

1999 ASSEMBLY BILL 389

June 15, 1999 – Introduced by Representatives HOVEN, PLALE and MEYERHOFER, cosponsored by Senator MOEN, by request of Governor Tommy G. Thompson. Referred to Committee on Utilities.

1 **AN ACT** *to repeal* 196.485 (3) (bm) and 196.795 (5) (pm) 1. (intro.); *to renumber*
2 196.025, 196.485 (1) (dm) 1., 196.795 (5) (p) 1., 2., 3. and 4., 196.795 (5) (pm) 1.
3 a., 196.795 (5) (pm) 1. b. and 196.795 (5) (pm) 1. c.; *to renumber and amend*
4 196.485 (1) (dm) 3., 196.795 (5) (pm) 2. and 196.795 (5) (pm) 3.; *to amend* 76.28
5 (1) (d), 76.28 (1) (e) (intro.), 76.28 (2) (c) (intro.), 76.28 (2) (d), 196.31 (1) (intro.),
6 196.31 (1) (a), 196.485 (1) (dm) (intro.), 196.485 (2) (a) (intro.), 196.485 (4) (a)
7 (intro.), 196.491 (3m) (b) 2., 196.494 (3), 196.52 (3) (a), 196.795 (1) (g) 1., 196.795
8 (1) (g) 2., 196.795 (5) (i) 1., 196.795 (11) (b) and 200.01 (2); *to repeal and*
9 *recreate* 196.374 and 196.485 (title); and *to create* 15.107 (17), 16.957, 16.969,
10 20.505 (1) (ge), 20.505 (1) (gs), 20.505 (10), 25.17 (1) (xm), 25.96, 76.28 (1) (e) 5.,
11 76.28 (1) (j), 76.28 (2) (e), 196.025 (2), 196.025 (3), 196.025 (4), 196.025 (5),
12 196.192, 196.378, 196.485 (1) (am), 196.485 (1) (be), 196.485 (1) (bs), 196.485
13 (1) (dm) 2., 196.485 (1) (do), 196.485 (1) (dq), 196.485 (1) (dr), 196.485 (1) (ds),
14 196.485 (1) (dt), 196.485 (1) (dv), 196.485 (1) (em), 196.485 (1) (fe), 196.485 (1)

ASSEMBLY BILL 389

1 (ge), 196.485 (1) (gm), 196.485 (1) (j), 196.485 (1m), 196.485 (2) (ar), 196.485 (2)
2 (bx), 196.485 (2) (d), 196.485 (3m), 196.485 (4) (am), 196.485 (5), 196.485 (6),
3 196.485 (6m), 196.485 (7), 196.485 (8), 196.487, 196.491 (3) (d) 3r., 196.491 (3)
4 (d) 3t., 196.491 (3) (gm), 196.491 (3g), 196.494 (5), 196.795 (1) (h) 3., 196.795 (1)
5 (p), 196.795 (6m) (title), 196.795 (6m) (a) (intro.), 196.795 (6m) (a) 1., 196.795
6 (6m) (a) 2., 196.795 (6m) (a) 4., 196.795 (6m) (b) (title), 196.795 (6m) (e), 196.795
7 (11) (c), 196.807 and 285.48 of the statutes; **relating to:** control and ownership
8 of transmission facilities by a transmission company and a Midwest
9 independent system operator, ownership of nonutility assets by a public utility
10 holding company, investments in transmission facilities, offers of employment
11 to certain public utility and nonutility affiliates employees, fees and approvals
12 for certain high-voltage transmission lines, construction of certain electric
13 transmission facilities, environmental reviews by the public service
14 commission, reports on reliability status of electric utilities, state participation
15 in a regional transmission need and siting compact, incentives for development
16 of certain generating facilities, study of market power and retail electric
17 competition, market-based compensation, rates and contracts for electric
18 customers, regulation of certain nitrogen oxide emissions, establishing
19 programs for low-income energy assistance, improving energy conservation
20 and efficiency markets and encouraging the development and use of renewable
21 resources, creating a council on utility public benefits, establishing a utility
22 public benefits fund, requiring electric utilities and retail electric cooperatives
23 to charge public benefits fees to customers and members, imposing
24 requirements on the use of renewable resources by electric utilities and

ASSEMBLY BILL 389

1 cooperatives, requiring the exercise of rule-making authority, making
2 appropriations and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill does each of the following: 1) establishes programs administered by the department of administration (DOA) for providing energy assistance to low-income households (low-income programs), for conservation and efficiency services (conservation programs) and for encouraging the development and use of renewable energy resources (renewables programs); 2) imposes certain requirements on the generation of electricity from renewable energy resources; 3) creates an exemption from the cap on investments of public utility holding companies in nonutility affiliate assets (asset cap); 4) changes requirements regarding the ownership and operation of the transmission system of the state; 5) imposes employment requirements with respect to the acquisition of certain energy business units; 6) changes the requirements for the approval of certain high-voltage transmission lines; and 7) imposes various other requirements, including changes to the duties of the public service commission (PSC), prohibitions on the authority of the department of natural resources (DNR) regarding nitrogen oxide emissions and requirements for an interstate compact on regional transmission need and siting.

Low-income, conservation and renewables programs

After consulting with a council on utility public benefits that is created under the bill, DOA is required to establish the low-income, conservation and renewables programs. DOA must hold a hearing before establishing the programs.

The bill requires the division of housing in DOA to contract with certain nonprofit or governmental entities for the administration of the low-income programs. DOA must also contract with a nonprofit corporation for the administration of the conservation and renewables programs.

The programs established by DOA are funded by a public benefits fee that DOA collects from nonmunicipal electric public utilities, which must charge the public benefits fees to their customers. Municipal electric public utilities and retail electric cooperatives (municipal utilities and cooperatives) are also required to charge a public benefits fee to their customers or members. Every three years, a municipal utility or cooperative may elect to contribute all or a specified portion of the public benefits fees to DOA for the programs established by DOA. A municipal utility or cooperative that does not elect to contribute all of the public benefits fees to DOA must spend specified portions of the fees on its own “commitment to community programs”, which are defined as low-income assistance and conservation programs.

Each municipal utility and cooperative must charge a public benefits fee that is sufficient for the utility or cooperative to collect an annual average of \$17 per meter. However, for the period ending on June 30, 2008, the amount of any increase to an electric bill that is based on the public benefits fee charged by a municipal

ASSEMBLY BILL 389

utility or cooperative may not exceed 3% of the total of every other charge billed during that period, or \$750 per month, whichever is less.

For nonmunicipal utilities, the bill directs DOA to determine the amount of the public benefits fee, which consists of a portion sufficient to fund the low-income programs and a portion sufficient to fund the conservation and renewables programs. The bill allows DOA to reduce the amount that must be collected for the conservation and renewables programs after fiscal year 2003–04 if DOA determines to reduce or discontinue such programs. The public benefits fee paid by a customer of a nonmunicipal utility is subject to the same limit that applies to a municipal utility or cooperative for the period ending on June 30, 2008.

