

D-NOTE

1

LFB:.....Worzala - Electric reliability package

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 24, line 9: after that line insert:

3 "SECTION 28m. 15.107 (17) of the statutes is created to read:

4 15.107 (17) COUNCIL ON UTILITY PUBLIC BENEFITS. There is created a council on

5 utility public benefits that is attached to the department of administration under s.

6 15.03. The council shall consist of the following members appointed for 3-year

7 terms:

8 (a) Two members appointed by the governor.

9 (b) Two members appointed by the senate majority leader.

10 (c) One member appointed by the senate minority leader.

1 (d) Two members appointed by the speaker of the assembly.

2 (e) One member appointed by the assembly minority leader.

3 (f) One member appointed by the secretary of natural resources.

4 (g) One member appointed by the secretary of administration.

5 (h) One member appointed by the chairperson of the public service  
6 commission.”.

7 **2.** Page 54, line 4: after that line insert:

8 “SECTION 109m. 16.957 of the statutes is created to read:

9 **16.957 Utility public benefits. (1) DEFINITIONS.** In this section:

10 (bm) “Commission” means the public service commission.

11 (c) “Commitment to community program” means a program by a municipal  
12 utility or retail electric cooperative for low-income assistance or an energy  
13 conservation program by a municipal utility or retail electric cooperative.

14 (cm) “Council” means the council on utility public benefits created under s.  
15 15.107 (17).

16 (d) “Customer application of renewable resources” means the generation of  
17 electricity from renewable resources that takes place on the premises of a customer  
18 or member of an electric provider.

19 (e) “Division of housing” means the division of housing in the department.

20 (f) “Electric provider” means an electric utility or retail electric cooperative.

21 (g) “Electric utility” means a public utility that owns or operates a retail electric  
22 distribution system.

23 (h) “Energy conservation program” means a program for reducing the demand  
24 for natural gas or electricity or improving the efficiency of its use during any period.

1 (i) “Fiscal year” has the meaning given in s. 655.001 (6).

2 (k) “Local unit of government” means the governing body of any county, city,  
3 town, village or county utility district or the elected tribal governing body of a  
4 federally recognized American Indian tribe or band.

5 (L) “Low-income assistance” means assistance to low-income households for  
6 weatherization and other energy conservation services, payment of energy bills or  
7 early identification or prevention of energy crises.

8 (m) “Low-income household” means any individual or group of individuals in  
9 this state who are living together as one economic unit and for whom residential  
10 electricity is customarily purchased in common or who make undesignated  
11 payments for electricity in the form of rent, and whose household income is not more  
12 than 150% of the poverty line as determined under 42 USC 9902 (2).

13 (n) “Low-income need” means the amount obtained by subtracting from the  
14 total low-income energy bills in a fiscal year the product of 2.2% of the estimated  
15 average annual income of low-income households in this state in that fiscal year  
16 multiplied by the estimated number of low-income households in this state in that  
17 fiscal year.

18 (o) “Low-income need percentage” means the percentage that results from  
19 dividing the sum of the following by the amount of low-income need in fiscal year  
20 1998–99:

21 1. The total amount received by the department for low-income funding under  
22 42 USC 6861 to 6873 and 42 USC 8621 to 8629 in fiscal year 1997–98.

23 1m. The amount of the portion of the public benefits fee for fiscal year  
24 1999–2000 that is specified in sub. (4) (c) 1. The amount specified in this subdivision

1 shall not be subject to the reduction under 1999 Wisconsin Act .... (this act), section  
2 9101 (1zv) (a).

3 2. The total amount expended by utilities under s. 196.374 related to  
4 low-income assistance.

5 3. Fifty percent of the amount of public benefits fees that municipal utilities  
6 and retail electric cooperatives are required to charge under sub. (5) (a) in fiscal year  
7 1999–2000. The amount specified in this subdivision shall not be subject to the  
8 reduction under 1999 Wisconsin Act .... (this act), section 9101 (1zv) (c).

9 (p) “Low-income need target” means the product of the low-income need  
10 percentage multiplied by low-income need in a fiscal year.

11 (q) “Municipal utility” means an electric utility that is owned wholly by a  
12 municipality and that owns a retail distribution system.

13 (qm) “Public utility” has the meaning given in s. 196.01 (5).

14 (r) “Renewable resource” has the meaning given in s. 196.378 (1) (h).

15 (s) “Retail capacity” means the total amount of electricity that an electric  
16 provider is capable of delivering to its retail customers or members and that is  
17 supplied by electric generating facilities owned or operated by the electric provider  
18 or any other person. “Retail capacity” does not include any electricity that is not used  
19 to satisfy the electric provider’s retail load obligations.

20 (t) “Retail electric cooperative” means a cooperative association that is  
21 organized under ch. 185 for the purpose of providing electricity at retail to its  
22 members only and that owns or operates a retail electric distribution system.

23 (u) “Total low-income energy bills” means the total estimated amount that all  
24 low-income households are billed for residential electricity, natural gas and heating  
25 fuel in a fiscal year.

1 (v) “Wholesale electric cooperative” means a cooperative association that is  
2 organized under ch. 185 for the purpose of providing electricity at wholesale to its  
3 members only.

4 (w) “Wholesale supplier” means a wholesale electric cooperative or a municipal  
5 electric company, as defined in s. 66.073 (3) (d), that supplies electricity at wholesale  
6 to a municipal utility or retail electric cooperative.

7 (x) “Wholesale supply percentage” means the percentage of a municipal  
8 utility’s or retail electric cooperative’s retail capacity in a fiscal year that is supplied  
9 by a wholesale supplier.

10 (2) DEPARTMENT DUTIES. In consultation with the council, the department shall  
11 do all of the following:

12 (a) *Low-income programs.* After holding a hearing, establish programs to be  
13 administered by the department through the division of housing for awarding grants  
14 from the appropriation under s. 20.505 (10) (r) to provide low-income assistance. In  
15 each fiscal year, the amount awarded under this paragraph shall be sufficient to  
16 ensure that an amount equal to 47% of the sum of the following is spent for  
17 weatherization and other energy conservation services:

18 1. All moneys received from the federal government under 42 USC 6861 to 6873  
19 and 42 USC 8621 to 8629 in a fiscal year.

20 2. All moneys spent in a fiscal year for low-income programs established under  
21 s. 196.374.

22 3. All moneys spent in a fiscal year on programs established under this  
23 paragraph.

24 4. Fifty percent of the moneys collected in public benefits fees under sub. (5).

1           (b) *Energy conservation and efficiency and renewable resource programs.* 1.  
2 Subject to subd. 2., after holding a hearing, establish programs for awarding grants  
3 from the appropriation under s. 20.505 (10) (s) for each of the following:

4           a. Proposals for providing energy conservation or efficiency services. In  
5 awarding grants under this subd. 1. a., the department shall give priority to  
6 proposals directed at the sectors of energy conservation or efficiency markets that  
7 are least competitive and at promoting environmental protection, electric system  
8 reliability or rural economic development. In each fiscal year, 1.75% of the  
9 appropriation under s. 20.505 (10) (s) shall be awarded in grants for research and  
10 development proposals regarding the environmental impacts of the electric industry.

11           b. Proposals for encouraging the development or use of customer applications  
12 of renewable resources, including educating customers or members about renewable  
13 resources or encouraging uses of renewable resources by customers or members or  
14 encouraging research technology transfers. In each fiscal year, the department shall  
15 ensure that 4.5% of the appropriation under s. 20.505 (10) (s) is awarded in grants  
16 under this subd. 1. b.

17           2. For each fiscal year after fiscal year 2003–04, determine whether to continue,  
18 discontinue or reduce any of the programs established under subd. 1. and determine  
19 the total amount necessary to fund the programs that the department determines  
20 to continue or reduce under this subdivision. The department shall notify the  
21 commission if the department determines under this subdivision to reduce funding  
22 by an amount that is greater than the portion of the public benefits fee specified in  
23 sub. (4) (c) 2. The notice shall specify the portion of the reduction that exceeds the  
24 amount of public benefits fees specified in sub. (4) (c) 2.

25           (c) *Rules.* Promulgate rules establishing all of the following:

1           1. Eligibility requirements for low-income assistance under programs  
2 established under par. (a). The rules shall prohibit a person who receives  
3 low-income assistance from a municipal utility or retail electric cooperative under  
4 a program specified in sub. (5) (d) 2. b. or 3. a. from receiving low-income assistance  
5 under programs established under par. (a).

6           2. Requirements and procedures for applications for grants awarded under  
7 programs established under par. (a) or (b) 1.

8           2m. Criteria for the selection of proposals by a corporation specified in sub. (3)  
9 (b).

10          2n. Criteria for making the determination under par. (b) 2. Rules promulgated  
11 under this subdivision shall require the department to determine whether the need  
12 for a program established under par. (b) 1. is satisfied by the private sector market  
13 and, if so, whether the program should be discontinued or reduced.

14          4. Requirements for electric utilities to allow customers to include voluntary  
15 contributions to assist in funding a program established under par. (a) or (b) 1. with  
16 bill payments for electric service. The rules may require an electric utility to provide  
17 a space on an electric bill in which a customer may indicate the amount of a voluntary  
18 contribution and the customer's preference regarding whether a contribution should  
19 be used for a program established under par. (a) or (b) 1. a. or b. The rules shall  
20 establish requirements and procedures for electric utilities to pay to the department  
21 any voluntary contributions included with bill payments and to report to the  
22 department customer preferences regarding use of the contributions. The  
23 department shall deposit all contributions received under this paragraph in the  
24 utility public benefits fund.

1           5. A method for estimating total low-income energy bills, average annual  
2 income of low-income households and the number of low-income households in a  
3 fiscal year for the purpose of determining the amount of low-income need in the fiscal  
4 year.

5           (d) *Other duties.* 1. For each fiscal year after fiscal year 1998-99, determine  
6 the low-income need target for that fiscal year.

7           2. Encourage customers or members to make voluntary contributions to assist  
8 in funding the programs established under pars. (a) and (b) 1. The department shall  
9 deposit all contributions received under this paragraph in the utility public benefits  
10 fund.

(4) (a) or

11           3. Deposit all moneys received under sub. (5) (c) or (d) in the utility public  
12 benefits fund and, ~~except as provided in s. 16.958 (2) (a), deposit all moneys received~~  
13 ~~under sub. (4) (a) in the utility public benefits fund.~~

14           4. Provide for an annual independent audit and submit an annual report to the  
15 legislature under s. 13.172 (2) that describes each of the following:

16           a. The expenses of the department, other state agencies and grant recipients  
17 in administering or participating in the programs under pars. (a) and (b).

18           b. The effectiveness of the programs under par. (a) in providing assistance to  
19 low-income individuals.

20           c. The effectiveness of the programs under par. (b) in reducing demand for  
21 electricity and increasing the use of renewable resources owned by customers or  
22 members.

23           d. Any other issue identified by the department, council, governor, speaker of  
24 the assembly or majority leader of the senate.



1           (3) CONTRACTS. (a) The division of housing shall, on the basis of competitive  
2 bids, contract with community action agencies described in s. 46.30 (2) (a) 1.,  
3 nonstock, nonprofit corporations organized under ch. 181 or local units of  
4 government to provide services under the programs established under sub. (2) (a).

5           (b) The department shall, on the basis of competitive bids, contract with one  
6 or more nonstock, nonprofit corporations organized under ch. 181 to administer the  
7 programs established under sub. (2) (b) 1., including soliciting proposals, processing  
8 grant applications, selecting, based on criteria specified in rules promulgated under  
9 sub. (2) (c) 2m., proposals for the department to make awards and distributing grants  
10 to recipients.

11           (c) In selecting proposals and awarding grants under sub. (2) (b), the  
12 department or a nonprofit corporation specified in par. (b) may not discriminate  
13 against an electric provider or its affiliate or a wholesale electric supplier or its  
14 affiliate solely on the basis of its status as an electric provider, wholesale electric  
15 supplier or affiliate.

16           (4) ELECTRIC UTILITIES. (a) *Requirement to charge public benefits fees.* Each  
17 electric utility, except for a municipal utility, shall charge each customer a public  
18 benefits fee in an amount established in rules promulgated by the department under  
19 par. (b). An electric utility, except for a municipal utility, shall collect and pay the fees  
20 to the department in accordance with the rules promulgated under par. (b). The  
21 public benefits fees collected by an electric utility shall be considered trust funds of  
22 the department and not income of the electric utility.

23           (am) *Electric bills.* An electric utility shall include a public benefits fee in the  
24 fixed charges for electricity in a customer's bill and shall provide the customer with

1 an annual statement that identifies the annual charges for public benefits fees and  
2 describes the programs for which fees are used.

3 (b) *Rules.* In consultation with the council, the department shall promulgate  
4 rules that establish the amount of a public benefits fee under par. (a). Fees  
5 established in rules under this paragraph may vary by class of customer, but shall  
6 be uniform within each class, and shall satisfy each of the following:

7 1. The fees may not be based on the kilowatt-hour consumption of electricity  
8 by customers.

9 2. Seventy percent of the total amount of fees charged by an electric provider  
10 may be charged to residential customers and 30% of the total may be charged to  
11 nonresidential customers.

12 3. The fees shall allow an electric provider to recover the reasonable and  
13 prudent expenses incurred by the electric provider in complying with this section.

14 (c) *Amount of public benefits fees.* A fee established in rules promulgated under  
15 par. (b) shall satisfy each of the following:

16 1. 'Low-income funding.' In fiscal year 1999–2000, a portion of the public  
17 benefits fee shall be an amount that, when added to 50% of the estimated public  
18 benefits fees charged by municipal utilities and retail electric cooperatives under  
19 sub. (5) (a) for that fiscal year, shall equal \$24,000,000. In each fiscal year after fiscal  
20 year 1999–2000, a portion of the public benefits fee shall be an amount that, when  
21 added to the sum of the following shall equal the low-income need target for that  
22 fiscal year determined by the department under sub. (2) (d) 1.:

23 a. Fifty percent of the estimated public benefits fees charged by municipal  
24 utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year.

1           b. All moneys received under 42 USC 6861 to 6873 and 42 USC 8621 to 8629  
2 for that fiscal year.

3           c. The total amount spent on programs or contributed to the commission by  
4 utilities under s. 196.374 (3) for that fiscal year for low-income assistance.

5           2. 'Energy conservation and efficiency and renewable resource funding.' For  
6 fiscal year 1999–2000, a portion of the public benefits fee shall be in an amount that,  
7 when added to 50% of the estimated public benefits fees charged by municipal  
8 utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year, shall  
9 equal \$20,000,000. In each fiscal year after fiscal year 1999–2000, a portion of the  
10 public benefits fee shall be the amount determined under this subdivision for fiscal  
11 year 1999–2000, except that if the department determines to reduce or discontinue  
12 a program under sub. (2) (b) 2., the department shall reduce the amount accordingly.

13           3. 'Limitation on electric bill increases.' For the period beginning on the  
14 effective date of this subdivision .... [revisor inserts date], and ending on June 30,  
15 2008, the total increase in a customer's electric bills that is based on the requirement  
16 to pay public benefits fees, including any increase resulting from an electric utility's  
17 compliance with this section, may not exceed 3% of the total of every other charge for  
18 which the customer is billed for that period or \$750 per month, whichever is less.

19           (5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to*  
20 *charge public benefits fees.* Each retail electric cooperative and municipal utility  
21 shall charge a monthly public benefits fee to each customer or member in an amount  
22 that is sufficient for the retail electric cooperative or municipal utility to collect an  
23 annual average of \$16 per meter. A retail electric cooperative or municipal utility  
24 may determine the amount that a particular class of customers or members is

1 required to pay under this paragraph and may charge different fees to different  
2 classes of customers or members.

3 (am) *Public benefits fee restriction.* Notwithstanding par. (a), for the period  
4 beginning on the effective date of this paragraph .... [revisor inserts date], and ending  
5 on June 30, 2008, the total increase in a customer's or member's electric bills that is  
6 based on the requirement to pay public benefits fees, including any increase  
7 resulting from a retail electric cooperative's or municipal utility's compliance with  
8 this section, may not exceed 3% of the total of every other charge for which the  
9 member or customer is billed for that period or \$750 per month, whichever is less.

10 (b) *Election to contribute to department programs.* 1. No later than the first  
11 day of the 12th month beginning after the effective date of this subdivision ....  
12 [revisor inserts date], each municipal utility or retail electric cooperative shall notify  
13 the department whether it has elected to contribute to the programs established  
14 under sub. (2) (a) or (b) 1. for a 3-year period.

