

1999 DRAFTING REQUEST

Bill

Received: 05/28/1999

Received By: kunkemd

Wanted: As time permits

Identical to LRB:

For: Charles Chvala (608) 266-9170

By/Representing: Curt Pawlisch

This file may be shown to any legislator: NO

Drafter: kunkemd

May Contact:

Alt. Drafters:

Subject: Public Util. - electric
Public Util. - misc.

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Public utility holding company asset cap and transmission company

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 06/07/1999	gilfokm 06/07/1999	haugeca 06/08/1999	_____	_____	_____	State
	kunkemd 06/08/1999	gilfokm 06/08/1999		_____	_____	_____	
/P2	kunkemd 05/30/2000		haugeca 06/08/1999	_____	_____	_____	State

FE Sent For:

<END>

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/?	kunkemd	1/1-6-7-99 kmcj	ch 6-8	km 6-8			State
FE Sent For:		1/2-6-8-99 kmcj	ch 6-8	km 6-8 <END>			

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/P2	kunkemd		haugeca 06/08/1999	_____	_____	_____	State

FE Sent For:

<END>



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

Mark - Here's the
draft I voice -
mailed about.

Thanks!

A stylized handwritten signature in black ink, appearing to read 'Chuck Chvala'.



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



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

Sec. 196.795(5)(pm)1.a.

"Energy and telecommunications assets" means the assets of a nonutility affiliate that are used for the production, transmission, delivery or furnishing of heat, light, power or natural gas or that are used for the provision of telecommunications service, as defined in sec. 196.01(9m), Stats.

Sec. 196.795(5)(pm)4. of the statutes is created to read:

4. a. If each of the public utility affiliates of all the public utility holding companies authorized by the commission under sec. 196.795(2) (*i.e.*, *Wisconsin Energy, Alliant, WPS Resources*) divest all of their transmission facilities as defined by sec. 196.485(1)(h) to the same transmission company (TC) that meets the requirements set forth below in sec. 6, the energy and telecommunications assets of a nonutility affiliate shall not be included in the sum of the assets of a public utility affiliate under par.(p)1.a., b. or c. and shall not be included in a nonutility affiliate's total assets under par.(p)2.a.

b. The effective date of this section shall be the date the TC, after divestiture by the persons described above in section 4(a), commences operation, as set forth in section 5(s) below.

5. The TC shall meet the following requirements:

- a. it shall be a public utility subject to the jurisdiction of the public service commission and the federal energy regulatory commission;
- b. it shall be a single-purpose company, and that purpose shall be to plan, construct, operate, maintain and expand the transmission facilities which it owns to meet the needs of all users dependent upon it, consistent with subsection (c);
- c. it shall transfer its transmission facilities to an independent system operator which has been approved by the federal regulatory energy commission prior to 12/31/98 (*i.e., 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. prior to such transfer, the transmission utilities in the transmission area as defined by sec. 196.485(1)(g) (*i.e., WEPCO, WPS, Alliant, MGE*) shall individually join the MISO;
- e. it shall not own electric generation facilities or sell electric capacity or energy in the state or the region; nor shall it directly or

- indirectly participate in the relevant wholesale or retail markets for the purchase and sale of electricity in the state or the region;
- f. 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*);
 - g. the transmission utilities in the transmission area and the TC shall elect initially to be a single zone for purposes of the MISO tariff, and shall thereafter be part of the same zone;
 - h. any electric utility as defined in sec. 196.491(1)(d) (e.g., *MGE, DPC, MPL, NSP*) shall have the option to transfer its 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 within ____ months of the formation of the TC;
 - i. transmission-dependent public utilities and electric cooperatives in the state (e.g., *WPPI, other municipal utilities, non-DPC coops*) shall have the option to purchase an equity interest in the TC on reasonable terms and conditions and in an amount equal to their share of firm electric usage in the prior year (1998);
 - j. the transmission facilities transferred to the TC shall be valued at net book cost at the time of transfer;
 - k. if a public utility affiliate may not transfer ownership of its transmission facilities to an TC due to merger-related accounting requirements, it shall, for the period of time during which such

requirements are in effect, transfer its transmission facilities by means of a net lease which shall be the financial equivalent of a transfer of ownership, provided, however, that during such time it shall not receive voting shares in the TC;

1. a transmission utility that transfers its transmission facilities to the TC shall receive securities in the form of common stock with voting rights, preferred stock without voting rights, and bonds, such that the return of and on capital for such utility is equivalent to the return of and on capital which that utility currently receives, as approved by the public service commission and the federal energy regulatory commission; provided, however, that no transmission utility shall receive such common stock with voting rights to an extent that will allow it to control the TC, and in such case preferred stock without voting rights shall be substituted for common stock;
- m. the bylaws of the TC shall require that each transmission utility which transfers ownership of its facilities to the TC has the right to appoint one director to the board of directors of the TC, and that the board of directors shall appoint four additional directors to represent interests of wholesale transmission users, retail customers, the environment and the public interest;
- n. the transmission utilities who transfer ownership of their facilities to the TC shall initially capitalize the TC in a manner which the public service commission determines shall permit the TC to

finance in a prudent manner at least \$400,000,000 of transmission improvements within the state during the next five years; such initial capitalization shall be subject to reasonable limits on each transmission utility's obligation to contribute capital; transmission utilities also shall contribute start-up and working capital to the TC as necessary, provided that the TC makes reasonable provision to repay such costs to such utilities; the TC also shall be authorized to issue new common stock and bonds as necessary, subject to the approval of the public service commission;

- o. the TC shall hire a sufficient number of non-supervisory employees to operate and maintain its transmission facilities by initially making offers of employment to the non-supervisory workforce of the transmission utilities, at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of such facilities, and such wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of such transfer of ownership unless the parties mutually agree to different terms and conditions of employment within that 30-month period; the transmission utilities shall offer a transition plan to those employees who are not offered jobs by the TC because it has a need for fewer workers;

- p. the TC shall have the authority, subject to the approval of the appropriate regulatory agencies, to enter into contracts with the transmission utilities which transfer its facilities to the TC for the purpose of providing reasonable and cost-effective construction and maintenance services to the TC;
- q. 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;
- r. the TC shall assume any obligations of transmission utilities who transfer ownership to the TC which consist of agreements to provide transmission service over their facilities, or credits for the use of certain transmission facilities of transmission users (*i.e., munis and coops who currently receive facilities credits*);
- s. the TC shall file an application for certification as a public utility and a plan of operation with the PSC and the FERC by 1/1/2000, with service commencing no later than 6/30/2000; the TC shall be the transmission service provider in the transmission area until the MISO is operational;
- t. 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.

6. If a holding company or public-utility affiliate sells, transfers, assigns, or otherwise conveys the functions of a public-utility affiliate to any other person, including a non-utility affiliate, the contract or arrangement for transfer between the holding company or public-utility affiliate and such person shall require that the person comply with sec. 5(o) above (*i.e., offer of employment or transition plan*).

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

To insulate ratepayers from the risks related to investments made by the holding company in any nonutility affiliate, In its determination of any rate change proposed by a public utility affiliate under s. 196.20, the commission:

Sec. 196.795(5)(i).1. is amended to read:

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 is not making investments in its facilities sufficient to ensure reliable electric service, the commission shall order the holding company not to make any further investments in nonutility affiliates. The commission may not rescind its order until it determines that the public utility affiliate has made adequate investments in its facilities sufficient to ensure reliable service.

III. CFC WHITE PAPER ✓

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

- (1) The Commission shall determine the amount of existing total, simultaneous import transmission capability into the state. If such capability is less than ____ MW, the Commission shall identify the necessary transmission system improvements required to achieve ____ MW of total, simultaneous import capability into the state and the public utilities required to construct such facilities, and shall order such utilities to construct the facilities.

- (2) Facilities constructed as a result of an order issued under this section 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.

- (3) The commission shall determine how the cost of the transmission facilities constructed pursuant to an order issued under this section shall be allocated among public utilities.

- (4) None of the provisions of this section shall be interpreted to waive or limit any of the provisions of sec. 196.491 (CPCN) or sec. 1.11 (WEPA).

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

The PSC shall condition approval under sec. 196.491(3), Stats., of any new high-voltage 345 kV transmission facility that will materially increase import capability into Wisconsin upon reservation by the owner of the facility of 50% of the new import capability created by the facility for use by sellers and buyers in a transparent, regional spot energy market that includes this state and for the possible future use by sellers and buyers in a competitive market for the delivery of electric services to customers in this state, provided that such sellers and buyers are responsible for an equivalent portion of the costs of such facility.

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:

- (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.

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 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 (*i.e.*, 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 January 1, 1999.
- (c) An owner shall pay a transmission facility impact fee under this section to the department of administration which 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. 196.491(3i) of the statutes is created to read:

- (1) The commission shall condition approval under sec. 196.491(3), Stats., of any new 345 kV transmission facility upon payment by the owner of such facility of an environmental impact fee equivalent to _____% of the cost of the transmission facility to fund projects to offset environmental and aesthetic impacts of the transmission facility.
- (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 by owners under this section may not be used to offset any other required mitigation measures for the facility.

Sec. 16.395 is created to read:

- (1) From the fees collected pursuant to sec. 196.491(3i), the department shall distribute funds to the counties and other units of local government through which a 345 kV transmission line is routed, with 50% distributed to the counties and 50% to affected municipalities, and allocated on the basis of 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.

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 be located in part in Wisconsin.
- (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) ~~No later than December 31, 2004, the~~ The commission may, under this subsection, issue an order requiring an electric 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, ~~based upon the results of the study under sub (2),~~ such construction is necessary to relieve a constraint on a transmission system and the construction will materially benefit the customers of the electric 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. 196.491(3j) of the statutes is created to read:

- (1) The PSC shall condition approval of any new large electric generation facility upon payment by the owner of the proposed facility of an impact fee equal to the amount necessary to provide local governmental units where a new facility is located with the same amount of revenue each year for the life of the facility that the local units of government would receive pursuant to sec. 79.04, Stats., during the first year of service of the facility.
- (2) An owner shall pay a generation impact fee under this section to the department of administration which shall distribute such fees in accordance with sec. 16.396.

Sec. 16.396 of the statutes is created to read:

From the fees collected pursuant to sec. 196.491(3j), the department shall distribute funds equal to the amount necessary to provide local governmental units where a generation facility is located with the same amount of revenue each year for the life of the generation facility that the local unit of government receives pursuant to sec. 79.04(1), Stats., during the first year of service of the generation facility.

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

- (1) An investor-owned public utility which has received the approval of the commission to construct a generation facility pursuant to sec. 196.491(3), Stats., after the effective date of this act, may commit to divest the facility by auction if retail electric competition is authorized in this state, subject to the consent and approval of the commission under sec. 196.80, Stats.

- (2) An investor-owned public utility making an election under sec. 196.____(1) shall be entitled to receive 20% of any profit above the generation facility's net book value from the sale of such facility at auction, with 80% of such profit to be credited to ratepayers as a credit against rates. If the sale price at auction is less than net book value, the utility shall absorb 20% of the loss, and ratepayers shall absorb the remaining 80% of the loss.

Sec. 196.492 of the statutes is created to read:

If necessary to insure reliable electric service, the commission may issue an order requiring public utilities to construct or procure, on a competitive basis, the construction of generation facilities at appropriate sites.

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

A public utility may recover in retail rates its prudently incurred capital costs and operating expenses for energy conservation projects in its service territory.

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 vertical and 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. 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) Subject to approval of the commission, a public utility may establish retail real-time interruptible and curtailable rate programs for customers that result in the customers receiving market-price signals for load reductions during peak periods of electric use that might otherwise result in requiring curtailments of firm customers.