The bill also requires the PSC to determine the amount that an electric utility spent on low-income, energy conservation and renewables programs in 1998. Under the bill, an electric utility must spend a decreasing portion of such amount and contribute an increasing portion of such amount to the PSC for deposit in a utility public benefits fund, which is used to fund the programs established by DOA under the bill. This requirement replaces a requirement under current law that an electric utility annually spend a specified percentage of its annual operating revenues on energy conservation programs.

Renewable energy resources

Under this bill, specified percentages of the electricity generated by a public utility or retail cooperative must be generated from renewable energy resources. The percentage is calculated on the basis of a public utility's or retail cooperative's total retail energy sales. The bill allows public utilities and retail cooperatives to purchase credits from other public utilities and retail cooperatives that generate electricity from renewable energy resources in excess of the percentages required under the bill.

The bill also includes other requirements, including requirements for calculating the percentages and reporting compliance with the percentages to DOA.

Asset cap

With certain exceptions, current law prohibits the investments of a public utility holding company system (system) in nonutility affiliate assets from exceeding a specified asset cap.

This bill creates a new exception from this prohibition if the public utility affiliates in a system satisfy certain requirements, including the following: 1) petitioning the PSC and the federal energy regulatory commission for approval to transfer operational control of their electric transmission facilities that are located in the midwest region of the United States to a specific independent system operator; and 2) filing a commitment with the PSC to transfer ownership of transmission facilities and related land rights in this state to a transmission company that satisfies specified requirements. If the public utility affiliates satisfy the requirements for the exception, then certain nonutility affiliate assets are not included in calculating whether the system exceeds the asset cap. The assets that are not included in the calculation include the assets of a nonutility affiliate that are used for the following: 1) producing or selling gas, oil, electricity or steam energy; 2) providing energy management, conservation or efficiency products or services; 3) providing energy customer services; 4) recovering or producing energy from waste

ASSEMBLY BILL 389

materials; 5) processing waste materials; 6) manufacturing or selling certain filtration or fluid pumping products; and 7) providing telecommunications services.

Transmission system operation

This bill allows transmission utilities to transfer ownership of their transmission facilities to a transmission company that satisfies certain requirements, including the requirements to apply for approval to begin operations no later than November 1, 2000. The bill requires the transmission utilities that make such a transfer to enter into contracts with the transmission company to provide operation and maintenance with respect to the transmission facilities for a period of at least three years. A transmission utility that is a public utility affiliate in a public utility holding company system must comply with these transfer requirements in order for the system to qualify for the exception from the asset cap that is described above.

The bill also provides that, after the transmission company begins operations, a transmission utility or cooperative that has transferred ownership of its transmission facilities to the transmission company no longer has a duty to provide transmission services. Instead, the transmission company has the exclusive duty to provide transmission service in a specified area of the state. The transmission company's duty terminates when a certain independent system operator begins operations. This independent system operator is a person that has received the conditional approval of the federal energy regulatory commission to provide transmission service in the midwest region of the United States.

Under the bill, after the independent system operator begins operations, it has the exclusive duty to provide transmission service in a specified area of the state and each public utility that provides transmission service in that area must transfer operational control over its transmission facilities to the independent system operator. In addition, as noted above, a public utility affiliate must make such a transfer to qualify for the exception to the asset cap exception described above.

The bill imposes other requirements on the organization, formation and operation of the transmission company.

Under current law, a utility company's property is exempt from the property tax and the utility company pays a license fee that is based on a percentage of the company's gross revenues. Under this bill, the transmission company's property is also exempt from the property tax and the transmission company is required to pay the license fee.

Employment requirements for acquired energy units

The bill imposes certain employment requirements on a person who acquires an energy unit, which is defined as a business unit of a nonutility affiliate in a public utility holding company system or a public utility or cooperative association in which the business unit engages in certain energy-related activities. A person who acquires an energy unit must offer employment to the energy unit's nonsupervisory employees who are necessary for the operation and maintenance of the energy unit. If a nonutility affiliate acquires an energy unit in the same holding company system, the nonutility affiliate must offer employment to all of the energy unit's nonsupervisory employees. A person or nonutility affiliate that is subject to the bill's

ASSEMBLY BILL 389

requirements must, during the 30-month period after the acquisition, offer employment at wage rates that are no less than the wage rates in effect immediately prior to the acquisition. In addition, during the same 30-month period, the terms and conditions of employment, including fringe benefits, must be substantially similar to the terms and conditions in effect immediately prior to the acquisition.

Approval of high-voltage transmission lines

Under current law, with certain exceptions, a person may not construct a high-voltage transmission line, which is defined as a line that is designed for operation at 100 kilovolts or more, unless the PSC issues a certificate of public convenience and necessity (certificate) to the person. The PSC may not issue a certificate unless it makes certain specified findings regarding the high-voltage transmission line.

Under this bill, the PSC may not issue a certificate for a high-voltage transmission line that is proposed to increase transmission capacity into this state unless, in addition to the findings under current law, the PSC also makes specified findings regarding the use of existing rights-of-way and the routing and design of the line. In addition, the PSC may not issue a certificate for a high-voltage transmission line that is designed for operation at 345 kilovolts or more unless the PSC finds that certain benefits are reasonable in relation to the cost of the line.

The bill also imposes fees on persons who are issued certificates for high-voltage transmission lines that are designed for operation at 345 kilovolts or more. Such a person must pay an annual impact fee and a one-time environmental impact fee. The fees are based on the cost of the high-voltage transmission line. The fees must be paid to DOA, which is required to distribute the fees to counties, towns, cities and villages through which the high-voltage transmission line is routed.

Other requirements

The bill imposes the following duties on the PSC:

1. Requires the PSC to promulgate rules for carrying out the PSC's duties under current law regarding the consideration of environmental impact of certain actions.
2. Requires the PSC to promulgate rules requiring certain electric utilities and cooperative associations to submit reports on their electric reliability status.
3. Requires the PSC to study and report to the legislature on the establishment of a program for providing incentives for the development of certain high-efficiency, small-scale electric generating facilities.
4. Requires the PSC to contract for a study and submit a report to the legislature on the potential for horizontal market power of electric generators to frustrate the creation of effectively competitive retail electric markets.
5. Requires the PSC to approve certain market-based rates, individual contract options and market-based compensation for voluntary service interruptions for certain customers of certain electric public utilities.
6. Requires the PSC to order a public utility affiliate or the transmission company described above to make certain investments in its facilities if the PSC determines that the public utility affiliate or transmission company is not making investments that are sufficient to ensure reliable electric service.