15 2. No later than every 3rd year after the date specified in subd. 1., each  
16 municipal utility or retail electric cooperative shall notify the department whether  
17 it has elected to contribute to the programs established under sub. (2) (a) or (b) 1. for  
18 a 3-year period.

19 (c) *Full contribution.* If a municipal utility or retail electric cooperative elects  
20 under par. (b) 1. or 2. to contribute to the programs established both under sub. (2)  
21 (a) and under sub. (2) (b) 1., it shall pay 100% of the public benefits fees that it charges  
22 under par. (a) to the department in each fiscal year of the 3-year period for which it  
23 has made the election.

1           (d) *Partial contributions and commitment to community spending.* A  
2 municipal utility or retail electric cooperative not specified in par. (c) shall do one of  
3 the following:

4           1. If the municipal utility or retail electric cooperative elects to contribute only  
5 to the programs established under sub. (2) (a), the municipal utility or retail electric  
6 cooperative shall, in each fiscal year of the 3–year period for which it elects to  
7 contribute under par. (b) 1. or 2., do all of the following:

8           a. Pay 50% of the public benefits fees that it charges under par. (a) to the  
9 department.

10           b. Spend 50% of the public benefits fees that it charges under par. (a) on energy  
11 conservation programs.

12           2. If the municipal utility or retail electric cooperative elects to contribute only  
13 to the programs established under sub. (2) (b) 1., the municipal utility or retail  
14 electric cooperative shall, in each fiscal year of the 3–year period for which it elects  
15 to contribute under par. (b) 1. or 2., do all of the following:

16           a. Pay 50% of the public benefits fees that it charges under par. (a) to the  
17 department.

18           b. Spend 50% of the public benefits fees that it charges under par. (a) on  
19 programs for low–income assistance.

20           3. If the municipal utility or retail electric cooperative elects not to contribute  
21 to any of the programs established under sub. (2) (a) or (b) 1., the municipal utility  
22 or retail electric cooperative shall, in each fiscal year of the 3–year period for which  
23 it elects not to contribute under par. (b) 1. or 2., do all of the following:

24           a. Spend 50% of the public benefits fees that it charges under par. (a) on  
25 programs for low–income assistance.

1           b. Spend 50% of the public benefits fees that it charges under par. (a) on energy  
2 conservation programs.

3           (e) *Wholesale supplier credit.* If a wholesale supplier has established a program  
4 for low-income assistance or an energy conservation program, a municipal utility or  
5 retail electric cooperative that is a customer or member of the wholesale supplier  
6 may do any of the following:

7           1. Include an amount equal to the product of the municipal utility's or retail  
8 electric cooperative's wholesale supply percentage and the amount that the  
9 wholesale supplier has spent on low-income assistance in a fiscal year in calculating  
10 the amount that the municipal utility or retail electric cooperative has spent on  
11 low-income assistance in that fiscal year under par. (d) 2. b. or 3. a.

12           2. Include an amount equal to the product of the municipal utility's or retail  
13 electric cooperative's wholesale supply percentage and the amount that the  
14 wholesale supplier has spent on energy conservation programs or customer  
15 applications of renewable resources in a fiscal year in calculating the amount that  
16 the municipal utility or retail electric cooperative has spent on energy conservation  
17 programs under par. (d) 1. b. or 3. b.

18           (f) *Joint programs.* Municipal utilities or retail electric cooperatives may  
19 establish joint commitment to community programs, except that each municipal  
20 utility or retail electric cooperative that participates in a joint program is required  
21 to comply with the spending requirements under par. (d).

22           (g) *Reports.* 1. For each fiscal year, each municipal utility and retail electric  
23 cooperative that does not pay 100% of the public benefits fee that it charges under  
24 par. (a) to the department under par. (c) shall file a report with the department that  
25 describes each of the following:

1 a. An accounting of public benefits fees charged to customers or members under  
2 par. (a) in the fiscal year and expenditures on commitment to community programs  
3 under par. (d), including any amounts included in the municipal utility's or retail  
4 electric cooperative's calculations under par. (e).

5 b. A description of commitment to community programs established by the  
6 municipal utility or retail electric cooperative in the fiscal year.

7 2. The department shall maintain reports filed under subd. 1. for at least 6  
8 years.

9 **SECTION 109no.** 16.958 of the statutes is created to read:

10 **16.958 Air quality improvement program.** (1) In this section:

11 (a) "Eligible electric provider" means a generator public utility or a generator  
12 electric cooperative that provides electric service to customers or members in the  
13 midcontinent area of this state.

14 (b) "Generator electric cooperative" means an electric cooperative, as defined  
15 in s. 76.48 (1g) (c), that generates electricity.

16 (c) "Generator public utility" means a public utility, as defined in s. 196.01 (5),  
17 that generates electricity.

18 (d) "Initial compliance date" means the date specified in a notice by the  
19 department of natural resources under s. 285.48 (2) ~~at~~ <sup>by</sup> which electric generating  
20 facilities in the midcontinent area of this state are required to comply with initial  
21 nitrogen oxide emission reduction requirements.

22 (e) "Midcontinent area" means the geographic area served by the  
23 Mid-Continent Area Power Pool reliability council of the North American Electric  
24 Reliability Council.

INSERT 16-1

1 (2) If the department of natural resources notifies the department of  
2 administration that the department of natural resources has made the  
3 ~~determination under~~ s. 285.48 (2), the department of administration shall do each  
4 of the following:

5 (a) In each fiscal year of the 10-year period that commences on July 1 of the  
6 fiscal year ending before the initial compliance date, ~~at least~~ \$2,500,000, or the lesser  
7 amount specified in a notice under s. 285.48 (3) (d) 4., ~~of the moneys received under~~  
8 ~~s. 16.957 (4) (a) in the air quality improvement fund and deposit the remainder of the~~  
9 ~~moneys received under s. 16.957 (4) (a) in the utility public benefits fund.~~

transfer

from the utility public benefits fund to

10 (b) From the air quality improvement fund, award grants to eligible electric  
11 providers to be used for the purpose of complying with requirements under state or  
12 federal law to reduce nitrogen oxide emissions in the midcontinent area of this state  
13 pursuant to a state implementation plan. An eligible electric provider that is a public  
14 utility may receive no more than \$500,000 per year in grants under this paragraph.

15 (c) Promulgate rules for awarding grants under par. (b). The rules shall require  
16 an applicant for a grant to identify the reduction in nitrogen oxide emissions that the  
17 applicant is capable of achieving with the grant.

18 (3) An eligible electric provider that is awarded a grant under sub. (2) (b) may  
19 assign the grant to a 3rd party if the 3rd party uses the grant for the purpose of  
20 reducing nitrogen oxide emissions and the eligible electric provider demonstrates to  
21 the satisfaction of the department of administration that the 3rd party is capable of  
22 achieving the reduction in nitrogen oxide emissions identified in the eligible electric  
23 provider's application for the grant."

24 3. Page 60, line 22: after that line insert:



1           “SECTION 114nm. 16.969 of the statutes is created to read:

2           **16.969 Fees for certain high-voltage transmission lines.** (1) In this  
3 section:

4           (a) “Commission” means the public service commission.

5           (b) “High-voltage transmission line” means a high-voltage transmission line,  
6 as defined in s. 196.491 (1) (f), that is designed for operation at a nominal voltage of  
7 345 kilovolts or more.

8           (2) The department shall promulgate rules that require a person who is issued  
9 a certificate of public convenience and necessity by the commission under s. 196.491

10 (3) for a high-voltage transmission line to pay the department the following fees:

11           (a) An annual impact fee in an amount equal to 0.3% of the cost of the  
12 high-voltage transmission line, as determined by the commission under s. 196.491

13 (3) (gm).

14           (b) A one-time environmental impact fee in an amount equal to 5% of the cost  
15 of the high-voltage transmission line, as determined by the commission under s.  
16 196.491 (3) (gm).

17           (3) (a) The department shall distribute the fees that are paid by a person under  
18 the rules promulgated under sub. (2) (a) to each town, village and city that is  
19 identified by the commission under s. 196.491 (3) (gm) in proportion to the amount  
20 of investment that is allocated by the commission under s. 196.491 (3) (gm) to each  
21 such town, village and city.

22           (b) The fee that is paid by a person under the rules promulgated under sub. (2)

23 (b) shall be distributed as follows:

1           1. The department shall pay 50% of the fee to each county that is identified by  
2 the commission under s. 196.491 (3) (gm) in proportion to the amount of investment  
3 that is allocated by the commission under s. 196.491 (3) (gm) to each such county.

4           2. The department shall pay 50% of the fee to each town, village and city that  
5 is identified by the commission under s. 196.491 (3) (gm) in proportion to the amount  
6 of investment that is allocated by the commission under s. 196.491 (3) (gm) to each  
7 such town, village and city.

8           (4) A county, town, village or city that receives a distribution under sub. (3) (b)  
9 may use the distribution only for park, conservancy, wetland or other similar  
10 environmental programs.”.

11           **4.** Page 114, line 8: increase the dollar amount for fiscal year 1999–00 by  
12 \$250,000 and increase the dollar amount for fiscal year 2000–01 by \$250,000 for the  
13 purpose for which the appropriation is made.

14           **5.** Page 235, line 18: after that line insert:

15	“(ge) High-voltage transmission line				
16	annual impact fee distributions	PR	C	-0-	-0-
17	(gs) High-voltage transmission line				
18	environmental impact fee dis-				
19	tributions	PR	C	-0-	-0-”.

20           **6.** Page 244, line 13: after that line insert:

21           “(10) UTILITY PUBLIC BENEFITS

22	(q) General program operations	SEG	A	-0-	-0-
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1	(r)	Low-income assistance grants	SEG	S	-0-	-0-
2	(s)	Energy conservation and effi-				
3		ciency and renewable resource				
4		grants	SEG	S	-0-	-0-
5	(11)	AIR QUALITY IMPROVEMENT PROGRAM				
6	(r)	Air quality improvement grants	SEG	S	-0-	-0-".

7           **7.** Page 371, line 18: after that line insert:

8           “**SECTION 511n.** 20.505 (1) (ge) of the statutes is created to read:

9           20.505 (1) (ge) *High-voltage transmission line annual impact fee distributions.*

10          All moneys received from the payment of fees under the rules promulgated under s.

11          16.969 (2) (a) for distributions to to towns, villages and cities under s. 16.969 (3) (a).

12           **SECTION 511r.** 20.505 (1) (gs) of the statutes is created to read:

13           20.505 (1) (gs) *High-voltage transmission line environmental impact fee*  
14 *distributions.* All moneys received from the payment of fees under the rules

15 promulgated under s. 16.969 (2) (b) for distributions to counties, towns, villages and

16 cities under s. 16.969 (3) (b).”.

17           **8.** Page 388, line 14: after that line insert:

18           “**SECTION 587b.** 20.505 (10) of the statutes is created to read:

19           20.505 (10) **UTILITY PUBLIC BENEFITS.** (q) *General program operations.* From  
20 the utility public benefits fund, the amounts in the schedule for general program  
21 operations.

22           (r) *Low-income assistance grants.* From the utility public benefits fund, a sum  
23 sufficient for low-income assistance grants under s. 16.957 (2) (a).

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1 (s) *Energy conservation and efficiency and renewable resource grants*. From the  
2 utility public benefits fund, a sum sufficient for energy conservation and efficiency  
3 and renewable resource grants under s. 16.957 (2) (b) 1.

4 **SECTION 587d.** 20.505 (11) of the statutes is created to read:

5 20.505 (11) AIR QUALITY IMPROVEMENT PROGRAM. (r) *Air quality improvement*

6 *grants*. From the air quality improvement fund, ~~\$1,500,000 of the moneys received~~

7 ~~under s. 16.957 (2) (a) and (b) and all moneys received under s. 196.86 (2), for the purpose~~

8 of making grants under s. 16.958 (2) (b).”.

9 **9.** Page 464, line 2: after that line insert:

10 “**SECTION 697b.** 25.17 (1) (ai) of the statutes is created to read:

11 25.17 (1) (ai) Air quality improvement fund (s. 25.97);”.

12 **10.** Page 464, line 10: after that line insert:

13 “**SECTION 699m.** 25.17 (1) (xm) of the statutes is created to read:

14 25.17 (1) (xm) Utility public benefits fund (s. 25.96);”.

15 **11.** Page 470, line 18: after that line insert:

16 “**SECTION 718b.** 25.96 of the statutes is created to read:

17 **25.96 Utility public benefits fund.** There is established a separate  
18 nonlapsible trust fund designated as the utility public benefits fund, consisting of  
19 deposits by the public service commission under s. 196.374 (3), public benefits fees  
20 received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions received under  
21 s. 16.957 (2) (c) 4. and (d) 2.

22 **SECTION 718d.** 25.97 of the statutes is created to read:

*all moneys transferred*

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**25.97 Air quality improvement fund.** There is established a separate nonlapsible trust fund designated as the air quality improvement fund, consisting of ~~deposits~~ <sup>of s.</sup> under ~~s.~~ 16.958 (2) (a) and 196.86 (3)."

*all moneys deposited under s.*

**12.** Page 953, line 3: after that line insert:

**"SECTION 1809b.** 76.28 (1) (d) of the statutes is amended to read:

76.28 (1) (d) "Gross revenues" for a light, heat and power company other than a qualified wholesale electric company or a transmission company means total operating revenues as reported to the public service commission except revenues for interdepartmental sales and for interdepartmental rents as reported to the public service commission and deductions from the sales and use tax under s. 77.61 (4), except that the company may subtract from revenues either the actual cost of power purchased for resale, as reported to the public service commission, by a light, heat and power company, except a municipal light, heat and power company, that purchases under federal or state approved wholesale rates more than 50% of its electric power from a person other than an affiliated interest, as defined in s. 196.52 (1), if the revenue from that purchased electric power is included in the seller's gross revenues or the following percentages of the actual cost of power purchased for resale, as reported to the public service commission, by a light, heat and power company, except a municipal light, heat and power company that purchases more than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50% for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric company, "gross revenues" means total business revenues from those businesses included under par. (e) 1. to 4. For a transmission company, "gross revenues" means

1 total operating revenues as reported to the public service commission, except  
2 revenues for transmission service that is provided to a public utility that is subject  
3 to the license fee under sub. (2) (d), to a public utility, as defined in s. 196.01 (5), or  
4 to a cooperative association organized under ch. 185 for the purpose of providing  
5 electricity to its members only. For an electric utility, as defined in s. 16.957 (1) (g),  
6 “gross revenues” does not include public benefits fees collected by the electric utility  
7 under s. 16.957 (4) (a) or (5) (a). For a generator public utility, “gross revenues” does  
8 not include any grants awarded to the generator public utility under s. 16.958 (2) (b).  
9 For a wholesale supplier, as defined in s. 16.957 (1) (w), “gross revenues” does not  
10 include any public benefits fees that are received from a municipal utility or retail  
11 electric cooperative or under a joint program established under s. 16.957 (5) (f). For  
12 a municipal utility, “gross revenues” does not include public benefits fees received by  
13 the municipal utility from a municipal utility or retail electric cooperative under a  
14 joint program established under s. 16.957 (5) (f).

15 **SECTION 1809f.** 76.28 (1) (e) (intro.) of the statutes is amended to read:

16 76.28 (1) (e) (intro.) “Light, heat and power companies” means any person,  
17 association, company or corporation, including corporations described in s. 66.069 (2)  
18 and including, qualified wholesale electric companies and transmission companies  
19 and except only business enterprises carried on exclusively either for the private use  
20 of the person, association, company or corporation engaged in them, or for the private  
21 use of a person, association, company or corporation owning a majority of all  
22 outstanding capital stock or who control the operation of business enterprises and  
23 except electric cooperatives taxed under s. 76.48 that engage in any of the following  
24 businesses:

25 **SECTION 1809k.** 76.28 (1) (e) 5. of the statutes is created to read:

1 76.28 (1) (e) 5. Transmitting electric current for light, heat or power.

2 **SECTION 1809h.** 76.28 (1) (eg) of the statutes is created to read:

3 76.28 (1) (eg) “Municipal utility” has the meaning given in s. 16.957 (1) (q).