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

- (1) The commission shall develop new market-based pricing options for retail customers that will allow them, through service from their existing utility, to take market risk for their energy purchases.
- (2) In ratemaking proceedings, the commission shall approve market-based rate schedules that are consistent with market-based pricing options established under sec. 1.
- (3) Market-based pricing options developed under this section, and market-based rate schedules, shall be designed to ensure that the rates of other customers are not increased due to a loss of revenues from customers under market-based rate schedules.

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

The commission shall promulgate rules requiring public utilities to report in advance on a monthly basis their current reliability status, including operating reserves, planning reserves, available transmission capacity into their systems, and unit and line outage status. Such reports shall be open to public inspection.

IV. NITROUS OXIDE EMISSIONS ✓

Section 285. is created to read:

The department may not in a state implementation plan (SIP) or by rule regulate nitrous oxide emissions from generation facilities not owned by an investor-owned public utility which are located west of the boundary between the MAPP and MAIN reliability councils as such boundary is identified by the department.

DRAFT

May 12, 1999

**FINAL PROPOSED AMENDMENTS
RE: ASSET-CAP MODIFICATION**

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

Sec. 196.795(5)(pm)1.a.

“Energy and telecommunications assets” means the assets of a non-utility affiliate that 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; ~~and assets used in the~~ recovery or production of energy from waste materials, ~~assets used for the~~ processing of waste materials, pumping, water processing, fluid-handling, filtration and related business; ~~and assets used in the~~ provision of telecommunications service, as defined in sec. 196.01(9m), Stats.

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.

Confidential

Public Benefits - call Art Paulisch
other Qs - call
Lee Cullen

May 13, 1999

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

Section 196.795(11)(b) (relating to WICOR) is amended to read:

1. This section shall be deemed to legalize and confirm the formation, prior to November 28, 1985, of any holding company, which is not itself a public utility, and shall be deemed to legalize and confirm the operations and issuance of securities of the holding company.
2. The commission may impose reasonable terms, limitations, conditions on any holding company legalized and confirmed by this paragraph which
 - a. are consistent with the requirements of sub. (5)(pm), or
 - b. are consistent with and necessary to satisfy the requirements of sub. 5(b) to (o) and (q) to (s), or
 - c. relate to future investments by the holding company.
3. The commission may not impose terms, limitations or conditions under 2. upon a holding company that owns, operates, manages or controls a telecommunications utility and that does not also own, operate, manage or control a public utility which is not a telecommunications utility.
4. The commission may not impose upon a holding company that owns, operates, manages or controls a natural gas public utility and that does not also own, operate, manage or control a public utility which is an electric utility terms, limitations or conditions under 2 that establish the sum of the holding company's nonutility 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 exclude energy and telecommunications assets, as defined in sec. 196.795(5)(pm)1.a.

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

Sec. 196.795(5)(pm)1.a.

“Energy and telecommunications assets” means the assets of a non-utility affiliate that are used for the production, generation, transmission, delivery or furnishing of gas, electric, or steam energy, and assets used in the recovery or production of energy from waste materials, assets used for processing of waste materials, pumping, water processing, fluid-handling, filtration and related business, and assets used in the provision of telecommunications service, as defined in sec. 196.01(9m), Stats.

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 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 MISO 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(1)(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, for the period of time during which such lien or requirements are in effect, transfer its transmission facilities by means of a lease for the life of the transmission facilities or until such facilities are transferred to the TC, whichever is earlier; the lease shall be the financial equivalent of a transfer of ownership, provided, however, that during the term of the lease the public-utility affiliate shall not receive voting interests in the TC;
 - l. 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.
- 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) 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.

- (4) 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.
- (5) 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 11/1/2000; 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. 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:
 - t. 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(1)(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 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.

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 Wi. 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).

7. 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.

8. (a) In the event of a lease, sale, or any other transfer of ownership or control (hereinafter "Transaction") of one or more divisions, departments, or business units, or any other assets in this state or in Iowa, Michigan, Minnesota, or Illinois (hereinafter "Unit") from a public utility that is not a

municipal utility or a municipal electric company, a holding company, or a public utility-affiliate (hereinafter "Selling Entity"), 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 Selling Entity's non-supervisory employees employed at the time of the Transaction in order to operate and maintain the Unit at no less than the wage rates and substantially equivalent fringe benefits and 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.

(b) If there is a transfer of one or more Unit(s) in this state or in Iowa, Michigan, Minnesota, or Illinois of a holding company or public-utility affiliate to a majority-owned subsidiary of the Selling Entity, the acquiring subsidiary shall continue to employ the Selling Entity employees who were working in the Unit at the time of the Transaction under the same terms and conditions of employment existing at the time of the Transaction.

c) Prior to approving any transaction, the public service commission must first determine that the Employment Terms are in place, as set forth above.

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 set aside in trust or escrow sufficient funds to ensure reliable electric service, prior to making any additional investment in non-utility affiliates. 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.

II. PUBLIC BENEFITS

SECTION 1. 15.07 (1) (a) 7. of the statutes is created to read:

15.07 (1) (a) 7. Members of the utility public benefits board appointed under s. 15.792 (1) (b) shall be appointed as provided in s. 15.792 (1) (b) without senate confirmation.

SECTION 2. 15.07 (1) (d) of the statutes is created to read:

15.07 (1) (d) Except as provided in s. 15.792 (1) (b) 5. or 8., no member appointed to the utility public benefits board may be an employee of a utility, as defined in s. 196.374 (1).

SECTION 3. 15.792 of the statutes is created to read:

15.792 Same; attached board. (1) UTILITY PUBLIC BENEFITS BOARD. (a) In this subsection:

1. "Electric utility" has the meaning given in s. 196.96 (1) (g).
2. "Low-income household" has the meaning given in s. 196.96 (1) (m).
3. "Municipal utility" has the meaning given in s. 196.96 (1) (q).
4. "Renewable resource" has the meaning given in s. 196.378 (1) (g).
5. "Retail electric cooperative" has the meaning given in s. 196.96 (1) (t).
6. "Small business" has the meaning given in s. 16.75 (4) (c).
7. "Small business representative" means a director, manager, member, officer, owner or partner of a small business.

(b) There is created a utility public benefits board that is attached to the department of administration under s. 15.03. The board shall consist of the following members appointed for 3-year terms:

1. One member appointed by the governor who is a member of a low-income household or a group or organization that represents low-income households.

2. One member appointed by the majority leader of the senate who is a residential electric utility customer or who represents a residential electric utility customer advocacy group.

3. One member appointed by the governor who is a small business representative or who represents a small business advocacy group.

4. One member appointed by the majority leader of the senate who represents an environmental or renewable resource advocacy group.

5. One member appointed by the majority leader of the senate who represents one of the following:

a. A municipal utility or retail electric cooperative or municipal utility or retail electric cooperative advocacy group, if one-third or more of the municipal utilities and retail electric cooperatives doing business in this state notify the board under s. 196.96 (5) (b) 2. that they have elected to contribute to any of the programs established under s. 196.96 (2) (a) or (b) 1.

b. An electric utility or electric utility advocacy group, if fewer than one-third of the municipal utilities and retail electric cooperatives doing business in this state notify the board under s. 196.96 (5) (b) 2. that they have

elected to contribute to any of the programs established under s. 196.96 (2) (a) or (b) 1.

6. One member appointed by the speaker of the assembly who is a member of a low-income household or a group or organization that represents low-income households.

7. One member appointed by the speaker of the assembly who represents an environmental or renewable resource advocacy group.

8. One member appointed by the speaker of the assembly who represents an electric utility or electric utility advocacy group.

9. One member appointed by the chairperson of the public service commission to represent the public service commission.

10. One member appointed by the secretary of natural resources to represent the department of natural resources.

11. One member appointed by the administrator of the division of housing in the department of administration to represent the division of housing.

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

	1999-00	2000-01
20.157 Utility public benefits board		
(1) LOW-INCOME ASSISTANCE, ENERGY CONSERVATION AND EFFICIENCY AND RENEWABLE RESOURCES		
(g) GENERAL PROGRAM OPERATIONS SEG A	-0-	-0-

SECTION 5. 20.157 of the statutes is created to read:

20.157 Utility public benefits board. There is appropriated to the utility public benefits board for the following programs:

(1) **LOW-INCOME ASSISTANCE, ENERGY CONSERVATION AND EFFICIENCY AND RENEWABLE RESOURCES.** (q) *General program operations.* From the utility public benefits fund, the amounts in the schedule for general program operations.

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

(s) *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 6. 25.17 (1) (xm) of the statutes is created to read:

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

SECTION 7. 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 access 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 8. 196.374(4) of the statutes is created to read:

196.374(4). This section does not apply after _____ (the effective date of public-benefits funding).

SECTION 9. 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.

(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, 1998, derived electricity from hydroelectric power or biomass, 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, as calculated in accordance with rules promulgated by the commission under sub. (4) (b), that an electric provider sells to its retail customers and that is supplied under executed wholesale purchase contracts by 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 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).

(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.

(l) "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) The sum of an electric provider's total renewable energy, as calculated under par. (b), and the amount of any renewable resource credit purchased by the electric provider under sub. (3) (a) shall be at least the following percentages of the electric provider's total retail energy sold in the state in the year preceding enactment of this legislation: (a) Each electric provider shall provide its retail customers 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%.
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%.

(b) An electric provider's total renewable energy shall be calculated in accordance with each of the following:

2. Notwithstanding subd. 1., 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 amount specified in subd. 1, 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.

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

(c) 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.

(d) 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 2(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 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 10. 196.96 of the statutes is created to read:

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

(a) "Board" means the utility public benefits board created in s. 15.792 (1) (b).

(b) "Community assistance program" means a program to provide assistance to, or to promote the welfare of, a community that includes the customers or members of a municipal utility or retail electric cooperative.

(c) "Commitment to community program" means a program by a municipal utility or retail electric cooperative for low-income assistance or a

community assistance, energy conservation or load management program by a municipal utility or retail electric cooperative.

(d) "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.

(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 during any period.

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

(j) "Load management program" means a program that allows an electric provider or its wholesale electric supplier to control electric usage by customers and reduce demand for electricity.

(k) "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.

(l) "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.

(m) "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).

(n) "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.

(o) "Low-income need percentage" means the percentage that results from dividing \$105,000,000 by the amount of low-income need in fiscal year 1998-99.

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

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

(r) "Renewable resource" has the meaning given in s. 196.378 (1) (g).

(s) "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.

(t) "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.

(u) "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.

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

(w) "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.

(x) "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) BOARD DUTIES. The board shall do all of the following:

(a) *Low income programs.* After holding a hearing, establish programs to be administered by the department of administration through the division of housing for awarding grants from the appropriation under s. 20.157 (1) (r) 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 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., after holding a hearing, establish programs for awarding grants from the appropriation under s. 20.157 (1) (s) for each of the following:

a. Proposals for providing energy conservation or efficiency services. In awarding grants under this subdivision, the board 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. 20.157 (1) (s) 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 board shall ensure that 4.5% of the appropriation under s. 20.157 (1) (s) shall be awarded in grants under this subdivision.

2. For each fiscal year after 2002-03, 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 board determines to continue or reduce under this subdivision. An amount determined under this paragraph may not exceed \$84,000,000.

(c) *Rules.* 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).

3. Requirements for electric utilities to allow customers to include voluntary contributions to assist in funding a commitment to 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 board any voluntary contributions included with bill payments and to report to the board customer preferences regarding use of the contributions. The board 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.

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 board 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.

4. Conduct an independent audit annually and report to the legislature concerning (1) the level of program expenses consumed by the board, other agencies, and fund recipients; (2) the efficiency of conservation programs in reducing demand; (3) 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 board shall, on the basis of competitive bids, contract with a nonstock, nonprofit corporation organized under ch. 181 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 board to make awards and distributing grants to recipients.

