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06/15/99

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1999 DRAFTINGREQUEST

Bill

Received: **06/9/99**

Received By: **kunkemd**

Wanted: **Today**

Identical to LRB:

For: Tim Hoven (608) 267-2369

By/Representing: **Mike Welsh**

This file may be shown to any legislator: NO

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - electric**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

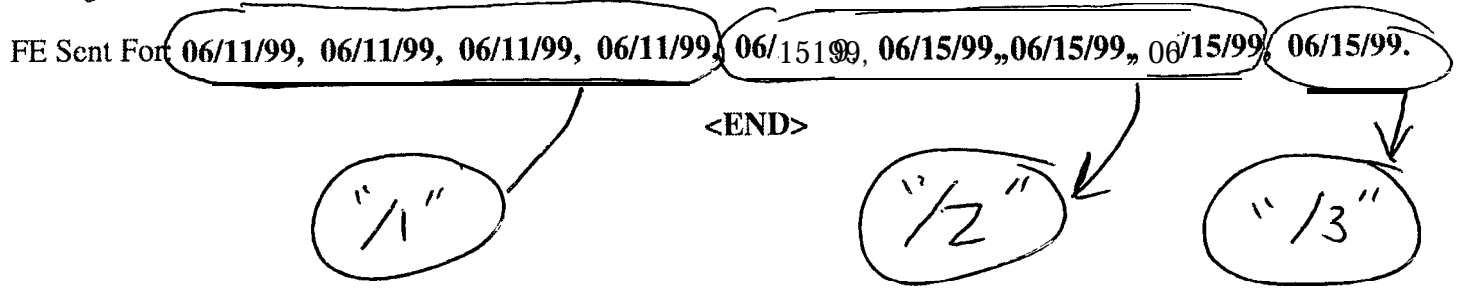
Electric transmission system reliability

Instructions:

See Attached

Drafting History:

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LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3561

-3200

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for BILL drafts. Attach more pages if necessary.

Date of request: <i>02 JUNE 99</i>	Legislator or agency requesting this draft: <i>REP. HOVEN</i>
Name/phone number of person submitting request: <i>7-2369</i>	
Persons to contact for questions about this draft (names and phone numbers please): <i>MIKE WELSH 7-2370</i>	
Describe the problem, including any helpful examples. How do you want to solve the problem? <i>ELECTRIC RELIABILITY 2000</i>	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy. <i>196</i>	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-57):

Requests are confidential unless stated otherwise.
May we tell others that we are working on this for you? YES NO
If yes, anyone who asks? YES NO
Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:
AT REQUEST OF GOV.

Is this request of higher priority than other pending request(s) you have made?
 YES NO If yes, please sign your name here:
Michael E. Welsh

**1. ASSET-CAP MODIFICATION/
TRANSMISSION COMPANY (TransCo)/MISO**

Section 196.795(1 l)(b) (*relating to WICOR*) is amended to add:

The commission may not impose upon a holding company, subject to this subsection, terms, limitations or conditions under (b) that establish the sum of the holding company's non-utility affiliate assets at less than 25% of the sum of the holding company's utility affiliate assets. For the purpose of this subsection, any terms, limitations, or conditions on non-utility affiliate assets shall not apply to the ownership, operation, management or control of: (i) energy and telecommunications assets, as defined in sec. 196.795(5)(pm) 1.a., or (ii) manufacturing, distributing, or selling swimming pools or spas, products for pumping water or other fluids, processing or heating water, fluid-handling, filtration or related businesses.

Section 196.795(5)(pm) 1 of the statutes is created to read:

(a) "Energy and telecommunications assets" means, subject to (b), the assets of a non-utility affiliate which are used for the production, generation, transmission, delivery, sale or furnishing of gas, oil, electric, or steam energy: energy management and demand-side management services, energy conservation, or energy efficiency: energy customer service, metering, or billing: the recovery or production of energy from waste materials, the processing of waste materials; products for pumping water or other fluids, processing or heating water, fluid-handling,

filtration or related businesses; or the provision of telecommunications service, as defined in sec. **196.01(9m)**, Stats.

- (b) If a non-utility affiliate by by-law or resolution limits its business to activities involving energy and telecommunications assets, and substantially all of its assets are energy and telecommunication assets, all of the assets of the non-utility affiliate shall be treated as energy and telecommunications assets.

Sec. **196.795(5)(pm)3** and 4 of the statutes are created to read:

3. The net-book value of transmission facilities contributed to a transmission company (TC) as provided in sections (4) and (5). as these facilities would be depreciated over the course of time if still owned by such affiliates, shall continue to be included in the sum of the assets of the public-utility affiliates.
4. If a public utility affiliate is required or permitted by a lawful final order of a regulatory agency or court to sell or divest generation facilities to a third party which is not an affiliate of the public utility affiliate, the net book value of such generation facilities, as these facilities would be depreciated over the course of time if still owned by such affiliate, shall continue to be included in the sum of the assets of the public-utility affiliates.

Sec. **196.795(5)(pm)4.** and 5. of the statutes are created to read:

4. a. If each of the public utility affiliates of a public utility holding company authorized by the commission under sec. **196.795(2)** (*i.e.*, Wisconsin Energy, **Alliant**, or WPS Resources) transfers operational control of all of its transmission facilities in this state and in Iowa, Michigan, Minnesota and Illinois, and any other of its transmission facilities integrated therewith, to the same independent system operator which has been accepted for filing with conditions by the federal energy regulatory commission and had members in the state prior to **12/31/98** (*i.e.*, the **MISO**), and contributes, subject to its membership in the MISO, all of its currently owned transmission facilities, as defined by sec. 196.485(1)(h) in this state, and associated rights of way, easements, and land, subject to the rights of existing co-users, as provided in sec. 5, and commits to contribute, and to cause each entity into which it merges or consolidates, or to which it transfers substantially all of its assets to contribute, all subsequently acquired or otherwise owned transmission facilities, as defined by sec. 196.485(1)(h), in this state and associated rights of way, easements, and land, subject to the rights of existing co-users, as provided in sec. 5, to the same transmission company (TC) that meets the requirements set forth below in sec. 5, then the energy and telecommunications assets of the non-utility affiliates of such holding company shall not be included in the sum of the assets of the public utility affiliates under sec. 196.795(5)(p) 1.a., b. or c. and

shall not be included in the non-utility affiliates' total assets under sec. 196.795(5)(p)2.a.