4 **SECTION 1809j.** 76.28 (1) (gr) of the statutes is created to read:

5 76.28 (1) (gr) “Retail electric cooperative” has the meaning given in s. 16.957

6 (1) (t).

7 **SECTION 1809no.** 76.28 (1) (j) of the statutes is created to read:

8 76.28 (1) (j) “Transmission company” has the meaning given in s. 196.485 (1)

9 (ge).

10 **SECTION 1809s.** 76.28 (2) (c) (intro.) of the statutes is amended to read:

11 76.28 (2) (c) (intro.) ~~For~~ Except as provided under par. (e), for private light, heat  
12 and power companies for 1986 and thereafter, an amount equal to the apportionment  
13 factor multiplied by the sum of:

14 **SECTION 1809w.** 76.28 (2) (d) of the statutes is amended to read:

15 76.28 (2) (d) ~~For~~ Except as provided under par. (e), for municipal light, heat and  
16 power companies, an amount equal to the gross revenues, except gross revenues from  
17 operations within the municipality that operates the company, multiplied by the  
18 rates under par. (b) or (c).

19 **SECTION 1809y.** 76.28 (2) (e) of the statutes is created to read:

20 76.28 (2) (e) For transmission companies, an amount equal to the gross  
21 revenues multiplied by the rates under par. (c).”.

22 **13.** Page 953, line 4: before that line insert:

23 “**SECTION 1809zm.** 76.48 (1g) (d) of the statutes is amended to read:

1           76.48 (1g) (d) “Gross revenues” means total operating revenues, except  
2 revenues for interdepartmental sales and for interdepartmental rents, less  
3 deductions from the sales and use tax under s. 77.61 (4) and, in respect to any electric  
4 cooperative that purchases more than 50% of the power it sells, less the actual cost  
5 of power purchased for resale by an electric cooperative, if the revenue from that  
6 purchased electric power is included in the seller’s gross revenues or if the electric  
7 cooperative purchased more than 50% of the power it sold in the year prior to January  
8 1, 1988, from a seller located outside this state. For an electric cooperative, “gross  
9 revenues” does not include grants awarded to the electric cooperative under s. 16.958  
10 (2) (b). For a retail electric cooperative, “gross revenues” does not include public  
11 benefits fees collected by the retail electric cooperative under s. 16.957 (5) (a), public  
12 benefits fees received by the retail electric cooperative from a retail electric  
13 cooperative or municipal utility under a joint program established under s. 16.957  
14 (5) (f). For a wholesale supplier, as defined in s. 16.957 (1) (w), “gross revenues” does  
15 not include any public benefits fees that are received from a municipal utility, as  
16 defined in s. 16.957 (1) (q), or retail electric cooperative or under a joint program  
17 established under s. 16.957 (5) (f).

18           **SECTION 1809zo.** 76.48 (1g) (dm) of the statutes is created to read:

19           76.48 (1g) (dm) “Municipal utility” has the meaning given in s. 16.957 (1) (q).

20           **SECTION 1809zp.** 76.48 (1g) (fm) of the statutes is created to read:

21           76.48 (1g) (fm) “Retail electric cooperative” has the meaning given in s. 16.957  
22 (1) (t).”.

23           **14.** Page 953, line 14: after that line insert:

24           “**SECTION 1810m.** 77.25 (21) of the statutes is created to read:



1           77.25 (21) Of transmission facilities or land rights to the transmission  
2 company, as defined in s. 196.485 (1) (ge), under s. 196.485 (5) (b) or (c) or (6) (a) 1.  
3 in exchange for securities, as defined in s. 196.485 (1) (fe).”

4           **15.** Page 953, line 21: after that line insert:

5           “SECTION 1813s. 77.51 (14g) (fm) of the statutes is created to read:

6           77.51 (14g) (fm) The transfer of transmission facilities, as defined in s. 196.485  
7 (1) (h), to a transmission company, as defined in s. 196.485 (1) (ge), after the  
8 organizational start-up date, as defined in s. 196.485 (1) (dv), of such company in  
9 exchange for securities, as defined in s. 196.485 (1) (fe);

10          SECTION 1183v. 77.54 (44) of the statutes is created to read:

11          77.54 (44) The gross receipts from the collection of public benefits fees that are  
12 charged under s. 16.957 (4) (a) or (5) (a).”

13          **16.** Page 1179, line 21: after that line insert:

14          “SECTION 2315c. 196.025 of the statutes is renumbered 196.025 (1).

15          SECTION 2315g. 196.025 (2) of the statutes is created to read:

16          196.025 (2) The commission shall promulgate rules establishing requirements  
17 and procedures for the commission to carry out the duties under s. 1.11. Rules  
18 promulgated under this subsection shall include requirements and procedures for  
19 each of the following:

20           (a) Standards for determining the necessity of preparing an environmental  
21 impact statement.

22           (b) Adequate opportunities for interested persons to be heard on environmental  
23 impact statements, including adequate time for the preparation and submission of  
24 comments.

1 (c) Deadlines that allow thorough review of environmental issues without  
2 imposing unnecessary delays in addressing the need for additional electric  
3 transmission capacity in this state.

4 **SECTION 2315L.** 196.025 (3) of the statutes is created to read:

5 196.025 (3) The commission shall promulgate rules establishing requirements  
6 and procedures for electric utilities, as defined under s. 196.491 (1) (d), to file reports  
7 with the commission, on a frequency that the commission determines is reasonably  
8 necessary, on their current reliability status, including the status of operating and  
9 planning reserves, available transmission capacity and outages of major operational  
10 units and transmission lines. A report filed under the rules promulgated under this  
11 subsection is subject to inspection and copying under s. 19.35 (1), except that the  
12 commission may withhold the report from inspection and copying for a period of time  
13 that the commission determines is reasonably necessary to prevent an adverse  
14 impact on the supply or price of energy in this state.

15 **SECTION 2315p.** 196.025 (4) of the statutes is created to read:

16 196.025 (4) (a) In consultation with the department of administration and the  
17 department of revenue, the commission shall study the establishment of a program  
18 for providing incentives for the development of high–efficiency, small–scale electric  
19 generating facilities in this state that do either of the following:

20 1. Provide benefits in the form of support for electric distribution or  
21 transmission systems, power quality or environmental performance.

22 2. Employ technologies such as combined heat and power systems, fuel cells,  
23 microturbines or photovoltaic systems that may be situated in, on or next to  
24 buildings or other electric load centers.

1 (b) No later than January 1, 2001, the commission shall submit a report of its  
2 findings and recommendations under par. (a) to the chief clerk of each house of the  
3 legislature for distribution to the appropriate standing committees under s. 13.172  
4 (3).

5 **SECTION 2315t.** 196.025 (5) of the statutes is created to read:

6 196.025 (5) (ag) In this subsection, “electric cooperative” means a cooperative  
7 association organized under ch. 185 for the purpose of generating, distributing or  
8 furnishing electric energy at retail or wholesale to its members only.

9 (ar) The commission shall contract with an expert consultant in economics to  
10 conduct a study on the potential for horizontal market power, including the  
11 horizontal market power of electric generators, to frustrate the creation of an  
12 effectively competitive retail electricity market in this state and to make  
13 recommendations on measures to eliminate such market power on a sustainable  
14 basis. The study shall include each of the following:

15 1. An assessment of the effect of each recommendation on public utility workers  
16 and shareholders and electric cooperative workers and members.

17 1m. An assessment of the effect of each recommendation on rates for each class  
18 of public utility customers and electric cooperative members.

19 2. An evaluation of the impact of transmission constraints on the market power  
20 of electric generators in local areas.

21 (b) No later than January 1, 2001, the commission shall submit a report of the  
22 results of the study under par. (ar) to the chief clerk of each house of the legislature  
23 for distribution to the appropriate standing committees under s. 13.172 (3).

24 **SECTION 2315x.** 196.192 of the statutes is created to read:

1           **196.192 Market-based compensation, rates and contracts.** (1) In this  
2 section, “electric public utility” means a public utility whose purpose is the  
3 generation, distribution and sale of electric energy.

4           (2) No later than March 1, 2000, each investor-owned electric public utility  
5 shall do each of the following:

6           (a) File with the commission rates that result in customers receiving  
7 market-based compensation for voluntary interruptions of firm load during peak  
8 periods of electric use.

9           (b) File with the commission market-based pricing options and options for  
10 individual contracts that allow a retail customer, through service from its existing  
11 public utility, to receive market benefits and take market risks for the customer’s  
12 purchases of capacity or energy.

13           (3) (a) The commission shall approve market-based rates that are consistent  
14 with the options specified in sub. (2), except that the commission may not approve  
15 a market-based rate unless the commission determines that the rate will not harm  
16 shareholders of the investor-owned electric public utility or customers who are not  
17 subject to the rate.

18           (b) Nothing in s. 196.20, 196.21, 196.22, 196.37, 196.60 or 196.604 prohibits the  
19 commission from approving a filing under sub. (2) or approving market-based rates  
20 under par. (a).

21           (4) Subject to any approval of the commission that is necessary, an electric  
22 public utility that is not an investor-owned electric public utility may implement  
23 market-based rates approved under sub. (3) (a) or implement the options in filings  
24 under sub. (2) that are approved by the commission.”.

1           **17.** Page 1185, line 19: after that line insert:

2           “**SECTION 2334d.** 196.31 (1) (intro.) of the statutes is amended to read:

3           196.31 (1) (intro.) In any proceeding before the commission, the commission  
4 ~~may~~ shall compensate any participant in the proceeding who is not a public utility,  
5 for some or all of the reasonable costs of participation in the proceeding if the  
6 commission finds that:

7           **SECTION 2334h.** 196.31 (1) (a) of the statutes is amended to read:

8           196.31 (1) (a) The participation is necessary to provide for the record an  
9 adequate presentation of a significant position in which the participant has a  
10 substantial interest, and that an adequate presentation would not ~~be possible~~ occur  
11 without a grant of compensation; or

12           **SECTION 2334p.** 196.374 of the statutes is repealed and recreated to read:

13           **196.374 Low-income assistance, energy efficiency and other**  
14 **programs.** (1) In this section:

15           (a) “Department” means the department of administration.

16           (b) “Fund” means the utility public benefits fund.

17           (c) “Utility” means a Class A gas or electric utility, as defined by the  
18 commission, but does not include a municipal utility, as defined in s. 16.957 (1) (q),  
19 a municipal electric company, as defined in s. 66.073 (3) (d), or a cooperative  
20 association organized under ch. 185.

21           (2) The commission shall determine the amount that each utility spent in 1998  
22 on programs for each of the following:

23           (a) Low-income assistance, including low-income weatherization and writing  
24 off uncollectibles and arrearages.

1 (b) Energy conservation and efficiency.

2 (c) Environmental research and development.

3 (d) Renewable resources.

4 (3) In 2000, 2001 and 2002, the commission shall require each utility to spend  
5 a decreasing portion of the amount determined under sub. (2) on programs specified  
6 in sub. (2) and contribute the remaining portion of the amount to the commission for  
7 deposit in the fund. In each year after 2002, each utility shall contribute the entire  
8 amount determined under sub. (2) to the commission for deposit in the fund. The  
9 commission shall ensure in rate-making orders that a utility recovers from its  
10 ratepayers the amounts spent on programs or contributed to the fund under this  
11 subsection. The commission shall allow each utility the option of continuing to use,  
12 until January 1, 2002, the moneys that it has recovered under s. 196.374 (3), 1997  
13 stats., to administer the programs that it has funded under s. 196.374 (1), 1997 stats.  
14 The commission may allow each utility to spend additional moneys on the programs  
15 specified in sub. (2) if the utility otherwise complies with the requirements of this  
16 section and s. 16.957 (4).

17 (4) If the department notifies the commission under s. 16.957 (2) (b) 2. that the  
18 department has reduced funding for energy conservation and efficiency and  
19 renewable resource programs by an amount that is greater than the portion of the  
20 public benefits fee specified in s. 16.957 (4) (c) 2., the commission shall reduce the  
21 amount that utilities are required to spend on programs or contribute to the fund  
22 under sub. (3) by the portion of the reduction that exceeds the amount of public  
23 benefits fees specified in s. 16.957 (4) (c) 2.

24 **SECTION 2334t.** 196.378 of the statutes is created to read:

25 **196.378 Renewable resources. (1) DEFINITIONS.** In this section:

1 (a) “Biomass” means a resource that derives energy from wood or plant  
2 material or residue, biological waste, crops grown for use as a resource or landfill  
3 gases. “Biomass” does not include garbage, as defined in s. 289.01 (9), or  
4 nonvegetation-based industrial, commercial or household waste, except that  
5 “biomass” includes refuse-derived fuel used for a renewable facility that was in  
6 service in this state before January 1, 1998.

7 (am) “Biomass cofired facility” means a renewable facility in which biomass  
8 and conventional resources are fired together.

9 (b) “Conventional resource” means a resource that derives energy from coal, oil,  
10 nuclear power or natural gas, except for natural gas used in a fuel cell.

11 (bm) “Department” means the department of administration.

12 (c) “Electric provider” means an electric utility or retail electric cooperative.

13 (d) “Electric utility” means a public utility that sells electricity at retail. For  
14 purposes of this paragraph, a public utility is not considered to sell electricity at  
15 retail solely on the basis of its ownership or operation of a retail electric distribution  
16 system.

17 (e) “Excludable renewable energy” means the portion of an electric provider’s  
18 total renewable energy that is supplied from renewable facilities that were placed  
19 in service before January 1, 1998, and that, before January 1, 1998, derived  
20 electricity from hydroelectric power, even if the output of the renewable facilities is  
21 used to satisfy requirements under federal law.

22 (f) “Nonsystem renewable energy” means the amount of electricity that an  
23 electric provider sells to its retail customers or members and that is supplied or  
24 allocated under executed wholesale purchase contracts from renewable facilities  
25 that are not owned or operated by the electric provider. “Nonsystem renewable

1 energy” does not include any electricity that is not used to satisfy the electric  
2 provider’s retail load obligations.

3 (g) “Renewable facility” means an installed and operational electric generating  
4 facility in which electricity is derived from a renewable resource. “Renewable  
5 facility” includes a facility the installation or operation of which is required under  
6 federal law, but does not include a facility the installation or operation of which is  
7 required under the laws of another state even if the installation or operation of the  
8 facility is also required under federal law.

9 (h) “Renewable resource” means any of the following:

10 1. A resource that derives electricity from any of the following:

11 a. A fuel cell that uses, as determined by the commission, a renewable fuel.

12 b. Tidal or wave action.

13 c. Solar thermal electric or photovoltaic energy.

14 d. Wind power.

15 e. Geothermal technology.

16 g. Biomass.

17 1m. A resource with a capacity of less than 60 megawatts that derives  
18 electricity from hydroelectric power.

19 2. Any other resource, except a conventional resource, that the commission  
20 designates as a renewable resource in rules promulgated under sub. (4).

21 (i) “Renewable resource credit” means a credit calculated in accordance with  
22 rules promulgated under sub. (3) (a).

23 (j) “Resource” means a source of energy used to generate electric power.

24 (k) “Retail electric cooperative” means a cooperative association organized  
25 under ch. 185 that sells electricity at retail to its members only. For purposes of this



1 paragraph, a cooperative association is not considered to sell electricity at retail  
2 solely on the basis of its ownership or operation of a retail electric distribution  
3 system.

4 (n) "System renewable energy" means the amount of electricity that an electric  
5 provider sells to its retail customers or members and that is supplied by renewable  
6 facilities owned or operated by the electric provider.

7 (o) "Total renewable energy" means the sum of an electric provider's system and  
8 nonsystem renewable energy.

9 (2) RENEWABLE RESOURCE ENERGY. (a) Each electric provider shall provide to its  
10 retail electric customers or members total renewable energy in at least the following  
11 percentages of its total retail electric sales, either directly or through renewable  
12 resource credits from another electric provider:

- 13 1. By December 31, 2001, 0.5%.
- 14 2. By December 31, 2003, 0.85%.
- 15 3. By December 31, 2005, 1.2%.
- 16 4. By December 31, 2007, 1.55%.
- 17 5. By December 31, 2009, 1.9%.
- 18 6. By December 31, 2011, 2.2%.

19 (b) For purposes of determining compliance with par. (a):

20 1. Total retail electric sales shall be calculated on the basis of an average of an  
21 electric provider's retail electric sales in this state during the prior 3 years.

