benefits programs.** (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in subsection (7), this funding level remains in effect until July 1, 2003.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for customers' programs or activities as provided in subsection (7).

(c) A utility at which the sale of power for final end-use occurs is the utility that receives credit for the universal system benefits program expenditure.

(d) For a utility to receive credit for low-income related expenditures, the activity must have taken

place in Montana.

(e) If a utility's or a customer's credit for internal activities do not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal energy assistance fund.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) A customer with loads greater than 1,000 kilowatts shall:

(a) pay a universal system benefits program charge equal to the lesser of:

(i) \$500,000 less the customer credits provided for in this subsection (7); or

(ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases, less customer credits provided for in this subsection (7);

(b) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(i) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and

(ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities; and

(c) customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the transition advisory committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The annual report must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of [sections 1 through 31];

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

**Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity supply may be procured during the transition period by the distribution function of a public utility for those customers that have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with [section 11].

(3) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to [section 24].

(5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with [sections 1 through 31], and on the public utility's transition plan.

(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the commission may promulgate any other rules necessary to carry out the provision of [sections 1 through 31].

(10) [Sections 1 through 31] do not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with [sections 1 through 31]; or

(b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1 through 31].

**Section 24. Licensing.** (1) Except as provided in [section 20], an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.

(2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliate's distribution facilities.

(3) The commission may require electricity suppliers that provide electricity supply service to small

customers to make a standard service offer that ensures that those customers have access to affordable electricity.

(4) The commission may require:

(a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to obtain those reserves; and

(b) a licensee to post a bond should an electricity supplier fail to supply electricity or lack financial integrity.

(5) An electricity supplier shall provide the commission and all distribution services providers with copies of all license applications pursuant to subsection (2). Licensees shall update information and file annual reports with the commission and all distribution services providers.

(6) License applications are effective 30 days after filing with the commission unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome deficiencies.

(7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a license from the commission to be an electricity supplier to customers served by that cooperative utility in its electric facilities service territory or to any customers served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

**Section 25. Penalties -- license revocation.** (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or caused to be switched, the electricity supply for a customer without first obtaining the customer's written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or

(d) committed fraud or engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,] and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

**Section 26. Bill information -- customer nonpayment -- commission rulemaking.** (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. Electrical bills must disclose but are not limited to the following:

(a) distribution and transmission charges;

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the customer's nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities

regarding:

- (a) customer nonpayment and reconnection; and
- (b) information contained in electrical bills to consumers.

**Section 27. Unauthorized switching – commission rulemaking.** (1) An electricity supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity supplier for a customer without first obtaining the customer's written permission.

- (2) The commission shall promulgate rules establishing procedures to prevent unauthorized switching.

**Section 28. Reciprocity.** (1) Except as provided in [section 20], all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete.

(2) A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities.

**Section 29. Transition advisory committee.** (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of eight voting members who are appointed as follows:

(a) The speaker of the house shall appoint four members from the house of representatives, not more than two of whom may be from one political party.

(b) The president of the senate shall appoint four members from the senate, not more than two of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in section 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed within 60 days of [the effective date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.

(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of the region at that time.

(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be

provided for, if necessary.

(17) On or before November 1, 2001, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through 31] to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th legislature.

(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers.

**Section 30. Tax revenue analysis.** (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the revenue oversight committee should place comparable state and local taxation burdens upon all market participants.

**Section 31. Transition costs financing.** (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order

authorizing the fixed transition amounts has become effective in accordance with subsection (2), and the transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that transition property to one or more assignees in connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to the extent approved in the pertinent financing order and may provide for a security interest in the transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the transition property as debtor and identify the transition property.

(b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax

purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section

is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest.

**Section 32.** Section 15-6-137, MCA, is amended to read:

**"15-6-137. Class seven property – description – taxable percentage.** (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town, *except rural electric cooperative properties described in 15-6-141(1)(a)*;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value."

**Section 33.** Section 15-6-141, MCA, is amended to read:

**"15-6-141. Class nine property – description – taxable percentage.** (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives); *However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a),*

*"property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.*

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

**Section 34.** Section 69-5-101, MCA, is amended to read:

**"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity Act of 1971"."

**Section 35.** Section 69-5-102, MCA, is amended to read:

**"69-5-102. Definitions.** When used in this part, the following definitions apply:

(1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) ~~"Electric supplier facilities provider" means any electrical utility and any electric cooperative that provides electric service facilities to the public.~~

(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

~~(4)~~(5) "Electric utility" means a person, firm, or corporation other than an electric cooperative which furnishes electrical that provides electric service facilities to the public.

