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SDC:.....Walter - Am #4212, Utility public benefits and transmission system
company requirements

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

~~AMENDMENT~~ AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

6/659/11

RM NOT
RUN

D-NOTE

- 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 public benefits fees established for fiscal year 1999-2000 under sub.

24 (4) (c) 1.

25

2. The total amount expended by utilities under s. 196.374.

*related to
low-income
assistance*

1 3. Fifty percent of the public benefits fees established for fiscal year 1999–2000
2 that are charged by municipal utilities and retail electric cooperatives.

3 (p) “Low–income need target” means the product of the low–income need
4 percentage multiplied by low–income need in a fiscal year.

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

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

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

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

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

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

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

23 (w) “Wholesale supply percentage” means the percentage of a municipal
24 utility’s or retail electric cooperative’s retail capacity in a fiscal year that is supplied
25 by a wholesale supplier.

1 (x) "Wholesale supplier" means a wholesale electric cooperative or a municipal
2 electric company, as defined in s. 66.073 (3) (d), that supplies electricity at wholesale
3 to a municipal utility or retail electric cooperative.

4 (2) DEPARTMENT DUTIES. In consultation with the council, the department shall
5 do all of the following: *to ensure that an amount*

6 (a) *Low-income programs.* After holding a hearing, establish programs to be
7 administered by the department ~~of administration~~ *through* the division of housing
8 for awarding grants from the appropriation under s. 20.505 (10) (r) to provide
9 low-income assistance. In each fiscal year, the amount awarded under this
10 paragraph in grants for weatherization and other energy conservation services shall
11 be sufficient ~~to equal~~ *to* 47% of the sum of the following: *is spent for weatherization*
and other energy conservation

12 1. All moneys received from the federal government under 42 USC 6861 to 6873 *services*
13 and 42 USC 8621 to 8629 in a fiscal year.

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

16 3. All moneys spent in a fiscal year on programs established under this
17 paragraph.

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

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

22 a. Proposals for providing energy conservation or efficiency services. In
23 awarding grants under this subd. 1. a., the department shall give priority to
24 proposals directed at the sectors of energy conservation or efficiency markets that
25 are least competitive and at promoting environmental protection, electric system

1 reliability or rural economic development. In each fiscal year, 1.75% of the
2 appropriation under s. 20.505 (10) (s) shall be awarded in grants for research and
3 development proposals regarding the environmental impacts of the electric industry.

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

*by an amount that is greater than
the portion of the public benefits fee
specified in ✓*

10 2. For each fiscal year after fiscal year 2003–04, determine whether to continue,
11 discontinue or reduce any of the programs established under subd. 1. and determine
12 the total amount necessary to fund the programs that the department determines
13 to continue or reduce under this subdivision. The department shall notify the
14 commission if the department determines under this subdivision to reduce funding.

*sub. (4)
(c) 2.*

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

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

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

23 2m. Criteria for the selection of proposals by a corporation specified in sub. (3)

24 (b).

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

5 4. Requirements for electric utilities to allow customers ~~of the program~~ to include
 6 voluntary contributions to assist in funding ~~a commitment to community program~~
 7 ~~or~~ a program established under par. (a) or (b) 1. with bill payments for electric service.

8 The rules may require an electric utility to provide a space on an electric bill in which
 9 a customer ~~or member~~ may indicate the amount of a voluntary contribution and the
 10 customer's ~~or member's~~ preference regarding whether a contribution should be used
 11 for a program established under par. (a) or (b) 1. a. or b. The rules shall establish
 12 requirements and procedures for electric utilities to pay to the department any
 13 voluntary contributions included with bill payments and to report to the department
 14 customer ~~or member~~ preferences regarding use of the contributions. The
 15 department shall deposit all contributions received under this paragraph in the
 16 utility public benefits fund.

17 5. A method for estimating total low-income energy bills, average annual
 18 income of low-income households and the number of low-income households in a
 19 fiscal year for the purpose of determining the amount of low-income need in the fiscal
 20 year.

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

23 2. Encourage customers or members to make voluntary contributions to assist
 24 in funding the programs established under pars. (a) and (b) 1. The department shall

1 deposit all contributions received under this paragraph in the utility public benefits
2 fund.

3 3. Deposit all moneys received under sub. (4) (a) or (5) (c) or (d) in the utility
4 public benefits fund.

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

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

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

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

14 d. Any other issue identified by the ^{department's council's} governor, speaker of the assembly or
15 majority leader of the senate.

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

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

in the fixed charges for electricity

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

6 (4) ELECTRIC UTILITIES. (a) *Requirement to charge public benefits fees.* Each
7 electric utility, except for a municipal utility, shall charge each customer a public
8 benefits fee in an amount established in rules promulgated by the department under
9 par. (b). An electric utility, except for a municipal utility, shall collect and pay the fees
10 to the department in accordance with the rules promulgated under par. (b).

INSERT 9-10

11 (am) *Electric bills.* An electric utility shall include a public benefits fee in a
12 customer's bill and shall provide the customer with an annual statement that
13 identifies the annual charges for public benefits fees and describes the programs for
14 which fees are used.

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

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

21 2. Seventy percent of the total amount of fees charged by an electric provider
22 may be charged to residential customers and 30% of the total may be charged to
23 nonresidential customers.

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

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

3 1. 'Low-income funding.' In fiscal year 1999–2000, a portion of the public
4 benefits fee shall be an amount that, when added to 50% of the estimated public
5 benefits fees charged by municipal utilities and retail electric cooperatives under
6 sub. (5) (a) for that fiscal year, shall equal \$27,000,000. In each fiscal year after fiscal
7 year 1999–2000, a portion of the public benefits fee shall be an amount that, when
8 added to the sum of the following shall equal the low-income need target for that
9 fiscal year determined by the department under sub. (2) (d) 1.:

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

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

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

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

24 3. 'Limitation on electric bill increases.' For the period beginning on the
25 effective date of this subdivision [revisor inserts date], and ending on June 30,

1 2008, the total increase in a customer's electric bills that is based on the requirement
2 to pay public benefits fees, including any increase resulting from an electric utility's
3 compliance with this section, may not exceed 3% of the total of every other charge for
4 which the customer is billed for that period or \$750 per month, whichever is less.

5 (5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to*
6 *charge public benefits fees.* Each retail electric cooperative and municipal utility
7 shall charge a monthly public benefits fee to each customer or member in ^{an} amount
8 that is sufficient for the retail electric cooperative or municipal utility to collect an
9 annual average of \$17 per meter. A retail electric cooperative or municipal utility
10 may determine the amount that a particular class of customers or members is
11 required to pay under this paragraph and may charge different fees to different
12 classes of customers or members.

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

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

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

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

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

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

17 a. Pay ~~no less than~~ 50% of the public benefits fees that it charges under par.
18 (a) to the department.

19 b. Spend ~~no less than~~ 50% of the public benefits fees that it charges under par.
20 (a) on energy conservation programs.

21 2. If the municipal utility or retail electric cooperative elects to contribute only
22 to the programs established under sub. (2) (b) 1., the municipal utility or retail
23 electric cooperative shall, in each fiscal year of the 3-year period for which it elects
24 to contribute under par. (b) 1. or 2., do all of the following:

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

3 b. Spend ~~no less than~~ 50% of the public benefits fees that it charges under par.
4 (a) on programs for low-income assistance.

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

9 a. Spend ~~no less than~~ 50% of the public benefits fees that it charges under par.
10 (a) on programs for low-income assistance.

11 b. Spend ~~no less than~~ 50% of the public benefits fees that it charges under par.
12 (a) on energy conservation programs.