22 2. The amount of electricity supplied by a biomass cofired facility that may be  
23 counted toward satisfying the requirements of par. (a) shall be an amount equal to  
24 the product of the maximum amount of electricity that the facility is capable of

INSERT 34-5

1 generating and the ratio of the energy content of the biomass fuels to the energy  
2 content of both the biomass and conventional resources.

3 3. Any excludable renewable energy that exceeds 0.6% of an electric provider's  
4 total retail electric sales shall be excluded from the electric provider's total  
5 renewable energy.

6 (c) No later than April 15 annually, an electric provider shall submit a report  
7 to the department that describes the electric provider's compliance with par. (a).  
8 Reports under this paragraph may include certifications from wholesale suppliers  
9 regarding the sources and amounts of energy supplied to an electric provider. The  
10 department may specify the documentation that is required to be included with  
11 reports submitted under this paragraph.

12 (d) The commission shall allow an electric utility to recover from ratepayers the  
13 cost of providing total renewable energy to its retail customers in amounts that equal  
14 or exceed the percentages specified in par. (a). Subject to any approval of the  
15 commission that is necessary, an electric utility may recover costs under this  
16 paragraph by any of the following methods:

- 17 1. Allocating the costs equally to all customers on a kilowatt-hour basis.
- 18 2. Establishing alternative price structures, including price structures under  
19 which customers pay a premium for renewable energy.
- 20 3. Any combination of the methods specified in subs. 1. and 2.

21 (e) 1. This subsection does not apply to any of the following:

22 a. An electric provider that provides more than 10% of its summer peak demand  
23 in this state from renewable facilities.

24 b. An electric provider that provides more than 10% of its summer peak demand  
25 from renewable resources.

1           2. For purposes of calculating the percentages under subd. 1., an electric  
2 provider may include renewable facilities located in this or another state and  
3 renewable facilities located on its or another electric provider's system.

4           3. Notwithstanding subd. 1., this subsection applies to an electric provider  
5 unless the electric provider provides documentation to the commission that  
6 establishes, to the satisfaction of the commission, that the electric provider satisfies  
7 the requirements under subd. 1. a. or b.

8           **(3) RENEWABLE RESOURCE CREDITS.** (a) An electric provider that provides total  
9 renewable energy to its retail electric customers or members in excess of the  
10 percentages specified in sub. (2) (a) 1. to 6. may, in the applicable year, sell to any  
11 other electric provider a renewable resource credit or a portion of a renewable  
12 resource credit at any negotiated price. Alternatively, an electric provider may use  
13 a renewable resource credit or portion of a renewable resource credit in a subsequent  
14 year to establish compliance with sub. (2) (a). The commission shall promulgate  
15 rules that establish requirements for the use of a renewable resource credit,  
16 including calculating the amount of a renewable resource credit.

17           (b) The commission may promulgate rules that establish requirements and  
18 procedures for a sale under par. (a).

19           **(4) RULES.** The commission may promulgate rules that designate a resource,  
20 except for a conventional resource, as a renewable resource in addition to the  
21 resources specified in sub. (1) (h) 1. and 1m.

22           **(5) PENALTY.** Any person who violates sub. (2) or any wholesale supplier who  
23 provides an electric provider with a false or misleading certification regarding the  
24 sources or amounts of energy supplied to the electric provider shall forfeit not less  
25 than \$5,000 nor more than \$500,000. Forfeitures under this subsection shall be

1 enforced by action on behalf of the state by the attorney general. A court imposing  
2 a forfeiture under this subsection shall consider all of the following in determining  
3 the amount of the forfeiture:

4 (a) The appropriateness of the forfeiture to the person's or wholesale supplier's  
5 volume of business.

6 (b) The gravity of the violation.

7 (c) Whether a violation of sub. (2) is due to circumstances beyond the violator's  
8 control.”.

9 **18.** Page 1186, line 2: after that line insert:

10 “**SECTION 2335ta.** 196.485 (title) of the statutes is repealed and recreated to  
11 read:

12 **196.485 (title) Transmission system requirements.**

13 **SECTION 2335tb.** 196.485 (1) (am) of the statutes is created to read:

14 196.485 (1) (am) “Contribute a transmission facility” means to divest a person's  
15 interest in the transmission facility and to transfer ownership of the transmission  
16 facility, and associated deferred tax reserves and deferred investment tax credits to  
17 the extent permitted by law, to another person.

18 **SECTION 2335tc.** 196.485 (1) (be) of the statutes is created to read:

19 196.485 (1) (bc) “Director” means, with respect to a transmission company  
20 organized as a corporation under ch. 180, a member of the board of directors of the  
21 transmission company.

22 **SECTION 2335td.** 196.485 (1) (bs) of the statutes is created to read:

23 196.485 (1) (bs) “Electric utility” means any of the following:

1           1. A public utility that is involved in the generation, transmission, distribution  
2 or sale of electric energy.

3           2. A retail or wholesale electric cooperative.

4           **SECTION 2335te.** 196.485 (1) (dm) (intro.) of the statutes is amended to read:

5           196.485 (1) (dm) (intro.) “Independent transmission owner” means:

6           1m. Means a person that satisfies each of the following:

7           **SECTION 2335tf.** 196.485 (1) (dm) 1. of the statutes is renumbered 196.485 (1)  
8 (dm) 1m. a.

9           **SECTION 2335tg.** 196.485 (1) (dm) 2. of the statutes is created to read:

10          196.485 (1) (dm) 2. Does not include the transmission company.

11          **SECTION 2335th.** 196.485 (1) (dm) 3. of the statutes is renumbered 196.485 (1)  
12 (dm) 1m. b. and amended to read:

13          196.485 (1) (dm) 1m. b. The person is not an affiliated interest of a person  
14 specified in subd. 1. 1m. a.

15          **SECTION 2335ti.** 196.485 (1) (do) of the statutes is created to read:

16          196.485 (1) (do) “Land right” means any right in real property, including fee  
17 simple ownership or a right-of-way or easement, that has been acquired for a  
18 transmission facility that is located or intended to be located on the real property.

19          **SECTION 2335tk.** 196.485 (1) (dq) of the statutes is created to read:

20          196.485 (1) (dq) “Manager” means, with respect to a transmission company  
21 organized as a limited liability company under ch. 183, the representatives of the  
22 security holders that are elected or appointed under sub. (3m) (c).

23          **SECTION 2335tL.** 196.485 (1) (dr) of the statutes is created to read:

1           196.485 (1) (dr) “Merger enforcement policy” means the enforcement policy of  
2 the federal department of justice and the federal trade commission regarding  
3 horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

4           **SECTION 2335tm.** 196.485 (1) (ds) of the statutes is created to read:

5           196.485 (1) (ds) “Midwest independent system operator” means the  
6 independent system operator the establishment of which the federal energy  
7 regulatory commission has conditionally authorized in an order issued on September  
8 16, 1998, or the successor to such independent system operator.

9           **SECTION 2335tn.** 196.485 (1) (dt) of the statutes is created to read:

10           196.485 (1) (dt) “Nontransmission utility security holder” means a security  
11 holder that is not a transmission utility security holder.

12           **SECTION 2335to.** 196.485 (1) (dv) of the statutes is created to read:

13           196.485 (1) (dv) “Organizational start-up date” means, with respect to a  
14 transmission company that is organized as a limited liability company under ch. 183,  
15 the date on which the articles of organization become effective under s. 183.0111 or,  
16 with respect to a transmission company that is organized as a corporation under ch.  
17 180, the date on which the articles of incorporation become effective under s.  
18 180.0123.

19           **SECTION 2335tp.** 196.485 (1) (em) of the statutes is created to read:

20           196.485 (1) (em) “Retail electric cooperative” means a cooperative that provides  
21 retail electric service to its members.

22           **SECTION 2335tq.** 196.485 (1) (fe) of the statutes is created to read:

23           196.485 (1) (fe) “Security” means, with respect to a transmission company  
24 organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and,

1 with respect to a transmission company organized as a limited liability company  
2 under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

3 **SECTION 2335tr.** 196.485 (1) (ge) of the statutes is created to read:

4 196.485 (1) (ge) “Transmission company” means a corporation organized under  
5 ch. 180 or a limited liability company organized under ch. 183 that has as its sole  
6 purpose the planning, constructing, operating, maintaining and expanding of  
7 transmission facilities that it owns to provide for an adequate and reliable  
8 transmission system that meets the needs of all users that are dependent on the  
9 transmission system and that supports effective competition in energy markets  
10 without favoring any market participant.

11 **SECTION 2335ts.** 196.485 (1) (gm) of the statutes is created to read:

12 196.485 (1) (gm) “Transmission dependent utility” means an electric utility  
13 that is not a transmission utility and that is dependent on the transmission system  
14 of another person for delivering electricity to the electric utility’s customers.

15 **SECTION 2335tt.** 196.485 (1) (j) of the statutes is created to read:

16 196.485 (1) (j) “Transmission utility security holder” means a person that is a  
17 security holder of a transmission company, is an investor–owned transmission utility  
18 in the transmission area and has contributed its transmission facilities to the  
19 transmission company.

20 **SECTION 2335ttm.** 196.485 (1) (k) of the statutes is created to read:

21 196.485 (1) (k) “Wholesale electric cooperative” means a cooperative that  
22 provides wholesale electric service to its members.

23 **SECTION 2335tu.** 196.485 (1m) of the statutes is created to read:

24 196.485 (1m) DUTY TO PROVIDE TRANSMISSION SERVICE. (a) The duty of any  
25 electric utility that has contributed its transmission facilities to the transmission

1 company to finance, construct, maintain or operate a transmission facility shall  
2 terminate on the date, as determined by the commission under sub. (2) (d), that the  
3 transmission company begins operations.

4 (b) After beginning operations, the transmission company shall, except for  
5 transmission service provided by an electric utility that has not transferred its  
6 transmission facilities to the the transmission company, have the exclusive duty to  
7 provide transmission service in those areas in which transmission facilities have  
8 been contributed. The duty under this paragraph shall terminate on the date, as  
9 determined by the commission under sub. (2) (d), that the Midwest independent  
10 system operator begins operations.

11 (c) After beginning operations, the Midwest independent system operator  
12 shall, except for transmission service provided by an electric utility that has not  
13 transferred control over its transmission facilities to the Midwest independent  
14 system operator, have the exclusive duty to provide transmission service in the  
15 transmission area and shall ensure that each transmission facility in the  
16 transmission area that is under its operational control is planned, constructed,  
17 operated, maintained and controlled as part of a single transmission system.

18 **SECTION 2335tv.** 196.485 (2) (a) (intro.) of the statutes is amended to read:

19 196.485 (2) (a) (intro.) By June 30, 2000, if a transmission utility has not  
20 transferred control over its transmission facilities to an independent system  
21 operator that is approved by the applicable federal agency or divested, with approval  
22 of the applicable federal agency and, for a public utility, the commission, its interest  
23 in its transmission facilities to an independent transmission owner, the commission  
24 shall, subject to ~~par.~~ pars. (am) and (ar), order the transmission utility to apply to the  
25 applicable federal agency to do one of the following:



1           **SECTION 2335tw.** 196.485 (2) (ar) of the statutes is created to read:

2           196.485 (2) (ar) The commission shall waive the requirement to issue an order  
3 against a transmission utility under par. (a) if the transmission utility shows, to the  
4 satisfaction of the commission, that a transfer of its transmission facilities to the  
5 Midwest independent system operator may have the effect of jeopardizing the  
6 tax-exempt status of the transmission utility or its securities under the Internal  
7 Revenue Code. A waiver under this paragraph shall be in effect until the commission  
8 determines that the proposed transfer does not have the effect described in this  
9 paragraph.

10          **SECTION 2335tx.** 196.485 (2) (bx) of the statutes is created to read:

11          196.485 (2) (bx) If the Midwest system operator fails to commence operations  
12 or ceases operations, the requirements of this section that apply to the Midwest  
13 independent system operator shall apply to any other independent system operator  
14 or regional transmission organization that is authorized under federal law to operate  
15 in this state. The commission shall require that any transfer of transmission  
16 facilities to such independent system operator or regional transmission organization  
17 satisfies the requirements of this section.

18          **SECTION 2335ty.** 196.485 (2) (d) of the statutes is created to read:

19          196.485 (2) (d) The commission shall determine each of the following:

- 20           1. The date on which the transmission company begins operations.  
21           2. Whether the Midwest independent system operator has begun operations  
22 and the date on which such operations have begun.

23          **SECTION 2335tz.** 196.485 (3) (bm) of the statutes is repealed.

24          **SECTION 2335ub.** 196.485 (3m) of the statutes is created to read:

1           196.485 (3m) TRANSMISSION COMPANY. (a) *Duties*. 1. The transmission company  
2 shall do each of the following:

3           a. Apply for any approval under state or federal law that is necessary for the  
4 transmission company to begin operations no later than November 1, 2000.

5           b. Subject to any approval required under state or federal law, contract with  
6 each transmission utility that has transferred transmission facilities to the  
7 transmission company for the transmission utility to provide reasonable and  
8 cost-effective operation and maintenance services to the transmission company  
9 during the 3-year period after the transmission company first begins operations.  
10 The transmission company and a transmission utility may, subject to any approval  
11 required under federal or state law, agree to an extension of such 3-year period.

12           c. Assume the obligations of a transmission utility that has transferred  
13 ownership of its transmission facilities to the transmission company under any  
14 agreement by the transmission utility to provide transmission service over its  
15 transmission facilities or credits for the use of transmission facilities, except that the  
16 transmission company may modify such an agreement to the extent allowed under  
17 the agreement and to the extent allowed under state or federal law.

18           d. Apply for membership in the Midwest independent system operator as a  
19 single zone for pricing purposes that includes the transmission area and, upon a  
20 determination by the commission under sub. (2) (d) that the Midwest independent  
21 system operator has begun operations, transfer operational control of the  
22 transmission company's transmission facilities to the Midwest independent system  
23 operator.

24           e. Remain a member of the Midwest independent system operator, or any  
25 independent system operator or regional transmission organization that has been

1 approved under federal law to succeed the Midwest independent system operator, for  
2 at least the 6–year transition period that is specified in the agreement conditionally  
3 approved by the federal energy regulatory commission that establishes the Midwest  
4 independent system operator.

5 f. Subject to subd. 4., elect to be included in a single zone for the purpose of any  
6 tariff administered by the Midwest independent system operator.

7 2. The transmission company may not do any of the following:

8 a. Sell or transfer its assets to, or merge its assets with, another person, unless  
9 the assets are sold, transferred or merged on an integrated basis and in a manner  
10 that ensures that the transmission facilities in the transmission area are planned,  
11 constructed, operated, maintained and controlled as a single transmission system.

12 b. Bypass the distribution facilities of an electric utility or provide service  
13 directly to a retail customer or member.

14 c. Own electric generation facilities or sell, market or broker electric capacity  
15 or energy in a relevant wholesale or retail market as determined by the commission,  
16 except that, if authorized or required by the federal energy regulatory commission,  
17 the transmission company may procure or resell ancillary services obtained from 3rd  
18 parties, engage in redispatch activities that are necessary to relieve transmission  
19 constraints or operate a control area.

20 3. Notwithstanding subd. 1. a., the transmission company may not begin  
21 operations until it provides an opinion to the commission from a nationally  
22 recognized investment banking firm that the transmission company is able to  
23 finance, at a reasonable cost, its start–up costs, working capital and operating  
24 expenses and the cost of any new facilities that are planned.

1           4. If the transmission charges or rates of any transmission utility in the  
2 transmission area are 10% or more below the average transmission charges or rates  
3 of the transmission utilities in the transmission area on the date, as determined by  
4 the commission, that the last public utility affiliate files a commitment with the  
5 commission under sub. (5) (a) 2., the transmission company shall, after consulting  
6 with each public utility affiliate that has filed a commitment under sub. (5) (a) 2.,  
7 prepare a plan for phasing in a combined single zone rate for the purpose of pricing  
8 network use by users of the transmission system operated by the Midwest  
9 independent system operator and shall seek plan approval by the federal energy  
10 regulatory commission and the Midwest independent system operator. A plan under  
11 this subdivision shall phase in an average–cost price for the combined single zone in  
12 equal increments over a 5–year period, except that, under the plan, transmission  
13 service shall be provided to all users of the transmission system on a single–zone  
14 basis during the phase–in period.