~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities.~~

(6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts or less, measured phase-to-phase.~~

(7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric service facilities are provided or ~~is are~~ to be furnished, provided, that installed; however, two or more buildings, structures, or facilities ~~which that~~ are located on one tract or contiguous tracts of land and ~~that~~ are ~~utilized~~ used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes ~~shall must~~ together constitute one premises, except that any ~~such~~ building, structure, or facility, other than a trailer court, ~~shall may~~ not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for ~~such that~~ service are calculated independently of charges for service to any other building,

structure, or facility.

(8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

**Section 36.** Section 69-5-104, MCA, is amended to read:

**"69-5-104. Continuation of service electric service facilities to existing consumers.** ~~Every~~ Each electric ~~supplier~~ service facilities provider ~~shall have~~ has the right to ~~serve~~ provide electric service facilities to all premises being served by it or to which any of its facilities are attached on ~~February 1, 1971~~ [the effective date of this act]."

**Section 37.** Section 69-5-105, MCA, is amended to read:

**"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric ~~supplier~~ facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall ~~serve~~ provide electric service facilities to the premises initially requiring service after ~~February 1, 1971~~ [the effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost.

(2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which that~~ can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises.~~

(3) ~~If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved."~~

**Section 38.** Section 69-5-106, MCA, is amended to read:

**"69-5-106. Service Electric service facilities to industrial or commercial premises large customers.** (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~ premises if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and if the~~ electric utility can extend its ~~lines~~ facilities to ~~such industrial or commercial~~ the premises at less cost to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service facilities to ~~such the~~ premises.

(2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or, in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~

facilities at the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the electric ~~suppliers~~ facilities providers involved.

~~(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section."~~

**Section 39.** Section 69-5-107, MCA, is amended to read:

**"69-5-107. Service to property owned by electric supplier Customer-owned facilities.** ~~Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier. This part may not limit a customer's right to construct, own, or operate electric service facilities for the customer's own use, and construction, ownership, or use may not cause the customer to be considered a utility. A customer may not duplicate existing electric service facilities."~~

**Section 40.** Section 69-5-108, MCA, is amended to read:

**"69-5-108. Agreements between electric suppliers as to service areas facilities providers.** ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements that identify the geographical area to be exclusively served by each electric facilities provider that is party to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and all customers, except those provided for in 69-5-106."~~

**Section 41.** Section 69-5-109, MCA, is amended to read:

**"69-5-109. Special provisions for annexed areas.** ~~With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:~~

~~—(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.~~

~~—(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since 1985 or having existing municipal planning zones on [the effective date of this act] shall enter into agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit the agreements to the commission for approval, pursuant to this part.~~

~~(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater. Agreements must be based on the location of facilities in place on [the effective date of this act].~~

~~(3) If electric facilities providers have failed to negotiate agreements within 1 year from the [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive service territories, using the considerations pursuant to [section 44].~~

~~(4) Until agreements are final, electric service facilities to new customers will be provided pursuant to 69-5-105."~~

**Section 42.** Section 69-5-110, MCA, is amended to read:

**"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under this part over all electric ~~suppliers facilities providers~~ subject to ~~the provisions thereof this part.~~"

**Section 43.** Section 69-5-111, MCA, is amended to read:

**"69-5-111. Judicial remedies.** (1) Whenever it ~~shall appear that any~~ an electric ~~supplier facilities provider~~ is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any~~ the electric ~~supplier facilities provider~~ affected ~~thereby shall have the right to~~ may file a complaint in the district court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist ~~therefor that an electric facilities provider is in violation of this part~~ is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than 10 days after service ~~thereof of the order~~ and ~~shall~~ must take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order ~~theretofore that was issued and dismissing the complaint~~ must be made ~~not later than~~ before 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days ~~thereafter after filing the notice of appeal~~ and ~~shall~~ must take precedence over all matters pending before the supreme court of Montana."

**Section 44. Commission jurisdiction over agreements.** (1) All agreements between electric facilities providers must be submitted to the commission for approval. Each agreement must clearly identify the geographical area to be served by each electric facilities provider. The submission must include:

- (a) a map and a written description of the area; and
- (b) the terms and conditions pertaining to the implementation of the agreement.

(2) Whenever an agreement involves the exchange or transfer of customers within service territories, the following must also be included with the agreement submission:

- (a) the number and class of customers to be transferred;
- (b) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and
- (c) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those opposed to the transfer.

(3) In approving agreements, the commission shall consider but not be limited to consideration of:

- (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and
- (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

(4) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.

(5) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.

(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.

(7) The commission may promulgate rules to administer this part consistent with the requirements of this part.