ASSEMBLY BILL 389

The bill allows the governor, on behalf of the state, to enter into an interstate compact on the need for and siting of regional electric transmission facilities. A compact under the bill must include certain requirements, including a mechanism for resolving transmission conflicts between states.

The bill prohibits DNR from establishing certain reductions in nitrogen oxide emissions from electric generating facilities in specified counties.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.107 (17) of the statutes is created to read:

2 15.107 (17) COUNCIL ON UTILITY PUBLIC BENEFITS. There is created a council on
3 utility public benefits that is attached to the department of administration under s.
4 15.03. The council shall consist of the following members appointed for 3-year
5 terms:

6 (a) Two members appointed by the governor.

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

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

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

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

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

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

13 (h) One member appointed by the chairperson of the public service commission.

14 **SECTION 2.** 16.957 of the statutes is created to read:

15 **16.957 Utility public benefits. (1) DEFINITIONS.** In this section:

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

ASSEMBLY BILL 389

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

4 (cm) “Council” means the council on utility public benefits created under s.
5 15.107 (17).

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

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

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

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

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

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

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

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

22 (m) “Low-income household” means any individual or group of individuals in
23 this state who are living together as one economic unit and for whom residential
24 electricity is customarily purchased in common or who make undesignated

ASSEMBLY BILL 389

1 payments for electricity in the form of rent, and whose household income is not more
2 than 150% of the poverty line as determined under 42 USC 9902 (2).

3 (n) “Low-income need” means the amount obtained by subtracting from the
4 total low-income energy bills in a fiscal year the product of 2.2% of the estimated
5 average annual income of low-income households in this state in that fiscal year
6 multiplied by the estimated number of low-income households in this state in that
7 fiscal year.

8 (o) “Low-income need percentage” means the percentage that results from
9 dividing the sum of the following by the amount of low-income need in fiscal year
10 1998–99:

11 1. The total amount received by the department for low-income funding under
12 42 USC 6861 to 6873 and 42 USC 8621 to 8629 in fiscal year 1997–98.

13 1m. The public benefits fees established for fiscal year 1999–2000 under sub.
14 (4) (c) 1.

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

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

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

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

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

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

24 (s) “Retail capacity” means the total amount of electricity that an electric
25 provider is capable of delivering to its retail customers or members and that is

ASSEMBLY BILL 389**SECTION 2**

1 supplied by electric generating facilities owned or operated by the electric provider
2 or any other person. “Retail capacity” does not include any electricity that is not used
3 to satisfy the electric provider’s retail load obligations.

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

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

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

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

16 (x) “Wholesale supplier” means a wholesale electric cooperative or a municipal
17 electric company, as defined in s. 66.073 (3) (d), that supplies electricity at wholesale
18 to a municipal utility or retail electric cooperative.

19 **(2) DEPARTMENT DUTIES.** In consultation with the council, the department shall
20 do all of the following:

21 (a) *Low-income programs.* After holding a hearing, establish programs to be
22 administered by the department of administration through the division of housing
23 for awarding grants from the appropriation under s. 20.505 (10) (r) to provide
24 low-income assistance. In each fiscal year, the amount awarded under this

ASSEMBLY BILL 389

1 paragraph in grants for weatherization and other energy conservation services shall
2 be sufficient to equal 47% of the sum of the following:

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

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

7 3. All moneys spent in a fiscal year on programs established under this
8 paragraph.

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

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

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

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

ASSEMBLY BILL 389**SECTION 2**

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

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

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

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

14 2m. Criteria for the selection of proposals by a corporation specified in sub. (3)
15 (b).

16 2n. Criteria for making the determination under par. (b) 2. Rules promulgated
17 under this subdivision shall require the department to determine whether the need
18 for a program established under par. (b) 1. is satisfied by the private sector market
19 and, if so, whether the program should be discontinued or reduced.

20 4. Requirements for electric utilities to allow customers or members to include
21 voluntary contributions to assist in funding a commitment to community program
22 or a program established under par. (a) or (b) 1. with bill payments for electric service.
23 The rules may require an electric utility to provide a space on an electric bill in which
24 a customer or member may indicate the amount of a voluntary contribution and the
25 customer's or member's preference regarding whether a contribution should be used

ASSEMBLY BILL 389

1 for a program established under par. (a) or (b) 1. a. or b. The rules shall establish
2 requirements and procedures for electric utilities to pay to the department any
3 voluntary contributions included with bill payments and to report to the department
4 customer or member preferences regarding use of the contributions. The
5 department shall deposit all contributions received under this paragraph in the
6 utility public benefits fund.

7 5. A method for estimating total low-income energy bills, average annual
8 income of low-income households and the number of low-income households in a
9 fiscal year for the purpose of determining the amount of low-income need in the fiscal
10 year.

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

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

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

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

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

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

ASSEMBLY BILL 389**SECTION 2**

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

4 d. Any other issue identified by the governor, speaker of the assembly or
5 majority leader of the senate.

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

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

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

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

ASSEMBLY BILL 389

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

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

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

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

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

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

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

ASSEMBLY BILL 389

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

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

5 c. The total amount spent on programs or contributed to the commission by
6 utilities under s. 196.374 (3) for that fiscal year.

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

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

21 **(5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES.** (a) *Requirement to*
22 *charge public benefits fees.* Each retail electric cooperative and municipal utility
23 shall charge a monthly public benefits fee to each customer or member in amount
24 that is sufficient for the retail electric cooperative or municipal utility to collect an
25 annual average of \$17 per meter. A retail electric cooperative or municipal utility

ASSEMBLY BILL 389

1 may determine the amount that a particular class of customers or members is
2 required to pay under this paragraph and may charge different fees to different
3 classes of customers or members.

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

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

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

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

ASSEMBLY BILL 389**SECTION 2**

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

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

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

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

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

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

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

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

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

ASSEMBLY BILL 389

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

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

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

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

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

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

ASSEMBLY BILL 389**SECTION 2**

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

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

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

9 **SECTION 3.** 16.969 of the statutes is created to read:

10 **16.969 Fees for certain high-voltage transmission lines. (1)** In this
11 section:

12 (a) "Commission" means the public service commission.

13 (b) "High-voltage transmission line" means a high-voltage transmission line,
14 as defined in s. 196.491 (1) (f), that is designed for operation at a nominal voltage of
15 345 kilovolts or more.

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

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

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

21 **(3) (gm).**

22 (b) A one-time environmental impact fee in amount equal to 5% of the cost of
23 the high-voltage transmission line, as determined by the commission under s.