15           (b) *Powers.* The transmission company may do any of the following:

16           1. Subject to the approval of the commission under s. 196.491 (3), construct and  
17 own transmission facilities, including high–voltage transmission lines, as defined in  
18 s. 196.491 (1) (f), in the transmission area or in any other area of the state in which  
19 transmission facilities that have been contributed to the transmission company are  
20 located. This subdivision does not affect the right or duty of an electric utility that  
21 is not located in the transmission area or that has not contributed its transmission  
22 facilities to the transmission company to construct or own transmission facilities.

23           2. Subject to any approval required under state or federal law, purchase or  
24 acquire transmission facilities in addition to the transmission facilities contributed  
25 under sub. (5) (b).

1           (c) *Organization.* The operating agreement, as defined in s. 183.0102 (16), of  
2 a transmission company that is organized as a limited liability company under ch.  
3 183 or the bylaws of a transmission company that is organized as a corporation under  
4 ch. 180 shall provide for each of the following:

5           1. That the transmission company has no less than 5 nor more than 14  
6 managers or directors, except that the operating agreement or bylaws may allow the  
7 requirements of this subdivision to be modified upon a unanimous vote of the  
8 managers or directors during the 10-year period after the organizational start-up  
9 date or upon a two-thirds vote of the board of directors or managers after such  
10 10-year period.

11           2. That at least 4 managers or directors of the transmission company have  
12 staggered 4-year terms, are elected by a majority vote of the voting security holders  
13 and are not directors, employees or independent contractors of a person engaged in  
14 the production, sale, marketing, transmission or distribution of electricity or natural  
15 gas or of an affiliate of such a person.

16           3. That, during the 10-year period after the organizational start-up date, each  
17 of the following is satisfied, subject to the limitation on the number of managers or  
18 directors under subd. 1.:

19           a. Each nontransmission utility security holder that owns 10% or more of the  
20 outstanding voting securities of the transmission company may appoint one  
21 manager or director of the transmission company for a one-year term, except that  
22 the requirements of this subd. 3. a. may be modified upon a unanimous vote of the  
23 managers or directors.

24           b. Each group of nontransmission utility security holders that, as a group, owns  
25 10% or more of the outstanding voting securities of the transmission company may

1 appoint one manager or director of the transmission company for a one-year term  
2 if the group has entered into a written agreement regarding the appointment and the  
3 group files the agreement with the transmission company, except that the  
4 requirements of this subd. 3. b. may be modified upon a unanimous vote of the  
5 managers or directors.

6 bg. Each nontransmission utility security holder that makes an appointment  
7 under subd. 3. a. is not allowed to make an appointment under subd. 3. b. as a  
8 member of a group of nontransmission utility security holders.

9 br. Each nontransmission utility security holder that makes an appointment  
10 as a member of a group under subd. 3. b. is not allowed to make an appointment  
11 under subd. 3. a.

12 c. Each person that receives at least 5% of the voting securities of the  
13 transmission company under sub. (6)(a) 1. or 3. may appoint one manager or director  
14 of the transmission company for a one-year term if the person continues to hold at  
15 least a 5% equity interest in the transmission company during the one-year term  
16 and if the person does not make an appointment under subd. 3. a., b. or d.

17 d. Each transmission utility security holder may appoint one manager or  
18 director of the transmission company for a one-year term.

19 4. That, during the 5-year period after the organizational start-up date, no  
20 public utility affiliate that contributes transmission facility assets to the  
21 transmission company under sub. (5) (b) and no affiliate of such a public utility  
22 affiliate may increase its percentage share of the outstanding securities of the  
23 transmission company prior to any initial issuance of securities by the transmission  
24 company to any 3rd party other than a 3rd party exercising its right to purchase  
25 securities under sub. (6) (a) 3., except that this subdivision does not apply to

1 securities that are issued by the transmission company in exchange for transmission  
2 facilities that are contributed in addition to the transmission facilities that are  
3 contributed under sub. (5) (b) and except that the requirements of this subdivision  
4 may be modified upon a unanimous vote of the managers or directors.

5 5. That, beginning 3 years after the organizational start-up date, any holder  
6 of 10% or more of the securities of the transmission company may require the  
7 transmission company to comply with any state or federal law that is necessary for  
8 the security holder to sell or transfer its shares.

9 (d) *Commission jurisdiction.* The transmission company is subject to the  
10 jurisdiction of the commission except to the extent that it is subject to the exclusive  
11 jurisdiction of the federal energy regulatory commission.

12 **SECTION 2335ud.** 196.485 (4) (a) (intro.) of the statutes is amended to read:

13 196.485 (4) (a) (intro.) ~~A~~ Except as provided in par. (am), a transmission utility  
14 may not transfer control over, or divest its interest in, its transmission facilities to  
15 an independent system operator or independent transmission owner unless, to the  
16 satisfaction of the commission, each of the following requirements is satisfied:

17 **SECTION 2335uf.** 196.485 (4) (am) of the statutes is created to read:

18 196.485 (4) (am) Each transmission utility in the transmission area that is a  
19 public utility shall become a member of the Midwest independent system operator  
20 no later than June 30, 2000, and shall transfer operational control over its  
21 transmission facilities to the Midwest independent system operator. Each such  
22 transmission utility that has not contributed its transmission facilities to the  
23 transmission company shall elect to become part of the single zone for pricing  
24 purposes within the Midwest independent system operator and any phase-in plan  
25 prepared under sub. (3m) (a) 4.

1           **SECTION 2335uh.** 196.485 (5) of the statutes is created to read:

2           196.485 (5) PUBLIC UTILITY AFFILIATES. (a) *Asset cap exception.* Section 196.795  
3 (6m) (e) does not apply to the eligible assets of a nonutility affiliate in a holding  
4 company system unless each public utility affiliate in the holding company system  
5 does each of the following:

6           1. Petitions the commission and the federal energy regulatory commission to  
7 approve the transfer of operational control of all the public utility affiliate's  
8 transmission facilities in this state and in Iowa, Michigan, Minnesota and Illinois to  
9 the Midwest independent system operator.

10          2. Files with the commission an unconditional, irrevocable and binding  
11 commitment to contribute, no later than September 30, 2000, all of the transmission  
12 facilities that the public utility affiliate owns or operates in this state on the effective  
13 date of this subdivision .... [revisor inserts date], and land rights, to the transmission  
14 company. A filing under this subdivision shall specify a date no later than September  
15 30, 2000, on which the public utility affiliate will complete the contribution of  
16 transmission facilities.

17          3. Files with the commission an unconditional, irrevocable and binding  
18 commitment to contribute, and to cause each entity into which it merges or  
19 consolidates or to which it transfers substantially all of its assets to contribute, any  
20 transmission facility in this state the ownership or control of which it acquires after  
21 the effective date of this subdivision .... [revisor inserts date], and land rights, to the  
22 transmission company.

23          4. Notifies the commission in writing that the public utility affiliate has become  
24 a member of the Midwest independent system operator, has agreed to transfer its  
25 transmission facilities to the Midwest independent system operator and has



1 committed not to withdraw its membership prior to the date on which the public  
2 utility affiliate contributes transmission facilities to the transmission company  
3 under par. (b).

4 5. Petitions the commission and the federal energy regulatory commission to  
5 approve the contributions specified in subds. 2. and 3. and agrees in such a petition  
6 not to withdraw the petition in the event that the commission or the federal energy  
7 regulatory commission conditions its approval on changes that are consistent with  
8 state ~~and~~ federal law. *and*

9 (b) *Contribution of transmission facilities.* 1. A public utility affiliate may not  
10 contribute a transmission facility to the transmission company until the commission  
11 has reviewed the terms and conditions of the transfer to determine whether the  
12 transfer satisfies the requirements of this subsection and has issued an order  
13 approving the terms and conditions of the transfer. The commission may modify the  
14 terms and conditions of the transfer and take any other action necessary to satisfy  
15 the requirements of this subsection. An order under this subdivision that approves  
16 or modifies the terms and conditions of a transfer may allow a public utility affiliate  
17 to recover in retail rates any adverse tax consequences of the transfer as a transition  
18 cost.

19 2. The transmission company and a public utility affiliate that files a  
20 commitment to contribute transmission facilities under par. (a) 2. shall structure the  
21 transfer of the transmission facilities in a manner that satisfies each of the following:

22 a. The structure of the transfer avoids or minimizes material adverse tax  
23 consequences to the public utility affiliate from the transfer and avoids or minimizes  
24 material adverse consequences on public utility rates that do not arise out of

1 combining the transmission company's facilities into a single zone in the Midwest  
2 independent system operator.

3 b. To the extent practicable; the structure of the transfer satisfies the  
4 requirements of the Internal Revenue Service for a tax-free transfer.

5 3. The requirements under subd. 2. b. shall, if practicable, be satisfied by the  
6 transmission company's issuance of a preferred class of securities that provides the  
7 fixed-cost portion of the resulting capital structure of the transmission company.  
8 The transmission company shall issue preferred securities under this subdivision on  
9 a basis that does not dilute the voting rights of the initial security holders relative  
10 to the value of their initial contributions.

11 4. If the transfer of transmission assets under this paragraph results in a  
12 capital structure of the transmission company in which the percentage of common  
13 equity is materially higher than that of the public utility affiliates who made the  
14 transfer, or if the cost of the fixed-cost portion of the capital structure of the  
15 transmission company is materially higher than that of the public utility affiliates  
16 who made the transfer, the public utility affiliates shall enter into a contract with the  
17 transmission company under which the public utility affiliates agree to accept from  
18 the transmission company a return on common equity based upon the equity rate of  
19 return approved by the federal energy regulatory commission and upon an imputed  
20 capital structure that assigns to a portion of the public utility affiliates' common  
21 equity holdings an imputed debt return that is consistent with the requirements of  
22 this subdivision. A contract under this subdivision shall specify that the public  
23 utility affiliates shall be required to accept the return on common equity described  
24 in this subdivision only until such time that the federal energy regulatory  
25 commission determines that the actual capital structure and capital costs of the

1 transmission company are appropriate and consistent with industry practice for a  
2 regulated public utility that provides electric transmission service in interstate  
3 commerce.

4 5. If, at the time that a public utility affiliate files a commitment under par. (a)  
5 2., the public utility affiliate has applied for or obtained a certificate of public  
6 convenience and necessity under s. 196.491 (3) or a certificate under s. 196.49 for the  
7 construction of transmission facilities, the public utility affiliate shall do each of the  
8 following:

9 a. Proceed with diligence with respect to obtaining the certificate and, except  
10 as provided in subd. 6., constructing the transmission facilities.

11 b. If the commission determines that the cost of the transmission facilities is  
12 reasonable and prudent, transfer the transmission facilities to the transmission  
13 company at net book value when construction is completed in exchange for additional  
14 securities of the transmission company on a basis that is consistent with the  
15 securities that were initially issued to the public utility affiliate.

16 6. If the construction of a transmission facility specified in subd. 5. a. is not  
17 completed within 3 years after a certificate is issued for the transmission facility  
18 under s. 196.49 or 196.491 (3), the transmission company may assume responsibility  
19 for completing construction of the transmission facility. If the transmission company  
20 assumes responsibility for completing construction under this subdivision, the  
21 transmission company shall carry out any obligation under any contract entered into  
22 by the public utility with respect to the construction until the contract is modified or  
23 rescinded by the transmission company to the extent allowed under the contract.

1           7. Any transmission facilities that are contributed to the transmission  
2 company shall be valued at net book value determined on the basis of the regulated  
3 books of account at the time of the transfer.

4           (bm) *Lease of transmission facilities.* If a public utility affiliate is not able to  
5 contribute its transmission facilities to the transmission company as required under  
6 par. (b) due to merger-related accounting requirements, the public utility affiliate  
7 shall transfer the transmission facilities to the transmission company under a lease  
8 for the period of time during which the accounting requirements are in effect and,  
9 after such requirements are no longer in effect, contribute the transmission facilities  
10 to the transmission company under par. (b). A public utility affiliate that transfers  
11 transmission facilities under a lease under this paragraph does not qualify for the  
12 asset cap exception under par. (a) unless, during the term of the lease, the public  
13 utility affiliate does not receive any voting interest in the transmission company.

14           (c) *Contribution of land rights.* 1. A public utility affiliate that commits to  
15 contributing land rights to the transmission company under par. (a) 2. shall do each  
16 of the following:

17           a. Except as provided in subd. 2., if the land right is assigned to a transmission  
18 account for rate-making purposes and is not jointly used for electric and gas  
19 distribution facilities by the public utility affiliate, the public utility affiliate shall  
20 convey or assign at book value all of its interest in the land right to the transmission  
21 company, except that any conveyance or assignment under this subd. 1. a. shall be  
22 subject to the rights of any joint user of the land right and to the right of the public  
23 utility affiliate to nondiscriminatory access to the real estate that is subject to the  
24 land right.

1           b. If the land right is jointly used, or is intended to be jointly used, for electric  
2 and gas distribution facilities by the public utility affiliate, the public utility affiliate  
3 shall enter into a contract with the transmission company that grants the  
4 transmission company a right to place, maintain, modify or replace the transmission  
5 company's transmission facilities on the real property that is subject to the land right  
6 during the life of the transmission facilities and the life of any replacements of the  
7 transmission facilities. A right granted in a contract under this subd. 1. b. shall be  
8 paramount to the right of any other user of the land right, except that a right granted  
9 in such a contract shall be on par with the right of the public utility affiliate to use  
10 the land right for electric or gas distribution facilities.

11           2. If a public utility affiliate is prohibited from making a conveyance or  
12 assignment described in subd. 1. a., the public utility affiliate shall enter into a  
13 contract with the transmission company that grants the transmission company  
14 substantially the same rights as under such a conveyance or assignment. For  
15 purposes of a contract under this subdivision, a land right shall be valued at book  
16 value, not at market value.

17           3. The commission shall resolve any dispute over the contribution of a land  
18 right under subd. 1. or 2., including a dispute over the valuation of such a land right,  
19 unless a federal agency exercises jurisdiction over the dispute. During the pendency  
20 of any dispute that is before the commission or a federal agency, the transmission  
21 company shall be entitled to use the land right that is the subject to the dispute and  
22 shall be required to pay any compensation that is in dispute into an escrow account.

23           (d) *Applicability.* Notwithstanding sub. (1) (h), and subject to any approval  
24 required under federal law, for purposes of this subsection, a facility of a public utility  
25 affiliate is a transmission facility if any of the following applies:

1           1. The facility is not a radial facility and the facility is designed for operation  
2 at a nominal voltage of more than 130 kilovolts.

3           2. The facility is not a radial facility and the facility is designed for operation  
4 at a nominal voltage of more than 50 kilovolts but <sup>not more than</sup> 130 kilovolts ~~or less~~, unless a  
5 person has demonstrated to the commission that the facility is not a transmission  
6 facility on the basis of factors for identifying a transmission facility that are specified  
7 in the orders of the federal energy regulatory commission under 16 USC 824d and  
8 824e.

9           3. The facility is a radial facility or is designed for operation at a nominal  
10 voltage of 50 kilovolts or less, and a person has demonstrated to the commission that  
11 the facility is a transmission facility on the basis of factors for identifying a  
12 transmission facility that are specified in the orders of the federal energy regulatory  
13 commission under 16 USC 824d and 824e.

14           **SECTION 2335uj.** 196.485 (6) of the statutes is created to read:

15           196.485 (6) ELECTRIC UTILITIES, TRANSMISSION DEPENDENT UTILITIES AND RETAIL  
16 ELECTRIC COOPERATIVES. (a) No later than the first day of the 12th month beginning  
17 after the first public utility affiliate files a commitment under sub. (5) (a) 2.:

18           1. An electric utility, other than a public utility affiliate or an owner or operator  
19 of a wholesale merchant plant, as defined in s. 196.491 (1) (w), may transfer all of its  
20 transmission facilities that are specified in subd. 2. to the transmission company on  
21 the same terms and conditions as a contribution of transmission facilities and land  
22 rights by a public utility affiliate under sub. (5) (b) and (c).

23           2. An electric utility may transfer transmission facilities under subd. 1. if the  
24 transmission facilities are located in the geographic area that is served by the

1 Mid–America Interconnected Network, Inc., or the Mid–Continent Area Power Pool  
2 reliability council of the North American Electric Reliability Council.

3 3. A transmission–dependent utility or retail electric cooperative may  
4 purchase equity interests in the transmission company at a price that is equivalent  
5 to net book value and on terms and conditions that are comparable to those for public  
6 utility affiliates that have contributed transmission facilities to the transmission  
7 company. A purchaser under this subdivision may contribute funds to the  
8 transmission company that are no more than the value of its prorated shares based  
9 on firm electric usage in this state in 1999.