- b. This section shall be effective for a public utility holding company on the first day following the date upon which all of its public utility affiliates have taken all of the following actions: (1) filed with the public service commission unconditional, irrevocable and binding legal commitments to contribute to the TC, by a date certain no later June 30, 2000, the transmission facilities and associated rights of way, easements and land, as set forth above in section 4(a), (2) petitioned the public service commission and the federal energy regulatory commission for approval to transfer its transmission facilities to the TC as provided in sec. 4(a), and agreed in such petitions not to withdraw its request in the event that the public service commission or the federal energy regulatory commission conditions the approval of such petitions on changes consistent with state or federal law, and (3) notified the public service commission in writing that it has joined the MISO, and committed not to withdraw as a member from the MISO prior to the date on which it contributes its transmission facilities to the TC and requested approval from the public service commission and the federal energy regulatory commission to transfer operational control to the MISO of its transmission facilities. Such unconditional, irrevocable and binding commitments shall be enforceable by specific performance in the circuit court of Dane

County by any wholesale or retail customer of such public utility affiliate. A public utility affiliate also shall forfeit \$25,000 per day for each day after June 30, 2000 that contribution of its transmission facilities is delayed, provided that the **TC** is legally able to accept transfer.

- c. For the purposes of this Act, transfer of transmission facilities includes transfer of the deferred tax reserves associated with those facilities.
5. The TC shall meet the following requirements:
- a. it shall be a public utility subject to the jurisdiction of the public service commission except as provided below in section 5(t), and the federal energy regulatory commission;
 - b. it shall be a single-purpose corporation under chapter 180 or a single-purpose limited-liability company under chapter 183, and that purpose shall be to plan, construct, operate, maintain and expand the transmission facilities which it owns to provide an adequate, reliable transmission system which meets the needs of all users dependent upon it and supports robust competition in energy markets without favoring any participant in such markets, consistent with subsection (c) and with **secs.** 196.485 and 196.494;
 - c. it shall transfer operational control of its transmission facilities to the MISO, and shall remain a member of such ISO or any successor regional transmission organization approved by the appropriate regulatory agencies at least through the transition

period set forth in the agreement which establishes the ISO (6 *years*);

- d. it shall not own electric generation facilities or sell, market, or broker electric capacity or energy in the relevant wholesale or retail markets for the purchase and sale of electricity in the state or the region, provided, however, that nothing in this subsection shall prohibit the TC from procuring and reselling ancillary services from third parties, engaging in redispatch activities necessary to relieve constraints, or operating a control area, as required or authorized by the federal energy regulatory commission.
- e. it shall have the exclusive duty and responsibility, subject to the approval of the commission, to construct and own any additional high-voltage transmission facilities in the transmission area (i.e., **EWU**), and in the other areas of the state where the transmission facilities of any electric utility which contributes transmission facilities to the TC are located:
- f. it shall elect to be included in a single zone for purposes of the MIS0 tariff when it becomes effective, and shall thereafter be part of the same zone; provided, however, that if the transmission costs of any of the transmission utilities in the transmission area were 10% or more below the average transmission cost of the transmission utilities in the transmission area as a group immediately prior to transfer, the TC and the public utility affiliates referred to above shall devise a phase-in plan for the new

combined single zone for pricing network use by the utilities that have joined the MISO and by other transmission users, and shall seek approval from the MISO and the federal energy regulatory commission for such a zone. Such plan shall phase in an average-cost price for the zone in equal parts over five years, provided, however, that service shall be provided to all users on a single-zone basis during the phase-in period:

- g.** The transfer of land rights to the TC shall be as follows:

 - (1)** A “land right” for purposes of this section means the right pursuant to which transmission facilities are located on real property and include, without limitation, ownership and fee, easements, permissions and/or licenses.
 - (2)** Where a land right has been booked to transmission for ratemaking purposes and is not being jointly used for electric distribution or gas facilities by the public utility affiliate, the public utility **affiliate** shall convey or assign at book value all of its interest in the land right to the TC, subject to any rights of existing joint users of the land right for communications or other facilities and a right in the public utility affiliate to access in the future on a non-discriminatory basis. This provision also shall apply to land rights that have been acquired by a utility affiliate and are being held for future use for transmission and not held for joint-use. If the land right cannot be transferred or

assigned to the TC, the public utility affiliate shall enter into a contract with the TC granting the TC substantially the same rights it would have had if transfer or assignment were possible for the **same** price (book value) for the life of the **TC's** transmission facilities and any replacements thereof.

- (3) Where a land right in use for transmission facilities being transferred to the TC also is being used, or is planned to be used, by the public utility affiliate for electric or gas distribution facilities, the public utility affiliate shall grant the TC by contract a right to place and maintain the **TC's** transmission facilities, and any modifications or replacements thereof, on such land right for the life of such facilities, including any replacements. The rights of the TC under the contract for the purpose of providing transmission service shall be paramount to the rights of any other users of the land rights for any purpose, which use must not interfere in any way with the **TC's** use, except that the right of the public utility affiliate to use the land rights for electric or gas distribution facilities shall be on a par with the rights of the TC for transmission purposes.
- (4) Any dispute concerning the sufficiency of the land right transferred or the valuation **of** the right shall be submitted to the public service commission for resolution, unless a federal agency has jurisdiction over the dispute. No such

dispute shall delay commencement of operations of the TC. During any pending dispute, the TC shall be entitled to use the land right in question, and shall pay any disputed compensation into an escrow account.

- h. any electric utility as defined in sec. 196.491(l)(d) (e.g., **MGE, DPC, MPL, NSP**) shall have the option to transfer all of its integrated transmission facilities to the TC on the same terms and conditions as public utility affiliates of public utility holding companies: such option shall be exercised no later than one year after the date on which the first public-utility affiliate files the commitment to contribute its transmission facilities to the TC set forth in 4(a);
- i. transmission-dependent public utilities and electric cooperatives in the state (e.g., **WPPI, other municipal utilities, non-DPC coops**) may purchase equity interests in the TC at a price and on terms and conditions comparable to those for transmission utilities that have contributed their transmission facilities, that is, equivalent to net-book value, by contributing funds up to their pro-rata shares based upon firm electric usage in the state in the prior year (1999); such option shall be exercised no later than one year after the date on which the first public-utility affiliate files the commitment to contribute its transmission facilities to the TC set forth in 4(a);
- j. the transmission facilities transferred to the **TC** shall be valued at net book value at the time of transfer:

- k. if a public utility affiliate may not transfer ownership of its transmission facilities to the TC due to merger-related accounting requirements, it shall, only for the period of time during which such requirements are in effect, transfer its transmission facilities by means of a lease which complies with the requirements set forth in section (4) and in this section, provided that, as soon as such merger-related accounting requirements are no longer applicable, it shall be eligible to continue to exclude energy and telecommunications assets from its asset-cap formula only if it elects to transfer ownership of its transmission facilities to the **TC** as provided in section (4) and in this section, and provided further that during the term of any such lease the public-utility affiliate shall not receive voting interests in the TC;
1. a transmission utility or other electric utility that contributes its transmission facilities to the TC under sec. 4(a) or 5(g) shall receive securities from the TC as follows:
 - (1) The transfer of facilities to the TC shall be structured (i) to avoid or minimize material adverse tax consequences for the transferor as a result of the transfer, and (ii) to avoid or minimize material adverse rate consequences, not arising out of combining the **TC's** facilities into a single zone in the MISO.
 - (2) The PSC shall review the proposed structure of the transfer to determine that it meets the objectives of this section, and

may modify the structure if necessary to accomplish those objectives, and take such other actions as are necessary to equitably accomplish the objectives set forth in this section, including permitting a public-utility affiliate to recover in retail rates any adverse tax consequences of the transfer as a transition cost.