24 196.491 **(3) (gm).**

ASSEMBLY BILL 389

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

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

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

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

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

18 **SECTION 4.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
19 the following amounts for the purposes indicated:

	1999-00	2000-01
--	----------------	----------------

21 **20.505 Administration, department of**

22 (10) UTILITY PUBLIC BENEFITS

(q) General program operations	SEG	A	-0-	-0-
--------------------------------	-----	---	-----	-----

24 **SECTION 5.** 20.505 (1) (ge) of the statutes is created to read:

ASSEMBLY BILL 389

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 6.** 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 **SECTION 7.** 20.505 (10) of the statutes is created to read:

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

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

12 operations.

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

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

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

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

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

18 **SECTION 8.** 25.17 (1) (xm) of the statutes is created to read:

19 25.17 (1) (xm) Utility public benefits fund (s. 25.96);

20 **SECTION 9.** 25.96 of the statutes is created to read:

21 **25.96 Utility public benefits fund.** There is established a separate

22 nonlapsible trust fund designated as the utility public benefits fund, consisting of

23 deposits by the public service commission under s. 196.374 (3), public benefits fees

24 received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions received under

25 s. 16.957 (2) (c) 4. and (d) 2.

ASSEMBLY BILL 389

1 **SECTION 10.** 76.28 (1) (d) of the statutes is amended to read:

2 76.28 (1) (d) “Gross revenues” for a light, heat and power company other than
3 a qualified wholesale electric company or a transmission company means total
4 operating revenues as reported to the public service commission except revenues for
5 interdepartmental sales and for interdepartmental rents as reported to the public
6 service commission and deductions from the sales and use tax under s. 77.61 (4),
7 except that the company may subtract from revenues either the actual cost of power
8 purchased for resale, as reported to the public service commission, by a light, heat
9 and power company, except a municipal light, heat and power company, that
10 purchases under federal or state approved wholesale rates more than 50% of its
11 electric power from a person other than an affiliated interest, as defined in s. 196.52
12 (1), if the revenue from that purchased electric power is included in the seller’s gross
13 revenues or the following percentages of the actual cost of power purchased for
14 resale, as reported to the public service commission, by a light, heat and power
15 company, except a municipal light, heat and power company that purchases more
16 than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for
17 the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50%
18 for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric
19 company, “gross revenues” means total business revenues from those businesses
20 included under par. (e) 1. to 4. For a transmission company, “gross revenues” means
21 total operating revenues as reported to the public service commission, except
22 revenues for transmission service that is provided to a public utility that is subject
23 to the license fee under sub. (2) (d), to a public utility, as defined in s. 196.01 (5), or
24 to a cooperative association organized under ch. 185 for the purpose of providing
25 electricity to its members only.

ASSEMBLY BILL 389**SECTION 11**

1 **SECTION 11.** 76.28 (1) (e) (intro.) of the statutes is amended to read:

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

11 **SECTION 12.** 76.28 (1) (e) 5. of the statutes is created to read:

12 76.28 (1) (e) 5. Transmitting electric current for light, heat or power.

13 **SECTION 13.** 76.28 (1) (j) of the statutes is created to read:

14 76.28 (1) (j) “Transmission company” has the meaning given in s. 196.485 (1)
15 (ge).

16 **SECTION 14.** 76.28 (2) (c) (intro.) of the statutes is amended to read:

17 76.28 (2) (c) (intro.) ~~For~~ Except as provided under par. (e), for private light, heat
18 and power companies for 1986 and thereafter, an amount equal to the apportionment
19 factor multiplied by the sum of:

20 **SECTION 15.** 76.28 (2) (d) of the statutes is amended to read:

21 76.28 (2) (d) ~~For~~ Except as provided under par. (e), for municipal light, heat and
22 power companies, an amount equal to the gross revenues, except gross revenues from
23 operations within the municipality that operates the company, multiplied by the
24 rates under par. (b) or (c).

25 **SECTION 16.** 76.28 (2) (e) of the statutes is created to read:

ASSEMBLY BILL 389

1 76.28 (2) (e) For transmission companies, an amount equal to the gross
2 revenues multiplied by the rates under par. (c).

3 **SECTION 17.** 196.025 of the statutes is renumbered 196.025 (1).

4 **SECTION 18.** 196.025 (2) of the statutes is created to read:

5 196.025 (2) The commission shall promulgate rules establishing requirements
6 and procedures for the commission to carry out the duties under s. 1.11. Rules
7 promulgated under this subsection shall include requirements and procedures for
8 each of the following:

9 (a) Standards for determining the necessity of preparing an environmental
10 impact statement.

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

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

17 **SECTION 19.** 196.025 (3) of the statutes is created to read:

18 196.025 (3) The commission shall promulgate rules establishing requirements
19 and procedures for electric utilities, as defined under s. 196.491 (1) (d), to file reports
20 with the commission, on a frequency that the commission determines is reasonably
21 necessary, on their current reliability status, including the status of operating and
22 planning reserves, available transmission capacity and outages of major operational
23 units and transmission lines. A report filed under the rules promulgated under this
24 subsection is subject to inspection and copying under s. 19.35 (1), except that the
25 commission may withhold the report from inspection and copying for a period of time

ASSEMBLY BILL 389

1 that the commission determines is reasonably necessary to prevent an adverse
2 impact on the supply or price of energy in this state.

3 **SECTION 20.** 196.025 (4) of the statutes is created to read:

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

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

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

13 (b) No later than January 1, 2001, the commission shall submit a report of its
14 findings and recommendations under par. (a) to the chief clerk of each house of the
15 legislature for distribution to the appropriate standing committees under s. 13.172
16 (3).

17 **SECTION 21.** 196.025 (5) of the statutes is created to read:

18 196.025 (5) (a) The commission shall contract with an expert consultant in
19 economics to conduct a study on the potential for horizontal market power, including
20 the horizontal market power of electric generators, to frustrate the creation of an
21 effectively competitive retail electricity market in this state and to make
22 recommendations on measures to eliminate such market power on a sustainable
23 basis. The study shall include each of the following:

24 1. An assessment of the effect of each recommendation on public utility workers
25 and shareholders and on rates for each class of public utility customers.

ASSEMBLY BILL 389

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

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

6 **SECTION 22.** 196.192 of the statutes is created to read:

7 **196.192 Market-based compensation, rates and contracts. (1)** In this
8 section, “electric public utility” means a public utility whose purpose is the
9 generation, distribution and sale of electric energy.

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

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

15 (b) File with the commission market-based pricing options and options for
16 individual contracts that allow a retail customer, through service from its existing
17 public utility, to receive market benefits and subject itself to market risks for the
18 customer’s purchases of capacity or energy.