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

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

22 2. Include an amount equal to the product of the municipal utility's or retail
23 electric cooperative's wholesale supply percentage and the amount that the
24 wholesale supplier has spent on energy conservation programs or customer
25 applications of renewable resources in a fiscal year in calculating the amount that

1 the municipal utility or retail electric cooperative has spent on energy conservation
2 programs under par. (d) 1. b. or 3. b.

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

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

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

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

17 2. The department shall maintain reports filed under subd. 1. for at least 6
18 years.”.

19 **3.** Page 60, line 22: after that line insert:

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

21 **16.969 Fees for certain high-voltage transmission lines.** (1) In this
22 section:

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

1 (b) "High-voltage transmission line" means a high-voltage transmission line,
2 as defined in s. 196.491 (1) (f), that is designed for operation at a nominal voltage of
3 345 kilovolts or more.

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

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

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

10 (b) A one-time environmental impact fee in ^{an} amount equal to 5% of the cost of
11 the high-voltage transmission line, as determined by the commission under s.
12 196.491 (3) (gm).

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

18 (b) The fee that is paid by a person under the rules promulgated under sub. (2)
19 (b) shall be distributed as follows:

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

23 2. The department shall pay 50% of the fee to each town, village and city that
24 is identified by the commission under s. 196.491 (3) (gm) in proportion to the amount

1 of investment that is allocated by the commission under s. 196.491 (3) (gm) to each
2 such town, village and city.

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

6 4. Page 114, line 8: increase the dollar amount for fiscal year 1999–00 by
7 \$250,000 and increase the dollar amount for fiscal year 2000–01 by \$250,000 for the
8 purpose for which the appropriation is made.

9 5. Page 235, line 18: after that line insert:

10	“(ge) High-voltage transmission line				
11	annual impact fee distributions	PR	C	-0-	-0-
12	(gs) High-voltage transmission line				
13	environmental impact fee dis-				
14	tributions	PR	C	-0-	-0-”.

15 6. Page 244, line 13: after that line insert:

16	“(10) UTILITY PUBLIC BENEFITS				
17	(q) General program operations	SEG	A	-0-	-0-
18	(r) Low-income assistance grants	SEG	S	-0-	-0-
19	(s) Energy conservation and effi-				
20	ciency and renewable resource				
21	grants	SEG	S	-0-	-0-”.

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

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

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

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

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

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

5 20.505 (1) (gs) *High-voltage transmission line environmental impact fee*

6 *distributions.* All moneys received from the payment of fees under the rules

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

8 cities under s. 16.969 (3) (b).”.

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

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

11 20.505 (10) UTILITY PUBLIC BENEFITS. (q) *General program operations.* From

12 the utility public benefits fund, the amounts in the schedule for general program

13 operations.

14 (r) *Low-income assistance grants.* From the utility public benefits fund, a sum

15 sufficient for low-income assistance grants under s. 16.957 (2) (a).

16 (s) *Energy conservation and efficiency and renewable resource grants.* From the

17 utility public benefits fund, a sum sufficient for energy conservation and efficiency

18 and renewable resource grants under s. 16.957 (2) (b) 1.”.

19 **9.** Page 464, line 10: after that line insert:

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

21 25.17 (1) (xm) Utility public benefits fund (s. 25.96);”.

22 **10.** Page 470, line 18: after that line insert:

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

1 **25.96 Utility public benefits fund.** There is established a separate
2 nonlapsible trust fund designated as the utility public benefits fund, consisting of
3 deposits by the public service commission under s. 196.374 (3), public benefits fees
4 received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions received under
5 s. 16.957 (2) (c) 4. and (d) 2.”.

6 **11.** Page 953, line 3: after that line insert:

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

8 76.28 (1) (d) “Gross revenues” for a light, heat and power company other than
9 a qualified wholesale electric company or a transmission company means total
10 operating revenues as reported to the public service commission except revenues for
11 interdepartmental sales and for interdepartmental rents as reported to the public
12 service commission and deductions from the sales and use tax under s. 77.61 (4),
13 except that the company may subtract from revenues either the actual cost of power
14 purchased for resale, as reported to the public service commission, by a light, heat
15 and power company, except a municipal light, heat and power company, that
16 purchases under federal or state approved wholesale rates more than 50% of its
17 electric power from a person other than an affiliated interest, as defined in s. 196.52
18 (1), if the revenue from that purchased electric power is included in the seller’s gross
19 revenues or the following percentages of the actual cost of power purchased for
20 resale, as reported to the public service commission, by a light, heat and power
21 company, except a municipal light, heat and power company that purchases more
22 than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for
23 the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50%
24 for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric

1 company, “gross revenues” means total business revenues from those businesses
2 included under par. (e) 1. to 4. For a transmission company, “gross revenues” means
3 total operating revenues as reported to the public service commission, except
4 revenues for transmission service that is provided to a public utility that is subject
5 to the license fee under sub. (2) (d), to a public utility, as defined in s. 196.01 (5), or
6 to a cooperative association organized under ch. 185 for the purpose of providing
7 electricity to its members only.”.

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

9 76.28 (1) (e) (intro.) “Light, heat and power companies” means any person,
10 association, company or corporation, including corporations described in s. 66.069 (2)
11 ~~and including~~, qualified wholesale electric companies and transmission companies
12 and except only business enterprises carried on exclusively either for the private use
13 of the person, association, company or corporation engaged in them, or for the private
14 use of a person, association, company or corporation owning a majority of all
15 outstanding capital stock or who control the operation of business enterprises and
16 except electric cooperatives taxed under s. 76.48 that engage in any of the following
17 businesses:

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

19 76.28 (1) (e) 5. Transmitting electric current for light, heat or power.

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

21 76.28 (1) (j) “Transmission company” has the meaning given in s. 196.485 (1)
22 (ge).

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

1 76.28 (2) (c) (intro.) ~~For~~ Except as provided under par. (e), for private light, heat
2 and power companies for 1986 and thereafter, an amount equal to the apportionment
3 factor multiplied by the sum of:

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

5 76.28 (2) (d) ~~For~~ Except as provided under par. (e), for municipal light, heat and
6 power companies, an amount equal to the gross revenues, except gross revenues from
7 operations within the municipality that operates the company, multiplied by the
8 rates under par. (b) or (c).

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

10 76.28 (2) (e) For transmission companies, an amount equal to the gross
11 revenues multiplied by the rates under par. (c).”.

12 **12.** Page 1179, line 21: after that line insert:

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

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

15 196.025 (2) The commission shall promulgate rules establishing requirements
16 and procedures for the commission to carry out the duties under s. 1.11. Rules
17 promulgated under this subsection shall include requirements and procedures for
18 each of the following:

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

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

INSERT 22-6 (9)

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

6 196.025 (5) ^{or} (4) The commission shall contract with an expert consultant in
7 economics to conduct a study on the potential for horizontal market power, including
8 the horizontal market power of electric generators, to frustrate the creation of an
9 effectively competitive retail electricity market in this state and to make
10 recommendations on measures to eliminate such market power on a sustainable
11 basis. The study shall include each of the following:

- 12 1. An assessment of the effect of each recommendation on ~~public~~ ^{electric} utility workers
- 13 and shareholders and on rates for each class of ~~public~~ ^{electric} utility customers ^{or members}
- 14 2. An evaluation of the impact of transmission constraints on the market power
- 15 of electric generators in local areas.

16 (b) No later than January 1, 2001, the commission shall submit a report of the
17 results of the study under par. (4) ^{or} to the chief clerk of each house of the legislature
18 for distribution to the appropriate standing committees under s. 13.172 (3).