10 (b) Notwithstanding sub. (1) (h), and subject to any approval required under  
11 federal law, for purposes of this subsection, a facility of an electric utility is a  
12 transmission facility if the criteria specified in sub. (5) (d) 1., 2. or 3. are satisfied.

13 **SECTION 2335uk.** 196.485 (6m) of the statutes is created to read:

14 196.485 (6m) DIVIDENDS, DISTRIBUTIONS, PROFITS AND GAINS. The commission  
15 may not treat any dividend or distribution received by a transmission utility from  
16 the transmission company or any gain or profit of a transmission utility from the sale  
17 or other disposition of securities issued by the transmission company as a credit  
18 against the retail revenue requirements of the transmission utility.

19 **SECTION 2335um.** 196.485 (7) of the statutes is created to read:

20 196.485 (7) ENFORCEMENT. A wholesale or retail customer of a public utility  
21 affiliate may petition the circuit court for Dane County for specific performance of  
22 a commitment filed under sub. (5) (a) 2. or 3.

23 **SECTION 2335uo.** 196.485 (8) of the statutes is created to read:

24 196.485 (8) PENALTIES. A public utility affiliate that fails to complete the  
25 contribution of transmission facilities to the transmission company by the

1 completion date specified in the filing under sub. (5) (a) 2. shall forfeit \$25,000 for  
2 each day that completion of the contribution is delayed if the transmission company  
3 is legally able to accept the contribution.

4 **SECTION 2335uq.** 196.487 of the statutes is created to read:

5 **196.487 Reliability of electric service. (1) DEFINITIONS.** In this section:

6 (a) “Public utility affiliate” has the meaning given in s. 196.795 (1) (L).

7 (b) “Transmission company” has the meaning given in s. 196.485 (1) (ge).

8 **(2) COMMISSION ORDER.** If the commission determines that a public utility  
9 affiliate or the transmission company is not making investments in the facilities  
10 under its control that are sufficient to ensure reliable electric service, the commission  
11 shall order the public utility affiliate or transmission company to make adequate  
12 investments in its facilities that are sufficient to ensure reliable electric service. An  
13 order under this subsection shall require the public utility affiliate or transmission  
14 company to provide security in an amount and form that, to the satisfaction of the  
15 commission, is sufficient to ensure that the public utility affiliate or transmission  
16 company expeditiously makes any investment that is ordered.

17 **(3) COST RECOVERY.** The commission shall allow a public utility affiliate that is  
18 subject to an order under sub. (2) to recover in its retail electric rates the costs that  
19 are prudently incurred in complying with the order.

20 **SECTION 2335wb.** 196.491 (3) (d) 3r. of the statutes is created to read:

21 196.491 (3) (d) 3r. For a high-voltage transmission line that is proposed to  
22 increase the transmission import capability into this state, existing rights-of-way  
23 are used to the extent practicable and the routing and design of the high-voltage  
24 transmission line minimizes environmental impacts in a manner that is consistent  
25 with achieving reasonable electric rates.



1           **SECTION 2335wd.** 196.491 (3) (d) 3t. of the statutes is created to read:

2           196.491 (3) (d) 3t. For a high-voltage transmission line that is designed for  
3 operation at a nominal voltage of 345 kilovolts or more, the high-voltage  
4 transmission line provides usage, service or increased regional reliability benefits to  
5 the wholesale and retail customers or members in this state and the benefits of the  
6 high-voltage transmission line are reasonable in relation to the cost of the  
7 high-voltage transmission line.

8           **SECTION 2335wf.** 196.491 (3) (gm) of the statutes is created to read:

9           196.491 (3) (gm) The commission may not approve an application filed after the  
10 effective date of this paragraph .... [revisor inserts date], under this section for a  
11 certificate of public convenience and necessity for a high-voltage transmission line  
12 that is designed for operation at a nominal voltage of 345 kilovolts or more unless the  
13 approval includes the condition that the applicant shall pay the fees specified in sub.  
14 (3g) (a). If the commission has approved an application under this section for a  
15 certificate of public convenience and necessity for a high-voltage transmission line  
16 that is designed for operation at a nominal voltage of 345 kilovolts or more that was  
17 filed after April 1, 1999, and before the effective date of this paragraph .... [revisor  
18 inserts date], the commission shall require the applicant to pay the fees specified in  
19 sub. (3g) (a). For any application subject to this paragraph, the commission shall  
20 determine the cost of the high-voltage transmission line, identify the counties,  
21 towns, villages and cities through which the high-voltage transmission line is routed  
22 and allocate the amount of investment associated with the high-voltage  
23 transmission line to each such county, town, village and city.

24           **SECTION 2335wh.** 196.491 (3g) of the statutes is created to read:

1           196.491 (3g) FEES FOR CERTAIN HIGH-VOLTAGE TRANSMISSION LINES. (a) A person  
 2 who receives a certificate of public convenience and necessity for a high-voltage  
 3 transmission line that is designed for operation at a nominal voltage of 345 kilovolts  
 4 or more under sub. (3) shall pay the department of administration an annual impact  
 5 fee as specified in the rules promulgated by the department of administration under  
 6 s. 16.969 (2) (a) and shall pay the department of administration a one-time  
 7 environmental impact fee as specified in the rules promulgated by the department  
 8 of administration under s. 16.969 (2) (b).

9           (b) A person that pays a fee under par. (a) may not use the payment to offset  
 10 any other mitigation measure that is required in an order by the commission under  
 11 sub. (3) regarding the certificate of public convenience and necessity specified in par.  
 12 (a).

13           SECTION 2335wj. 196.491 (3m) (b) 2. of the statutes is amended to read:

14           196.491 (3m) (b) 2. The analytical process specified in subd. 1. b. shall, to the  
 15 extent practicable, be consistent with the analytical process described in the merger  
 16 enforcement policy of the federal department of justice and the federal trade  
 17 commission regarding horizontal acquisitions and mergers that are subject to 15  
 18 USC 1, 18 or 45, as defined in s. 196.485 (1) (dr).

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19           SECTION 2335wL. 196.494 (3) of the statutes is amended to read:

20           196.494 (3) ~~No later than December 31, 2004, the~~ The commission may shall,  
 21 under this subsection, issue an order requiring an electric utility to construct or  
 22 procure, on a competitive basis, the construction of transmission facilities specified  
 23 by the commission in its order if the commission determines that, based on the  
 24 results of the study under sub. (2), such construction is necessary to relieve a  
 25 constraint on a transmission system and the construction will materially benefit the

Transmission Company or

1 customers of the electric utility or other electric utilities or of an independent system  
2 operator, as defined in s. 196.485 (1) (d), or independent transmission owner, as  
3 defined in s. 196.485 (1) (dm).

4 **SECTION 2335wn.** 196.494 (5) of the statutes is created to read:

5 196.494 (5) The governor may, on behalf of this state, enter into an interstate  
6 compact that establishes a joint process for the states in the upper midwest region  
7 of the United States to determine the need for and siting of regional electric  
8 transmission facilities that may affect electric service in this state. The governor  
9 may not enter into a compact under this subsection unless the compact includes  
10 requirements and procedures for establishing each of the following:

11 (a) Compliance with each state's environmental and siting standards for  
12 transmission facilities.

13 (b) A regional need determination for transmission facilities.

14 (c) A mechanism for resolving conflicts between the states regarding the siting  
15 of transmission facilities.

16 **SECTION 2335wp.** 196.52 (3) (a) of the statutes is amended to read:

17 196.52 (3) (a) In this subsection, "contract or arrangement" means a contract  
18 or arrangement providing for the furnishing of management, supervisory,  
19 construction, engineering, accounting, legal, financial or similar services and any  
20 contract or arrangement for the purchase, sale, lease or exchange of any property,  
21 right, or thing, or for the furnishing of any service, property, right, or thing, other  
22 than management, supervisory, construction, engineering, accounting, legal,  
23 financial or similar services, but "contract or arrangement" does not include a  
24 contract or arrangement under which a transmission utility, as defined in s. 196.485  
25 (1) (i), sells or transfers securities, as defined in s. 196.485 (1) (fe), that have been

1 issued by a transmission company, as defined in s. 196.485 (1) (ge). Except as  
2 provided under par. (b), unless and until the commission gives its written approval,  
3 any contract or arrangement is not valid or effective if the contract or arrangement  
4 is made between a public utility and an affiliated interest after June 7, 1931. Every  
5 public utility shall file with the commission a verified copy of any contract or  
6 arrangement, a verified summary of any unwritten contract or arrangement, and  
7 any contract or arrangement, written or unwritten, which was in effect on June 7,  
8 1931. The commission shall approve a contract or arrangement made or entered into  
9 after June 7, 1931, only if it shall clearly appear and be established upon  
10 investigation that it is reasonable and consistent with the public interest. The  
11 commission may not approve any contract or arrangement unless satisfactory proof  
12 is submitted to the commission of the cost to the affiliated interest of rendering the  
13 services or of furnishing the property or service to each public utility or of the cost  
14 to the public utility of rendering the services or of furnishing the property or service  
15 to each affiliated interest. No proof is satisfactory under this paragraph unless it  
16 includes the original (or verified copies) of the relevant cost records and other  
17 relevant accounts of the affiliated interest, or an abstract of the records and accounts  
18 or a summary taken from the records and accounts if the commission deems the  
19 abstract or summary adequate. The accounts shall be properly identified and duly  
20 authenticated. The commission, where reasonable, may approve or disapprove a  
21 contract or arrangement without submission of the cost records or accounts.

22 **SECTION 2335ya.** 196.795 (1) (g) 1. of the statutes is amended to read:

23 196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of  
24 the outstanding voting securities of a public utility, other than a transmission  
25 company, with the unconditional power to vote those securities.

1           **SECTION 2335yb.** 196.795 (1) (g) 2. of the statutes is amended to read:

2           196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting  
3 securities of a public utility, other than a municipality or other political subdivision  
4 or a transmission company, for or into the voting securities of a company organized,  
5 created, appointed or formed by or at the direction of the public utility or of a  
6 subsidiary of such company.

7           **SECTION 2335yc.** 196.795 (1) (h) 3. of the statutes is created to read:

8           196.795 (1) (h) 3. “Holding company” does not include a transmission company.

9           **SECTION 2335yd.** 196.795 (1) (p) of the statutes is created to read:

10          196.795 (1) (p) “Transmission company” has the meaning given in s. 196.485  
11 (1) (ge).

12          **SECTION 2335ye.** 196.795 (5) (i) 1. of the statutes is amended to read:

13          196.795 (5) (i) 1. Shall consider the public utility affiliate as a wholly  
14 independent corporation and shall impute a capital structure to the public utility  
15 affiliate and establish a cost of capital for the public utility affiliate on a stand-alone  
16 basis;

17          **SECTION 2335yf.** 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered

18 196.795 (6m) (b) 1., 2., 3. and 4.

19          **SECTION 2335yg.** 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

20          **SECTION 2335yh.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795

21 (6m) (a) 3.

22          **SECTION 2335yi.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795

23 (6m) (a) 5.

24          **SECTION 2335yj.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795

25 (6m) (a) 6.

1           **SECTION 2335yk.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795  
2 (6m) (c) and amended to read:

3           196.795 (6m) (c) Wholesale merchant plants. The assets of a wholesale  
4 merchant plant shall not be included in the sum of the assets of a public utility  
5 affiliate under par. ~~(p)~~ (b) 1. a., b. or c. and shall not be included in a nonutility  
6 affiliate's total assets under par. ~~(p)~~ (b) 2. a. if the requirements specified in s. 196.491  
7 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the  
8 exemption under s. 196.491 (3m) (e).

9           **SECTION 2335yL.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795  
10 (6m) (d) and amended to read:

11           196.795 (6m) (d) Foreign affiliates. The assets of a foreign affiliate shall be  
12 included in the sum of the assets of a public utility affiliate under par. ~~(p)~~ (b) 1. a.,  
13 b. or c. and shall not be included in a nonutility affiliate's total assets under par. ~~(p)~~  
14 (b) 2. a.

15           **SECTION 2335ym.** 196.795 (6m) (title) of the statutes is created to read:

16           196.795 (6m) (title) ASSET CAP.

17           **SECTION 2335yn.** 196.795 (6m) (a) (intro.) of the statutes is created to read:

18           196.795 (6m) (a) Definitions. (intro.) In this subsection:

19           **SECTION 2335yo.** 196.795 (6m) (a) 1. of the statutes is created to read:

20           196.795 (6m) (a) 1. "Contributor public utility affiliate" means a public utility  
21 affiliate that has contributed its transmission facilities to the transmission company  
22 under s. 196.485 (5) (b).

23           **SECTION 2335yp.** 196.795 (6m) (a) 2. of the statutes is created to read:

24           196.795 (6m) (a) 2. "Eligible asset" means an asset of a nonutility affiliate that  
25 is used for any of the following:

1 a. Producing, generating, transmitting, delivering, selling or furnishing gas,  
2 oil, electricity or steam energy.

3 b. Providing an energy management, conservation or efficiency product or  
4 service or a demand–side management product or service.

5 c. Providing an energy customer service, including metering or billing.

6 d. Recovering or producing energy from waste materials.

7 e. Processing waste materials.

8 f. Manufacturing, distributing or selling products for filtration, pumping water  
9 or other fluids, processing or heating water, handling fluids or other related  
10 activities.

11 g. Providing a telecommunications service, as defined in s. 196.01 (9m).

12 h. Providing an environmental engineering service.

13 **SECTION 2335yq.** 196.795 (6m) (a) 4. of the statutes is created to read:

14 196.795 (6m) (a) 4. “Generation assets” means assets that are classified as  
15 electric generation assets on the books of account of a public utility, as determined  
16 by the commission.

17 **SECTION 2335yr.** 196.795 (6m) (b) (title) of the statutes is created to read:

18 196.795 (6m) (b) *In general.*

19 **SECTION 2335ys.** 196.795 (6m) (e) of the statutes is created to read:

20 196.795 (6m) (e) *Contributor public utility affiliates.* 1. The eligible assets of  
21 a nonutility affiliate in a holding company system that includes each of the  
22 contributor public utility affiliates in the holding company system shall not be  
23 included in the sum of the assets of the public utility affiliates under par. (b) 1. a.,  
24 b. or c. and shall not be included in the nonutility affiliate’s total assets under par.  
25 (b) 2. a.

1           2. For purposes of subd. 1., all of the assets of a nonutility affiliate shall be  
2 considered eligible assets if each of the following is satisfied:

3           a. The bylaws of the nonutility affiliate or a resolution adopted by its board of  
4 directors specifies that the business of the nonutility affiliate is limited to activities  
5 involving eligible assets.

6           b. Substantially all of the assets of the nonutility affiliate are eligible assets.

7           3. The net book value of transmission facility assets that a contributor public  
8 utility affiliate has contributed to a transmission company under s. 196.485 (5) (b)  
9 shall be included in the sum of the assets of the public utility affiliate under par. (b)  
10 1. a., b. and c. In determining net book value under this subdivision, accumulated  
11 depreciation shall be calculated as if the contributor public utility affiliate had not  
12 contributed the assets.

13           4. The net book value of generation assets that a contributor public utility  
14 affiliate has transferred to a person that is not affiliated with the public utility  
15 affiliate pursuant to the order of the commission, a court or a federal regulatory  
16 agency shall be included in the sum of the assets of the public utility affiliate under  
17 par. (b) 1. a., b. and c. In determining net book value under this subdivision,  
18 accumulated depreciation shall be calculated as if the contributor public utility  
19 affiliate had not transferred the assets.