(c) In selecting proposals and awarding contracts under 2(b), the board 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 access fees.* Each electric utility, except for a municipal utility, shall charge each customer an access fee in an amount established in rules promulgated by the board under par. (b). An electric utility, except for a municipal utility, shall collect and pay the fees to the board in accordance with the rules promulgated under par. (b).

(b) *Rules.* The board shall promulgate rules that establish the amount of an access 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 the consumption of electricity by a customer, (3) shall be allocated so as not to recover more than ___ of the total fees from industrial customers, and ___ of the total fees from residential and commercial customers, recognizing that certain programs of the board are intended to benefit primarily residential and commercial 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 access 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 that is sufficient for the board to receive in access fees the amount obtained by subtracting from \$105,000,000 the sum of all moneys received under 42 USC 6861 to 6873 and 42 USC 8621 to 8629 for that fiscal

year and, as estimated by the board, and 50% of the access fees charged by municipal utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year. In each fiscal year after fiscal year 1999-2000, the portion of the fee specified in this subdivision shall be an amount that is sufficient for the board to receive from all electric utilities the amount obtained by subtracting from the amount of the low-income need target determined by the board for that fiscal year under sub. (2) (d) 1. the sum of all moneys received under 42 USC 6861 to 6873 and 42 USC 8621 to 8629 for that fiscal year and 50% of the access fees charged by municipal utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year.

2. 'Energy conservation and efficiency and renewable resource funding.' For fiscal year 1999-2000, a portion of the access fee shall be in an amount that is sufficient for the board to receive in access fees the amount obtained by subtracting from \$84,000,000 20% of the access fees charged by municipal utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year. For each fiscal year after 2002-03, if the board determines under sub. (2) (b) 2. to discontinue or reduce a program established under sub. (2) (b) 1., the portion of the fee specified in this subdivision shall be an amount that is sufficient for the board to receive from all electric utilities the amount obtained by subtracting from the amount of funding determined by the board under sub. (2) (b) 2. 20% of the access fees charged by municipal utilities and retail electric cooperatives under sub. (5) (a) for that fiscal year.

3. 'Access-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 access 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.

(5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to charge access fees.* Each retail electric cooperative and municipal utility shall charge a monthly access 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 \$13.16 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) *Access fee limitation.* Notwithstanding par. (a), for the period beginning on the effective date of this paragraph [revisor 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 access fees may not exceed 3% of the total of every other charge for which the member or customer is billed for that period.

(b) *Election to contribute to board 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 board 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 board 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 access fees that it charges under par. (a) to the board 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 access fees that it charges under par. (a) to the board.

b. Spend no less than 20% of the access fees that it charges under par. (a) on energy conservation programs. No more than 10% of the amount that a municipal utility or retail electric cooperative spends on energy conservation programs under this subd. 1. b. may be spent on load management programs.

c. Spend any remaining amounts on community assistance or load management 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 20% of the access fees that it charges under par. (a) to the board.

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

c. Spend any remaining amounts on community assistance or load management programs.

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 access fees that it charges under par. (a) on programs for low-income assistance.

b. Spend no less than 20% of the access fees that it charges under par. (a) on energy conservation programs. No more than 10% of the amount that a municipal utility or retail electric cooperative spends on energy conservation programs under this subd. 3. b. may be spent on load management programs.

c. Spend any remaining amounts on community assistance or load management programs.

(dm) *Wholesale electric supplier compensation.* A municipal utility or retail electric cooperative may use no more than 10% of the access fee that it charges under par. (a) to compensate a wholesale electric supplier for the difference between the market price of electricity that the electric supplier generates from renewable resources, as defined in s. 196.378 (1) (g), constructed after December 31, 1997, and the market price of electricity generated from conventional resources, as defined in s. 196.378 (1) (b). A municipal utility or retail electric cooperative may deduct from the access fees that it is required to pay to the board under par. (c) or (d) 1. a. or 2. a. the amount that it uses to compensate a wholesale electric supplier under this paragraph.

(e) *Wholesale electric supplier credit.* If a wholesale electric supplier has established a program for low-income assistance, community assistance or an energy conservation or load management 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 access fee that it charges under par. (a) to the board under par. (c) shall file a report with the secretary of state that describes each of the following:

a. An accounting of access 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 secretary of state shall maintain reports filed under subd. 1. for at least 6 years.

SECTION 11. Nonstatutory provisions.

(1) INITIAL APPOINTMENTS TO UTILITY PUBLIC BENEFITS BOARD. Notwithstanding section 15.792 (1) (b) (intro.) of the statutes, as created by this act:

(a) The following initial members of the utility public benefits board shall be appointed by the first day of the 3rd month beginning after the effective date of this paragraph for the following terms:

1. The members specified in section 15.792 (1) (b) 3., 4. and 9. of the statutes, as created by this act, for terms expiring on July 1, 2000.

2. The members specified in section 15.792 (1) (b) 1., 2., 8. and 10. of the statutes, as created by this act, for terms expiring on July 1, 2001.

3. The members specified in section 15.792 (1) (b) 6., 7. and 11. of the statutes, as created by this act, for terms expiring on July 1, 2002.

(b) The public utilities benefit board shall include a member appointed by the majority leader of the senate without senate confirmation who represents one of the following:

1. A municipal utility or retail electric cooperative or municipal utility or retail electric cooperative advocacy group, if one-third or more of the municipal utilities and retail electric cooperatives doing business in this state notify the board under section 196.96 (5) (b) 1. of the statutes, as created by this act. that they have elected to contribute to any of the programs established under section 196.96 (2) (a) or (b) 1. of the statutes, as created by this act.

2. An electric utility or electric utility advocacy group, if fewer than one-third of the municipal utilities and retail electric cooperatives doing business in this state notify the board under section 196.96 (5) (b) 1. of the statutes, as created by this act, that they have elected to contribute to any of the programs established under section 196.96 (2) (a) or (b) 1. of the statutes, as created by this act. Notwithstanding section 15.07 (1) (d) of the statutes, as created by this act, the member appointed under this subdivision

may be an employee of a utility, as defined in section 196.374 (1) of the statutes.

(c) The member of the utility public benefits board appointed under paragraph (b) shall serve on the board for a term that expires when a member is appointed under section 15.792 (1) (b) 5. of the statutes, as created by this act.

(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.

(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) UTILITY PUBLIC BENEFITS BOARD RULES.

(a) Using the procedure under section 227.24 of the statutes, the utility public benefits board shall promulgate the rules required under section 196.96

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(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 board is not required to make a finding of emergency.

(b) The utility public benefits board 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.

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) The commission shall determine how the cost of the transmission facilities constructed under sec. 196.494 shall be allocated among public utilities.
- (3) None of the provisions of sec. 196.494 shall be interpreted to waive or limit any of the provisions of sec. 196.491 (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 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:

- (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 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 (*i.e.*, 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. 196.491(3i) of the statutes is created to read:

- (1) The commission shall condition approval under sec. 196.491(3) of any new 345 kV 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. 196.491(3i), the department shall distribute funds to the counties and other units of local government through which a 345 kV 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.
- (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

residential customers. 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) Subject to approval of the commission, a public utility may establish real-time interruptible and curtailable retail rates that result in the customers receiving market-price signals for load reductions during peak periods of electric use that might otherwise result in requiring curtailments of firm customers.

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

- (1) Subject to approval of the commission, a public utility may develop new market-based pricing options for retail customers that will allow them, through service from their existing utility, to take market risk for their energy purchases.

- (2) In ratemaking proceedings, the commission shall approve market-based rate schedules that are consistent with market-based pricing options established under sec. 1.
- (3) Market-based pricing options developed under this section, and market-based rate schedules, shall be designed so that the rates of other customers are not increased or decreased due to a loss or gain of revenues from customers under market-based rate schedules.

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

The commission shall promulgate rules requiring electric utilities to report in advance on their current reliability status, including operating reserves, planning reserves, available transmission capacity into their systems, and unit and line outage status. Such reports shall be open to public inspection, except that immediate 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, 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 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 196.31(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.

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

Section 196.795(11)(b) (*relating to WICOR*) is amended to add:

4. a. The commission may not impose upon a holding company that owns, operates, manages or controls a natural gas public utility and that does not also own, operate, manage or control a public utility which is an electric utility 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)(a)(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; 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:

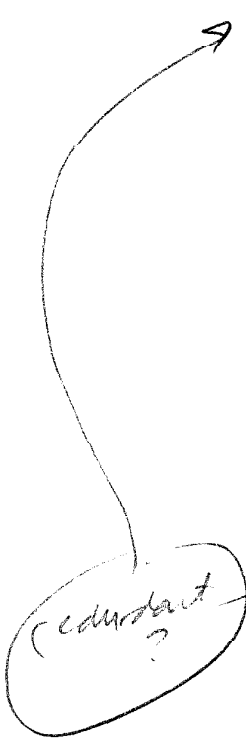
- 4. a. If each of the public utility affiliates ^{in a HCS} of a ~~public utility holding~~ company ^{to which HC Grant - of HC in which has rec'd approval} authorized by the commission under sec. 196.795(2) (i.e., Wisconsin Energy, Alliant, or WPS Resources) transfers operational control of all of 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

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Ant Paulson

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

(redundant?)



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 MISO 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

*uniform
single price
for transmission*

FERC

*Transition
to
single
price*

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.

*Single use to
Transco
if use
transmission/Distr.
Transco
has
agreed not
to use*

(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.

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- h. any electric utility as defined in sec. 196.491(1)(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

*imputed
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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 commitment, 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 existencce, 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 11/1/2000; 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(1)(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

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revenue*

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)l. 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).

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 assets (hereinafter "Unit") of a public utility, a public utility-affiliate or a non-utility affiliate of a holding company engaged in 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 terms and conditions of employment (hereinafter "Employment Terms") that are in effect at the time of the Transaction. The acquiring entity or

196.485
same type
Transactions

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 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.

Prior to approving any transaction, the public service commission shall first determine that the Employment Terms are in place, as set forth above.

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

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May 18, 1999

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.

Kunkel, Mark

From: Curt Pawlisch [pawlisch@cwpb.com]
Sent: Friday, May 28, 1999 9:53 AM
To: Kunkel, Mark
Subject: The Midwest ISO

Mark:

Refer to: The Midwest Independent Transmission System Operator, Inc. It is a Delaware non-stock corporation. Let me know if you need more.

--Curt

Cullen
Weston
Pines
& Bach

Attorneys at Law

122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax

June 1, 1999

Mr. Bob Wood
Room 115 East, State Capitol
Post Office Box 7863
Madison, WI 53707

Mr. Chris La Rowe
Room 115 East, State Capitol
Post Office Box 7863
Madison, WI 53707

Dear Bob and Chris:

Enclosed is the revised final draft of all amendments to the May 18 energy package. This supercedes the draft provided to you earlier today.

Please feel free to call me with any questions.

Sincerely,

CULLEN, WESTON, PINES & BACH



Lee Cullen

Cc: Mr. William J. McCoshen

Enclosures

Lee Cullen
Lester A. Pines
Steven A. Bach
Alison TenBruggencate
Gordon E. McQuillen
Carol Grob

Linda L. Harfst
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Of Counsel:
Cheryl Rosen Weston

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June 1, 1999

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

Section 196.795(11)(b) (*relating to WICOR*) is amended to add:

The commission may not impose upon a holding company, ~~that owns, operates, manages or controls a natural gas public utility and that does not also own, operate, manage or control a public utility which is an electric utility~~ 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.

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June 1, 1999

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 ~~commitment~~ 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

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 ~~assets~~ 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 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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June 1, 1999

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:

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June 1, 1999

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 (\$87,000,000) 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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June 1, 1999

1998, derived electricity from hydroelectric power ~~or biomass~~, 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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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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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

Confidential

June 1, 1999

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 [revisor 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 ... [revisor 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.