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

20 196.192 Market-based compensation, rates and contracts. (1) In this
21 section, "electric public utility" means a public utility whose purpose is the
22 generation, distribution and sale of electric energy.

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

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

4 (b) File with the commission market-based pricing options and options for
5 individual contracts that allow a retail customer, through service from its existing
6 public utility, to receive market benefits and ~~subject to~~ ^{Take} market risks for the
7 customer's purchases of capacity or energy.

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

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

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

20 **13.** Page 1185, line 19: after that line insert:

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

22 196.31 (1) (intro.) In any proceeding before the commission, the commission
23 ~~may~~ shall compensate any participant in the proceeding who is not a public utility,

1 for some or all of the reasonable costs of participation in the proceeding if the
2 commission finds that:

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

4 196.31 (1) (a) The participation is necessary to provide for the record an
5 adequate presentation of a significant position in which the participant has a
6 substantial interest, and that an adequate presentation would not be possible occur
7 without a grant of compensation; or

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

9 **196.374 Low-income assistance, energy efficiency and other**
10 **programs.** (1) In this section:

11 (a) "Department" means the department of administration.

12 (b) "Fund" means the utility public benefits fund.

13 (c) "Utility" means a Class A gas or electric utility, as defined by the
14 commission, but does not include a municipal utility, as defined in s. 16.957 (1) (q),
15 a municipal electric company, as defined in s. 66.073 (3) (d), or a cooperative
16 association organized under ch. 185.

17 (2) The commission shall determine the amount that each utility spent in 1998
18 on programs for low-income assistance, including writing off uncollectibles and
19 arrearages, low-income weatherization, energy conservation and efficiency,
20 environmental research and development, and renewable resources.

21 (3) In 1999, 2000 and 2001, the commission shall require each utility to spend
22 a decreasing portion of the amount determined under sub. (2) on programs specified
23 in sub. (2) and contribute the remaining portion of the amount to the commission for
24 deposit in the fund. In each year after 2001, each utility shall contribute the entire
25 amount determined under sub. (2) to the commission for deposit in the fund. The

1 commission shall ensure in rate-making orders that a utility recovers from its
2 ratepayers the amounts spent on programs or contributed to the fund under this
3 subsection. The commission shall allow each utility the option of continuing to use,
4 until January 1, 2001, the moneys that it has recovered under s. 196.374 (3), 1997
5 stats., to administer the programs that it has funded under s. 196.374 (1), 1997 stats.
6 The commission may allow each utility to spend additional moneys on the programs
7 specified in sub. (2) if the utility otherwise complies with the requirements of this
8 section and s. 16.957 (4).

9 (4) If the department notifies the commission under s. 16.957 (2) (b) 2. that the
10 department has reduced funding for energy conservation and efficiency and
11 renewable resource programs, the commission shall reduce the amount that a utility
12 ~~is~~ ^{utilities are} required to spend on programs or contribute to the fund under sub. (3) by ^{that amount.} the
13 ~~percentage by which the department has reduced the funding.~~

by an amount that is greater than the portion of the public benefits fee specified in s. 16.957 (4) (c) 2.

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

15 **196.378 Renewable resources.** (1) DEFINITIONS. In this section:

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

22 (b) "Conventional resource" means a resource that derives energy from coal, oil,
23 nuclear power or natural gas, except for natural gas used in a fuel cell.

24 (bm) "Department" means the department of administration.

25 (c) "Electric provider" means an electric utility or retail electric cooperative.

1 (d) "Electric utility" means a public utility that sells electricity at retail. For
2 purposes of this paragraph, a public utility is not considered to sell electricity at
3 retail solely on the basis of its ownership or operation of a retail electric distribution
4 system.

5 (e) "Excludable renewable ~~capacity~~^{energy}" means the portion of an electric provider's
6 total renewable ~~capacity~~^{energy} that is supplied from renewable facilities that were placed
7 in service before January 1, 1998, and that, before January 1, 1998, derived
8 electricity from hydroelectric power, even if the output of the renewable facilities is
9 used to satisfy requirements under federal law.

10 (f) "Nonsystem renewable energy" means the amount of electricity that an
11 electric provider sells to its retail customers or members and that is supplied or
12 allocated under executed wholesale purchase contracts from renewable facilities
13 that are not owned or operated by the electric provider. "Nonsystem renewable
14 energy" does not include any electricity that is not used to satisfy the electric
15 provider's retail load obligations.

16 (g) "Renewable facility" means an installed and operational electric generating
17 facility in which ~~energy~~^{electricity} is derived from a renewable resource. "Renewable facility"
18 includes a facility the installation or operation of which is required under federal law,
19 but does not include a facility the installation or operation of which is required under
20 the laws of another state even if the installation or operation of the facility is also
21 required under federal law.

22 (h) "Renewable resource" means any of the following:

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

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

25 b. Tidal or wave action.

1 c. Solar thermal electric or photovoltaic energy.

2 d. Wind power.

3 e. Geothermal technology.

4 g. Biomass.

5 1m. A resource with a capacity of less than 60 megawatts that derives
6 electricity from hydroelectric power.

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

9 (i) "Renewable resource credit" means a credit calculated in accordance with
10 rules promulgated under sub. (3) (a).

11 (j) "Resource" means a source of electric power ^{energy used to generate} ~~generation~~

12 (k) "Retail electric cooperative" means a cooperative association organized
13 under ch. 185 that sells electricity at retail to its members only. For purposes of this
14 paragraph, a cooperative association is not considered to sell electricity at retail
15 solely on the basis of its ownership or operation of a retail electric distribution
16 system.

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

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

22 (2) RENEWABLE RESOURCE ENERGY. (a) Each electric provider shall provide to its
23 retail electric customers or members total renewable energy in at least the following
24 percentages of its total retail ~~energy~~ ^{electric} sales, either directly or through renewable
25 resource credits from another electric provider:

- 1 1. By December 31, 2000, 0.5%.
- 2 2. By December 31, 2002, 0.85%.
- 3 3. By December 31, 2004, 1.2%.
- 4 4. By December 31, 2006, 1.55%.
- 5 5. By December 31, 2008, 1.9%.
- 6 6. By December 31, 2010, 2.2%.

electric

be considered to

Electric resources considered to be a renewable resource

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

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

10 2. The amount of electricity supplied by a renewable facility in which biomass
11 and conventional ~~resources~~ are fired together shall be equal to the product of the
12 maximum amount of electricity that the facility is capable of generating and the ratio
13 of the ~~British thermal unit~~ energy content of the biomass fuels to the ~~British thermal unit~~ energy
14 content of both the biomass and conventional resources ~~supplied~~.

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

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

24 (d) The commission shall allow an electric utility to recover from ratepayers the
25 cost of providing total renewable energy to its retail customers ~~by members~~ in

1 amounts that equal or exceed the percentages specified in par. (a). Subject to any
2 approval of the commission that is necessary, an electric utility may recover costs
3 under this paragraph by any of the following methods:

4 1. Allocating the costs equally to all customers of ~~members~~ *members* on a kilowatt-hour
5 basis.

6 2. Establishing alternative price structures, including price structures under
7 which customers of ~~members~~ *members* pay a premium for renewable energy.

8 3. Any combination of the methods specified in subds. 1. and 2.

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

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

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

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

17 3. Notwithstanding subd. 1., this subsection applies to an electric provider
18 unless the electric provider provides documentation to the commission that
19 establishes, to the satisfaction of the commission, that the electric provider satisfies
20 the requirements under subd. 1. a. or b.