**Section 45. Appropriation.** (1) The legislative services division may accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30].

(2) A gift, grant, or other donation made by a public utility, as defined in 69-3-101(1)(a), (1)(c), or (1)(d), is a cost that is nonrecoverable from ratepayers and must be borne 100% by the shareholders of the company making the gift, grant, or donation.

(3) The legislative services division is appropriated up to \$200,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30] is less than the amount received as gifts, grants, or donations, the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

**Section 46. Repealer.** Section 69-5-103, MCA, is repealed.

**Section 47. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 48. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 49. Codification instructions.** (1) [Sections 1 through 31] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

(2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [section 44].

**Section 50. Effective date.** [This act] is effective on passage and approval.

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SENATE BILL NO. 390

INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO, GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU, L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS, REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER,

LYNCH, GALVIN, MCCARTHY, BECK, RYAN, EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR, GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS, JENKINS, KOTTEL, WYATT, DENNY

AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

**Latest version of Bill** -- If this bill has not passed, the version is described underneath the "STATE BBS COPY" shown above left, if there is a second copy of the title above, then this version has passed the House and Senate and was sent to the Governor for approval.

New provisions are shown in *italic*, deleted provisions are shown ~~stricken~~.

Sponsor names are handwritten on introduced bills, hence do not appear until a bill is reprinted.

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using WP2HTML*

**THE MONTANA ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND  
CONSUMER CHOICE ACT  
Senate Bill 390**

**SUMMARY**

**Customer choice.** (Sections 4 & 5) On or before July 1, 1998 investor owned electric utility customers with loads greater than 1000 kilowatts or same customer meters with loads greater than 300 kilowatts that aggregate to 1000 kilowatts or greater must have the opportunity to choose an electric supplier.

- a. As soon as administratively feasible, but before July 1, 2002, all remaining investor owned utility customers must have choice.
- b. The Public Service Commission (PSC) may extend the date for 2 years if it finds that it is not administratively feasible or that there isn't workable competition.
- c. Beginning July 1, 1998, utilities must run pilot programs offering customer choice for residential and small commercial customers.
- d. Montana Dakota Utilities may defer completion of choice for its customers until 2006.

**Investor owned utility transition plan filing.** (Sections 6 & 7) Investor owned utilities must file a transition plan with the PSC 1 year before any customer is entitled to choice.

- a. The PSC must hold a contested case proceeding on the plan and afford all parties the opportunity for a hearing before issuing a final order either approving, modifying, or denying the plan.
- b. The PSC must make a decision on the plan within 9 months, unless waived by the utility.
- c. The transition plan must contain: an outline for an orderly transition to choice for all customers, a method for assigning customers that do not chose suppliers, an educational program for their customers, and a plan for implementing universal system benefits programs.

**Investor owned utility functional separation.** (Sections 8, 9 & 10) Investor owned utilities must functionally separate the utility's electricity supply, transmission, distribution and energy services operations.

- a. The utility must make its transmission and distribution facilities available for all electricity suppliers and customers on a nondiscriminatory and comparable basis.
- b. The utility must adopt and comply with a code of conduct consistent with the Federal Energy Regulatory Commission's code of conduct.

**Investor owned utility power supply during the transition.** (Section 11) On the effective date of the PSC's order, an investor owned utility must remove it's generation assets from rate base.

- a. During the transition to choice, the utility may offer cost-based supply service for those that do not have choice or have not chosen.
- b. If the transition period is extended, any cost-based supply contract may also be extended.
- c. If an investor owned utility intends to be an electricity supplier through an unregulated affiliate, the affiliate must be licensed as a supplier.

**Investor owned utility transition cost recovery.** (Section 12) The PSC shall allow recovery of transition costs. The costs that may be recovered include:

- a. The unmitigable above market costs of qualifying facility contracts, including buy out or buy down costs;
- b. The unmitigable costs of energy supply related regulatory assets and deferred charges; and
- c. For a 4 year period, the unmitigable costs of investor owned utility owned generation and power purchase contracts.
- d. The utility must make reasonable efforts to mitigate the costs
- e. Upon PSC approval the transition costs are to be recovered through a non bypassable charge on all customers (except on those customers with new loads greater than 1000 kilowatts).

**Investor owned utility rate moratorium.** (Section 12) An investor owned utility shall institute a rate moratorium during the transition to competition.