- (3) To the extent possible, the transfer shall be structured to meet the requirements of the IRS for a tax-free transfer. If possible, qualified preferred stock shall be issued in connection with the transfer to provide the **fixed** cost portion of the resulting capital structure. In the event preferred stock is issued it shall be issued on a basis that does not dilute the voting rights of initial shareholders relative to the value of their contributions. If the capital structure of the TC has a percentage of common equity that is materially higher than that of the transferors, or if the cost of the fixed-cost portion of the capital structure of the TC is materially higher than that of the transferors, the transferors shall agree by contract to accept from the **TC** a return on common equity based upon the equity rate of return approved by the federal energy regulatory commission and upon an imputed capital structure that assigns to a portion of their common equity holdings an imputed debt return, as is necessary to achieve the objectives of this



section, until such time as the FERC shall determine that the actual capital structure and capital costs of the TC are appropriate and consistent with industry practice for a regulated public utility providing electric transmission service in interstate commerce.

- (4) The TC shall provide an opinion to the commission prior to commencement of operations from a nationally-recognized investment banking firm that the TC will be able to finance its start-up costs, working capital, operating expenses and the cost of planned new facilities at reasonable cost.
- (5) Nothing in this subsection shall affect the authority of the federal energy regulatory commission to establish transmission rates for the TC or MISO.
- (6) If, when a public-utility affiliate files its binding commitment under sec. (4), it has an application to construct transmission facilities pending at the public service commission, or has been granted a CPCN for such facilities, the public-utility affiliate shall:

 - a. diligently pursue approval of such application and construction of any facilities authorized by the public service commission;
 - b. transfer such facilities to the TC at net book value when construction is completed in exchange for additional securities of the TC on a basis consistent

with the initial exchange, provided that the public service commission determines that the cost of the facilities is reasonable and prudent.

If the construction of any transmission facilities that are subject to a pending or granted CPCN on the date of the binding commitment are not completed within three years of the date of issuance of the CPCN, the responsibility to complete the project shall be transferred to the TC at the option of the TC, and the public-utility affiliate's reasonable and prudent investment to date shall be contributed to the TC in exchange for securities.

- m. the bylaws of the TC shall provide as follows:
 - (1) There shall be no less than 5 directors and no more than 14. The number shall be 5 unless more directors are required to comply with the provisions below, in which case, the number of directors shall be increased accordingly. This provision of the **TC's** bylaws may be modified during the first 10 years after the TC comes into existence only upon a unanimous affirmative vote of the directors, and thereafter upon a two-thirds vote of the directors.
 - (2) For the first 10 years after the TC comes into existence, each shareholder that owns 10% or more of the outstanding common stock of the TC shall be entitled to appoint one and only one director to the board of directors. These directors

shall have terms of one year each. Two or more shareholders that together own at least 10% of the common stock of the TC may by a written agreement with a term at least equal to the term of a director under the bylaws combine the voting rights of their common stock for the purpose of jointly appointing a director. Such agreement must be filed with the secretary of the TC. During the ten-year period set forth in this section, the provision of the bylaws of the TC containing this requirement may be modified only upon the unanimous vote of all directors. Thereafter, such requirement may be modified by a two-thirds vote of the directors.

- (3) For the first 10 years after the TC comes into existence, each shareholder which is an investor-owned transmission utility in the transmission area (i.e., **WEPCO, WPL, WPS, MGE**) and which has contributed its transmission facilities to the TC as set forth above in sections (4) and (5), and any person who receives at least a 5% equity interest under **secs. 4(h) or 4(i)** above, shall be entitled to appoint one and only one director to the board of directors, provided that it continues to own all of the stock which it has received from the TC for such contribution. This director shall be instead of the director for which the utility would qualify based upon 10% stock ownership under (2) above.

- (4) There shall be four directors at all times who are elected by a majority of the votes of the holders of common stock and who are not employed by, or under contract to, any entity engaged in the production, sale, marketing, transmission or distribution of electricity or natural gas, or by or to any affiliate of any such entity. These directors shall have staggered terms of four years each.
- (5) For the first five years following creation of the TC, none of the public utility affiliates that transfer transmission facilities to the TC, or any affiliate of such public utility affiliates, shall increase its percentage share of the outstanding common stock of the TC, including any percentage share of such outstanding common stock owned or controlled by any affiliate of such utility affiliate, prior to the first issuance of common stock by the TC to any third party, other than a third party exercising a right to purchase shares under section 5(h). This restriction shall not apply to common stock used in exchange for a contribution of additional transmission facilities. This provision of the bylaws of the TC may be modified during the first five years only upon the unanimous vote of all directors.
- (6) Beginning 36 months after the TC is formed, any holder of 10% of the voting shares may require that the TC register as is necessary for any equity owner to sell its shares.