21 (3) RENEWABLE RESOURCE CREDITS. (a) An electric provider that provides total
22 renewable energy to its retail electric customers or members in excess of the
23 percentages specified in sub. (2) (a) 1. to 6. may, in the applicable year, sell to any
24 other electric provider a renewable resource credit or a portion of a renewable
25 resource credit at any negotiated price. Alternatively, an electric provider may use

the use of a renewable resource credit, including

1 a renewable resource credit or portion of a renewable resource credit in a subsequent
2 year to establish compliance with sub. (2) (a). The commission shall promulgate
3 rules that establish requirements for calculating the amount of a renewable resource
4 credit.

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

7 (4) RULES. The commission may promulgate rules that designate a resource,
8 except for a conventional resource, as a renewable resource in addition to the
9 resources specified in sub. (1) ^{g h} 1. and 1m.

10 (5) PENALTY. Any person who violates sub. (2) or any wholesale supplier who
11 provides an electric provider with a false or misleading certification regarding the
12 sources or amounts of energy supplied to the electric provider shall forfeit not less
13 than \$5,000 nor more than \$500,000. Forfeitures under this subsection shall be
14 enforced by action on behalf of the state by the attorney general. A court imposing
15 a forfeiture under this subsection shall consider all of the following in determining
16 the amount of the forfeiture:

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

19 (b) The gravity of the violation.

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

22 **14.** Page 1186, line 2: after that line insert:

23 “SECTION 2335ta. 196.485 (title) of the statutes is repealed and recreated to
24 read:

INSERT 31-5

1 **196.485 (title) Transmission system requirements.**

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

3 196.485 (1) (am) "Contribute a transmission facility" means to divest a person's
4 interest in the transmission facility and to transfer ownership of the transmission
5 facility and associated deferred tax reserves to another person.

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

7 196.485 (1) (be) "Director" means, with respect to a transmission company
8 organized as a corporation under ch. 180, a member of the board of directors of the
9 transmission company.

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

11 196.485 (1) (bs) "Electric utility" has the meaning given in s. 196.491 (1) (d).

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

13 196.485 (1) (dm) (intro.) "Independent transmission owner" ~~means:~~

14 1m. Means a person that satisfies each of the following:

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

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

18 196.485 (1) (dm) 2. Does not include the transmission company.

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

21 196.485 (1) (dm) 1m. b. The person is not an affiliated interest of a person
22 specified in subd. ~~1.~~ 1m. a.

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

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

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

5 196.485 (1) (dq) "Manager" means, with respect to a transmission company
6 organized as a limited liability company under ch. 183, a manager, as defined in s.
7 183.0102(13), of the transmission company. **INSERT 32-7**

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

9 196.485 (1) (dr) "Merger enforcement policy" means the enforcement policy of
10 the federal department of justice and the federal trade commission regarding
11 horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

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

13 196.485 (1) (ds) "Midwest independent system operator" means the
14 independent system operator the establishment of which the federal energy
15 regulatory commission has conditionally authorized in an order issued on September
16 16, 1998, or the successor to such independent system operator.

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

18 196.485 (1) (dt) "Nontransmission utility security holder" means a security
19 holder that is not a transmission utility security holder.

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

21 196.485 (1) (dv) "Organizational start-up date" means, with respect to a
22 transmission company that is organized as a limited liability company under ch. 183,
23 the date on which the articles of organization become effective under s. 183.0111 or,
24 with respect to a transmission company that is organized as a corporation under ch.

1 180, the date on which the articles of incorporation become effective under s.
2 180.0123.

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

4 196.485 (1) (em) "Retail electric cooperative" means a cooperative that provides
5 retail electric service to its members.

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

7 196.485 (1) (fe) "Security" means, with respect to a transmission company
8 organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and,
9 with respect to a transmission company organized as a limited liability company
10 under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

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

12 196.485 (1) (ge) "Transmission company" means a corporation organized under
13 ch. 180 or a limited liability company organized under ch. 183 that has as its sole
14 purpose the planning, constructing, operating, maintaining and expanding of
15 transmission facilities that it owns to provide for an adequate and reliable
16 transmission system that meets the needs of all users that are dependent on the
17 transmission system and that supports effective competition in energy markets
18 without favoring any market participant.

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

20 196.485 (1) (gm) "Transmission dependent utility" means an electric utility
21 that is not a transmission utility and that is dependent on the transmission system
22 of another person for delivering electricity to the ~~public~~ utility's customers.

electric

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

24 196.485 (1) (j) "Transmission utility security holder" means a person that is a
25 security holder of a transmission company, is an investor-owned transmission utility

1 in the transmission area and has contributed its transmission facilities to the
2 transmission company.

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

4 196.485 (1m) DUTY TO PROVIDE TRANSMISSION SERVICE. (a) The duty of any
5 electric utility that has contributed its transmission facilities to the transmission
6 company to finance, construct, maintain or operate a transmission facility shall
7 terminate on the date, as determined by the commission under sub. (2) (d), that the
8 transmission company begins operations.

INSERT 34-a
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9

(b) After beginning operations, the transmission company shall have the
10 exclusive duty to provide transmission service in those areas in which transmission
11 facilities have been contributed. The duty under this paragraph shall terminate on
12 the date, as determined by the commission under sub. (2) (d), that the Midwest
13 independent system operator begins operations.

14 (c) After beginning operations, the Midwest independent system operator shall
15 have the exclusive duty to provide transmission service in the transmission area and
16 shall ensure that each transmission facility in the transmission area that is under
17 its operational control is planned, constructed, operated, maintained and controlled
18 as part of a single transmission system.

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

20 196.485 (2) (a) (intro.) By June 30, 2000, if a transmission utility has not
21 transferred control over its transmission facilities to an independent system
22 operator that is approved by the applicable federal agency or divested, with approval
23 of the applicable federal agency and, for a public utility, the commission, its interest
24 in its transmission facilities to an independent transmission owner, the commission

1 shall, subject to ~~par.~~ pars. (am) and (ar), order the transmission utility to apply to the
2 applicable federal agency to do one of the following:

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

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

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

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

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

21 196.485 (2) (d) The commission shall determine each of the following:

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

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

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

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

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

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

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

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

1 e. Remain a member of the Midwest independent system operator, or any
2 independent system operator or regional transmission organization that has been
3 approved under federal law to succeed the Midwest independent system operator, for
4 at least the 6-year transition period that is specified in the agreement conditionally
5 approved by the federal energy regulatory commission that establishes the Midwest
6 independent system operator.

7 ~~Except as provided in~~ *Subject to* subd. 4., elect to be included in a single zone for the
8 purpose of any tariff administered by the Midwest independent system operator.

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

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

14 b. Bypass the distribution facilities of an electric utility or provide electric
15 service directly to a retail customer.

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

22 3. Notwithstanding subd. 1. a., the transmission company may not begin
23 operations until it provides an opinion to the commission from a nationally
24 recognized investment banking firm that the transmission company is able to

1 finance, at a reasonable cost, its start-up costs, working capital and operating
2 expenses and the cost of any new facilities that are planned.

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

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

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

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

4 (c) *Organization.* The ~~articles of organization~~ ^{operating agreement}, as defined in s. 183.0102 (7), of ¹⁶
5 a transmission company that is organized as a limited liability company under ch.
6 183 or the bylaws of a transmission company that is organized as a corporation under
7 ch. 180 shall provide for each of the following:

8 1. That the transmission company has no less than 5 nor more than 14
9 managers or directors, except that the ~~articles of organization~~ ^{operating agreement} or bylaws may allow
10 the requirements of this subdivision to be modified upon a unanimous vote of the
11 managers or directors during the 10-year period after the organizational start-up
12 date or upon a two-thirds vote of the board of directors or managers after such
13 10-year period.