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

ASSEMBLY BILL 389

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

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

8 **SECTION 23.** 196.31 (1) (intro.) of the statutes is amended to read:

9 196.31 **(1)** (intro.) In any proceeding before the commission, the commission
10 ~~may~~ shall compensate any participant in the proceeding who is not a public utility,
11 for some or all of the reasonable costs of participation in the proceeding if the
12 commission finds that:

13 **SECTION 24.** 196.31 (1) (a) of the statutes is amended to read:

14 196.31 **(1)** (a) The participation is necessary to provide for the record an
15 adequate presentation of a significant position in which the participant has a
16 substantial interest, and that an adequate presentation would not ~~be possible~~ occur
17 without a grant of compensation; or

18 **SECTION 25.** 196.374 of the statutes is repealed and recreated to read:

19 **196.374 Low-income assistance, energy efficiency and other**
20 **programs. (1)** In this section:

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

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

23 (c) “Utility” means a Class A gas or electric utility, as defined by the
24 commission, but does not include a municipal utility, as defined in s. 16.957 (1) (q),

ASSEMBLY BILL 389

1 a municipal electric company, as defined in s. 66.073 (3) (d), or a cooperative
2 association organized under ch. 185.

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

7 (3) In 1999, 2000 and 2001, the commission shall require each utility to spend
8 a decreasing portion of the amount determined under sub. (2) on programs specified
9 in sub. (2) and contribute the remaining portion of the amount to the commission for
10 deposit in the fund. In each year after 2001, each utility shall contribute the entire
11 amount determined under sub. (2) to the commission for deposit in the fund. The
12 commission shall ensure in rate-making orders that a utility recovers from its
13 ratepayers the amounts spent on programs or contributed to the fund under this
14 subsection. The commission shall allow each utility the option of continuing to use,
15 until January 1, 2001, the moneys that it has recovered under s. 196.374 (3), 1997
16 stats., to administer the programs that it has funded under s. 196.374 (1), 1997 stats.
17 The commission may allow each utility to spend additional moneys on the programs
18 specified in sub. (2) if the utility otherwise complies with the requirements of this
19 section and s. 16.957 (4).

20 (4) If the department notifies the commission under s. 16.957 (2) (b) 2. that the
21 department has reduced funding for energy conservation and efficiency and
22 renewable resource programs, the commission shall reduce the amount that a utility
23 is required to spend on programs or contribute to the fund under sub. (3) by the
24 percentage by which the department has reduced the funding.

25 **SECTION 26.** 196.378 of the statutes is created to read:

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

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

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

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

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

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

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

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

ASSEMBLY BILL 389

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

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

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

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

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

12 b. Tidal or wave action.

13 c. Solar thermal electric or photovoltaic energy.

14 d. Wind power.

15 e. Geothermal technology.

16 g. Biomass.

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

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

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

23 (j) “Resource” means a source of electric power generation.

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

ASSEMBLY BILL 389

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

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

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

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

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

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

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

22 2. The amount of electricity supplied by a renewable facility in which biomass
23 and conventional fuels are fired together shall be equal to the product of the
24 maximum amount of electricity that the facility is capable of generating and the ratio

ASSEMBLY BILL 389

1 of the British thermal unit content of the biomass fuels to the British thermal unit
2 content of both the biomass and conventional resource fuels.

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

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

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

17 1. Allocating the costs equally to all customers or members on a kilowatt-hour
18 basis.

19 2. Establishing alternative price structures, including price structures under
20 which customers or members pay a premium for renewable energy.

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

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

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

ASSEMBLY BILL 389

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

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

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

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

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

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

24 **(5) PENALTY.** Any person who violates sub. (2) or any wholesale supplier who
25 provides an electric provider with a false or misleading certification regarding the

ASSEMBLY BILL 389

1 sources or amounts of energy supplied to the electric provider shall forfeit not less
2 than \$5,000 nor more than \$500,000. Forfeitures under this subsection shall be
3 enforced by action on behalf of the state by the attorney general. A court imposing
4 a forfeiture under this subsection shall consider all of the following in determining
5 the amount of the forfeiture:

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

8 (b) The gravity of the violation.

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

11 **SECTION 27.** 196.485 (title) of the statutes is repealed and recreated to read:

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

13 **SECTION 28.** 196.485 (1) (am) of the statutes is created to read:

14 196.485 (1) (am) "Contribute a transmission facility" means to divest a person's
15 interest in the transmission facility and to transfer ownership of the transmission
16 facility and associated deferred tax reserves to another person.

17 **SECTION 29.** 196.485 (1) (be) of the statutes is created to read:

18 196.485 (1) (be) "Director" means, with respect to a transmission company
19 organized as a corporation under ch. 180, a member of the board of directors of the
20 transmission company.

21 **SECTION 30.** 196.485 (1) (bs) of the statutes is created to read:

22 196.485 (1) (bs) "Electric utility" has the meaning given in s. 196.491 (1) (d).

23 **SECTION 31.** 196.485 (1) (dm) (intro.) of the statutes is amended to read:

24 196.485 (1) (dm) (intro.) "Independent transmission owner" means:

25 1m. Means a person that satisfies each of the following:

ASSEMBLY BILL 389

1 **SECTION 32.** 196.485 (1) (dm) 1. of the statutes is renumbered 196.485 (1) (dm)

2 1m. a.

3 **SECTION 33.** 196.485 (1) (dm) 2. of the statutes is created to read:

4 196.485 (1) (dm) 2. Does not include the transmission company.

5 **SECTION 34.** 196.485 (1) (dm) 3. of the statutes is renumbered 196.485 (1) (dm)

6 1m. b. and amended to read:

7 196.485 (1) (dm) 1m. b. The person is not an affiliated interest of a person
8 specified in subd. 4. 1m. a.

9 **SECTION 35.** 196.485 (1) (do) of the statutes is created to read:

10 196.485 (1) (do) “Land right” means any right in real property, including fee
11 simple ownership or a right-of-way or easement, that has been acquired for a
12 transmission facility that is located or intended to be located on the real property.

13 **SECTION 36.** 196.485 (1) (dq) of the statutes is created to read:

14 196.485 (1) (dq) “Manager” means, with respect to a transmission company
15 organized as a limited liability company under ch. 183, a manager, as defined in s.
16 183.0102 (13), of the transmission company.

17 **SECTION 37.** 196.485 (1) (dr) of the statutes is created to read:

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

21 **SECTION 38.** 196.485 (1) (ds) of the statutes is created to read:

22 196.485 (1) (ds) “Midwest independent system operator” means the
23 independent system operator the establishment of which the federal energy
24 regulatory commission has conditionally authorized in an order issued on September
25 16, 1998, or the successor to such independent system operator.

ASSEMBLY BILL 389

1 **SECTION 39.** 196.485 (1) (dt) of the statutes is created to read:

2 196.485 (1) (dt) “Nontransmission utility security holder” means a security
3 holder that is not a transmission utility security holder.