- a. Beginning July 1, 1998 there is a 2 year rate moratorium for all customers.
- b. After June 30, 2000, rates for customers that do not have choice, as of July 1, 1998, cannot be increased, except for transmission and distribution rates subject to PSC approval. Power supply costs may not increase for these customers until after June 30, 2002.
- c. There are moratorium exemptions for: increased universal systems benefits charges in excess of current revenues; for an extraordinary event resulting in a 4 percent or more increase in annual revenue requirement--8 percent of power supply costs in the last two years of the rate moratorium, and for increases or decreases in state and federal taxes in excess of rates of inflation.
- d. During the transition, public utilities may not charge rates or collect costs higher than they would reasonably expect to recover in rates if the current regulatory system had remained intact.

**Rural electric cooperative option of choice.** (Section 20) Rural electric cooperatives have the choice of opting in or out of offering their customers choice.

- a. If a cooperative opts in, it must certify to the PSC that it has adopted a transition plan consistent with the provisions of the act, but essentially the same as the investor owned utilities.
- b. If a cooperative opts out, it is precluded from accessing the distribution system, and thus customers, of other utilities that have opened their system up without a preexisting contract.
- c. A cooperative must participate in the universal systems benefits program whether it opts in or out.

**Universal systems benefits program.** (Section 22) A universal systems benefits program is established as a charge to all utility customers to ensure continued funding of energy conservation, renewables and low-income energy assistance programs.

- a. Beginning July 1, 1999 and until July 1, 2003, 2.4 percent of each utility's 1995 retail sales revenue is established as the funding level for universal systems benefits programs.
- b. A minimum annual funding requirement for low income energy bill and weatherization assistance is established at 17 percent of each utility's annual universal system benefits funding level.

c. Customers with loads greater than 1000 kilowatts pay the lesser of \$500,000 or .9 mills per kilowatt hour purchased.

d. Utilities and large customers receive credit toward their universal system benefits obligation for their internal programs.

e. If a utility's or a large customer's credit does not satisfy the annual funding requirement, then it shall make a payment to the universal systems benefit fund or the universal energy assistance fund.

f. Cooperatives may collectively pool their credits statewide.

g. Investor owned utilities and cooperatives must file annual reports relating to universal systems benefits to the transition advisory committee created by this bill.

**Public Service Commission regulatory responsibilities.** (Section 23) The PSC shall continue to regulate the retail transmission and distribution system within Montana after it issues a final order on a utility's transition plan.

a. The PSC may find that workable competition does not exist and continue the regulation of electricity supply by distribution services providers as a cost-based supply contract for a period of no more than 3 years, past the transition period.

b. The PSC must determine whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership.

**Licensing of electricity suppliers.** (Sections 24-28) The PSC shall license electricity suppliers and enforce their licensing provisions.

a. All electricity suppliers must be licensed by the PSC before offering to sell to customers in Montana.

b. The PSC must make sure that electricity supply is offered and is adequate in terms of quality, safety, and reliability.

c. The PSC may suspend the license, impose penalties, or both if the PSC finds the electricity supplier violates the provisions of this act.

d. Slamming or unauthorized switching of customers is specifically prohibited.

e. Electricity bills must disclose costs to customers of each cost component.

f. Reciprocity must be afforded to obtain access to another utility's distribution facilities.

**Legislative transition oversight committee on electricity restructuring.** (Section 29) A legislative transition oversight committee on electricity industry restructuring is created.

a. There are 8 voting legislative members, two from each house from each party.

b. There are 12 nonvoting advisory members from industry, customer groups, and other affected interests.

c. The transition oversight committee shall analyze and report to the Governor and members of the legislature on the status of electricity industry restructuring in the state, the transition to effective competition, the need for further consumer protections in the state, recommend legislation to further promote restructuring, and make recommendations on universal systems benefits programs.

**Tax study. (Section 30)** The revenue oversight committee is to analyze the tax implications of restructuring and report to the Legislature with legislative recommendations on the statutory tax changes that are necessary as a result of restructuring.

**Transition bond financing. (Section 31)** Utilities may apply to the PSC for a financing order to issue transition bonds to recover certain transition costs.

- a. The cost savings from issuing bonds must benefit customers.
- b. The bonds are secured by a non bypassable charge on all customers that creates a revenue stream to pay interest and retire the bonds.
- c. The bond term must not exceed 20 years.
- d. Rural electric cooperatives that opt in may also bond for recovery of transition costs.

**Territorial integrity act modifications. (Sections 32-44)** The territorial integrity act is modified from who has responsibility to serve loads to who has responsibility to connect the load.

- a. The Act creates a rebuttable presumption that the nearest line is the least-cost line to build.
- b. There are provisions for the PSC to approve agreements between competing utilities that might serve the same loads.
- c. There are special provisions for dealing with annexed new areas of cities.

Note: The effective date of SB 390 is May 2, 1997.

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