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

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

22 a. Each nontransmission utility security holder that owns 10% or more of the
23 outstanding voting securities of the transmission company may appoint one
24 manager or director of the transmission company for a one-year term, except that

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1 the requirements of this subd. 3. a. may be modified upon a unanimous vote of the
2 managers or directors.

3 b. Each group of nontransmission utility security holders that, as a group, owns
4 10% or more of the outstanding voting securities of the transmission company may
5 appoint one manager or director of the transmission company for a one-year term
6 if the group has entered into a written agreement regarding the appointment and the
7 group files the agreement with the ~~secretary of the~~ transmission company, except
8 that the requirements of this subd. 3. b. may be modified upon a unanimous vote of
9 the managers or directors.

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10 c. Each person that receives at least 5% of the voting securities of the
11 transmission company under sub. (6) (a) or (b) may appoint one manager or director
12 of the transmission company for a one-year term if the person continues to hold at
13 least a 5% equity interest in the transmission company during the one-year term.

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

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

1 under sub. (5) (b) and except that the requirements of this subdivision may be
2 modified upon a unanimous vote of the managers or directors.

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

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

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

11 196.485 (4) (a) (intro.) ~~A- Except as provided in par. (am),~~ a transmission utility
12 may not transfer control over, or divest its interest in, its transmission facilities to
13 an independent system operator or independent transmission owner unless, to the
14 satisfaction of the commission, each of the following requirements is satisfied:

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

16 196.485 (4) (am) Each transmission utility in the transmission area that is a
17 public utility shall become a member of the Midwest independent system operator
18 no later than June 30, 2000, and shall transfer operational control over its
19 transmission facilities to the Midwest independent system operator. Each such
20 transmission utility that has not contributed its transmission facilities to the
21 transmission company shall elect to become part of the single zone for pricing
22 purposes within the Midwest independent system operator and any phase-in plan
23 prepared under sub. (3m) (a) 4.

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

1 196.485 (5) PUBLIC UTILITY AFFILIATES. (a) *Asset cap exception*. Section 196.795
2 (6m) (e) does not apply to the eligible assets of a nonutility affiliate in a holding
3 company system unless each public utility affiliate in the holding company system
4 does each of the following:

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

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

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

22 4. Notifies the commission in writing that the public utility affiliate has become
23 a member of the Midwest independent system operator, has agreed to transfer its
24 transmission facilities to the Midwest independent system operator and has
25 committed not to withdraw its membership prior to the date on which the public

1 utility affiliate contributes transmission facilities to the transmission company
2 under par. (b).

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

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

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

19 a. The structure of the transfer avoids or minimizes the material adverse tax
20 consequences to the public utility affiliate that result from the transfer and avoids
21 or minimizes material adverse consequences on public utility rates that do not arise
22 out of combining the transmission company's facilities into a single zone in the
23 Midwest independent system operator.

24 b. To the extent practicable, the structure of the transfer satisfies the
25 requirements of the Internal Revenue Service for a tax-free transfer.

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

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

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

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

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

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

21 7. Any transmission facilities that are contributed to the transmission
22 company shall be valued at net book value at the time of the transfer.

23 (bm) *Lease of transmission facilities.* If a public utility affiliate is not able to
24 contribute its transmission facilities to the transmission company as required under
25 par. (b) due to merger-related accounting requirements, the public utility affiliate

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1 shall transfer the transmission facilities to the transmission company under a lease
2 for the period of time during which the accounting requirements are in effect and,
3 after such requirements are no longer in effect, contribute the transmission facilities
4 to the transmission company under par. (b). A public utility affiliate that transfers
5 transmission facilities under a lease under this paragraph does not qualify for the
6 asset cap exception under par. (a) unless, during the term of the lease, the public
7 utility affiliate does not receive any voting interest in the transmission company.

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

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

19 b. If the land right is jointly used, or is intended to be jointly used, for electric
20 and gas distribution facilities by the public utility affiliate, the public utility affiliate
21 shall enter into a contract with the transmission company that grants the
22 transmission company a right to place, maintain, modify or replace the transmission
23 company's transmission facilities on the real property that is subject to the land right
24 during the life of the transmission facilities and the life of any replacements of the
25 transmission facilities. A right granted in a contract under this subd. 1. b. shall be

1 paramount to the right of any other user of the land right, except that a right granted
2 in such a contract shall be on par with the right of the public utility affiliate to use
3 the land right for electric or gas distribution facilities.

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

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

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

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

20 (a) An electric utility, other than a public utility affiliate, may transfer all of its
21 integrated transmission facilities to the transmission company on the same terms
22 and conditions as a contribution of transmission facilities and land rights by a public
23 utility affiliate under sub. (5) (b) and (c).

24 (b) A transmission-dependent utility or retail electric cooperative may
25 purchase equity interests in the transmission company at a price that is equivalent

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or distribution

1 to net book value and on terms and conditions that are comparable to those for public
2 utility affiliates that have contributed transmission facilities to the transmission
3 company. A purchaser under this paragraph may contribute funds to the
4 transmission company that are no more than the value of its prorated shares based
5 on firm electric usage in this state in 1999.

DISTRIBUTIONS,

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

7
8
9

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

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

13 196.485 (7) ENFORCEMENT. A wholesale or retail customer of a public utility
14 affiliate may petition the circuit court for Dane County for specific performance of
15 a commitment filed under sub. (5) (a) 2. or 3.

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

17 196.485 (8) PENALTIES. A public utility affiliate that fails to complete the
18 contribution of transmission facilities to the transmission company by the
19 completion date specified in the filing under sub. (5) (a) 2. shall forfeit \$25,000 for
20 each day that completion of the contribution is delayed if the transmission company
21 is legally able to accept the contribution.

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

23 **196.487 Reliability of electric service.** (1) DEFINITIONS. In this section:

24 (a) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

25 (b) "Transmission company" has the meaning given in s. 196.485 (1) (ge).

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

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

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

14 196.491 (3) (d) 3r. For a high-voltage transmission line that is proposed to
15 increase the transmission import capability into this state, existing rights-of-way
16 are used to the extent practicable and the routing and design of the high-voltage
17 transmission line minimizes environmental impacts in a manner that is consistent
18 with achieving reasonable electric rates.

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

20 196.491 (3) (d) 3t. For a high-voltage transmission line that is designed for
21 operation at a nominal voltage of 345 kilovolts or more, the high-voltage
22 transmission line provides usage, service or increased regional reliability benefits to
23 the wholesale and retail customers or members in this state and the benefits of the
24 high-voltage transmission line are reasonable in relation to the cost of the
25 high-voltage transmission line.

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

2 196.491 (3) (gm) The commission may not approve an application filed after the
3 effective date of this paragraph [revisor inserts date], under this section for a
4 certificate of public convenience and necessity for a high-voltage transmission line
5 that is designed for operation at a nominal voltage of 345 kilovolts or more unless the
6 approval includes the condition that the applicant shall pay the fees specified in sub.
7 (3g) (a). If the commission has approved an application under this section for a
8 certificate of public convenience and necessity for a high-voltage transmission line
9 that is designed for operation at a nominal voltage of 345 kilovolts or more that was
10 filed after April 1, 1999, and before the effective date of this paragraph [revisor
11 inserts date], the commission shall require the applicant to pay the fees specified in
12 sub. (3g) (a). For any application subject to this paragraph, the commission shall
13 determine the cost of the high-voltage transmission line, identify the counties,
14 towns, villages and cities through which the high-voltage transmission line is routed
15 and allocate the amount of investment associated with the high-voltage
16 transmission line to each such county, town, village and city.