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June 1, 1999

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 ~~residential~~ each class of customers. Such study shall include an evaluation of the impact of transmission constraints on generation market power in local areas.

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June 1, 1999

- (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) Notwithstanding secs. 196.19, 196.20 and 196.21, and ~~S~~subject to approval of the commission, ~~a~~ each investor-owned public utility may establish shall, no later than March 1, 2000, file with the commission ~~real-time interruptible and curtailable~~ retail rates that result in ~~the~~ customers receiving ~~market-price signals -based compensation~~ for voluntary interruptions of firm load reductions during peak periods of electric use. ~~that might otherwise result in requiring curtailments of firm customers~~

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

- (1) Notwithstanding secs. 196.19, 196.20 and 196.21, and, Ssubject to approval of the commission, ~~a~~ each investor-owned public utility, may develop 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) ~~In ratemaking proceedings, 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 ~~the rates of other customers are not increased or decreased due to a loss or gain of revenues from customers under market-based rates.~~ other customers 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.

6/2/99

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

- (a) ~~{Notwithstanding}~~ [Nothing in] secs. 196.20, 196.21, 196.22, 196.37, 196.60 and 196.604 ~~{and subject to approval of}~~ ~~[prohibits]~~ the commission ~~{,}~~ ~~[from approving and]~~ *Subject to approval of the C* 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) ~~{Notwithstanding}~~ [Nothing in] secs. 196.20, 196.21, 196.22, 196.37, 196.60 and 196.604 ~~{and subject to approval of}~~ ~~[prohibits]~~ the commission ~~{,}~~ ~~[from approving and]~~ *subject of approval of the C* each investor-owned public utility shall file with the commission no later than March 1, 2000 new market-based pricing options and shall develop options for individual contracts 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 ~~{, taking into account costs and benefits,}~~ 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).

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Confidential

June 2, 1999

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

✓ Section 196.795(11)(b) ^{(creating (11)(c))} (relating to WICOR) is amended to add: (11)(b)

The commission may not impose upon a holding company, subject to ~~this subsection~~ ^{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~~ ^{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.

stet.

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.

depreciated stays same

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.

depreciated stays same

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

only happen if a transfer

Confidential

June 2, 1999

196.795
(5) (pm) ✓
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. *asset of utility*

*196.795
(5)(p)2.a.
4.b.*

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.

196.795 (5) (pm) H. C.

For the purposes of this Act, transfer of transmission facilities includes transfer of the deferred tax reserves associated with those facilities.

196.795 (5) (pm) 5.

The TC shall meet the following requirements:

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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;

that it is subj to the

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;

July to order

O-NOTE

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

Transfer to MISO → subj to MISO

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

10/2005
(S)(P)S.

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 ^{utilities} 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~~ ^{presently} single zone for purposes of the MISO 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

single zone
total facilities
300

who have contributed to TC

- even though pas diff. rates
but for operational purpose treat as single zone

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;

106795
(5) (b) (5)

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.

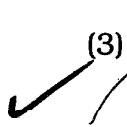
(2)

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.

*126-295
(5) pm
5.9.3.*

(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

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base
dispute
(including
but not
limited to
G/C PMA
53 JS
Distribution
land)*

*126-295
(5) pm
5.9.4.
dispute is
over
land right
not TC*

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.

(196.395 (5) (pm) (5))

h. any electric utility as defined in sec. 196.491(1)(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);

TO MAIN

6. Light integrated system

DPC information

not integrated w/ TC

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

depreciation?

revenue

re fund?

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);

KWH concept - 196.377 (3)

(6) last sentence

j. the transmission facilities transferred to the TC shall be valued at net book value at the time of transfer;

dependent on other pu

LOAD service entity put is dependent on another pu's T S to transmit

Confidential

June 2, 1999

specify standard

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(5) (pm)
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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;

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(5)
(P^m) 5-11

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. (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

COZ

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.

06/20/99
(S)(PM)
5.1.

3.

✓ (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

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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.

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(5) (pm)
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4.

(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.

D-NOTE
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(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.

✓ 6

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.

(96-795 (S)
(Am) S.M. 1.

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. ✓ (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

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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.

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(5)(PM)
S.M. 3.

✓(8)

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.

106.395
15) (pm)
5-M

✓ (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.

6-20
B-NOTE

(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.

Copy w/ state
regulation
To permit
part equity
owner to sell or T
steps? as an
access to permit
15 equity owner
to sell or T

106795
(5) (Pm)
5-11-

✓

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.

3 yr
✓ mandatory
✓ public
✓ PMS, etc
✓
if 5-11-99
do 11-1-00
so at
end of
K-person

P 20

✓

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;

0

✓

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;

0

✓

q. the TC shall make whichever filings are necessary to commence operation with service to begin by 11/1/2000; the TC shall be the transmission service provider in the transmission area until the MISO is operational;

who has
duty?
TC can't
do this
unless PAA
carry out
duties?

no filing deadline

196.795
(5) (P.M.)
5:15 ✓

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. ~~o~~

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. ~~o~~

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. ~~o~~
D. notes

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/or~~ 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(1)(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

FERC
- revenue
- requests for
rates, service
& acc'tg

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.

when SFR gets dividends than not a credit, but one retained earnings
 106.285 (5)(b)
 66.

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)(b) 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

later version

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).

Confidential

June 2, 1999

shall join

*196.485
(3)(a8)*

✓ 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~~ ^{*TC shall elect also*}, 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.

doesn't apply until p 16 section applies

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

*June 30, 2000
(or MISO)
all utilities*

any person who acquires control

NER

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.

D-NOTE

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.

everybody - NOT support unit

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.

D-NOTE

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.

D-NOTE

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:

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June 2, 1999

106.795
(5)(i) ✓
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.

106.795
(5)(t) ✓
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.

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, ENERGY CONSERVATION AND EFFICIENCY AND RENEWABLE RESOURCES	_____	_____
(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

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).

(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,

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 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).

(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.

(l) "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%.

Confidential

June 2, 1999

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~~ ^{its} 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.

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 2(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

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).

(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.

(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).

(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.

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

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.

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. 181 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

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 [revisor 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 ... [revisor 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.

(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.

III. CFC WHITE PAPER

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

196.491

(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. 196.491 (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:

- (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 ~~city, village, town, county~~ 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 (i.e., 3 mills). Such impact fees shall be allocated to each local unit of government where the transmission facilities are located.

Analogy to 79.04(1) - so same local govt units

- (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.

used for distribution - went appropriate

MIT APP

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. 196.491(3i) of the statutes is created to read:

- (1) The commission shall condition approval under sec. 196.491(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.

[Handwritten signature]
retroactive

Sec. 16.395 is created to read:

(1) From the fees collected pursuant to sec. 196.491(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. *w/ each 50% - do allocate -*

(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. *but NOT for any mitigation - means include in PSC order approving construction -*

(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.

Coordinated Provision - don't override state

- (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) ^{NO sunset} The commission ^{vs.} ~~shall~~ ^{may} 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~~ ^{recommend} a program of incentives for the

~~Handwritten scribbles~~

propose

51.
report to presiding officer
(in distributed -
strategy committee version)

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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 1/1/2001, 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:

1. Costs to
discriminate
state
2. in
products

(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).

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Handwritten note:
 as defined
 196.491

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 196.31(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.

315'

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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.

NOTE

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:

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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 natural gas or 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 from the federal government under 42 USC 6861 to 6873 and 42 USC 8621 to 8629 in federal fiscal year 1997, public benefit fees established for 1999-2000 under 196.96(4)(c)1, 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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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 must be sufficient to equal 47% of the sum of all monies spent for low income programs established under s. 196.374, this paragraph, monies received from the federal government under 42 USC 6861 to 6873 and 42 USC 8621 to 8629 in a fiscal year and 50% of the monies collected under s. 196.96(5).

(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

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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.

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~~ 196.96(2)(b)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

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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 ~~June 30, 2000~~ ^{1/1/2001}, 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 options for individual contracts ~~options~~ for retail customers that will allow them, through

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, issued prior to the effective date of this Act, 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 in Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Monroe, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempeleau, Vernon, and Washburn counties. 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



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: ???

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the *state* 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:

****NOTE: The following provisions of the instructions will be incorporated in the next version of this draft: section (v) on page 17 (issues regarding PSC-jurisdiction over the the transmission company), section (6) on page 18 (midwest independent system operator successor issues) and ~~the tax issues on pages 18 and 19~~.

2 SECTION 1. 196.485 (title) of the statutes is repealed and recreated to read:

3 196.485 (title) **Transmission system requirements.**

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

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

SOURCE: Transfer of deferred tax reserves is from creation of 196.795 (5) (pm) 4. c. on page 5.

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

2 196.485 (1) (ce) "Director" means, with respect to a transmission company
3 organized as a corporation under ch. 180, a member of the board of directors of the
4 transmission company.

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

6 196.485 (1) (cs) "Electric utility" has the meaning given in s. 196.491 (1) (d).

7 **SECTION 5.** 196.485 (1) (dm) (intro.) of the statutes is amended to read:

8 196.485 (1) (dm) (intro.) "Independent transmission owner" means:

9 1m. Means a person that satisfies each of the following:

History: 1997 a. 204.

10 **SECTION 6.** 196.485 (1) (dm) 1. and 3. of the statutes are renumbered 196.485
11 (1) (dm) 1m. a. and b.

12 **SECTION 7.** 196.485 (1) (dm) 2. of the statutes is created to read:

13 196.485 (1) (dm) 2. Does not include the transmission company.

14 **SECTION 8.** 196.485 (1) (do) of the statutes is created to read:

15 196.485 (1) (do) "Land right" means any right in real property, including fee
16 simple ownership or a right-of-way or easement, that has been acquired for a
17 transmission facility that is located or intended to be located on the real property.

SOURCE: Creation of s. 196.795 (5) (pm) 5. g. (1) on page 7.

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

19 196.485 (1) (dq) "Manager" means, with respect to a transmission company
20 organized as a limited liability company under ch. 183, a manager, as defined in s.
21 183.0102 (13), of the transmission company.

22 **SECTION 10.** 196.485 (1) (dr) of the statutes is created to read:

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

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 4. a. on page 3.

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

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

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

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

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

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

22 **SECTION 15.** 196.485 (1) (fe) of the statutes is created to read:

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

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

3 **SECTION 16.** 196.485 (1) (ge) of the statutes is created to read:

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. b. on page 5.

****NOTE: The instructions refer to "robust competition", but that term does not appear in the statutes and I think its meaning is not precise. The draft uses "effective competition", which has the benefit of also being used in s. 196.491 (2)(a) 12., stats. However, "effective competition" is also not very precise, and, depending on your intent, you may want to revise this language.

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

12 196.485 (1) (gm) "Transmission dependent utility" means a public utility that
13 is dependent on the transmission system of another person for delivering electricity
14 to the public utility's customers.

15 **SECTION 18.** 196.485 (1) (gs) of the statutes is created to read:

16 196.485 (1) (gs) "Transmission utility shareholder" means a person that is a
17 shareholder of a transmission company organized as a corporation under ch. 180, is
18 an investor-owned transmission utility in the transmission area and has
19 contributed its transmission facilities to the transmission company.

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

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

SOURCE: Creation of 196.795 (5) (pm) 5. t. on page 17.

****NOTE: The instructions state that, "except as specifically provided in this section", the duty described above terminates. I didn't include this language because it is imprecise. If other provisions of the draft create exceptions, they should be specified.

6 (b) After beginning operations, the transmission company shall have the
7 exclusive duty to provide transmission service in the transmission area. The duty
8 under this paragraph shall terminate on the date, as determined by the commission
9 under sub. (2) (d), that the midwest independent system operator is authorized to
10 begin operations.