20           **SECTION 2335ysm.** 196.795 (7) (a) (intro.) of the statutes is amended to read:

21           196.795 (7) (a) (intro.) No sooner than the first day of the 36th month after the  
22 formation of a holding company and at least once every 3 years thereafter, the  
23 commission shall investigate the impact of the operation of every holding company  
24 system formed on or after November 28, 1985, on every public utility affiliate in the  
25 holding company system and shall determine whether each nonutility affiliate,



1 except for the nonutility affiliates of a holding company that were affiliates of a  
2 holding company that was formed before November 28, 1985, does, or can reasonably  
3 be expected to do, at least one of the following:

4 **SECTION 2335yt.** 196.795 (11) (b) of the statutes is amended to read:

5 196.795 (11) (b) This section shall be deemed to legalize and confirm the  
6 formation, prior to November 28, 1985, of any holding company, which is not itself  
7 a public utility, and shall be deemed to legalize and confirm the operations and  
8 issuances of securities of the holding company, except that nothing in this section  
9 shall be deemed to prevent the commission from imposing reasonable terms,  
10 limitations or conditions on any holding company which are consistent with the  
11 requirements of sub. ~~(5) (pm)~~ (6m) (c) or (d) or which are consistent with and  
12 necessary to satisfy the requirements of sub. (5) (b) to (o) and (q) to (s) or which relate  
13 to future investments by the holding company unless the holding company owns,  
14 operates, manages or controls a telecommunications utility and does not also own,  
15 operate, manage or control a public utility which is not a telecommunications utility.

16 **SECTION 2335yu.** 196.795 (11) (c) of the statutes is created to read:

17 196.795 (11) (c) The commission may not impose upon a holding company the  
18 formation of which is considered to be legalized and confirmed under par. (b) any  
19 term, limitation or condition under par. (b) that establishes the sum of the holding  
20 company's nonutility affiliate assets at less than 25% of the sum of the holding  
21 company's utility affiliate assets. For purposes of this paragraph, any term,  
22 limitation or condition on nonutility affiliate assets shall not apply to the ownership,  
23 operation, management or control of any eligible asset, as defined under sub. (6m)  
24 (a) 2.

25 **SECTION 2335yum.** 196.796 of the statutes is created to read:

1           **196.796 Real estate activities. (1) In this section:**

2           (a) “Brownfields facility or site” means any abandoned, idle or underused  
3 industrial or commercial facility or site, the use, expansion or redevelopment of  
4 which is adversely affected by actual environmental contamination.

5           (b) 1. “Commercial construction” means the act of building any structure, or  
6 that part of any structure, that is not used as a home, residence or sleeping place by  
7 one or more persons maintaining a common household to the exclusion of all others.

8           2. “Commercial construction” does not include any of the following:

9           a. Any repair, maintenance, installation or construction of a structure owned  
10 or used by or for a public utility, or for a customer of a public utility, if the repair,  
11 maintenance, installation or construction is related to furnishing heat, light, water  
12 or power to the customer.

13           b. Any construction related to the evaluation, control or remediation of  
14 hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

15           c. Any construction performed in order to comply with federal, state or local  
16 environmental laws, regulations, orders or rules.

17           (c) “Economic development” means development that is designed to promote  
18 job growth or retention, expand the property tax base or improve the overall  
19 economic vitality of a municipality, as defined in s. 30.01 (4), or region.

20           (d) “Engage” means to actively participate in the daily operations or daily  
21 business decisions of an entity. “Engage” does not include taking an action necessary  
22 to protect an ownership interest in an entity.

23           (dg) “Entity” has the meaning given in s. 180.0103 (8).

24           (dr) “Financial support” includes investments, loans and grants.

25           (e) “Holding company system” has the meaning given in s. 196.795 (1) (i).

1 (f) “Improvements” means any valuable addition made to land, including  
2 excavations, gradings, foundations, structures, buildings, streets, parking lots,  
3 sidewalks, sewers, septic systems and drainage facilities. “Improvements” does not  
4 include any repair, maintenance, installation or construction of structures or  
5 facilities owned or used by or for a public utility, or by or for a customer of a public  
6 utility, if the repair, maintenance, installation or construction is related to furnishing  
7 heat, light, water or power to the customer.

8 (g) “Nonutility affiliate” means a subsidiary of a public utility or a company in  
9 a holding company system that is not a public utility. “Nonutility affiliate” does not  
10 include a passively held company.

11 (gm) “Passively held company” means an entity that satisfies each of the  
12 following:

13 1. Less than 50% of the ownership interest of the entity is directly or indirectly  
14 owned in any chain of successive ownership by a public utility or nonutility affiliate.

15 2. The entity engages in property management for a 3rd party, real estate  
16 practice, residential real estate development or residential or commercial  
17 construction.

18 (h) “Property management” means any activity associated with the care or  
19 maintenance of land or improvements, including business planning and budgeting,  
20 accounting, lease administration, tenant relations and retention, security,  
21 maintenance of common areas, rent collections, financial reporting, service contract  
22 administration and inspections.

23 (hm) “Public utility” means every corporation, company, individual or  
24 association and their lessees, trustees or receivers appointed by any court or state  
25 or federal agency, that may own, operate, manage or control all or any part of a plant

1 or equipment, within the state, for the production, transmission, delivery or  
2 furnishing of electricity directly to or for the public, except that “public utility” does  
3 not include any municipal utility or municipal electric company, as defined in s.  
4 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose  
5 of producing or furnishing heat, light, power or water to its members only.

6 (i) “Real estate practice” has the meaning given in s. 452.01 (6).

7 (j) “Residential construction” means the act of building any structure, or that  
8 part of any structure that is used as a home, residence or sleeping place by one or  
9 more persons maintaining a common household to the exclusion of all others.

10 (k) “Residential real estate development” means the act of dividing or  
11 subdividing any parcel of land for residential construction or making improvements  
12 to facilitate or allow residential construction.

13 (L) “Third party” means any person other than a public utility or nonutility  
14 affiliate.

15 **(2) PROHIBITED ACTIVITIES.** Except as provided in sub. (4), a public utility or  
16 nonutility affiliate may not do any of the following in this state:

17 (a) Engage in real estate practice.

18 (b) Engage in residential real estate development.

19 (c) Engage in property management for a 3rd party.

20 (d) Engage in residential or commercial construction.

21 **(3) PERMITTED ACTIVITIES.** (a) Subsection (2) does not prohibit a public utility  
22 or nonutility affiliate from doing any of the following:

23 1. Repairing, maintaining, installing or constructing a structure that is owned  
24 or used by or for a public utility or nonutility affiliate, or for a customer of a public

1 utility if the repair, maintenance, installation or construction is related to furnishing  
2 heat, light, water or power to the customer.

3 2. Engaging in construction that is specifically related to the evaluation,  
4 control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils;  
5 air; or water.

6 3. Engaging in construction that is performed in order to comply with federal,  
7 state or local environmental laws, regulations, orders or rules.

8 4. Consulting or making other financial or business arrangements with one or  
9 more 3rd parties who will engage in commercial construction.

10 5. Consulting or making other financial or business arrangements with one or  
11 more 3rd parties who will engage in residential construction or residential real  
12 estate development, except that if a public utility or nonutility affiliate contracts for  
13 the development of more than one residential construction project or residential real  
14 estate development, the public utility or nonutility affiliate may not enter into an  
15 exclusive arrangement with a 3rd party for all such residential construction or  
16 residential real estate development.

17 6. Acquiring or disposing of property or interests in property if the acquisition  
18 or disposition is related to the operation of a public utility and the acquisition or  
19 disposition satisfies one of the following:

20 a. The acquisition or disposition is conducted under a contract with a 3rd party  
21 that is engaged in real estate practice.

22 b. The acquisition or disposition is conducted by an individual engaged in real  
23 estate practice or employed by a public utility.

24 7. Owning a passively held company.

1           (b) Subsection (2) does not prohibit a public utility that is not subject to the  
2 requirements of s. 196.795, or the nonutility subsidiary of such a public utility, from  
3 doing any of the following:

4           1. Engaging in commercial or residential real estate development or  
5 construction on property owned or acquired by the public utility or nonutility  
6 subsidiary for a public utility purpose if the total annual revenues from the  
7 development or construction do not exceed 3% of the total operating revenues of the  
8 public utility in any year.

9           2. Providing financial support for the purpose of economic development to 3rd  
10 parties that are engaged in an activity specified in sub. (2)(a) to (d). The public utility  
11 or nonutility subsidiary may profit directly from that activity only through receipt  
12 of profits that are incidental to the economic development project or interest earned  
13 on a loan.

14           (4) EXCEPTIONS. (a) A nonutility affiliate that has engaged in residential  
15 construction prior to, or is engaged in residential construction on, the effective date  
16 of this paragraph .... [revisor inserts date], may directly or indirectly own in any  
17 chain of successive ownership 50% or more of the ownership interest of an entity that  
18 hires a 3rd party to engage in residential construction or commercial construction  
19 that is incidental to residential construction, except that the nonutility affiliate may  
20 not actively participate in the daily operations or daily business decisions of the  
21 entity.

22           (b) A public utility or nonutility affiliate may engage in residential real estate  
23 development at a brownfields facility or site.

24           (5) PRIVATE CAUSE OF ACTION. Any public utility or nonutility affiliate that does,  
25 causes or permits to be done any action prohibited under this section or fails to

1 comply with any requirement specified in this section is liable to any person injured  
2 thereby in the amount of damages sustained in consequence of the prohibited action  
3 or failure to comply.

4 **SECTION 2335z.** 196.807 of the statutes is created to read:

5 **196.807 Energy affiliate and utility employees.** (1) DEFINITIONS. In this  
6 section:

7 (a) “Affiliate or utility” means a nonutility affiliate, holding company system,  
8 public utility or cooperative association organized under ch. 185.

9 (b) “Energy unit” means a unit in this state that is engaged in activities related  
10 to the production, generation, transmission or distribution of electricity, gas or steam  
11 or the recovery of energy from waste materials.

12 (c) “Holding company system” has the meaning given in s. 196.795 (1) (i).

13 (d) “Nonutility affiliate” has the meaning given in s. 196.795 (1) (j).

14 (e) “Public utility affiliate” has the meaning given in s. 196.795 (1) (L).

15 (f) “Sell an energy unit” means to sell, offer by lease, or otherwise transfer  
16 ownership or control of the energy unit.

17 (fg) “Transmission company” has the meaning given in s. 196.485 (1) (ge).

18 (fr) “Transmission utility” has the meaning given in s. 196.485 (1) (i).

19 (g) “Unit” means a division, department or other operational business unit of  
20 an affiliate or utility.

21 (2) OFFER OF EMPLOYMENT. (a) Except as provided in par. (b), a person may not  
22 sell an energy unit unless the terms of the transfer require the person to which the  
23 energy unit is transferred to offer employment to the nonsupervisory employees who  
24 are employed with the energy unit immediately prior to the transfer and who are  
25 necessary for the operation and maintenance of the energy unit.

1 (b) 1. A public utility affiliate may not sell an energy unit to a nonutility affiliate  
2 in the same holding company system unless the terms of the transfer require the  
3 nonutility affiliate to offer employment to all of the nonsupervisory employees who are  
4 employed with the energy unit immediately prior to the transfer.

5 2. A transmission company to which an energy unit is sold by a transmission  
6 utility shall, beginning on the expiration of the 3-year period specified in s. 196.485  
7 (3m) (a) 1. b. or, if applicable, the expiration of any extension of such 3-year period,  
8 offer employment to the nonsupervisory employees who are employed with the energy  
9 unit immediately prior to the transfer and who are necessary for the operation and  
10 maintenance of the energy unit.

11 (3) EMPLOYMENT TERMS AND CONDITIONS. (a) Except as provided in par. (b), the  
12 employment that is offered under sub. (2) shall satisfy each of the following during  
13 the 30-month period beginning immediately after the transfer:

14 1. Wage rates shall be no less than the wage rates in effect immediately prior  
15 to the transfer.

16 2. Fringe benefits shall be substantially equivalent to the fringe benefits in  
17 effect immediately prior to the transfer.

18 3. Terms and conditions of employment, other than wage rates and fringe  
19 benefits, shall be substantially equivalent to the terms and conditions in effect  
20 immediately prior to the transfer.

21 (b) A collective bargaining agreement may modify or waive a requirement  
22 specified in par. (a).

23 (4) COMMISSION APPROVAL. Except for a cooperative association, as defined in  
24 s. 196.491 (1) (bm), or a transmission utility that sells an energy unit to a



1 transmission company, no person may sell an energy unit unless the commission  
2 determines that the person has satisfied subs. (2) and (3)."

3 **19.** Page 1186, line 9: after that line insert:

4 "SECTION 2336mt. 196.86 of the statutes is created to read:

5 **196.86 Assessments for air quality improvement program.** (1) In this  
6 section:

7 (a) "Department" means the department of natural resources.

8 (b) "Electric public utility affiliate" means a public utility affiliate, as defined  
9 in s. 196.795 (1) (L), that sells electricity in this state.

*that use fossil fuel*

10 (c) "Heat throughput ratio" means the result obtained by dividing the total heat  
11 throughput of all electric generating facilities of an individual electric public utility  
12 affiliate by the total heat throughput of all electric generating facilities of all electric  
13 public utility affiliates.

14 (d) "Initial compliance date" means the date specified in a notice by the  
15 department of natural resources under s. 285.48 (2) by which electric generating  
16 facilities in the midcontinent area of this state are required to comply with initial  
17 nitrogen oxide emission reduction requirements.

18 (2) If the department of natural resources makes a notification to the  
19 commission under s. 285.48 (2), the commission shall assess against electric public  
20 utility affiliates a total of \$2,400,000, or a decreased amount specified in a notice by  
21 the department of natural resources under s. 285.48 (3) (d) 3., in each fiscal year of  
22 the 10-year period that commences on July 1 of the fiscal year ending before the  
23 initial compliance date. An assessment in a fiscal year against an electric public

*INSERT 73-17*

1 utility affiliate under this subsection shall be in amount that is proportionate to the  
2 electric public utility affiliate's heat throughput ratio for the prior fiscal year.

3 (3) An electric public utility affiliate shall pay an assessment required under  
4 sub. (2) within 30 days after the commission has mailed a bill for the assessment.  
5 The bill constitutes notice of the assessment and demand of payment. Payments  
6 shall be deposited in the air quality improvement fund.

7 (4) Section 196.85 (3) to (8), as it applies to assessments under s. 196.85 (1) or  
8 (2), applies to assessments under this section.”.

9 **20.** Page 1186, line 9: after that line insert:

10 “**SECTION 2336u.** 200.01 (2) of the statutes is amended to read:

11 200.01 (2) “Public service corporation” means and embraces every corporation,  
12 except municipalities and other political subdivisions, which is a public utility as  
13 defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02,  
14 but shall not include a public utility corporation receiving an annual gross revenue  
15 of less than \$1,000 for the calendar year next preceding the issuance of any securities  
16 by it. “Public service corporation” includes a holding company, as defined under s.  
17 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). “Public service  
18 corporation” does not include a telecommunications utility, as defined in s. 196.01  
19 (10). “Public service corporation” does not include any other holding company unless  
20 the holding company was formed after November 28, 1985, and unless the  
21 commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate,  
22 as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do  
23 at least one of the items specified in s. 196.795 (7) (a). “Public service corporation”  
24 does not include a company, as defined in s. 196.795 (1) (f), which owns, operates,

1 manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless  
2 such company also owns, operates, manages or controls a public utility which is not  
3 a telecommunications utility. “Public service corporation” does not include a  
4 transmission company, as defined in s. 196.485 (1) (ge).”

5 **21.** Page 1276, line 4: after that line insert:

6 “SECTION 2554j. 285.48 of the statutes is created to read:

7 **285.48 Nitrogen oxide emissions reductions.** (1) DEFINITIONS. In this  
8 section:

9 (a) “Call” means a call to implement a state implementation plan ~~for control of~~  
10 ~~atmospheric ozone in another state~~ that is issued by the federal environmental  
11 protection agency before the effective date of this paragraph .... [revisor inserts date],  
12 or after that date arising out of a call issued before that date, including a call issued  
13 after that date pursuant to a federal court order or otherwise.

14 (b) “Electric cooperative” has the meaning given in s. 76.48 (1g) (c).

15 (c) “Midcontinent area” has the meaning given in s. 16.958 (1) (e).

16 (d) “Northwestern county” means Ashland, Barron, Bayfield, Buffalo, Burnett,  
17 Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Monroe,  
18 Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vernon or  
19 Washburn county.

20 (e) “Other county” means a county that is not a northwestern county.

21 (f) “Public utility” has the meaning given in s. 196.01 (5).

22 (g) “State implementation plan” means a state implementation plan for control  
23 of atmospheric ozone in another state.

1 (h) "Summer" means the period beginning on May 1 and ending on September  
2 30 of each year.