- n. for the first 36 months of operation, the TC shall, subject if necessary to the approval of the appropriate regulatory agencies, enter into contracts with the transmission utilities which transfer their facilities to the TC for the purpose of providing reasonable and cost-effective operation, and maintenance services to the TC; thereafter, the TC may continue to contract with each transmission utility. At the end of the final contract period, the provisions of Subsection 8 shall apply.
- o. the TC shall have the authority to expand through the voluntary purchase or acquisition of additional transmission facilities, subject to the approval of the appropriate regulatory agencies;
- p. the TC shall assume any obligations of transmission utilities that transfer ownership of transmission facilities to the TC under agreements to provide transmission service over their facilities (e.g., **certain joint-plant agreements**), or credits for the use of certain transmission facilities of transmission users (e.g., **munis** and **coops** who currently *receive facilities credits*) as modified from time to time by agreement of the **TC** with other parties to such agreements or by regulatory agencies with lawful authority to modify such agreements or credits;
- q. the TC shall make whichever filings are necessary to commence operation with service to begin by **1/1/2000**; the TC shall be the transmission service provider in the transmission area until the **MISO** is operational;

- r. the TC may not sell, transfer, or merge its assets **with another** person, unless such assets are sold, transferred, or merged on an integrated basis, and in a manner which insures that the transmission facilities in the transmission area (i.e., **EWU**) are planned, constructed, operated, maintained and controlled as a single transmission system;
- s. nothing in this section shall 'be interpreted to authorize or allow the TC to bypass the distribution facilities of any electric utility or to provide its services directly to any retail customer;
- t. except as specifically provided in this section, the obligations of **any electric utility** that has contributed its transmission facilities to the TC to finance, build, maintain, or operate transmission facilities shall terminate upon operation of the **TC**;
- u. nothing in this section shall be interpreted to affect the right or duty of an electric utility which is not in the transmission area and which has not contributed its facilities to the TC from constructing transmission facilities;
- v. Section **200.01(2)** is amended to exclude the TC from the definition of "public service corporation" (*i.e.*, issuance **of securities by TC not subject to prior PSC approval**). Section 196.795(l)(g) and (h) are amended to exclude the TC from the definition of a holding company and forming a holding company. Because the TC is primarily a FERC-jurisdictional entity, the provisions of chapter 196 regarding rates, service, and accounting shall not apply to the

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TC. Any dividends from the TC or gain or profit from the sale or disposition by transmission utilities of their securities in the TC shall not be a credit against retail revenue requirements. Section 196.52 (*affiliated-interest* statute) is amended to provide an exclusion for the sale or disposition by transmission utilities of their securities in the TC, but affiliated-interest approval applies for transactions (including service contracts) between transmission utilities and the TC.

6. If the independent system operator referred to above in sections (4) and (5) does not commence operation, or ceases operation, the actions referred to above in sections (4) and (5) and in sec. **196.485(3)(bm)** shall apply to the successor thereto, or if there is no successor, to any other regional transmission organization approved or authorized by the federal energy regulatory commission to operate in an area that includes the state, provided that the public service commission shall ensure that a condition of transfer of any public utility's transmission facilities to such regional transmission organization shall be that it meets the standards of sec. 196.485 and complies with the other provisions of chapter 196 of the statutes.
7. Sec. 76.28 of the statutes is amended as follows:
 - (d) "Gross revenues" for a light, heat and power company other than a qualified wholesale electric company or a transmission company as defined in sec. 196. means total operating revenues as reported to the public service commission except revenues for

interdepartmental sales and for interdepartmental rents For a qualified wholesale electric company, “gross revenues” means total business revenues from those businesses included under par. (e)I. to 4. For a transmission company, “gross revenue” means total operating revenues as reported to the public service commission except revenues for transmission service over its facilities provided to public utilities subject to the annual license fee under Wis. Stats. **72.28(2)(c)(2)** or to other electric utilities as defined in chapter 196.

(e) . . . including corporations described in s. **66.069(2)** and including qualified wholesale electric companies and including transmission companies as defined in sec. 196. and except only business enterprises carried on exclusively either for the private use of the. . . .

. . . hot water for heat, power or manufacturing purposes.

5. Transmitting electric current for light, heat or power.

(em) “Net production of electricity” means. . . .

(2) IMPOSITION . . .

(e) for transmission companies, as defined in sec. 196. _____ an amount equal to the gross revenues, except revenues for transmission service over its facilities provided to public utilities subject to the annual license fee under Wi. Stat. **72.28(2)(c)(2)** or to other electric utilities as defined in chapter 196, multiplied by the rates under par. **(b)** or (c).

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8. Sec. **196.485(3)(bm)** is amended to read:

Each of the transmission utilities in the transmission area that are public utilities shall transfer control over their transmission facilities to the **MISO** and shall elect with the TC, after it becomes operational, if such transmission utilities have not transferred their transmission facilities to the TC, to become part of a single zone within the MISO. Such independent system operator shall ensure that the transmission facilities in the transmission area are planned, constructed, operated, maintain and controlled as a single system.

9. In the event of a lease, sale, or any other transfer of ownership or control (hereinafter "Transaction") of one, more, or all divisions, departments, or business units, or any other operational unit (hereinafter "Unit") of an electric utility, a public utility, a public utility-affiliate or a non-utility affiliate of a holding company, which Unit of the electric utility, public utility, public-utility affiliate, or non-utility affiliate is engaged in activities related to the production, generation, transmission, or distribution of electricity, gas, or steam, or the recovery of energy from waste materials (hereinafter "Selling Entity") in this state, the terms of the Transaction with the acquiring entity or person(s) shall require the acquiring entity or person(s) to offer employment to a sufficient number of the non-supervisory employees working in the Unit at the time of the Transaction in order to operate and maintain the Unit. The acquiring entity or person(s) must offer such employees employment at no less than the wage rates and substantially equivalent fringe benefits and

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terms and conditions of employment (hereinafter "Employment Terms") that are in effect at the time of the Transaction. The acquiring entity or person(s) shall maintain the Employment Terms during the 30 months following the Transaction unless different terms and conditions of employment are collectively bargained.

If there is a Transaction of a Selling Entity's Unit(s) in this state to its majority-owned non-utility affiliate, the acquiring non-utility affiliate shall continue to employ the Selling Entity's non-supervisory employees **who** were working in the Unit(s) at the time of the Transaction under the same terms and conditions of employment existing at the time of the Transaction, as described in the above paragraph.

Prior to approving any Transaction involving a public utility, public-utility affiliate, or non-utility affiliate, the public service commission shall first determine that the Employment Terms are in place, as set forth above.

This section shall not apply to any Transaction involving activities other than those related to the production, generation, transmission, or distribution of electricity, gas, or steam, or the recovery of energy from waste materials.

This section shall not apply to any Units of a rural electric cooperative or municipal utility with gross annual revenue of less than \$___ million.

Sec. 196.795(5)(i) is amended to read:

In its determination of any rate change proposed by a public utility affiliate under s. 196.20, the commission:

1. Shall consider the public utility affiliate as a wholly independent corporation; and shall impute a capital structure to the public utility affiliate and establish a cost of capital for the public utility on a stand-alone basis.

Sec. 196,795(5)(t), Stats., is created to read:

If the commission determines that a public-utility affiliate or, for transmission, the transmission company, is not making investments in its facilities sufficient to ensure reliable electric service, the commission shall order the public utility affiliate or transmission company to make adequate investments in its facilities sufficient to ensure reliable service. Such order shall require that the public-utility affiliate or transmission company provide sufficient security in a form that is readily enforceable and satisfactory to the commission, and that is sufficient to ensure that such investments are made expeditiously. The commission shall allow the public-utility affiliate to recover in its retail electric rates costs that are prudently incurred in complying with this subsection.