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

SOURCE: Amendment of s. 196.485 (3) (bm) on page 20.

16 **SECTION 20.** 196.485 (2) (a) (intro.) of the statutes is amended to read:

17 **196.485 (2) (a) (intro.)** By June 30, 2000, if a transmission utility has not
18 transferred control over its transmission facilities to an independent system
19 operator that is approved by the applicable federal agency or divested, with approval
20 of the applicable federal agency and, for a public utility, the commission, its interest
21 in its transmission facilities to an independent transmission owner, the commission

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

3 History: 1997 a. 204.

SECTION 21. 196.485 (2) (ar) of the statutes is created to read:

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

SOURCE: Creation of s. 196.485 (2) (ar) on page 56.

***NOTE: In the last sentence of the above provision, I think it is necessary to specify that the commission decides when the waiver is no longer in effect. Is this okay, or should there be some other decision-maker or decision-making process? I think the instructions are too vague on this point.

12 **SECTION 22.** 196.485 (2) (d) of the statutes is created to read:

13 196.485 (2) (d) The commission shall determine each of the following:

14 1. The date on which the transmission company is authorized to begin
15 operations.

16 2. Whether the midwest independent system operator is authorized to begin
17 operations and the date on which such operations are authorized to begin.

18 **SECTION 23.** 196.485 (2) (e) of the statutes is created to read:

19 196.485 (2) (e) The commission shall determine the effective date of s. 196.807
20 as provided under s. 196.807 (5).

21 **SECTION 24.** 196.485 (3) (bm) of the statutes is repealed.

1 **SECTION 25.** 196.485 (3m) of the statutes is created to read:

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. q. on page 16.

6 b. Subject to any approval required under state or federal law, contract with
7 each transmission utility that has transferred transmission facilities to the
8 transmission company for the transmission utility to provide reasonable and
9 cost-effective operation and maintenance services to the transmission company
10 during the 3-year period after the transmission company first begins operations.
11 The transmission company and a transmission utility may agree to an extension of
12 such 3-year period. The transmission company shall provide notice to the
13 commission of any extension that is agreed to under this subd. 1. b.

SOURCE: Creation of s. 196.795 (5) (pm) 5. n. on page 16.

14 c. Assume obligations of transmission utilities that transfer ownership of
15 transmission facilities to the transmission company under agreements to provide
16 transmission service over their facilities (e.g., certain joint-plant agreements), or
17 credits for the use of certain transmission facilities of transmission users (e.g., munis
18 and coops who currently receive facilities credits) as modified from time to time by
19 agreement of the transmission company with other parties to such agreements or by
20 regulatory agencies with lawful authority to modify such agreements or credits.

SOURCE: Creation of s. 196.795 (5) (pm) 5. p. on page 16.

****NOTE: The above provision is verbatim from your instructions. It must be clarified.

1 d. Apply for membership in the midwest independent system operator as part
2 of a single zone that includes the transmission area and, upon a determination by
3 the commission under sub. (2) (d) that the midwest independent system operator is
4 authorized to begin operations, transfer operational control of the transmission
5 company's transmission facilities to the midwest independent system operator.

SOURCE: Creation of s. 196.795 (5) (pm) 5. c. on page 5 and amendment of s. 196.485
(3) (bm) on page 20.

6 e. Remain a member of the midwest independent system operator, or any
7 independent system operator that has been approved under federal law to succeed
8 the midwest independent operator, for at least the 6-year transition period that is
9 specified in the agreement conditionally approved by the federal energy regulatory
10 commission that establishes the midwest independent system operator.

SOURCE: Creation of s. 196.795 (5) (pm) 5. c. on page 5.

11 f. Except as provided in subd. 4., elect to be included in a single zone for the
12 purpose of any tariff proposed by the midwest independent system operator.

SOURCE: Creation of s. 196.795 (5) (pm) 5. f. on page 6.

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. r. on page 17.

****NOTE: Define "integrated basis"?

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. s. on page 17.

****NOTE: Define "bypass"? Is "electric utility" proper term?

1 c. Own electric generation facilities or sell, market or broker electric capacity
2 or energy in a relevant wholesale or retail market as established under the merger
3 enforcement policy, except that, if authorized or required by the federal energy
4 regulatory commission, the transmission company may procure or resell ancillary
5 services from third parties, engage in redispatch activities that are necessary to
6 relieve transmission constraints or take other actions related to operating a control
7 area.

SOURCE: Creation of s. 196.795 (5) (pm) 5. d. on page 6.

****NOTE: The following terms should be clarified: “ancillary service”, “third parties” and “redispatch activities”. Define “control area”?

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (4) on page 12.

13 4. If the transmission costs of any transmission utility in the transmission area
14 are 10% or more below the average transmission costs of the transmission utilities
15 in the transmission area on the date, as determined by the commission, that the last
16 public utility affiliate files a commitment with commission under sub. (5) (a) 2., the
17 transmission company shall, after consulting with each public utility affiliate that
18 has filed a commitment under sub. (5) (a) 2., prepare a plan for phasing in a combined
19 single zone for the purpose of pricing network use by users of the transmission
20 system operated by the midwest independent operator and shall seek plan approval
21 by the federal energy regulatory commission and the midwest independent system
22 operator. A plan under this subdivision shall phase in an average-cost price for the

1 combined single zone in equal increments over a 5-year period, except that, under
2 the plan, transmission service shall be provided to all users of the transmission
3 system on a single-zone basis during the phase-in period.

SOURCE: Creation of s. 196.795 (5) (pm) 5. f. on pages 6 and 7.

****NOTE: When referring to average transmission costs, isn't it redundant to refer to the transmission utilities "as a group"?

****NOTE: Shouldn't the draft clarify the meaning of "combined single zone", "single zone basis" and other terms? Also define "network use" (uses system as a whole, not point to point).

****NOTE: Regarding the last sentence of subd. 4., I don't understand how the exception is related to the phase-in requirement.

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

5 1. Subject to the approval of the commission under s. 196.491 (3), construct
6 transmission facilities, including high-voltage transmission lines, as defined in s.
7 196.491 (1) (f), in the transmission area or in any other area of the state in which
8 transmission facilities that have been contributed to the transmission company are
9 located.

SOURCE: Creation of s. 196.795 (5) (pm) 5. e. on page 6.

****NOTE: The instructions state that the transmission company shall have the "exclusive duty and responsibility" to construct transmission facilities in the above areas. Therefore, do you therefore want to add a provision to this draft that prohibits public utilities, or any other person, from constructing transmission facilities, as defined in s. 196.485 (1) (h)? If so, note that "transmission area" is defined (see s. 196.485 (1) (g)), but the other area is not defined. If you want to prohibit a public utility or other person from doing something in this other area, then the draft should be revised to specify in more detail what constitutes that other area.

****NOTE: The instructions refer to constructing *and owning* transmission facilities. Is it necessary to refer to owning transmission facilities? Isn't it clear that if transmission facilities are contributed to the transmission company, then the transmission company owns the transmission facilities? Or do you have something else in mind?

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. o. on page 16.

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

5 1. That the transmission company has no less than 5 and no more than 14
6 managers or directors, except that the articles of incorporation or bylaws may allow
7 the requirements of this subdivision to be modified upon a unanimous vote of the
8 managers or directors during the 10-year period after the organizational start-up
9 date or upon a two-thirds vote of the board of directors after such 10-year period.

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (1) on page 13.

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (4) on page 15.

****NOTE: My language regarding an independent contractor replaces the language
in the instructions regarding being "under contact to", which do not think is very clear.
Is my language okay, or do you have other contractual relationships in mind?

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

****NOTE: What if more than 14 managers or directors result from the application
of the rules below? Which of the managers or directors under the rules below is not
allowed to be a director?

18 a. That each nontransmission utility security holder that owns 10% or more of
19 the outstanding securities of the transmission company may appoint one manager
20 or director of the transmission company for a one-year term, except that the

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (2) on pages 13 and 14.

****NOTE: The instructions also allow for the above requirement to be modified after the 10-year period upon a two-thirds vote of the managers or directors. However, the instructions also state that the requirement should only apply during the 10-year period. Do you want this requirement to apply after the 10-year period?

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (2) on pages 13 and 14.

****NOTE: See the NOTE after subd. 3. a.

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (3) on page 14.

****NOTE: What happens if the person does not continue to hold the 5% equity interest during the one-year term?

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (3) on page 14.

16 4. That, during the 5-year period after the organizational start-up date, no
17 public utility affiliate that contributes transmission facility assets to the
18 transmission company under sub. (5) (b) and no affiliate of such a public utility

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. m. (5) on page 15.

5
^
****NOTE: The instructions include the phrase "including any percentage share of such outstanding common stock owned or controlled by any affiliate of such utility affiliate". I did not include this phrase because I was unsure of its relationship to the rest of the language.

9 SECTION 26. 196.485 (4) (a) (intro.) of the statutes is amended to read:

10 196.485 (4) (a) (intro.) ~~A~~ Except as provided in par. (am), a transmission utility
11 may not transfer control over, or divest its interest in, its transmission facilities to
12 an independent system operator or independent transmission owner unless, to the
13 satisfaction of the commission, each of the following requirements is satisfied:

14 History: 1997 a. 204.
SECTION 27. 196.485 (4) (am) of the statutes is created to read:

15 196.485 (4) (am) If the commission determines under sub. (2) (d) 2. that the
16 midwest independent system operator is authorized to begin operations, each
17 transmission utility in the transmission area that is a public utility shall transfer
18 operational control over its transmission facilities to the midwest independent
19 system operator and each such a transmission utility that has not contributed its
20 transmission facilities to the transmission company shall elect to become part of a
21 single zone within the midwest independent system operator.

SOURCE: Amendment of 196.485 (3) (bm) on page 20.

****NOTE: Review logic of above and check for consistent references to "single zone".

1 **SECTION 28.** 196.485 (5) of the statutes is created to read:

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

 SOURCE: The provisions below combine the creation of s. 196.795 (5) (pm) 4. a. and
b. on pages 3 and 4.

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

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

 ****NOTE: The instructions indicate that the above contribution is subject to
membership in the midwest independent system operator. I'm not sure what this
requirement means, so it is not included.

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

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (52 on pages 10 and 11.

****NOTE: The instructions require the PSC to determine whether the structure of a transfer “meets the objectives of this section” and allows the PSC to “take such other actions as are necessary to equitably accomplish the objectives set forth in this section”. I did not include this language because I think that it is vague. Other than the requirements included in this paragraph, with what other requirements should the structure comply? Also, I’m not sure what’s intended by the requirement to “equitably” accomplish objectives.

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

****NOTE: The instructions are not clear about who has the above duty, so I imposed the duty on both the transmission company and the public utility affiliates.

16 a. The structure of the transfer minimizes the material adverse tax
17 consequences to the public utility affiliate that result from the transfer and any other
18 material adverse tax consequence that does not result from combining transmission

1 facilities into a single zone under the control of the midwest independent system
2 operator.

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (1) on page 10.

3 b. To the extent practicable, the structure of the transfer satisfies the
4 requirements of the federal internal revenue service for a tax-free transfer.

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (3) on page 10.

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. The
8 transmission company shall issue preferred securities under this subdivision on a
9 basis that does not dilute the voting rights of the initial security holders relative to
10 their initial contributions.

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (3) on page 10.

****NOTE: Is it possible to have a preferred class of securities for a limited liability
company?

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

1 this subdivision. A contract under this subdivision shall specify that the public
2 utility affiliates shall be required to accept the return on common equity described
3 in this subdivision only until such time that the federal energy regulatory
4 commission determines that the actual capital structure and capital costs of the
5 transmission company are appropriate and consistent with industry practice for a
6 regulated public utility that provides electric transmission service in interstate
7 commerce.