4 **SECTION 40.** 196.485 (1) (dv) of the statutes is created to read:

5 196.485 (1) (dv) “Organizational start-up date” means, with respect to a
6 transmission company that is organized as a limited liability company under ch. 183,
7 the date on which the articles of organization become effective under s. 183.0111 or,
8 with respect to a transmission company that is organized as a corporation under ch.
9 180, the date on which the articles of incorporation become effective under s.
10 180.0123.

11 **SECTION 41.** 196.485 (1) (em) of the statutes is created to read:

12 196.485 (1) (em) “Retail electric cooperative” means a cooperative that provides
13 retail electric service to its members.

14 **SECTION 42.** 196.485 (1) (fe) of the statutes is created to read:

15 196.485 (1) (fe) “Security” means, with respect to a transmission company
16 organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and,
17 with respect to a transmission company organized as a limited liability company
18 under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

19 **SECTION 43.** 196.485 (1) (ge) of the statutes is created to read:

20 196.485 (1) (ge) “Transmission company” means a corporation organized under
21 ch. 180 or a limited liability company organized under ch. 183 that has as its sole
22 purpose the planning, constructing, operating, maintaining and expanding of
23 transmission facilities that it owns to provide for an adequate and reliable
24 transmission system that meets the needs of all users that are dependent on the

ASSEMBLY BILL 389

1 transmission system and that supports effective competition in energy markets
2 without favoring any market participant.

3 **SECTION 44.** 196.485 (1) (gm) of the statutes is created to read:

4 196.485 **(1)** (gm) “Transmission dependent utility” means an electric utility
5 that is not a transmission utility and that is dependent on the transmission system
6 of another person for delivering electricity to the public utility’s customers.

7 **SECTION 45.** 196.485 (1) (j) of the statutes is created to read:

8 196.485 **(1)** (j) “Transmission utility security holder” means a person that is a
9 security holder of a transmission company, is an investor–owned transmission utility
10 in the transmission area and has contributed its transmission facilities to the
11 transmission company.

12 **SECTION 46.** 196.485 (1m) of the statutes is created to read:

13 196.485 **(1m)** DUTY TO PROVIDE TRANSMISSION SERVICE. (a) The duty of any
14 electric utility that has contributed its transmission facilities to the transmission
15 company to finance, construct, maintain or operate a transmission facility shall
16 terminate on the date, as determined by the commission under sub. (2) (d), that the
17 transmission company begins operations.

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

23 (c) After beginning operations, the Midwest independent system operator shall
24 have the exclusive duty to provide transmission service in the transmission area and
25 shall ensure that each transmission facility in the transmission area that is under

ASSEMBLY BILL 389

1 its operational control is planned, constructed, operated, maintained and controlled
2 as part of a single transmission system.

3 **SECTION 47.** 196.485 (2) (a) (intro.) of the statutes is amended to read:

4 196.485 (2) (a) (intro.) By June 30, 2000, if a transmission utility has not
5 transferred control over its transmission facilities to an independent system
6 operator that is approved by the applicable federal agency or divested, with approval
7 of the applicable federal agency and, for a public utility, the commission, its interest
8 in its transmission facilities to an independent transmission owner, the commission
9 shall, subject to ~~par. pars.~~ (am) and (ar), order the transmission utility to apply to the
10 applicable federal agency to do one of the following:

11 **SECTION 48.** 196.485 (2) (ar) of the statutes is created to read:

12 196.485 (2) (ar) The commission shall waive the requirement to issue an order
13 against a transmission utility under par. (a) if the transmission utility shows, to the
14 satisfaction of the commission, that a transfer of its transmission facilities to the
15 Midwest independent system operator may have the effect of jeopardizing the
16 tax-exempt status of the transmission utility or its securities under the Internal
17 Revenue Code. A waiver under this paragraph shall be in effect until the commission
18 determines that the proposed transfer does not have the effect described in this
19 paragraph.

20 **SECTION 49.** 196.485 (2) (bx) of the statutes is created to read:

21 196.485 (2) (bx) If the Midwest system operator fails to commence operations
22 or ceases operations, the requirements of this section that apply to the Midwest
23 independent system operator shall apply to any other independent system operator
24 or regional transmission organization that is authorized under federal law to operate
25 in this state. The commission shall require that any transfer of transmission

ASSEMBLY BILL 389

1 facilities to such independent system operator or regional transmission organization
2 satisfies the requirements of this section.

3 **SECTION 50.** 196.485 (2) (d) of the statutes is created to read:

4 196.485 (2) (d) The commission shall determine each of the following:

5 1. The date on which the transmission company begins operations.

6 2. Whether the Midwest independent system operator has begun operations
7 and the date on which such operations have begun.

8 **SECTION 51.** 196.485 (3) (bm) of the statutes is repealed.

9 **SECTION 52.** 196.485 (3m) of the statutes is created to read:

10 196.485 (3m) TRANSMISSION COMPANY. (a) *Duties.* 1. The transmission company
11 shall do each of the following:

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

14 b. Subject to any approval required under state or federal law, contract with
15 each transmission utility that has transferred transmission facilities to the
16 transmission company for the transmission utility to provide reasonable and
17 cost-effective operation and maintenance services to the transmission company
18 during the 3-year period after the transmission company first begins operations.
19 The transmission company and a transmission utility may, subject to any approval
20 required under federal or state law, agree to an extension of such 3-year period.

21 c. Assume the obligations of a transmission utility that has transferred
22 ownership of its transmission facilities to the transmission company under any
23 agreement by the transmission utility to provide transmission service over its
24 transmission facilities or credits for the use of transmission facilities, except that the

ASSEMBLY BILL 389

1 transmission company may modify such an agreement to the extent allowed under
2 the agreement and to the extent allowed under state or federal law.

3 d. Apply for membership in the Midwest independent system operator as a
4 single zone for pricing purposes that includes the transmission area and, upon a
5 determination by the commission under sub. (2) (d) that the Midwest independent
6 system operator has begun operations, transfer operational control of the
7 transmission company's transmission facilities to the Midwest independent system
8 operator.

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

15 f. Except as provided in subd. 4., elect to be included in a single zone for the
16 purpose of any tariff administered by the Midwest independent system operator.

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

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

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

24 c. Own electric generation facilities or sell, market or broker electric capacity
25 or energy in a relevant wholesale or retail market as determined by the commission,

ASSEMBLY BILL 389

1 except that, if authorized or required by the federal energy regulatory commission,
2 the transmission company may procure or resell ancillary services obtained from 3rd
3 parties, engage in redispatch activities that are necessary to relieve transmission
4 constraints or operate a control area.