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II. PUBLIC BENEFITS

SECTION 1. Section 15.107(17) of the statute is created to read:

SECTION 15.107(17) COUNCIL ON PUBLIC BENEFITS.

There is created a council on public benefits that is attached to the department of administration under s. 15.03. The council shall consist of the following 11 members serving 3-year terms:

- (a) Two members selected by the Governor;
- (b)** Two members selected by the Senate Majority Leader;
- (c) One member selected by the Senate Minority Leader;
- (d) Two members selected by the Assembly Speaker;
- (e) One member selected by the Assembly Minority Leader.
- (f)** One member selected by the secretary of the department of natural resources.
- (g)** One member selected by secretary of the department of administration.
- (h) One member selected by the chairperson of the public service commission.

SECTION 2. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

1999-00 2000-01

20.505(10) Utility public benefits board

(a)	LOW-INCOME ASSISTANCE, AND EFFICIENCY AND RENEWABLE RESOURCES	ENERGY CONSERVATION	_____
(b)	GENERAL PROGRAM OPERATIONS	_____	_____

SECTION 3. 20.157 of the statutes is created to read:

20.505(10) Utility public benefits. There is appropriated to the department of administration for the following programs:

(a) *General program operations.* From the utility public benefits fund, the amounts in the schedule for general program operations.

(b) *Low-income assistance grants.* From the utility public benefits fund, a sum sufficient for **low-income** assistance grants under s. 196.96 (2) (a).

(c) *Energy conservation and **efficiency** and renewable resource grants.* From the utility benefits fund, a sum sufficient for energy conservation and efficiency and renewable resource grants under s. 196.96 (2) **(b) 1.**

SECTION 4. 25.17 (1) (xm) of the statutes is created to read:

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

SECTION 5. 25.96 of the statutes is created to read:

25.96 Utility public benefits fund. There is established a separate non-lapsible trust fund designated as the utility public benefits fund, consisting of the revenues received from public utilities under s. 196.374, the

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public benefits fees received under s. 196.96 (4) (a) and (5) (c) and (d), and contributions received under s. 196.96 (2) (c) 4. and (d) 2.

SECTION 6. 196.374(4) of the statutes is amended to read:

Low-income assistance, energy efficiency and other programs.

(1). In this section “utility*” shall mean a Class A gas or electric utility, as defined by the commission, which is not a municipal utility or electric cooperative.

(2) The commission shall determine the total amount which every such utility expended in calendar year 1998 for programs designed to provide **low-income assistance** (including **uncollectibles** and arrearages forgiveness), **low-income weatherization**, energy conservation and efficiency, environmental research and development, and renewable resources. The commission shall allocate this total amount equitably among such utilities and permit every such utility to continue to recover such amounts annually from its ratepayers. The commission also shall develop a method by which such total amount is gradually transferred to the utility public benefits fund over a period of three years. The commission shall allow each utility the option of continuing to use through calendar year 2000 the monies it is currently recovering to administer its existing energy conservation and efficiency programs. Nothing in this section is intended to prohibit a utility from involvement in the activities described in this subsection, provided that it is complying with its duties under **secs. 196.374 and 196.196(4)**.

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(3) If the department of administration decreases the amount of funding required for such programs as provided in s. 196.96, the commission shall make a pro rata decrease in the amount determined under this section.

SECTION 7. 196.378 of the statutes is created to read:

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

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

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

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

(d) “Electric utility” means a public utility that sells electricity at retail, provided that a public utility is not considered to sell electricity at retail solely by owning or operating a retail electric distribution system.

(e) “Excludable renewable energy” means the portion of an electric provider’s total renewable energy that is supplied from renewable facilities that were placed in service before January 1, 1998, and that, before January 1,

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1998, derived electricity from hydroelectric power, even if the output of such facilities is used to **satisfy** the requirements of federal law.

(f) “Nonsystem renewable energy” means the **amount** of electricity that an electric provider sells to its retail customers and that is supplied or allocated by a wholesale supplier under executed wholesale purchase contracts from renewable facilities that are not owned or operated by the electric provider. “Nonsystem renewable energy” does not include any electricity that is not used to satisfy the electric provider’s retail load obligations.

(g) “Renewable resource” means any **of the** following:

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

- a. A fuel cell that uses, as determined by the commission, a renewable fuel.
- b. Tidal or wave action.
- c. Solar thermal electric or photovoltaic energy.
- d. Wind power.
- e. Geothermal technology.
- f. Hydroelectric power **with** a capacity of less than ~~30~~ 60 MW.
- g. Biomass.

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

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(h) “Renewable facility” means an installed and operational electric generating facility in which energy is derived from a renewable resource. Renewable facility includes a facility the installation or operation of which is required by federal law, but does not include a facility the installation or operation of which is required under the laws of another state, even if such facility is required by federal law.

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

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

(k) “Retail electric cooperative” means a cooperative association organized under ch. 185 that sells electricity at retail to its members only, provided that a retail electric cooperative is not considered to sell electricity at retail solely by owning and operating a retail electric distribution system.

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

(m) “Total renewable energy” means the sum of an electric provider’s, system and nonsystem renewable **energy**.

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

1. By December 31, 2000, **.5%**.

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2. By December 31, 2002, .85%.
3. By December 31, 2004, 1.20%.
4. By December 31, 2006, 1.55%.
5. By December 31, 2008, 1.9%.
6. By December 31, 2010, 2.2%.

This subsection shall not apply to an electric provider that provides more than 10% of its summer peak demand (expressed in **MW**) in this state from renewable facilities in this state, or to an electric provider that provides more than 10% of the summer peak demand (expressed in **MW**) on its system from renewable facilities. For purposes of this exemption, the electric provider may count renewable facilities that it owns and power purchases from renewable facilities, whether or not located in this state and whether or not located on its system. The electric provider shall file documentation with the public service commission in support of this exemption. If the commission determines that an electric provider does not meet this standard, the provider shall be subject to this subsection.

Total retail energy sales shall be determined by calculating a **three-**year rolling average of the electric provider's retail energy sales in this state.

The amount of electricity supplied by a renewable facility in which biomass and conventional fuels are fired together is equal to the product of the maximum amount of electricity the facility is capable of generating and the ratio of the British thermal unit content of the biomass fuels to the British **thermal** unit content of both the biomass and conventional resource fuels.