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (3) on page 10.

****NOTE: The phrase "than that of the public utilities that made the transfer" needs to be clarified.

****NOTE: The language regarding consistency with the requirements of this subdivision is based on the language in the instruction regarding "necessary to achieve the objectives of this section". Neither language is very clear.

****NOTE: I'm not sure about the relationship of the last sentence to the rest of the subdivision.

****NOTE: How does "common equity" relate to definition of "security"? What is intended by common equity?

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (6) a. on page 12.

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. L. (6) b. on page 12.

****NOTE: What if the transmission company is a limited liability company?

1 6. If the construction of a transmission facility specified in subd. 5. a. is not
2 completed within 3 years after a certificate of public convenience and necessity is
3 issued for the transmission facility under s. 196.491 (3), the transmission company
4 may assume responsibility for completing construction of the transmission facility.
5 If the transmission company assumes responsibility for completing construction
6 under this subdivision, the transmission company shall carry out any obligation
7 under any contract entered into by the public utility with respect to the construction
8 until the contract is modified or rescinded by the transmission company to the extent
9 allowed under the contract.

SOURCE: Creation of language following s. 196.795 (5) (pm) 5. L. (6) b. on page 13.

****NOTE: I tried to make more specific the language in the instructions regarding
“the responsibility to complete the project shall be transferred to the [transmission
company]”.

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. j. on page 9.

12 (bm) *Lease of transmission facilities.* If a public utility affiliate is not able to
13 transfer ownership of its transmission facilities to the transmission company due to
14 merger-related accounting requirements, the public utility affiliate shall transfer
15 the transmission facilities to the transmission company under a lease for the period
16 of time during which the accounting requirements are in effect and, after such
17 requirements are no longer in effect, contribute the transmission facilities to the
18 transmission company under par. (b). A public utility affiliate that transfers
19 transmission facilities under a lease under this paragraph does not qualify for the

1 asset cap exception under par. (a) unless, during the term of the lease, the public
2 utility affiliate does not receive any voting interest in the transmission company.

SOURCE: Creation of s. 196.795 (5) (pm) 5. k. on page 10.

****NOTE: Check draft for consistency regarding “contribute”, “transfer” and “transfer ownership”.

****NOTE: Improve last sentence and check logical relation to rest of draft, in particular, the voting interest prohibition.

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. g. (2) (except for last sentence) on page 7.

****NOTE: Check reference to transmission account.

****NOTE: The instructions provide that the above requirement also applies to land rights “that have been acquired .. and are being held for future use for transmission and not held for joint use”. The “future use” component is included in the definition of land right. However, I’m not sure what your intent is regarding not being held for joint use. Are you referring to joint use for electric and gas distribution facilities? If so, the requirement is already included in the above language.

****NOTE: The instructions refer to a joint user “for communications or other facilities”, but doesn’t this include anybody? If so, it doesn’t add anything to the above requirement.

****NOTE: I’m not sure what’s intended by the above. The instructions refer to “a right in the public utility affiliate to access in the future on a nondiscriminatory basis”. What’s meant by the nondiscrimination language? What type of access should be allowed? Also, do you intend for the draft to create this access right, or for the draft to

refer only to access rights that exist independently of the draft? Answer: draft should create this right.

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

SOURCE: Creation of s. 196.795 (5) (pm) 5. g. (3) on page 8.

11 2. If a public utility affiliate is prohibited from making a conveyance or
12 assignment described in subd. 1. a., the public utility affiliate shall enter into a
13 contract with the transmission company that grants the transmission company
14 substantially the same rights as under such a conveyance or assignment.

SOURCE: Creation of s. 196.795 (5) (pm) 5. g. (2) (last sentence) on pages 7 and 8.

****NOTE: The above language responds to the instruction regarding a "land right that cannot be transferred or assigned to the TC". Under what circumstances would a public utility be prohibited from making such a conveyance or assignment? Shouldn't the draft specify these circumstances? Otherwise, isn't this language overbroad?

****NOTE: I'm confused over the reference to "the same price (book value) for the life of the TC's transmission facilities and any replacements thereof" in instructions. How does this reference relate to the requirement in subd. 1. a.?

****NOTE: Contract price for use should be book value, not market price.

15 3. The commission shall resolve any dispute over the contribution of a land
16 right under subd. 1. or 2., including a dispute over the valuation of such a land right,
17 unless a federal agency exercises jurisdiction over the dispute. During the pendency
18 of any dispute that is before the commission or a federal agency, the transmission

1 company shall be entitled to use the land right that is the subject to the dispute and
2 shall be required to pay any compensation that is in dispute into an escrow account.

SOURCE: Creation of s. 196.795 (5) (pm) 5. g. (4) on pages 8 and 9.

****NOTE: I'm not sure about the reference to compensation. Shouldn't the draft clarify that the transmission company must pay compensation for a land right to the public utility affiliate that contributes the land right to the transmission company? And, if so, is it correct to call this a "contribution"?

****NOTE: Verify that language should be "exercise jurisdiction" rather than "has jurisdiction".

3 **SECTION 29.** 196.485 (6) of the statutes is created to read:

4 196.485 (6) ELECTRIC UTILITIES, TRANSMISSION DEPENDENT UTILITIES AND RETAIL
5 ELECTRIC COOPERATIVES. No later than the first day of the 12 month beginning after
6 the first public utility affiliate files a commitment under sub. (5) (a) 2.:

7 (a) An electric utility may transfer all of its integrated transmission facilities
8 to the transmission company on the same terms and conditions as a contribution of
9 transmission facilities by a public utility affiliate under sub. (5) (b).

SOURCE: Creation of s. 196.795 (5) (pm) 5. h. on page 9.

****NOTE: What is "integrated" transmission facility? Answer: interconnected to other transmission facilities within [what area?].

10 (b) A transmission-dependent utility or retail electric cooperative may
11 purchase equity interests in the transmission company at a price that is equivalent
12 to net book value and on terms and conditions that are comparable to those for public
13 utility affiliates that have contributed transmission facilities to the transmission
14 company. A purchaser under this paragraph shall contribute funds to the
15 transmission company that are no less than the value of its pro rata shares based on
16 firm electric usage in this state in 1999.

SOURCE: Creation of s. 196.795 (5) (pm) 5. i. on page 9.

****NOTE: Should "net book value" requirement attach to price?

****NOTE: Define "firm electric usage"?

****NOTE: What does last sentence mean?



1 **SECTION 30.** 196.485 (7) of the statutes is created to read:

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

SOURCE: 2nd to last sentence of creation of s. 196.795 (5) (pm) 4. b. on page 4.

5 **SECTION 31.** 196.485 (8) of the statutes is created to read:

6 196.485 (8) **PENALTIES.** A public utility affiliate that fails to complete the
7 contribution of transmission facilities to the transmission company by the
8 completion date specified in the filing under sub. (5) (a) 2. shall forfeit \$25,000 for
9 each day that completion of the contribution is delayed if the transmission company
10 is legally able to accept the contribution.

SOURCE: Last sentence of creation of s. 196.795 (5) (pm) 4. b. on page 5.

****NOTE: The draft should clarify what is intended by "legally able to accept" a contribution. Why wouldn't the transmission company be legally able to accept the contribution?

11 **SECTION 32.** 196.487 of the statutes is created to read:

12 **196.487 Reliability of electric service. (1) DEFINITIONS.** In this section:

SOURCE: Creation of s. 196.795 (5) (t-) on page 22.

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

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

15 **(2) COMMISSION ORDER.** If the commission determines that a public utility
16 affiliate or the transmission company is not making investments in the facilities
17 under its control that are sufficient to ensure reliable electric service, the commission
18 shall order the public utility affiliate or transmission company to make adequate
19 investments in its facilities that are sufficient to ensure reliable electric service. An
20 order under this subsection shall require the public utility affiliate or transmission
21 company to provide security in an amount and form that, to the satisfaction of the

1 commission, is sufficient to ensure that the public utility affiliate or transmission
2 expeditiously makes any investment that is ordered.

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

6 SECTION 33. 196.491 (3m) (b) 2. of the statutes is amended to read:

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

History: 1975 c. 68, 199: 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227,
409; 1997 a. 27, 35, 204.

12 SECTION 34. 196.795 (5) (i) 1. of the statutes is amended to read:

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

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.
SOURCE: Amendment of s. 196.795 (5) (i) on page 22.

***NOTE: This provision is included verbatim from the instructions, but I do not understand what it means. Also, I assume that you intend not to make any changes to s. 196.795 (5) (i) 2. and 3.

17 SECTION 35. 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered
18 196.795 (6m) (b) 1., 2., 3. and 4.

19 SECTION 36. 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

20 SECTION 37. 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m)
21 (a) 4.

1 **SECTION 38.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m)
2 (a) 5.

3 **SECTION 39.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m)
4 (a) 6.

5 **SECTION 40.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c)
6 and amended to read:

7 196.795 (6m) (c) Wholesale merchant plants. The assets of a wholesale
8 merchant plant shall not be included in the sum of the assets of a public utility
9 affiliate under par. ~~(p)~~ (b) 1. a., b. or c. and shall not be included in a nonutility
10 affiliate's total assets under par. ~~(p)~~ (b) 2. a. if the requirements specified in s. 196.491
11 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the
12 exemption under s. 196.491 (3m) (e).

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

13 **SECTION 41.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d).

14 **SECTION 42.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d)
15 and amended to read:

16 196.795 (6m) (d) Foreign affiliates. The assets of a foreign affiliate shall be
17 included in the sum of the assets of a public utility affiliate under par. ~~(p)~~ (b) 1. a.,
18 b. or c. and shall not be included in a nonutility affiliate's total assets under par. ~~(p)~~
19 (b) 2. a.

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

20 **SECTION 43.** 196.795 (6m) (title) of the statutes is created to read:

21 196.795 (6m) (title) ASSET CAP.

22 **SECTION 44.** 196.795 (6m) (a) (intro.) of the statutes is created to read:

23 196.795 (6m) (a) Definitions. In this subsection:

24 **SECTION 45.** 196.795 (6m) (a) 1. of the statutes is created to read:

1 196.795 (6m) (a) 1. "Contributor public utility affiliate" means a public utility
2 affiliate that satisfies each of the following:

3 a. The public utility affiliate is in a holding company system in which the
4 formation of the holding company has been approved by the commission under sub
5 (2) of article specified in sub (b) (a).

6 b. The public utility affiliate has contributed its transmission facilities to the
7 transmission company under s. 196.485 (5) (b).

8 SECTION 46. 196.795 (6m) (a) 2. of the statutes is created to read:

9 196.795 (6m) (a) 2. "Eligible asset" means an asset of a nonutility affiliate that
10 is used for any of the following:

SOURCE: Creation of s. 196.795 (5) (pm) 1. (a) (definition of "energy and telecommunications asset") on pages 1 and 2.

11 a. Producing, generating, transmitting, delivering, selling or furnishing gas,
12 oil, electricity or steam energy.

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

****NOTE: Define "demand-side management"?

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

16 d. Recovering or producing energy from waste materials.

17 e. Processing waste materials.

18 f. Manufacturing, distributing or selling products for filtration, pumping water
19 or other fluids, processing or heating water, handling fluids or other related
20 activities.

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

22 SECTION 47. 196.795 (6m) (a) 3. of the statutes is created to read:

1 196.795 (6m) (a) 3. "Generation assets" means assets that are classified as
2 electric generation assets on the books of account ~~of~~ of a public utility.

3 SECTION 48. 196.795 (6m) (b) (title) of the statutes is created to read:

4 196.795 (6m) (b) *In general.*

5 SECTION 49. 196.795 (6m) (e) of the statutes is created to read:

6 196.795 (6m) (e) *Contributor public utility affiliates.* 1. The eligible assets of
7 a nonutility affiliate in a holding company system that includes a contributor public
8 utility affiliate shall not be included in the sum of the assets of the public utility
9 affiliates under par. (b) 1. a., b. or c. and shall not be included in the nonutility
10 affiliate's total assets under par. (b) 2. a.