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

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

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

ASSEMBLY BILL 389

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

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

11 (c) *Organization.* The articles of organization, as defined in s. 183.0102 (1), of
12 a transmission company that is organized as a limited liability company under ch.
13 183 or the bylaws of a transmission company that is organized as a corporation under
14 ch. 180 shall provide for each of the following:

15 1. That the transmission company has no less than 5 nor more than 14
16 managers or directors, except that the articles of organization or bylaws may allow
17 the requirements of this subdivision to be modified upon a unanimous vote of the
18 managers or directors during the 10-year period after the organizational start-up
19 date or upon a two-thirds vote of the board of directors or managers after such
20 10-year period.

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

ASSEMBLY BILL 389

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

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

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

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

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

22 4. That, during the 5-year period after the organizational start-up date, no
23 public utility affiliate that contributes transmission facility assets to the
24 transmission company under sub. (5) (b) and no affiliate of such a public utility
25 affiliate may increase its percentage share of the outstanding securities of the

ASSEMBLY BILL 389

1 transmission company prior to any initial issuance of securities by the transmission
2 company to any 3rd party other than a 3rd party exercising its right to purchase
3 securities under sub. (6) (b), except that this subdivision does not apply to securities
4 that are issued by the transmission company in exchange for transmission facilities
5 that are contributed in addition to the transmission facilities that are contributed
6 under sub. (5) (b) and except that the requirements of this subdivision may be
7 modified upon a unanimous vote of the managers or directors.

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

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

15 **SECTION 53.** 196.485 (4) (a) (intro.) of the statutes is amended to read:

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

20 **SECTION 54.** 196.485 (4) (am) of the statutes is created to read:

21 196.485 (4) (am) Each transmission utility in the transmission area that is a
22 public utility shall become a member of the Midwest independent system operator
23 no later than June 30, 2000, and shall transfer operational control over its
24 transmission facilities to the Midwest independent system operator. Each such
25 transmission utility that has not contributed its transmission facilities to the

ASSEMBLY BILL 389

1 transmission company shall elect to become part of the single zone for pricing
2 purposes within the Midwest independent system operator and any phase-in plan
3 prepared under sub. (3m) (a) 4.

4 **SECTION 55.** 196.485 (5) of the statutes is created to read:

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

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

13 2. Files with the commission an unconditional, irrevocable and binding
14 commitment to contribute, no later than June 30, 2000, all of the transmission
15 facilities that the public utility affiliate owns or operates in this state on the effective
16 date of this subdivision [revisor inserts date], and land rights, to the transmission
17 company. A filing under this subdivision shall specify a date no later than June 30,
18 2000, on which the public utility affiliate will complete the contribution of
19 transmission facilities.

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

ASSEMBLY BILL 389

1 4. Notifies the commission in writing that the public utility affiliate has become
2 a member of the Midwest independent system operator, has agreed to transfer its
3 transmission facilities to the Midwest independent system operator and has
4 committed not to withdraw its membership prior to the date on which the public
5 utility affiliate contributes transmission facilities to the transmission company
6 under par. (b).

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

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

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

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

ASSEMBLY BILL 389

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

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

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

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

ASSEMBLY BILL 389

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

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

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

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

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

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

ASSEMBLY BILL 389

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

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

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

22 b. If the land right is jointly used, or is intended to be jointly used, for electric
23 and gas distribution facilities by the public utility affiliate, the public utility affiliate
24 shall enter into a contract with the transmission company that grants the
25 transmission company a right to place, maintain, modify or replace the transmission

ASSEMBLY BILL 389

1 company's transmission facilities on the real property that is subject to the land right
2 during the life of the transmission facilities and the life of any replacements of the
3 transmission facilities. A right granted in a contract under this subd. 1. b. shall be
4 paramount to the right of any other user of the land right, except that a right granted
5 in such a contract shall be on par with the right of the public utility affiliate to use
6 the land right for electric or gas distribution facilities.

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

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

19 **SECTION 56.** 196.485 (6) of the statutes is created to read:

20 196.485 (6) ELECTRIC UTILITIES, TRANSMISSION DEPENDENT UTILITIES AND RETAIL
21 ELECTRIC COOPERATIVES. No later than the first day of the 12th month beginning after
22 the first public utility affiliate files a commitment under sub. (5) (a) 2.:

23 (a) An electric utility, other than a public utility affiliate, may transfer all of its
24 integrated transmission facilities to the transmission company on the same terms

ASSEMBLY BILL 389

1 and conditions as a contribution of transmission facilities and land rights by a public
2 utility affiliate under sub. (5) (b) and (c).

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

10 **SECTION 57.** 196.485 (6m) of the statutes is created to read:

11 196.485 **(6m)** DIVIDENDS, PROFITS AND GAINS. The commission may not treat any
12 dividend received by a transmission utility from the transmission company or any
13 gain or profit of a transmission utility from the sale or other disposition of securities
14 issued by the transmission company as a credit against the retail revenue
15 requirements of the transmission utility.

16 **SECTION 58.** 196.485 (7) of the statutes is created to read:

17 196.485 **(7)** ENFORCEMENT. A wholesale or retail customer of a public utility
18 affiliate may petition the circuit court for Dane County for specific performance of
19 a commitment filed under sub. (5) (a) 2. or 3.

20 **SECTION 59.** 196.485 (8) of the statutes is created to read:

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

ASSEMBLY BILL 389

1 **SECTION 60.** 196.487 of the statutes is created to read:

2 **196.487 Reliability of electric service. (1) DEFINITIONS.** In this section:

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

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

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

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

17 **SECTION 61.** 196.491 (3) (d) 3r. of the statutes is created to read:

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

23 **SECTION 62.** 196.491 (3) (d) 3t. of the statutes is created to read:

24 196.491 **(3) (d) 3t.** For a high-voltage transmission line that is designed for
25 operation at a nominal voltage of 345 kilovolts or more, the high-voltage

ASSEMBLY BILL 389

1 transmission line provides usage, service or increased regional reliability benefits to
2 the wholesale and retail customers or members in this state and the benefits of the
3 high-voltage transmission line are reasonable in relation to the cost of the
4 high-voltage transmission line.

5 **SECTION 63.** 196.491 (3) (gm) of the statutes is created to read:

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

21 **SECTION 64.** 196.491 (3g) of the statutes is created to read:

22 196.491 (3g) FEES FOR CERTAIN HIGH-VOLTAGE TRANSMISSION LINES. (a) A person
23 who receives a certificate of public convenience and necessity for a high-voltage
24 transmission line that is designed for operation at a nominal voltage of 345 kilovolts
25 or more under sub. (3) shall pay the department of administration an annual impact

ASSEMBLY BILL 389

1 fee as specified in the rules promulgated by the department of administration under
2 s. 16.969 (2) (a) and shall pay the department of administration a one-time
3 environmental impact fee as specified in the rules promulgated by the department
4 of administration under s. 16.969 (2) (b).