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Any excludable renewable energy that exceeds .6% of an electric provider's total retail energy sales shall be excluded from the electric provider's total renewable energy.

(b) On April 15 of each year, the electric provider shall provide the department of administration a report of its compliance with par. (a) including reasonable documentation as required by the department. The department shall accept certification from wholesale providers concerning the sources and amounts of energy supplied to the electric provider in the previous year.

(c) An electric provider may recover its costs of providing energy from renewable sources from its customers, including the costs of exceeding the levels specified in Z(a). An electric utility shall have the option of recovering these costs from its customers through any combination of the following subject to approval of the commission if necessary: (1) allocating costs equally (on a per kWh basis) to all customers; (2) selling the power under a green pricing program or programs; and (3) other pricing structures.

(3) RENEWABLE RESOURCE CREDITS.

(a) An electric provider that has energy from renewable resources that is more than the renewable resource energy requirement specified in sub. (2) (a) 1. to 6. for the applicable year may sell to any other electric provider a renewable resource credit or a portion of a renewable resource credit at any price negotiated between them. Alternatively, the electric provider may carry forward these credits for use in future years. The commission shall promulgate rules

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that establish procedures for calculating the amount of a renewable resource credit.

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

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

(5) PENALTY. Any electric provider that fails to comply with sub. **(2)** (a)-(c) shall forfeit no less than \$5,000 nor more than \$500,000. Any energy supplier that incorrectly certifies the sources of its energy as renewable shall be subject to the same penalty. Forfeitures under this subsection shall be enforced by action on behalf of the state by the attorney general. **A court** imposing a forfeiture under this subsection shall consider all of the following in determining the amount of the forfeiture:

(a) The appropriateness of the forfeiture to the volume of business of the electric provider.

(b) The gravity of the violation.

(c) Whether or not failure to comply is due to force majeure or circumstances entirely beyond the control of the electric provider.

SECTION 8. 196.96 of the statutes is created to read:

196.96 Utility public benefits. (1) DEFINITIONS. In this section:

(a) "Council" means the utility- public benefits council created in s. 15.107(17).

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(b) “Commitment to community program” means a program by a municipal utility or retail electric cooperative for low-income assistance or an energy conservation or load management program by a municipal utility or retail electric cooperative.

(c) “Customer application of renewable resources” means the generation of electricity from renewable resources that takes place on the premises of a customer of an electric provider.

(d) “Department” means the department of administration.

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

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

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

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

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

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

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

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

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

(n) “Low-income need percentage” means the percentage that results from dividing an amount equal to the sum of the total amounts received by the department for low-income funding the total amounts expended by public utilities under 196.374, and 50% of the public benefits fees charged by municipal utilities and retail electric cooperatives by the amount of low-income need in fiscal year 1998-99.

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

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

(q) “Renewable resource” has the meaning given in s. 196.378 (1) (g).

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

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

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

(u) “Wholesale electric cooperative” means a cooperative association organized under ch. 185 for the purposes of providing electricity at wholesale to its members only.

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

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

(2) DEPARTMENT DUTIES. The department shall do all of the following:

(a) **Low-income programs.** In consultation with the council, and after the council holds a hearing, establish programs to be administered by the

division of housing for awarding grants from the appropriation under s. **20.505(10)(c)** to provide low-income assistance. In each fiscal year, no less than the amount obtained by subtracting from **\$50,000,000** the sum of all moneys received from the federal government under 42 USC 6861 to 6873 in a fiscal year shall be awarded under this paragraph in grants for weatherization and other energy conservation services.

(b) *Energy conservation and **efficiency** and renewable **resource** programs.*

1. Subject to subd. **2.**, in consultation with the council, and after the council holds a hearing, establish programs for awarding grants from the appropriation under s. 20.505(10)(d) for each of the following:

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

b. Proposals for encouraging the development or use of customer applications of renewable resources, including educating customers about renewable resources or encouraging uses of renewable resources by customers or encouraging research technology transfers. In each fiscal year, the department shall ensure that 4.5% of the appropriation under sec. 20.505(10)(d) shall be awarded in grants under this subdivision.

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2. For each fiscal year after 2003-2004, in consultation with the council, determine whether to continue, discontinue or reduce any of the programs established under subd. 1. and determine the total amount necessary to fund the programs that the department determines to continue or reduce under this subdivision.

(c) Rules. In consultation with the council, promulgate rules establishing all of the following:

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

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

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

2n. Criteria for determining whether or not to continue, discontinue, or reduce any of the programs established under subd. 1 after 2003-2004. The rules shall require that the department **determine** whether the need for any such program is being effectively met by the private-sector market and, if so, that the **department** discontinue or reduce such program.

3. Requirements for electric utilities to allow customers to include voluntary contributions to assist in funding a commitment to

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

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

(d) Other duties. In consultation with the council, the department shall:

1. For each fiscal year after 1998-99, determine the low-income need target for that fiscal year.

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

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

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4. Conduct an independent audit annually and report to the legislature concerning (1) the level of program expenses incurred by the department, other agencies, and fund recipients; (2) the effectiveness of the programs under sec. 2(a) in providing assistance to low-income persons, (3) the effectiveness of the programs under sec. 2(b) in reducing the demand for electricity and increasing the use of customer-owned renewable resources, and (4) any other issue identified by the governor, speaker, or majority leader of the senate.

(3) CONTRACTS .

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

(b) The department shall, on the basis of competitive bids, contract with a nonstock, nonprofit corporation organized under ch. 18 1 to administer the programs established under sub. (2) (b) 1 ., including soliciting proposals, processing grant applications, selecting, based on criteria specified in rules promulgated under sub. (2) (c) **2m.**, proposals for the department to make awards and distributing grants to recipients.

(c) In selecting proposals and awarding contracts under 2(b), the department shall not disqualify, penalize, or discriminate against any electric provider or its affiliate or against any wholesale electric supplier or its affiliate.

(4) ELECTRIC UTILITIES.

(a) Requirement **to charge public benefits** fees. Each electric provider, except for a municipal utility or a retail electric cooperative, shall charge each customer a public benefits fee in an amount established in rules promulgated by the department under par. (b). An electric utility, except for a municipal utility, shall collect and pay the fees to the department in accordance with the rules promulgated under par. (b).

(b) Rules. In consultation with the council, the department shall promulgate rules that establish the amount of a public benefits fee under par. (a). The fees (1) may vary by class of customer, but shall be uniform within each class, (2) shall not be based on Kwh consumption of electricity by a customer, (3) shall be allocated so as not to recover more than 30% of the total fees from non-residential customers, and 70% of the total fees from residential customers, recognizing that programs of the department are intended to benefit primarily residential customers, (4) shall include the electric utility's reasonable and prudent expenses of administering such programs, and (5) shall be included in the customer's regular monthly bill, provided that the utility notify its customers annually of the amount of and benefits from such fees.