SOURCE: Creation of s. 196.795 (5) (pm) 4. a. on pages 3 and 4.

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

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

SOURCE: Creation of s. 196.795 (5) (pm) 1. (b) (definition of "energy and telecommunications asset") on page 2.

***NOTE: What about a nonutility affiliate that is not a corporation?

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

SOURCE: Creation of s. 196.795 (5) (pm) 1. (b) (definition of "energy and telecommunications asset") on page 2.

***NOTE: "Substantially all" is not a clear standard.

17 3. The net book value of transmission facility assets that a contributor public
18 utility affiliate has contributed to a transmission company under s. 196.485 (5) (b)
19 shall be included in the sum of the assets of the public utility affiliate under par. (b)
20 1. a., b. and c. In determining net book value under this subdivision, accumulated

as determined by the Commission

1 depreciation shall be calculated as if the contributor public utility affiliate had not
2 contributed the assets.

SOURCE: Creation of s. 196.795 (5) (pm) 3.on page 2.

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

SOURCE: Creation of s. 196.795 (5) (pm) 3.on page 2.

10 **SECTION 50.** 196.795 (11) (c) of the statutes is created to read:

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

SOURCE: Amendment of s. 196.795 (11) (b) on page 1.

19 **SECTION 51.** 196.807 of the statutes is created to read:

20 **196.807 Energy affiliate and utility employes. (1) DEFINITIONS.** In this
21 section:

SOURCE: The material in section 9 on pages 20 to 21.

1 (a) "Acquire an energy unit" means to lease, purchase or otherwise acquire
2 ownership or control of the energy unit.

3 (b) "Affiliate or utility" means a nonutility affiliate, as defined in s. 196.795 (1)
4 (j), in a holding company system, as defined in s. 196.795 (1) (i), or a public utility.

or
etc.
activity
is
affiliated
in a group
(1)
(2)

5 (c) "Energy unit" means a unit that is engaged in activities related to the
6 production, generation, transmission or distribution of electricity, gas or steam or the
7 recovery of energy from waste materials.

8 (d) "Unit" means a division, department or other operational business unit of
9 an affiliate or utility.

10 (2) OFFER OF EMPLOYMENT. A person that acquires an energy unit shall offer
11 employment to the nonsupervisory employees who are employed with the energy unit
12 immediately prior to the acquisition and who are necessary for the operation and
13 maintenance of the energy unit.

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

17 1. Wage rates shall be no less than the wage rates in effect immediately prior
18 to the acquisition.

19 2. Fringe benefits shall be substantially equivalent to the fringe benefits in
20 effect immediately prior to the acquisition.

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

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

1 (4) COMMISSION APPROVAL. No person may acquire an energy unit unless the
2 commission determines that the person has satisfied subs. (2) and (3).

3 (5) APPLICABILITY. This section does not apply until the expiration date of the
4 3-year period specified in s. 196.485 (3m) (a) 1. b., as determined by the commission,
5 or the expiration date of any extension of the 3-year period that is agreed to under
6 s. 196.485 (3m) (a) 1. b., as determined by the commission, whichever is later. The
7 commission shall publish a notice in the Wisconsin Administrative Register that
8 specifies the date that the commission determines is the effective date of this section.

9

10

(END)

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

LRB-3151/P1dn
MDK:.....

Senator Chvala:

Please review this draft very carefully to make sure that it achieves your intent. In addition to the questions raised in embedded notes that are included in the draft, please note the following:

1. The instructions dated June 2, 1999 (instructions), include the following in proposed s. 196.795 (5) (pm) 5. u. on on page 17: "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 [transmission company] from constructing transmission facilities". This language is not included because it is not necessary. If nothing in the draft affects such a right or duty, it is not necessary to make such a statement. If there is a specific provision of the draft that requires clarity on this point, that provision of the draft should be revised.

2. The instructions include the following language in proposed s. 196.795 (5) (pm) 5. m. (6) on page 15: "any holder of 10% of the voting shares may require that the [transmission company] register as is necessary for any equity owner to sell its shares". I did not include this provision because I don't know the registration requirements to which this provision refers.

3. The draft does not include the following provision on page 5 of the instructions: "[The transmission company] shall be a public utility subject to the jurisdiction of the [PSC] except as provided in section 5 (t), and [FERC]". It is not necessary to specify that the transmission company is a public utility because it qualifies as a public utility under the definition of that term under s. 196.01 (5) (a), stats. As for being subject to the jurisdiction of FERC, this issue is a question of federal law, not state law.

4. The instructions include the following language in proposed s. 196.795 (5) (pm) 5. b. on page 5: the transmission company shall take certain actions "consistent with subsection (c) and with ss. 196.485 and 196.494". This language is not included in the draft because I am not sure about your intent. To the extent that other provisions of this draft impose duties on the transmission company, there is no need to restate that the transmission company must comply with those duties. In addition, I am not sure about the reference to s. 196.494, stats., which imposes duties on the PSC.

5. The instructions include the following language in proposed s. 196.795 (5) (pm) 5. L. (4) on page 12: "Nothing in this subsection shall affect the authority of [FERC] to

*pertains to
(e) mp 6*

establish transmission rates for the [transmission company] or [midwest independent system operator]”. I didn’t include this language because it is not possible for state law to affect the jurisdiction of a federal agency under federal law. Therefore, the language is not necessary.

6. The instructions include the following language in proposed section 9 on page 21: “If there is a Transaction of a Selling Entity’s Unit(s) in this state to its majority-owned nonutility affiliate....” This language is not included because it appears to be covered under proposed s. 196.807 (2), which broadly covers any person that acquires an energy unit. *b/c*

7. The instructions include the following language in proposed section 9 on page 21: “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 language is not included because it is not necessary.

8. Regarding the exception at the bottom of page 21, it doesn’t appear that it is necessary to provide that the section does not apply to rural electric cooperatives because, as drafted, proposed s. 196.807 applies only to public utilities and nonutility affiliates. Is it possible for a rural electric cooperative to be a nonutility affiliate? Also, I will create an exception for municipal utilities after you provide me with the gross annual revenues that are necessary for the exception.

9. The tax provisions on pages 18 and 19 will be added to a subsequent version of this draft.

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

CONFIDENTIAL

To: Attorney Mark Kunkel, LRB
From: Lee Cullen, CWP B
Re: LRB 3151/P1

As you suggested, I am responding to the questions asked in this initial draft:

p. 2, l. 8. "Conditionally accepted for filing" is acceptable. This is what FERC did.

p. 2, l. 19. "Effective competition" is acceptable.

p. 3, l. 18. Since the public utility affiliates and the TC have to join the MISO anyway, a separate statement is probably not necessary.

p. 4, l. 9. This provision should be deleted, as we discussed on 6/4.

p. 4, l. 13. I do not think we need an explicit prohibition. The separate reference to owning should be maintained.

p. 5, l. 5. This is OK.

p. 5, l. 21. As we discussed, ancillary service, redispatch, and operating a control area are FERC/NERC terms of art.

p. 6, l. 3. We wanted to make sure that the TC initially elects to be part of the same zone, and then stays part of the same zone.

p. 6, l. 16. Utility affiliates do not have to contribute at the same time, but they have to meet the deadline for contribution. So the timing for this requirement should probably be the last contribution which meets the deadline. The provision can refer to "contribution" rather than "transfer." "As a group" is redundant. There is no need to define "single zone" because this is described in the FERC MISO order. "Network use" is a type of transmission service, and so should stay as is.

p. 7, l. 7. I believe these requirements should be in the articles of incorporation if possible.

p. 7, l. 13. Independent contractor is OK.

p. 7, l. 16. There should be as many directors as these specific provisions require.

p. 8, l. 1. Yes

p. 8, l. 6. Yes

p. 8, l. 10. The seat is contingent on continued ownership.

p. 9, l. 2. We meant that neither a utility nor its affiliate could increase its share.

p. 11, l. 6. OK

p. 11, l. 19. We need to use language applicable to an LLC, perhaps by saying that if the LLC issues an interest other than an equity interest it should not dilute the rights of those holding equity interests.

p. 12, l. 15. The phrase refers to the percentage of equity in the capital structure of the transferor. The reference to purposes and objectives is to the goal that the capital cost of and capital recovery from the TC are as nearly equivalent to current capital cost and recovery as practicable, that is, that both transmission shareholders and transmission ratepayers are treated as close to the same as they are now as practicable.

p. 13, l. 13. This should say "equity interests" rather than "securities."

p. 13, l. 17. OK

p. 14, l. 8. As we discussed, this term means included in transmission accounts. If there is joint use with electric or gas distribution, the land right is not transferred. Instead, a contract is entered into. If the joint use is for other than electric or gas distribution, the land right is transferred to the TC, which takes subject to the other joint use. The intent in the non-discriminatory access phrase is to allow the distribution company to access the land right which has been transferred to the TC on a non-discriminatory basis.

p. 15, l. 6. The conveyance itself may contain this restriction. We referred to price set by book value to contrast this with a price unilaterally set by the utility.

p. 15, l. 12. This is a reference to the price for the use of the land right.

p. 15, l. 15. File the commitment with the PSC.

p. 16, l. 1. This is a reference to an interconnected system.

p. 16, l. 7. Yes. Firm electric usage is a term of art. It means that if they had 2% of the state share, they would be entitled to a 2% buy-in.

p. 16, l. 15. We intended to say that the penalty would not accrue if the transfer could not be made to the TC.

p. 18, l. 5. OK.

Please feel free to call if you have any questions. We look forward to seeing you at 11:00 a.m. on June 7 at CWPB.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3151/P1
MDK:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: ???

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the *state* 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:

2 SECTION 1. 196.485 (title) of the statutes is repealed and recreated to read:

3 196.485 (title) **Transmission system requirements.**

4 SECTION 2. 196.485 (5) of the statutes is created to read:

5 196.485 (5) TRANSMISSION COMPANY. (a) *Definitions.* In this subsection:

6 1. "Electric utility" has the meaning given in s. 196.491 (1) (d).

7 2. "Land right" means any right in real property, including fee simple
8 ownership or a right-of-way or easement, that has been acquired for transmission

1 facilities that are located on the real property or that are intended to be located on
2 the real property in the future.

3 3. "Member's interest" has the meaning given in s. 183.0102 (11).

4 4. "Midwest independent system operator" means the independent system
5 operator in the midwest region of the United States that, prior to the effective date
6 of this subdivision [revisor inserts date], the federal energy regulatory
7 commission has conditionally accepted for filing and that, prior to December 31,
8 1998, has had public utility members in this state.

****NOTE: Is "conditionally accepted for filing" okay?

9 5. "Nontransmission utility shareholder" means a shareholder that is not a
10 transmission utility shareholder.

11 6. "Retail electric cooperative" means a cooperative that provides retail electric
12 service.

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

****NOTE: The instructions refer to "robust competition", but that term does not
appear in the statutes and I think its meaning is not precise. The draft uses "effective
competition", which has the benefit of also being used in s. 196.491 (2)(a) 12., stats.
However, "effective competition" is also not very precise, and, depending on your intent,
you may want to revise this language.

20 8. "Transmission dependent utility" means —.

1 9. "Transmission utility shareholder" means a person that is a shareholder of
2 a transmission company organized as a corporation under ch. 180, is an
3 investor-owned transmission utility in the transmission area and has contributed
4 its transmission facilities to the transmission company.