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

18 196.491 (3g) **FEEES FOR CERTAIN HIGH-VOLTAGE TRANSMISSION LINES.** (a) A person
19 who receives a certificate of public convenience and necessity for a high-voltage
20 transmission line that is designed for operation at a nominal voltage of 345 kilovolts
21 or more under sub. (3) shall pay the department of administration an annual impact
22 fee as specified in the rules promulgated by the department of administration under
23 s. 16.969 (2) (a) and shall pay the department of administration a one-time
24 environmental impact fee as specified in the rules promulgated by the department
25 of administration under s. 16.969 (2) (b).

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

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

6 196.491 (3m) (b) 2. The analytical process specified in subd. 1. b. shall, to the
7 extent practicable, be consistent with the analytical process described in the merger
8 ~~enforcement policy of the federal department of justice and the federal trade~~
9 ~~commission regarding horizontal acquisitions and mergers that are subject to 15~~
10 ~~USC 1, 18 or 45, as defined in s. 196.485 (1) (dr).~~

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

12 196.494 (3) ~~No later than December 31, 2004, the~~ The commission may shall,
13 under this subsection, issue an order requiring an electric utility to construct or
14 procure, on a competitive basis, the construction of transmission facilities specified
15 by the commission in its order if the commission determines that, ~~based on the~~
16 ~~results of the study under sub. (2),~~ such construction is necessary to relieve a
17 constraint on a transmission system and the construction will materially benefit the
18 customers of the electric utility or other electric utilities or of an independent system
19 operator, as defined in s. 196.485 (1) (d), or independent transmission owner, as
20 defined in s. 196.485 (1) (dm).

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

22 196.494 (5) The governor may, on behalf of this state, enter into an interstate
23 compact that establishes a joint process for the states in the upper midwest region
24 of the United States to determine the need for and siting of regional electric
25 transmission facilities that may affect electric service in this state. The governor

1 may not enter into a compact under this subsection unless the compact includes
2 requirements and procedures for establishing each of the following:

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

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

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

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

9 196.52 (3) (a) In this subsection, "contract or arrangement" means a contract
10 or arrangement providing for the furnishing of management, supervisory,
11 construction, engineering, accounting, legal, financial or similar services and any
12 contract or arrangement for the purchase, sale, lease or exchange of any property,
13 right, or thing, or for the furnishing of any service, property, right, or thing, other
14 than management, supervisory, construction, engineering, accounting, legal,
15 financial or similar services, but "contract or arrangement" does not include a
16 contract or arrangement under which a transmission utility, as defined in s. 196.485
17 (1) (i), sells or transfers securities, as defined in s. 196.485 (1) (fe), that have been
18 issued by a transmission company, as defined in s. 196.485 (1) (ge). Except as
19 provided under par. (b), unless and until the commission gives its written approval,
20 any contract or arrangement is not valid or effective if the contract or arrangement
21 is made between a public utility and an affiliated interest after June 7, 1931. Every
22 public utility shall file with the commission a verified copy of any contract or
23 arrangement, a verified summary of any unwritten contract or arrangement, and
24 any contract or arrangement, written or unwritten, which was in effect on June 7,
25 1931. The commission shall approve a contract or arrangement made or entered into

1 after June 7, 1931, only if it shall clearly appear and be established upon
2 investigation that it is reasonable and consistent with the public interest. The
3 commission may not approve any contract or arrangement unless satisfactory proof
4 is submitted to the commission of the cost to the affiliated interest of rendering the
5 services or of furnishing the property or service to each public utility or of the cost
6 to the public utility of rendering the services or of furnishing the property or service
7 to each affiliated interest. No proof is satisfactory under this paragraph unless it
8 includes the original (or verified copies) of the relevant cost records and other
9 relevant accounts of the affiliated interest, or an abstract of the records and accounts
10 or a summary taken from the records and accounts if the commission deems the
11 abstract or summary adequate. The accounts shall be properly identified and duly
12 authenticated. The commission, where reasonable, may approve or disapprove a
13 contract or arrangement without submission of the cost records or accounts.

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

15 196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of
16 the outstanding voting securities of a public utility, other than a transmission
17 company, with the unconditional power to vote those securities.

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

19 196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting
20 securities of a public utility, other than a municipality or other political subdivision
21 or a transmission company, for or into the voting securities of a company organized,
22 created, appointed or formed by or at the direction of the public utility or of a
23 subsidiary of such company.

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

25 196.795 (1) (h) 3. "Holding company" does not include a transmission company.

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

2 196.795 (1) (p) “Transmission company” has the meaning given in s. 196.485
3 (1) (ge).

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

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

9 **SECTION 2335yf.** 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered
10 196.795 (6m) (b) 1., 2., 3. and 4.

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

12 **SECTION 2335yh.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795
13 (6m) (a) 3.

14 **SECTION 2335yi.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795
15 (6m) (a) 5.

16 **SECTION 2335yj.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795
17 (6m) (a) 6.

18 **SECTION 2335yk.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795
19 (6m) (c) and amended to read:

20 196.795 (6m) (c) Wholesale merchant plants. The assets of a wholesale
21 merchant plant shall not be included in the sum of the assets of a public utility
22 affiliate under par. ~~(p)~~ (b) 1. a., b. or c. and shall not be included in a nonutility
23 affiliate’s total assets under par. ~~(p)~~ (b) 2. a. if the requirements specified in s. 196.491
24 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the
25 exemption under s. 196.491 (3m) (e).

1 **SECTION 2335yL.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795
2 (6m) (d) and amended to read:

3 196.795 (6m) (d) *Foreign affiliates.* The assets of a foreign affiliate shall be
4 included in the sum of the assets of a public utility affiliate under par. (p) (b) 1. a.,
5 b. or c. and shall not be included in a nonutility affiliate’s total assets under par. (p)
6 (b) 2. a.

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

8 196.795 (6m) (title) ASSET CAP.

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

10 196.795 (6m) (a) *Definitions.* (intro.) In this subsection:

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

12 196.795 (6m) (a) 1. “Contributor public utility affiliate” means a public utility
13 affiliate that has contributed its transmission facilities to the transmission company
14 under s. 196.485 (5) (b).

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

16 196.795 (6m) (a) 2. “Eligible asset” means an asset of a nonutility affiliate that
17 is used for any of the following:

18 a. Producing, generating, transmitting, delivering, selling or furnishing gas,
19 oil, electricity or steam energy.

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

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

23 d. Recovering or producing energy from waste materials.

24 e. Processing waste materials.

1 f. Manufacturing, distributing or selling products for filtration, pumping water
2 or other fluids, processing or heating water, handling fluids or other related
3 activities.

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

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

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

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

10 196.795 (6m) (b) *In general.*

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

12 196.795 (6m) (e) *Contributor public utility affiliates.* 1. The eligible assets of
13 a nonutility affiliate in a holding company system that includes each of the
14 contributor public utility affiliates in the holding company system shall not be
15 included in the sum of the assets of the public utility affiliates under par. (b) 1. a.,
16 b. or c. and shall not be included in the nonutility affiliate’s total assets under par.
17 (b) 2. a.

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

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

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

24 3. The net book value of transmission facility assets that a contributor public
25 utility affiliate has contributed to a transmission company under s. 196.485 (5) (b)

1 shall be included in the sum of the assets of the public utility affiliate under par. (b)
2 1. a., b. and c. In determining net book value under this subdivision, accumulated
3 depreciation shall be calculated as if the contributor public utility affiliate had not
4 contributed the assets.