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

1. 'Low-income funding.' In fiscal year 1999-2000, a portion of the fee shall be an amount which, when added to 50% of the estimated public benefits fees charged by municipal utilities and retail electric cooperatives

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under sub. (5)(a) for that fiscal year, shall equal **\$27,000,000**. In each fiscal year after **1999-2000**, the amount received by the department from this portion of the public benefits fees, from public utilities under s. 196.374, and from the federal government under 42 USC 6861 to 6873 and 42 USC 8621 to 8629, when added to 50% of the estimated public benefits fees charged by municipal utilities and retail electric cooperatives under sub. (5)(a), shall be sufficient to meet the low-income need target determined by the department under sub. (2)(d) 1.

2. 'Energy conservation and efficiency and renewable resource funding.' For fiscal year **1999-2000**, a portion of the public benefits fee shall be an amount which, when added to 50% of the estimated public benefits fees charged by municipal utilities and retail electric cooperatives under sub. (5)(a) for that fiscal year, shall equal **\$20,000,000**. For each fiscal year after 2002-2003, if the department determines to discontinue or reduce a program, this amount shall be reduced accordingly.

3. 'Public benefits fee limitation.' For the period beginning on the effective date of this subdivision . . . [reviser inserts date], and ending on June 30, 2008, the total increase in a customer's electric bills that is based on the requirement to pay public benefits fees, including the costs of electric utilities for administering the programs under the Act, may not exceed 3% of the total of every other charge for which the customer is billed for that period or \$750 per month, whichever is less.

(5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) ***Requirement to charge public benefits fees.*** Each retail electric cooperative and municipal

utility shall charge a monthly public benefits fee to each customer or member in amount that is sufficient for the retail electric cooperative or municipal utility to collect an annual average of \$17 per meter. A retail electric cooperative or municipal utility may determine the amount that a particular class of customers or members is required to pay under this paragraph and may charge different fees to different classes of customers or members.

(am) *Public benefits fee* limitation. Notwithstanding par. (a), for the period beginning on the effective date of this paragraph . . . [reviser inserts date], and ending on June 30, 2008, the total increase in a customer's or member's electric bills that is based on the requirement to pay public benefits fees may not exceed 3% of the total of every other charge for which the member or customer is billed for that period or \$750 per month, whichever is less.

(b) *Election to contribute to department programs.*

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

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

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

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

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

a. Except as provided in par. (dm), pay no less than 50% of the public benefits fees that it charges under par. (a) to the department.

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

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

a. Except as provided in par. (dm), pay 50% of the public benefits fees that it charges under par. (a) to the department.

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

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

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

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

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

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

2. Include an amount equal to the product of the municipal utility's or retail electric cooperative's wholesale supply percentage and the

amount that the electric supplier has spent on energy conservation programs or customer applications of renewable resources in a fiscal year in calculating the amount that the municipal utility or retail electric cooperative has spent on energy conservation programs under par. (d) 1. b. or 3. b.

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

(g) *Reports.*

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

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

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

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

SECTION 9. Nonstatutory provisions.

(1) **INITIAL APPOINTMENTS.** Notwithstanding the length of the term specified in section **15.107(17)** of the statutes, as created by this act, the initial members of the council on public benefits shall be appointed for the following terms:

(a) One of the members under section 15.107(17)(a), one of the members under section 15.107(17)(b), and one of the members under s. 15.107(17)(d), for terms expiring on May 1, 2003.

(b) One of the members under section 15.107(17)(a), the member under section **15.107(17)(c)**, the member under section **15.107(17)(e)**, and the members under Section 15.107(17)(e) and **(f)**, for terms expiring May 1, 2002.

(c) One of the members under section **15.107(17)(a)**, one of the members under section **15.107(17)(b)**, and one of the members under section 15.107(17)(d), for terms expiring on May 1, 2001.

(2) **PUBLIC SERVICE COMMISSION RULES.**

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

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

(3) DEPARTMENT OF ADMINISTRATION BOARD RULES.

(a) Using the procedure under section 227.24 of the statutes, the department of administration shall promulgate the rules required under section 196.96 (2) (c) and (4) (b) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under that section, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not required to make a finding of emergency.

(b) The department of administration shall submit in proposed form the rules required under section 196.96 (2) (c) and (4) (b) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this paragraph.

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III. CFC WHITE PAPER

Sec. 196 of the statutes is created to read:

- (1) Transmission facilities constructed to increase the transmission import capability into the state shall use existing rights-of-way wherever practicable. The routing and design of such facilities should minimize environmental impacts consistent with achieving reasonable electric rates.
- (2) None of the provisions of sec. 196.494 shall be interpreted to waive or limit any of the provisions of sec. 196.49 1 (**CPCN**) or sec. 1.11 (**WEPA**).

Sec. **196.491(3g)** of the statute is created to read:

The public service commission shall not approve an application under this section for construction of any new high-voltage 345 **kV** or higher transmission facility in this state without first finding that wholesale and retail customers in the state will gain benefits in the form of usage, service, or increased regional reliability from such facility that are reasonable in relation to its costs.

Sec. 196.026 of the statutes is created to read:

The commission shall promulgate rules establishing requirements and procedures for the preparation and review of environmental impact statements consistent with sec. 1.11 (**WEPA**). The rules shall, at a minimum:

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- (1) Establish standards for when an environmental impact statement must be prepared.
- (2) Provide adequate time to comment and be heard on environmental impact statements.
- (3) Establish timetables that permit thorough review of environmental issues and the processing of dockets without undue delay in view of the need for additional transmission capacity.

Sec. **196.491(3h)** of the statutes is created to read:

- (a) The PSC shall condition approval under sec. **196.491(3)**, Stats., of any high-voltage 345 kV or higher transmission facility upon payment of a **transmission** facility impact fee by the owner of the transmission facility to the local governmental units through which the new facilities are routed. Such fee shall be the same as the payments towns receive pursuant to sec. **79.04(1)**, Stats., for generation facilities located within their boundaries (Le., **3 mills**). Such impact fees shall be allocated to each local unit of government where the transmission facilities are located.
- (b) This section first applies to approvals granted to applications filed after April 1, 1999.
- (c) The department of administration shall distribute such fees in accordance with sec. 16.397, Stats.

Sec. 16.397 of the statutes is created to read:

The department shall distribute the transmission facility impact fees to the local units of government identified by the public service commission in orders issued pursuant to sec. **196.491(3h)**, Stats.