ISSUES

3 (2) APPLICABILITY. This section applies if the department of natural resources,  
4 pursuant to a call, ~~implements~~ a state implementation plan that requires electric  
5 generating facilities in the midcontinent area of this state to comply with nitrogen  
6 oxide emission reductions. If the department of natural resources ~~implements~~ such  
7 a plan, the department of natural resources shall notify the department of  
8 administration and the public service commission. The notice shall specify the date  
9 on which electric generating facilities in the midcontinent area of this state are  
10 required to comply with the initial nitrogen oxide emission reduction requirements.

requirements

ISSUES

11 (3) NITROGEN OXIDE EMISSIONS STANDARDS AND LIMITATIONS. (a) In establishing  
12 nitrogen oxide emission reductions ~~for~~ <sup>of requirements</sup> for the control of atmospheric ozone in another  
13 state pursuant to a call, the department may not, in a state implementation plan, by  
14 rule or through the adoption of control strategies, establish nitrogen oxide emissions  
15 standards or limitations that do any of the following:

16 1. Require less than 2,234 tons, or the greater number of tons determined under  
17 par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating  
18 facilities located in northwestern counties that are owned by electric cooperatives.

19 2. Require less than 315 tons, or the greater number of tons determined under  
20 par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating  
21 facilities located in northwestern counties that are owned by public utilities.

22 3. Require less than 15,157 tons, or the greater number of tons determined  
23 under par. (d) 1., in total nitrogen oxide emissions each summer from all electric  
24 generating facilities located in other counties ~~owned by~~

owned by  
public utilities  
or electric  
cooperatives

1 (b) The department shall issue emissions allowances in a number that is  
2 sufficient to allow the emissions specified in par. (a).

3 (c) The department may not, based on this section, require reductions of  
4 nitrogen oxide emissions that are in addition to ~~these~~ <sup>any</sup> reductions required in a state  
5 implementation plan from any of the following :

6 1. Any stationary source located in this state that is not an electric generating  
7 facility owned by a public utility or electric cooperative.

8 2. Any mobile source.

9 (d) If the department of natural resources implements a state implementation  
10 plan specified in sub. (2) in a manner that requires reductions in nitrogen oxide  
11 emissions that are lower than the reductions set forth in the call published on  
12 October 27, 1998, the department of natural resources shall do each of the following:

13 1. Determine the amounts by which the number of tons specified in par. (a) 1.,  
14 2. and 3. shall be increased to reflect the lower reductions.

15 2. Take action that is necessary to relax any related emissions control  
16 requirements in a manner that reflects the lower reductions.

17 3. Determine the amount by which the \$~~2,500,000~~ <sup>2,400,000</sup> in assessments under s.  
18 196.86 (2) shall be decreased to reflect the lower reductions and provide notice of the  
19 decreased amount to the public service commission.

20 4. Determine the amount by which the \$2,500,000 that is ~~deposited in~~ <sup>transferred to</sup> the air  
21 quality improvement fund under s. 16.958 (2) (a) shall be decreased to reflect the  
22 lower reductions and provide notice of the decreased amount to the department of  
23 administration.

24 (4) LOW-INCOME WEATHERIZATION AND ENERGY CONSERVATION MEASURES;  
25 RENEWABLE ENERGY USES. The department shall ensure that at least 866 tons of total

1 annual reductions in nitrogen oxide emissions required under the state  
2 implementation plan are achieved through any of the following:

3 (a) The use of renewable energy, including renewable energy that is provided  
4 by electric providers for the purpose of complying with the requirements of s. 196.378  
5 (2) (a), or renewable energy that is used under programs specified in s. 196.374 (2)  
6 (d) that are funded by expenditures under s. 196.374 (3).

7 (b) The implementation of low-income weatherization and energy  
8 conservation measures, including programs established under s. 16.957 (2) (a) or (b)  
9 or programs specified 196.374 (2) (a) or (b) that are funded by expenditures under s.  
10 196.374 (3).

11 **285.49 Trading program for nitrogen oxide emissions credits.** The  
12 department shall establish or participate in a market-based trading program for the  
13 purchase, sale and transfer of nitrogen oxide emissions credits for use in any state  
14 implementation plan that requires reductions in nitrogen oxide emissions. To the  
15 extent allowed under federal law, the department shall allow nitrogen oxide  
16 emissions reductions by any source in this state, regardless of whether the source is  
17 subject to nitrogen oxide controls under a state implementation plan, to be  
18 purchased, sold or transferred under the trading program.”

19 **22.** Page 1468, line 17: after that line insert:

20 “(1zt) INITIAL APPOINTMENTS TO COUNCIL ON UTILITY PUBLIC BENEFITS.  
21 Notwithstanding section 15.107 (17) (intro.) of the statutes, as created by this act,  
22 the initial members of the council on utility public benefits shall be appointed for the  
23 following terms:

374

374

ins.

authorize air contaminant sources to

under s. 285.11 (6)

1 (a) One of the members under section 15.107 (17) (a), (b) and (d) of the statutes,  
2 as created by this act, for terms expiring on July 1, 2001.

3 (b) One of the members under section 15.107 (17) (a) of the statutes, as created  
4 by this act, and the members under section 15.107 (17) (c), (e) and (f) of the statutes,  
5 as created by this act, for terms expiring on July 1, 2002.

6 (c) One of the members under section 15.107 (17) (b) and (d) of the statutes, as  
7 created by this act, and the members under section 15.107 (17) (g) and (h) of the  
8 statutes, as created by this act, for terms expiring on July 1, 2003.

9 (1zu) UTILITY PUBLIC BENEFITS AND TRANSMISSION LINE RULES.

10 (a) Using the procedure under section 227.24 of the statutes, the department  
11 of administration shall, no later than 60 days after the effective date of this  
12 subsection, promulgate the rules required under section 16.957 (4) (b) of the statutes,  
13 as created by this act, for the period before the effective date of the permanent rules  
14 promulgated under that section, but not to exceed the period authorized under  
15 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) and  
16 (3) of the statutes, the department is not required to make a finding of emergency.  
17 Notwithstanding section 16.957 (4) (b) (intro.) of the statutes, as created by this act,  
18 the department of administration is not required to consult with the council on utility  
19 public benefits in promulgating rules under this paragraph.

20 (am) Using the procedure under section 227.24 of the statutes, the department  
21 of administration shall promulgate the rules required under sections 16.957 (2) (c)  
22 and 16.969 (2) of the statutes, as created by this act, for the period before the effective  
23 date of the permanent rules promulgated under those sections, but not to exceed the  
24 period authorized under section 227.24 (1) (c) and (2) of the statutes.

1 Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not  
2 required to make a finding of emergency.

3 (b) The department of administration shall submit in proposed form the rules  
4 required under sections 16.957 (2) (c) and (4) (b) and 16.969 (2) of the statutes, as  
5 created by this act, to the legislative council staff under section 227.15 (1) of the  
6 statutes no later than the first day of the 6th month beginning after the effective date  
7 of this paragraph.

8 (1zv) PUBLIC BENEFITS FEES.

9 (a) Notwithstanding section 16.957 (4) (c) 1. (intro.) of the statutes, as created  
10 by this act, the department of administration shall ensure that, for fiscal year  
11 1999–2000, the portion of the public benefits fee that is specified in section 16.957  
12 (4) (c) 1. (intro.) of the statutes, as created by this act, is reduced in proportion to the  
13 length of time that has elapsed in that fiscal year at the time that the rules specified  
14 in subsection (1zu) (a) become effective.

15 (b) Notwithstanding section 16.957 (4) (c) 2. of the statutes, as created by this  
16 act, the department of administration shall ensure that, for fiscal year 1999–2000,  
17 the portion of the public benefits fee that is specified in section 16.957 (4) (c) 2. of the  
18 statutes, as created by this act, is reduced in proportion to the length of time that has  
19 elapsed in that fiscal year at the time that the rules specified in subsection (1zu) (a)  
20 become effective.

21 (c) Notwithstanding section 16.957 (5) (a) of the statutes, as created by this act,  
22 for fiscal year 1999–2000, the annual average amount of the monthly public benefits  
23 fee that retail electric cooperatives and municipalities are required to charge to each  
24 customer or member shall be reduced in proportion to the length of time that has  
25 elapsed in that fiscal year as of the effective date of the rules promulgated under



1 subsection (1zu) (a). Upon the request of a retail electric cooperative or municipality,  
2 the department of administration shall provide advice as to the amount of a  
3 reduction that is required under this paragraph.

4 (1zw) PHASE-IN OF WEATHERIZATION AND ENERGY CONSERVATION AWARDS.  
5 Notwithstanding section 16.957 (2) (a) (intro.) of the statutes, as created by this act,  
6 the department of administration shall do each of the following:

7 (a) Specify a schedule for fiscal years 1999–2000 and 2000–01 for phasing in  
8 the requirement to spend the amount specified in section 16.957 (2) (a) of the  
9 statutes, as created by this act, on weatherization and other energy conservation  
10 services.

11 (b) Ensure that grants under section 16.957 (2) (a) of the statutes, as created  
12 by this act, are made in accordance with the schedule specified in paragraph (a).”.

13 **23.** Page 1544, line 8: after that line insert:

14 “(2zt) RENEWABLE RESOURCES, ENVIRONMENTAL IMPACT AND RELIABILITY STATUS  
15 RULES.

16 (a) Using the procedure under section 227.24 of the statutes, the public service  
17 commission shall promulgate the rules required under sections 196.025 (2) and (3)  
18 and 196.378 (3) (a) of the statutes, as created by this act, for the period before the  
19 effective date of the permanent rules promulgated under that section, but not to  
20 exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.  
21 Notwithstanding section 227.24 (1) and (3) of the statutes, the commission is not  
22 required to make a finding of emergency.

23 (b) The public service commission shall submit in proposed form the rules  
24 required under sections 196.025 (2) and (3) and 196.378 (3) (a) of the statutes, as

1 created by this act, to the legislative council staff under section 227.15 (1) of the  
2 statutes no later than the first day of the 6th month beginning after the effective date  
3 of this paragraph.”.

4 **24.** Page 1595, line 17: after that line insert:

5 “(1zt) HIGH-VOLTAGE TRANSMISSION LINES. The treatment of section 196.491 (3)  
6 (d) 3r. and 3t. of the statutes first applies to applications for certificates of public  
7 convenience and necessity that are filed with the public service commission on the  
8 effective date of this subsection.”.

9 **25.** Page 1596, line 3: after that line insert:

10 “(1zt) TRANSMISSION COMPANY LICENSE FEE. The treatment of sections 76.28 (1)  
11 (d), (e) (intro.) and 5. and (j) and (2) (c) (intro.), (d) and (e) and 196.485 (1) (ge) of the  
12 statutes first applies to taxable years beginning on January 1 of the year in which  
13 this subsection takes effect, except that if this subsection takes effect after July 31  
14 the treatment of sections 76.28 (1) (d), (e) (intro.) and 5. and (j) and (2) (c) (intro.), (d)  
15 and (e) of the statutes first applies to taxable years beginning on January 1 of the  
16 year following the year in which this subsection takes effect.”.

17 (END)

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb1931/lins  
MDK:.....

1 **INSERT 16-1:**  
2 makes a notification to the department of administration under

3 **INSERT 20-3:**  
4 and to make the transfer to the air quality improvement fund under s. 16.958 (2) (a).

5 **INSERT 20-7:**  
6 a sum sufficient equal to all moneys transferred under s. 16.958 (2) (a)

7 **INSERT 34-5:**  
8 4. The members of a municipal electric company, as defined in s. 66.073 (3) (d),  
9 may aggregate and allocate renewable energy among themselves.

10 **INSERT 58-21:**  
11 the transmission company, as defined in s. 196.485 (1) (g) or

12 **INSERT 73-17:**  
13 (e) "Midcontinent area" has the meaning given in s. 16.958 (1) (e).

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(END OF INSERTS)

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1931/1dn

MDK:.....

cmf

DATE

Please note the following about this amendment:

1. With respect to the meaning of the term "or otherwise" at the end of the definition of "call" in proposed s. 285.48 (1) (a), Curt Pawlisch has indicated to me that the intent of the conferees is to denote a different legal disposition of the SIP issued before the effective date of the bill, for example, by settlement of the litigation concerning the SIP rather than by federal court order. The term is not intended to refer to any new enforcement program for regulating nitrogen oxide emissions, for example a new federal or state initiated plan for reduction of such emissions.

2. I understand that the intent of the conferees is that the impact fees under proposed s. 16.969 are to be imposed prospectively on newly approved 345 kV transmission lines. The question has arose as to whether proposed s. 16.969 has been drafted in a manner consistent with that intent. I believe that it has. A statute may be classified as ~~either~~ substantive, procedural or remedial and such classification determines whether a statute is presumed to operate prospectively or retroactively. The statutory language at issue is likely be classified as substantive, because it defines or regulates rights or obligations. *See City of Madison v. Town of Madison*, 127 Wis. 2d 96, 102 (Ct. App. 1985). A substantive statute is presumed to operate prospectively, unless the statute clearly reveals, by express language or necessary implication, an intent that it apply retroactively. *See State v. ILHR Department*, 101 Wis. 2d 396, 403 (1981), *Chappy v. LIRC*, 136 Wis. 2d 172, 180-84 (1987), *Employers Ins. of Wausau v. Smith*, 154 Wis. 2d 199, 220-26 (1990) and *In re Marriage of Schulz v. Ystad*, 155 Wis. 2d 574, 597-98 (1990). In this case, with one exception, there is no express language for retroactive application. Instead, proposed s. 16.969 (2) provides that the fees must be paid by a person "who is issued" a CPCN, and does not use the past tense. There is express language for retroactivity only in proposed s. 196.491 (3) (gm), which provides that CPCN applicants are required to pay the impact fees for applications that were filed after April 1, 1999. In addition, proposed s. 196.491 (3) (gm) is quite clear that, except for applications filed after April 1, 1999, the duty to pay the fees applies to CPCN applicants who apply after the effective date of the bill. Based on this language, it may be implied that utilities with transmission lines approved under CPCN applications filed before April 1, 1999 do not need to pay the impact fee for those lines. Therefore, I do not think that any changes are necessary to proposed s. 16.969.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBb1931/1dn  
MDK:cmh:hmh

October 3, 1999

Please note the following about this amendment:

1. With respect to the meaning of the term "or otherwise" at the end of the definition of "call" in proposed s. 285.48 (1) (a), Curt Pawlisch has indicated to me that the intent of the conferees is to denote a different legal disposition of the SIP issued before the effective date of the bill, for example, by settlement of the litigation concerning the SIP rather than by federal court order. The term is not intended to refer to any new enforcement program for regulating nitrogen oxide emissions, for example a new federal or state initiated plan for reduction of such emissions.

2. I understand that the intent of the conferees is that the impact fees under proposed s. 16.969 are to be imposed prospectively on newly approved 345 kV transmission lines. The question has arose as to whether proposed s. 16.969 has been drafted in a manner consistent with that intent. I believe that it has. A statute may be classified as substantive, procedural or remedial and such classification determines whether a statute is presumed to operate prospectively or retroactively. The statutory language at issue is likely be classified as substantive, because it defines or regulates rights or obligations. See *City of Madison v. Town of Madison*, 127 Wis. 2d 96, 102 (Ct. App. 1985). A substantive statute is presumed to operate prospectively, unless the statute clearly reveals, by express language or necessary implication, an intent that it apply retroactively. See *State v. ILHR Department*, 101 Wis. 2d 396, 403 (1981), *Chappy v. LIRC*, 136 Wis. 2d 172, 180-84 (1987), *Employers Ins. of Wausau v. Smith*, 154 Wis. 2d 199, 220-26 (1990) and *In re Marriage of Schulz v. Ystad*, 155 Wis. 2d 574, 597-98 (1990). In this case, with one exception, there is no express language for retroactive application. Instead, proposed s. 16.969 (2) provides that the fees must be paid by a person "who is issued" a CPCN, and does not use the past tense. There is express language for retroactivity only in proposed s. 196.491 (3) (gm), which provides that CPCN applicants are required to pay the impact fees for applications that were filed after April 1, 1999. In addition, proposed s. 196.491 (3) (gm) is quite clear that, except for applications filed after April 1, 1999, the duty to pay the fees applies to CPCN applicants who apply after the effective date of the bill. Based on this language, it may be implied that utilities with transmission lines approved under CPCN applications filed before April 1, 1999 do not need to pay the impact fee for those lines. Therefore, I do not think that any changes are necessary to proposed s. 16.969.

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