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

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

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

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

1 196.795 (11) (c) The commission may not impose upon a holding company the
 2 formation of which is considered to be legalized and confirmed under par. (b) any
 3 term, limitation or condition under par. (b) that establishes the sum of the holding
 4 company's nonutility affiliate assets at less than 25% of the sum of the holding
 5 company's utility affiliate assets. For purposes of this paragraph, any term,
 6 limitation or condition on nonutility affiliate assets shall not apply to the ownership,
 7 operation, management or control of any eligible asset, as defined under sub. (6m)

8 (a) 2. ~~for an asset that is used for manufacturing, distributing or selling swimming~~
 9 ~~pools or spas~~

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

11 **196.807 Energy affiliate and utility employes.** (1) DEFINITIONS. In this
 12 section:

INSERT 58-14 ✓

13 (a) "Affiliate or utility" means a nonutility affiliate, a holding company system
 14 or an electric utility, ~~as defined in s. 196.491 (1) (a)~~

15 (b) "Energy unit" means a unit in this state that is engaged in activities related
 16 to the production, generation, transmission or distribution of electricity, gas or steam
 17 or the recovery of energy from waste materials.

18 (c) "Holding company system" has the meaning given in s. 196.795 (1) (i).

19 (d) "Nonutility affiliate" has the meaning given in s. 196.795 (1) (j).

20 (e) "Public utility affiliate" has the meaning given in s. 196.795 (1) (L).

21 (f) "Sell an energy unit" means to sell, offer by lease, or otherwise transfer
 22 ownership or control of the energy unit.

23 (g) "Unit" means a division, department or other operational business unit of
 24 an affiliate or utility.

INSERT 58-22 ✓

INSERT 59-9 ✓

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

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

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

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

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

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

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

INSERT 59-23

22 (4) COMMISSION APPROVAL. Except for a cooperative association, as defined in
23 s. 196.491 (1) (bm), no person may sell an energy unit unless the commission
24 determines that the person has satisfied subs. (2) and (3)."

1 **15.** Page 1186, line 9: after that line insert:

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

3 200.01 (2) “Public service corporation” means and embraces every corporation,
4 except municipalities and other political subdivisions, which is a public utility as
5 defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02,
6 but shall not include a public utility corporation receiving an annual gross revenue
7 of less than \$1,000 for the calendar year next preceding the issuance of any securities
8 by it. “Public service corporation” includes a holding company, as defined under s.
9 196.795 (1)(h), which is a public utility, as defined under s. 196.01 (5). “Public service
10 corporation” does not include a telecommunications utility, as defined in s. 196.01
11 (10). “Public service corporation” does not include any other holding company unless
12 the holding company was formed after November 28, 1985, and unless the
13 commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate,
14 as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do
15 at least one of the items specified in s. 196.795 (7) (a). “Public service corporation”
16 does not include a company, as defined in s. 196.795 (1) (f), which owns, operates,
17 manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless
18 such company also owns, operates, manages or controls a public utility which is not
19 a telecommunications utility. “Public service corporation” does not include a
20 transmission company, as defined in s. 196.485 (1) (ge).”

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

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

23 **285.48 Nitrogen oxide emissions from certain electric generation**
24 **facilities. (1)** In establishing nitrogen oxide emission reductions for the control of

1 atmospheric ozone in another state pursuant to a call for a state implementation plan
2 issued prior to the effective date of this subsection [revisor inserts date], the
3 department may not, in an implementation plan under s. 285.11 (6), by rule or
4 through the adoption of control strategies, regulate nitrogen oxide emissions from
5 electric generation facilities that are located in Ashland, Barron, Bayfield, Buffalo,
6 Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse,
7 Monroe, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau,
8 Vernon or Washburn county.

9 (2) The department may not, based solely on the prohibition under sub. (1),
10 require more stringent nitrogen oxide emission reductions for any electric utility, as
11 defined in s. 196.491 (1) (d), or large industrial core source in this state that is
12 identified by the federal environmental protection agency.”.

13 **17.** Page 1468, line 17: after that line insert:

14 “(1zt) INITIAL APPOINTMENTS TO COUNCIL ON UTILITY PUBLIC BENEFITS.
15 Notwithstanding section 15.107 (17) (intro.) of the statutes, as created by this act,
16 the initial members of the council on utility public benefits shall be appointed for the
17 following terms:

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

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

AND TRANSMISSION
LINE

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

4 (1zu) UTILITY PUBLIC BENEFITS RULES.

and 16.969(2) ✓

5 (a) Using the procedure under section 227.24 of the statutes, the department
6 of administration shall promulgate the rules required under section 16.957 (2) (c)
7 and (4) (b) of the statutes, as created by this act, for the period before the effective
8 date of the permanent rules promulgated under that section, but not to exceed the
9 period authorized under section 227.24 (1) (c) and (2) of the statutes.
10 Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not
11 required to make a finding of emergency.

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

and 16.969(2) ✓

16 **18.** Page 1544, line 8: after that line insert:

ENVIRONMENTAL IMPACT AND
RELIABILITY STATUS

17 “(2zt) RENEWABLE RESOURCES RULES.

196.025(2) ✓
and (3) ✓ and

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

196.025 (2) and (3)
end

1 (b) The public service commission shall submit in proposed form the rules
2 required under section 196.378 (3) (a) of the statutes, as created by this act, to the
3 legislative council staff under section 227.15 (1) of the statutes no later than the first
4 day of the 6th month beginning after the effective date of this paragraph.”

5 **19.** Page 1595, line 17: after that line insert:

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

10 **20.** Page 1596, line 3: after that line insert:

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

18 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1659/lins
MDK:.....

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INSERT 9-10: ✓

The public benefits fees collected by an electric utility shall be considered trust funds of the department and not income of the electric utility.

INSERT 22-6: ✓

text: treat

Ⓐ (ag) In this subsection, "electric utility" has the meaning given in s. 196.491 (1) (d).

INSERT 31-5: ✓

to the extent ^{that} they may be transferred without adverse tax consequences,

INSERT 32-7: ✓

the representatives of the security holders that are elected or appointed under sub. (3m) (c)

INSERT 34-9: ✓

, except for transmission service provided by an electric utility that has not transferred its transmission facilities to the the transmission company,

INSERT 40-9: ✓

text: treat

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

INSERT 40-13: ✓

and if the person does not make an appointment under subd. 3. a., b. or d. ✓

INSERT 45-22: ✓

determined on the basis of the regulated books of account

INSERT 47-20: ✓

1 or an owner or operator of a wholesale merchant plant, as defined in s. 196.491 (1)
2 (w)

3 **INSERT 58-14:**

4 (am) "Electric utility" has the meaning given in s. 196.491 (1) (d), except that
5 "electric utility" does not include the owner or operator of a wholesale merchant
6 plant, as defined in s. 196.491 (1) (w).

7 **INSERT 58-22:**

8 (fg) "Transmission company" has the meaning given in s. 196.485 (1) (ge).
9 (fr) "Transmission utility" has the meaning given in s. 196.485 (1) (i).

10 **INSERT 59-9:**

11 2. A transmission company to which an energy unit is sold by a transmission
12 utility shall, beginning on the expiration of the 3-year period specified in s. 196.485
13 (3m) (a) 1. b. or, if applicable, the expiration of any extension of such 3-year period,
14 offer employment to the nonsupervisory employees who are employed with the energy
15 unit immediately prior to the transfer and who are necessary for the operation and
16 maintenance of the energy unit.

17 **INSERT 59-23:**

18 or a transmission utility that sells an energy unit to a transmission company,

text: treat

1999

LRB 61659, ldn

DRAFTER'S NOTE

MDK:kmj:

INSERTS

In the component bar:

Execute: create → text: → intent

→ *P* Please review this draft carefully to ensure that it complies with your intent.