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

9 **SECTION 65.** 196.491 (3m) (b) 2. of the statutes is amended to read:

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

15 **SECTION 66.** 196.494 (3) of the statutes is amended to read:

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

25 **SECTION 67.** 196.494 (5) of the statutes is created to read:

ASSEMBLY BILL 389

1 196.494 (5) The governor may, on behalf of this state, enter into an interstate
2 compact that establishes a joint process for the states in the upper midwest region
3 of the United States to determine the need for and siting of regional electric
4 transmission facilities that may affect electric service in this state. The governor
5 may not enter into a compact under this subsection unless the compact includes
6 requirements and procedures for establishing each of the following:

7 (a) Compliance with each state’s environmental and siting standards for
8 transmission facilities.

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

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

12 **SECTION 68.** 196.52 (3) (a) of the statutes is amended to read:

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

ASSEMBLY BILL 389

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

18 **SECTION 69.** 196.795 (1) (g) 1. of the statutes is amended to read:

19 196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of
20 the outstanding voting securities of a public utility, other than a transmission
21 company, with the unconditional power to vote those securities.

22 **SECTION 70.** 196.795 (1) (g) 2. of the statutes is amended to read:

23 196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting
24 securities of a public utility, other than a municipality or other political subdivision
25 or a transmission company, for or into the voting securities of a company organized,

ASSEMBLY BILL 389

1 created, appointed or formed by or at the direction of the public utility or of a
2 subsidiary of such company.

3 **SECTION 71.** 196.795 (1) (h) 3. of the statutes is created to read:

4 196.795 (1) (h) 3. “Holding company” does not include a transmission company.

5 **SECTION 72.** 196.795 (1) (p) of the statutes is created to read:

6 196.795 (1) (p) “Transmission company” has the meaning given in s. 196.485
7 (1) (ge).

8 **SECTION 73.** 196.795 (5) (i) 1. of the statutes is amended to read:

9 196.795 (5) (i) 1. Shall consider the public utility affiliate as a wholly
10 independent corporation and shall impute a capital structure to the public utility
11 affiliate and establish a cost of capital for the public utility affiliate on a stand-alone
12 basis;

13 **SECTION 74.** 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered
14 196.795 (6m) (b) 1., 2., 3. and 4.

15 **SECTION 75.** 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

16 **SECTION 76.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m)
17 (a) 3.

18 **SECTION 77.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m)
19 (a) 5.

20 **SECTION 78.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m)
21 (a) 6.

22 **SECTION 79.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c)
23 and amended to read:

24 196.795 (6m) (c) Wholesale merchant plants. The assets of a wholesale
25 merchant plant shall not be included in the sum of the assets of a public utility

ASSEMBLY BILL 389

1 affiliate under par. ~~(p)~~ (b) 1. a., b. or c. and shall not be included in a nonutility
2 affiliate's total assets under par. ~~(p)~~ (b) 2. a. if the requirements specified in s. 196.491
3 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the
4 exemption under s. 196.491 (3m) (e).

5 **SECTION 80.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d)
6 and amended to read:

7 196.795 **(6m)** (d) *Foreign affiliates.* The assets of a foreign affiliate shall be
8 included in the sum of the assets of a public utility affiliate under par. ~~(p)~~ (b) 1. a.,
9 b. or c. and shall not be included in a nonutility affiliate's total assets under par. ~~(p)~~
10 (b) 2. a.

11 **SECTION 81.** 196.795 (6m) (title) of the statutes is created to read:

12 196.795 **(6m)** (title) ASSET CAP.

13 **SECTION 82.** 196.795 (6m) (a) (intro.) of the statutes is created to read:

14 196.795 **(6m)** (a) *Definitions.* (intro.) In this subsection:

15 **SECTION 83.** 196.795 (6m) (a) 1. of the statutes is created to read:

16 196.795 **(6m)** (a) 1. "Contributor public utility affiliate" means a public utility
17 affiliate that has contributed its transmission facilities to the transmission company
18 under s. 196.485 (5) (b).

19 **SECTION 84.** 196.795 (6m) (a) 2. of the statutes is created to read:

20 196.795 **(6m)** (a) 2. "Eligible asset" means an asset of a nonutility affiliate that
21 is used for any of the following:

22 a. Producing, generating, transmitting, delivering, selling or furnishing gas,
23 oil, electricity or steam energy.

24 b. Providing an energy management, conservation or efficiency product or
25 service or a demand-side management product or service.

ASSEMBLY BILL 389

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

2 d. Recovering or producing energy from waste materials.

3 e. Processing waste materials.

4 f. Manufacturing, distributing or selling products for filtration, pumping water
5 or other fluids, processing or heating water, handling fluids or other related
6 activities.

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

8 **SECTION 85.** 196.795 (6m) (a) 4. of the statutes is created to read:

9 196.795 **(6m)** (a) 4. “Generation assets” means assets that are classified as
10 electric generation assets on the books of account of a public utility, as determined
11 by the commission.

12 **SECTION 86.** 196.795 (6m) (b) (title) of the statutes is created to read:

13 196.795 **(6m)** (b) *In general.*

14 **SECTION 87.** 196.795 (6m) (e) of the statutes is created to read:

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

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

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

ASSEMBLY BILL 389

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

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

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

15 **SECTION 88.** 196.795 (11) (b) of the statutes is amended to read:

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

ASSEMBLY BILL 389

1 operates, manages or controls a telecommunications utility and does not also own,
2 operate, manage or control a public utility which is not a telecommunications utility.

3 **SECTION 89.** 196.795 (11) (c) of the statutes is created to read:

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

13 **SECTION 90.** 196.807 of the statutes is created to read:

14 **196.807 Energy affiliate and utility employes. (1) DEFINITIONS.** In this
15 section:

16 (a) "Affiliate or utility" means a nonutility affiliate, a holding company system
17 or an electric utility, as defined in s. 196.491 (1) (d).

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

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

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

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

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

ASSEMBLY BILL 389

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

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

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

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

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

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

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

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

ASSEMBLY BILL 389

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

4 **SECTION 91.** 200.01 (2) of the statutes is amended to read:

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

23 **SECTION 92.** 285.48 of the statutes is created to read:

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

ASSEMBLY BILL 389

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.

SECTION 93. Nonstatutory provisions.

13
14 (1) 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.

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

ASSEMBLY BILL 389

1 (2) PUBLIC SERVICE COMMISSION RULES.

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

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

13 (3) DEPARTMENT OF ADMINISTRATION RULES.

14 (a) Using the procedure under section 227.24 of the statutes, the department
15 of administration shall promulgate the rules required under section 16.957 (2) (c)
16 and (4) (b) of the statutes, as created by this act, for the period before the effective
17 date of the permanent rules promulgated under that section, but not to exceed the
18 period authorized under section 227.24 (1) (c) and (2) of the statutes.
19 Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not
20 required to make a finding of emergency.

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

25 **SECTION 94. Appropriation changes.**