Sec. 196.49 **1(3i)** of the statutes is created to read:

- (1) The commission shall condition approval under sec. 196.49 l(3) of any new 345 **kV** or higher transmission facility upon payment by the owner of such facility of an environmental impact fee equivalent to 5% of the cost of the transmission facility as determined by the commission in the proceeding under sec. **196.491(3)**.
- (2) An owner subject to this subsection shall pay such amount to the department of administration which shall distribute such fees in accordance with sec. 16.395.
- (3) Payments made under this section may not be used to offset any other required mitigation measures for the facility.
- (4) This section first applies to approvals granted to applications filed after April 1, 1999.

Sec. 16.395 is created to read:

- (1) From the fees collected pursuant to sec. 196.49 **1(3i)**, the department shall distribute funds to the counties and other units of local government through which a 345 **kV** or **higher** transmission line is routed, with 50% distributed to the counties and 50% to other affected municipalities, and allocated in proportion to the amount of investment in each county and municipality.
- (2) Funds received under this section shall be used by the affected counties and municipalities for park, conservancy, wetland restoration and similar environmental offset projects.
- (3) Fees paid under **196.491(3h)** and (3i) shall be recoverable by the owner as reasonably incurred expenses of providing transmission service.

Sec. 14.036 of the statutes is created to read:

- (1) Subject to the requirements of sec. **(2)**, the governor may, on behalf of the state, enter into a Regional Transmission Need and Siting Compact with one or more states in the upper Midwest to create a joint process to determine the need for and siting of regional electric transmission facilities that will affect electric service in this state.

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- (2) The Regional Transmission Need and Siting Compact shall require:
 - (a) compliance with each state’s environmental and siting standards for electric transmission facilities, and
 - (b) provide for a regional need determination and a mechanism to resolve siting conflicts between states.

Sec. 196.494 of the statutes is amended to read:

- (3) The commission shall, under this subsection, issue an order requiring a public utility to construct or procure, on a competitive basis, the construction of transmission facilities specified by the commission in its order if the commission determines that such construction is necessary to relieve a constraint on a transmission system and the construction will materially benefit the customers of the public utility or other electric utilities or of an independent system operator, as defined in s. 196,485(1)(d), or independent transmission owner, as defined in s. **196.485(1)(dm)**.

Sec. 196.026 of the statutes is created to read:

The commission, the department of administration, and the department of revenue shall develop and implement a program of incentives for the



development of high-efficiency, small-scale generating facilities in the state that:

- (1) provide benefits in the form of support for the transmission and distribution system, power quality and environmental performance; and
- (2) employ such technologies as combined heat and power systems, fuel cells, microturbines, and photovoltaic systems which can be situated in, on, or next to buildings or other electric load centers.

Sec. 196.____ of the statutes is created to read:

- (1) The commission shall contract with an expert economic consultant to conduct a study on the potential of horizontal market power (including generation market power) to frustrate the creation of an effectively competitive retail electricity market in the state and to make recommendations on measures to eliminate such market power on a sustainable basis. For each recommendation, the study shall include an assessment of the effect on utility workers and shareholders, and on rates for each class of customer. Such study shall include an evaluation of the impact of transmission constraints on generation market power in local areas.

- (2) No later than _____, the commission shall submit a report on the results of the study to the legislature in the manner provided in s. 13.172(2).

Sec. 196.20(4t) of the statutes is created to read:

- (a) Nothing in secs. 196.20, 196.21, 196.22, 196.37, 196.60 and 196.604 prohibits the commission from approving and, subject to approval of the commission, each investor-owned public utility shall, no later than March 1, 2000, file with the commission retail rates that result in customers receiving market -based compensation for voluntary interruptions of firm load during peak periods of electric use.

Sec. 196.____ of the statutes is created to read:

- (1) Nothing in secs. 196.20, 196.21, 196.22, 196.37, 196.60 and 196.604 prohibits the commission from approving and, subject to approval of the commission, each investor-owned public utility, shall file with the commission no later than March 1, 2000 new market-based pricing options and shall develop individual contract options for retail customers that will allow them, through service from their existing utility, to receive market benefits and to take market risk for their capacity and energy purchases.

- (2) The commission shall approve market-based rates that are consistent with market-based pricing and individual contract options established under sec. 1.
- (3) Market-based pricing and individual contract options developed under this section, and market-based rates, shall be designed so that other customers and utility shareholders are not harmed.
- (4) Other electric public utilities may, subject to the approval of the commission, implement the options set forth in this section and in sec. 196.20(4t).

Sec. 196.____ of the statutes is created to read:

The commission shall promulgate rules requiring electric utilities to report as reasonably necessary on their current reliability status, including operating reserves, planning reserves, available transmission capacity, and outage status of major units and transmission lines. Such reports shall be open to public inspection, except that public disclosure may be delayed. for a reasonable time if the commission finds that such disclosure will adversely affect the supply and price of energy in the state.

IV. OTHER PROVISIONS

Section **285.**__ is created to read:

In establishing nitrogen oxides emission reductions for control of atmospheric ozone in another state pursuant to a call for a state implementation plan, the department shall not in a state implementation plan, by rule, or through the adoption of control strategies regulate nitrogen oxide emissions from generation facilities which are located west of the current boundary between the MAPP and MAIN reliability councils as such boundary is identified by the department. The department shall not, as a result of this subsection, require nitrogen oxides emission reductions that are more stringent for any other electric utility or large industrial core sources in this state identified by the environmental protection agency.

Section 196.485(2)(c) is amended to reference new sec. **2(ar)**; and new sec. 2 (ar) is created to read:

(ar) The commission shall waive the requirement to issue an order under par. (a) for a transmission utility upon a showing by the transmission utility to the commission's satisfaction that a transfer to an independent system operator which has been accepted for filing with conditions by the federal energy regulatory commission and had members in the state prior to **12/31/98** would have the effect of jeopardizing the tax-exempt status of the utility or its securities under the Internal Revenue Code of 1986. Such waiver shall be

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effective only until such tax questions have been resolved in a manner which permits compliance with the requirement without having the effect of jeopardizing tax-exempt status under the Internal Revenue Code of 1986.

Increase the total funding level for intervenor financing in sec. **20.155(l)(j)** from \$500,000 to \$750,000.

Section 196.3 **l(1)** is amended to read:

- (1)** in any proceeding before the commission, the commission shall compensate any participant in the proceeding who is not a public utility, for some or all of the reasonable costs of participation in the proceeding if:
 - (a)** The participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation: or
 - (b)** The participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.

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