In the component bar:

Execute: create → text: → \$0

For this draft, I have included an appropriation but have specified "\$-0-" for expenditure in fiscal years 1999-00 and 2000-01. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.

In particular, please review proposed s. 196.378 (2) (b) 2., which I have slightly changed from the suggested language.

MDK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1659/1dn
MDK:kmg:kjf

July 8, 1999

Please review this draft carefully to ensure that it complies with your intent. In particular, please review proposed s. 196.378 (2) (b) 2., which I have slightly changed from the suggested language.

Mark D. Kunkel
Legislative Attorney
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E-mail: Mark.Kunkel@legis.state.wi.us

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by Thursday
morning

Lee Cullen
Lester A. Pines
Steven A. Bach
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Elise Clancy Ruoho
Mary Wright
Jordan Loeb
Tamara B. Packard

Of Counsel:
Cheryl Rosen Weston

MEMORANDUM
Confidential

TO: Mark Kunkel

FROM: Lee Cullen

RE: Additional technical corrections (Page and line cites to LRBb1659/1)

DATE: July 13, 1999

1. LRB Fax, July 9, 1999. We agree with these changes. ✓
2. **Public Benefits Implementation.**
 - a. P. 63, lines 4-11. Provide that DOA in preparing an emergency rule to establish the public benefits fee pursuant to sec. 16.957(4)(b) is not required to consult with the Council, and that its emergency rule should be promulgated within 60 days of enactment. ✓
 - b. P. 10, lines 5-8, 18-22. Maintain the obligation to impose public benefits fees sufficient (when added to commitment to community monies) to equal \$47 million in 1999-2000, but pro-rate the amount of public benefits fees to be raised in 1999-2000 to reflect that only a partial fiscal year will be necessary after the bill's enactment.
 - c. P. 11, lines 8-11. Maintain the obligation of coops to impose public benefits fees in an amount sufficient to equal an annual average of \$17 per meter, but pro-rate that amount in the first year of the biennium.
 - d. P. 3, lines 22-23, P. 4, lines 1-2. Clarify that the low income need percentage would be determined as if in 1999-2000 the full \$27 million in public benefits and commitment to community monies were raised.
 - e. P. 5, lines 8-11. Provide that the 47% obligation applies only after fiscal year 2000-2001. Provide that in prior years, the department, in

determining the amount of public benefits that should be awarded for weatherization, should seek to phase-in the 47% obligation.

3. ~~X~~ **Leonard Sosnowski Memo, June 30, 1999.** Include No. 12 of his memorandum to clarify that transfers of transmission facilities to the transmission company after the transmission company's organization would be exempt from the sales tax.

*Otras as 1's
b/c of
defn of
elect.
util
-196.485
(3m)
(a) i.f.*

4. **Legislative Council Corrections.** From the undated Legislative Council document previously submitted to you with our July 2 memo, incorporate II.J. to clarify that the transmission company could not bypass the distribution facilities of a cooperative or provide electric service directly to a member of a cooperative.

5. **Gross Revenue Exception.** Provide that public benefit fees collected by public utilities and cooperatives or received as grants from the department of administration pursuant to sec. 16.957 are not to be considered gross revenues under secs. 76.28(1)(d) or 76.48(1)(d). (19) Further provide that the transfers of public benefits fees to a wholesale supplier or to a retail cooperative or municipality pursuant to secs. 16.957(5)(e) and (f), are not to be considered gross revenues of the transferee under secs. 76.28(1)(d) or 76.48(1)(d). (19)

*→ this
doesn't
happen*

6. ~~X~~ **Market Power Study.** Page 22, lines 5-21. Return to the original language in this section (AB389), but include in sec. 196.025(5)(a)1 effects on electric cooperative workers and members.

7. ~~X~~ **"Electric Utility" Definition.** Replace the definition of "electric utility" in proposed secs. 196.485(1)(bs) and 196.807(1)(a) with the following: "Electric utility" means a public utility or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water, or by means of pipes or mains, natural gas.

or

- 4 -

which investor-owned utilities are prohibited from doing. Is this language intentional?

G. [p. 33, l. 22 to p. 34, l. 2] It is unclear why two separate standards are created or how they are to be applied. The standard that refers only to in-state demand clearly applies to utilities with only in-state sales. As drafted, though, a utility with both in-state and out-of-state sales would seem to have a choice of standards. Since the standard that refers only to in-state demand is easier to meet, this presumably would be the standard of choice. What then is the purpose of the second standard?

H. [p. 34, ll. 16 to 18] Under this provision, it may be argued that the PSC's rule making on renewable resource credits is limited to calculating the amount of the credits. The PSC will probably want to address other issues such as the term of the credit. To address this concern, "the use of a renewable resource credit" could be added after "for" on l. 17.

I. [p. 34, l. 24 to p. 35, l. 5] Is each day of continued violation a separate offense?

J. [p. 41, ll. 22 and 23] Since there are electric cooperatives in eastern Wisconsin, why should this provision not also apply to bypassing the distribution facilities of a retail cooperative or providing electric service directly to a member of a cooperative?

K. [p. 42, ll. 10 to 23] The requirement in this provision that during the phase-in period transmission service must be provided to all users of the transmission system on a single-zone basis, even though they may have different transmission charges, is not clear. Does "single-zone basis" mean something other than a uniform charge?

L. [p. 53, l. 8] The PSC's authority under this provision applies to public utility affiliates and the transmission company. Should it also apply to MG&E and WPPI? Should it apply to electric providers in western Wisconsin (Dairyland Power and NSP)?

M. [p. 56, ll. 10 and 11] A mechanism for resolving conflicts between states regarding the siting of transmission facilities under the interstate compact could involve the payment of fees from a utility in Wisconsin constructing the transmission line to a local government or property owners in another state in which the line is located. If this outcome is not intended, then the bill should be amended to explicitly address fees and payments. Also, the use of an "interstate compact" may be too narrow and inflexible. An interstate compact may require congressional approval. An agreement or contract may provide more flexibility.

N. [p. 15, ll. 1 to 4] If the new public benefits fees constitute an increase in rates to consumers, then under s. 196.20 (2m), the fees may not be instituted until

6. Section 52, page 44, line 13. There is no concept of a statutory secretary for an LLC, although this title can be used for convenience. I would suggest deleting "the secretary of."

7. Section 55, page 47, line 17. Insert "approves or" before "modifies." There is no reason that rate relief for adverse tax consequences should be limited to only a plan modified by the PSCW. Indeed, the words "To the extent practicable," in line 3 on page 48 envisions potential tax consequences.

8. Section 55, page 49, line 25. This provision should specify whether book value is to be determined based upon the financial accounting basis or the regulated books of account? The latter is probably what is contemplated.

9. Section 55, in general. The provisions for contribution of transmission facilities and land rights do not specifically address the rights of telephone and cable companies which were granted rights in utility easements or have telecommunication cable and communications equipment attached to towers. Shouldn't such rights be specifically acknowledged?

10. Sections 57, page 52, line 12. Insert "or distribution" after "dividend." LLC's technically do not pay dividends, but make distributions.

11. Real Estate Transfer Tax. Any fee interests in real estate transferred to the transmission company will be subject to the real estate transfer fee imposed by s. 77.22. The rate is 30 cents per \$100 of value. Given the policy legislative mandate to form a transmission company, the fee is not good public policy. An exemption should be added to s. 77.25.

12. Sales Tax. Transmission facilities on land not owned by the utility are considered tangible personal property. A transfer to the transmission company as part of its formation would be exempt under s. 77.51(14)(a) or (bm). However, a transfer by a utility that was not part of the organization transfer would not be exempt. An exemption would seem appropriate.

149

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