5 (b) *Asset cap exception.* 1. Section 196.795 (6m) (c) 3. does not apply to the
6 energy or telecommunications assets of a nonutility affiliate in a holding company
7 system unless each public utility affiliates in the holding company system does each
8 of the following:

9 a. 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 b. 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 paragraph [revisor inserts date], and land rights, to the transmission
17 company. A filing under this subdivision shall specify the date on which the public
18 utility affiliate will complete the contribution of transmission facilities.

 ****NOTE: The instructions indicate that the above contribution is subject to
membership in the midwest independent system operator. I'm not sure what this
requirement means, so it is not included.

19 c. Files with the commission an unconditional, irrevocable and binding
20 commitment to contribute, and to cause each entity into which it merges or
21 consolidates or to which it transfers substantially all of its assets to contribute, any
22 transmission facility in this state the ownership or control of which it acquires after

1 the effective date of this paragraph [revisor inserts date], and land rights, to the
2 transmission company.

3 d. Notifies the commission in writing that the public utility affiliate has become
4 a member of the midwest independent system operator and has committed not to
5 withdraw its membership prior to the date on which the public utility affiliate
6 contributes transmission facilities to the transmission company under —.

7 2. A holding company in a holding company system may satisfy the
8 requirements specified in subd. 1. on behalf of a public utility affiliate in the holding
9 company system.

***NOTE: Is the above requirement okay?

10 (c) *Transmission company powers.* 1. The transmission company may, subject
11 to the approval of the commission under —, construct transmission facilities in the
12 transmission area or in any other area of the state in which transmission facilities
13 that have been contributed to the transmission company are located.

***NOTE: The instructions state that the transmission company shall have the
“exclusive duty and responsibility” to construct transmission facilities in the above areas.
Therefore, do you therefore want to add a provision to this draft that prohibits public
utilities, or any other person, from constructing transmission facilities, as defined in s.
196.485 (1) (h)? If so, note that “transmission area” is defined (see s. 196.485 (1) (g)), but
the other area is not defined. If you want to prohibit a public utility or other person from
doing something in this other area, then the draft should be revised to specify in more
detail what constitutes that other area.

***NOTE: The instructions refer to constructing *and owning* transmission facilities.
Is it necessary to refer to owning transmission facilities? Isn't it clear that if transmission
facilities are contributed to the transmission company, then the transmission company
owns the transmission facilities? Or do you have something else in mind?

14 2. The transmission company may not provide transmission service until it
15 provides an opinion to the commission from a nationally recognized investment
16 banking firm that the transmission company will be able to finance at reasonable
17 cost its start-up costs, working capital, operating expenses and the cost of any new
18 facilities that are planned.

****NOTE: "Provide transmission service" is what I substituted for "commence operation". Okay?

1 3. Subject to any approval required under federal law, the transmission
2 company may purchase or acquire transmission facilities in addition to the
3 transmission facilities contributed under —.

4 (d) *Transmission company duties.* The transmission company shall satisfy
5 each of the following:

6 2. The transmission company shall become a member of the midwest
7 independent system operator and transfer operational control of the transmission
8 company's transmission facilities to the midwest independent system operator.

9 3. The transmission company shall remain a member of the midwest
10 independent system operator, or any independent system operator that has been
11 approved under federal law to succeed the midwest independent operator, for at least
12 the 6-year transition period that is specified in the agreement that establishes the
13 midwest independent system operator.

14 4. The transmission company may not own electric generation facilities or sell,
15 market or broker electric capacity or energy in a ~~wholesale or retail market for the~~
16 ~~purchase and sale of electricity in this state or a region of the United States that~~
17 ~~includes this state~~, except that, if authorized or required by the federal energy
18 regulatory commission, the transmission company may procure or resell ancillary
19 services from third parties, engage in redispatch activities that are necessary to
20 relieve transmission constraints or take other actions related to operating a
21 transmission system in the transmission area.

****NOTE: The following terms should be clarified: "ancillary service", "third parties" and "redispatch activities". Also, instead of using the term "operating a control area", which is used in the instructions, the above provision refers to "operating a transmission system in the transmission area", which I think is clearer. Is this okay? Note that "transmission area" is defined in s. 196.485 (1) (h).

FERC has DOT in applied for WUMS guidelines

relevant

order 888

no-control area

check X-109 in 196.493 (3)(b) 2.

1 5. a. Except as provided in subd. 5. b., the transmission company shall elect to
 2 be included in a single zone for purposes of any tariff proposed by the midwest
 3 independent system operator.

 ****NOTE: Why is it necessary to state, as included in the instructions, that, after
 election, the transmission company shall "thereafter be part of the same zone"?

4 b. If the transmission costs of any transmission utility in the transmission area
 5 are 10% or more below the average transmission costs of the transmission utilities
 6 in the transmission area immediately prior to the date on which transmission
 7 facilities are contributed to the transmission company under —, the transmission
 8 company shall, after consulting with the public utility affiliates specified in —,
 9 prepare a plan for phasing in a combined single zone for the purpose of pricing
 10 network use by users of the transmission system operated by the midwest
 11 independent operator and shall seek plan approval by the federal energy regulatory
 12 commission and the midwest independent system operator. A plan under this subd.
 13 5. b. shall phase in an average cost price for the combined single zone in equal
 14 increments over a 5-year period, except that, under the plan, transmission service
 15 shall be provided to all users of the transmission system on a single-zone basis
 16 during the phase-in period.

 ****NOTE: What is your intent regarding the contribution date? Do you want to
 require all public utility affiliates to contribute transmission facilities by the same date?
 If not, I'm not sure about the timing of the above requirement. Also, the instructions for
 this provision refer to the "transfer" of assets, but I don't think that that term is consistent
 with other provisions that refer to the contribution of assets. Is this a problem?

 ****NOTE: When referring to average transmission costs, isn't it redundant to refer
 to the transmission utilities "as a group"?

 ****NOTE: Shouldn't the draft clarify the meaning of "combined single zone", "single
 zone basis" and other terms? Also, is "network use" the same as use of the transmission
 system? If so, shouldn't the draft use consistent language?

 ****NOTE: Regarding the last sentence of subd. 5. b., I don't understand how the
 exception is related to the phase-in requirement.

*NO - imply to
 date of
 last
 PUA's
 transfer
 which
 initial
 window*

*NO - don't add dual
 PUA's
 opt*

*use sub as
 network
 not PUA's opt*

1 (e) *Corporate organization.* If the transmission company is organized as a
2 corporation under ch. 180, the bylaws of the transmission company shall provide for
3 each of the following:

 ****NOTE: Are each of the following the types of requirements that may be included
in bylaws? Or should they be included in articles of incorporation?

4 1. That the corporation has no less than 5 and no more than 14 directors, except
5 that the bylaws may allow the requirements of this subdivision to be modified upon
6 a unanimous vote of the board of directors during the 10-year period after the
7 articles of incorporation become effective under s. 180.0123 or upon a two-thirds vote
8 of the board of directors after such 10-year period.

9 2. That at least 4 directors of the corporation have staggered 4-year terms, are
10 elected by a majority vote of the holders of common stock of the corporation and are
11 not employes or independent contractors of a person engaged in the production, sale,
12 marketing, transmission or distribution of electricity or natural gas or of an affiliate
13 of such a person.

 ****NOTE: My language regarding an independent contractor replaces the language
in the instructions regarding being "under contact to", which do not think is very clear.
Is my language okay, or do you have other contractual relationships in mind?

14 3. That, during the 10-year period after the articles of incorporation become
15 effective under s. 180.0123, each of the following is satisfied, subject to the limitation
16 on the number of directors under subd. 1.:

 ****NOTE: What if more than 14 directors result from the application of the rules
below? Which of the directors under the rules below is not allowed to be a director?

17 a. That each nontransmission utility shareholder that owns 10% or more of the
18 outstanding common stock of the transmission company may appoint one director to
19 the board of directors of the corporation for a one-year term, except that the
20 requirements of this subd. 3. a. may be modified upon a unanimous vote of the board
21 of directors.

****NOTE: The instructions also allow for the above requirement to be modified after the 10-year period upon a two-thirds vote of the board of directors. However, the instructions also state that the requirement should only apply during the 10-year period. Do you want this requirement to apply after the 10-year period?

1 b. That each group of nontransmission utility shareholders that owns 10% or
2 more of the outstanding common stock of the transmission company may appoint one
3 director to the board of directors for a one-year term if the group has entered into a
4 written agreement regarding the appointment and the group files the agreement
5 with the secretary of the transmission company, except that the requirements of this
6 subd. 3. b. may be modified upon a unanimous vote of the board of directors.

****NOTE: See the NOTE after subd. 3. a.

7 c. That each person that receives at least a 5% equity interest in the corporation
8 under — may appoint one director to the board of directors of the corporation for a
9 one-year term if the person continues to hold at least a 5% equity interest in the
10 corporation during the one-year term.

****NOTE: What happens if the person does not continue to hold the 5% equity interest during the one-year term?

11 d. That each transmission utility shareholder may appoint one director to the
12 board of directors of the corporation for a one-year term.

13 4. That, during the 5-year period after the articles of incorporation become
14 effective under s. 180.0123, no public utility affiliate that contributes transmission
15 facility assets to the transmission company under — and no affiliate of such a public
16 utility affiliate may increase its percentage share of the outstanding common stock
17 of the transmission company prior to any initial issuance of common stock by the
18 transmission company to any third party other than a third party exercising its right
19 to purchase stock under —, except that this subdivision does not apply to common
20 stock that is issued by the transmission company in exchange for transmission
21 facilities that are contributed in addition to the transmission facilities that are

1 contributed under — and except that the requirements of this subdivision may be
2 modified upon a unanimous vote of the board of directors.

****NOTE: The instructions include the phrase “including any percentage share of such outstanding common stock owned or controlled by any affiliate of such utility affiliate”. I did not include this phrase because I was unsure of its relationship to the rest of the language.

3 (f) *Limited liability company organization.* If the transmission company is
4 organized as a limited liability company under ch. 183, the articles of organization
5 of the transmission company shall provide for each of the following:

****NOTE: See the NOTES under par. (e).

6 1. That the limited liability company has no less than 5 and no more than 14
7 managers, except that the articles of organization may allow the requirements of this
8 subdivision to be modified upon a unanimous vote of the members of the limited
9 liability company during the 10-year period after the articles of organization become
10 effective under s. 183.0111 or upon a two-thirds vote of the members after such
11 10-year period.

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

17 3. That, during the 10-year period after the articles of organization become
18 effective under s. 18.0111, each of the following is satisfied, subject to the limitation
19 on the number of managers under subd. 1.:

20 a. That each nontransmission utility member of the limited liability company
21 that has a 10% or more member's interest in the limited liability company may
22 appoint one manager of the limited liability company for a one-year term, except

1 that the requirements of this subd. 3. a. may be modified upon a unanimous vote of
2 the members of the limited liability company.

3 b. That each group of nontransmission utility members of the limited liability
4 company that have a 10% or more member's interest in the limited liability company
5 may appoint one manager of the limited liability company for a one-year term if the
6 group has entered into a written agreement regarding the appointment and the
7 group files the agreement with the secretary of the limited liability company, except
8 that the requirements of this subd. 3. b. may be modified upon a unanimous vote of
9 the members of the limited liability company.

10 c. That each person that receives at least a 5% member's interest in the limited
11 liability company under — may appoint one manager of the limited liability
12 company for a one-year term if the person continues to have at least a 5% member's
13 interest in the limited liability company during the one-year term.

14 d. That each transmission utility member of the limited liability company may
15 appoint one manager of the limited liability company for a one-year term.

16 4. That, during the 5-year period after the articles of organization become
17 effective under s. 183.0111, no public utility affiliate that contributes transmission
18 facility assets to the limited liability company under — and no affiliate of such a
19 public utility affiliate may increase its percentage of its member's interest in the
20 limited liability company prior to any initial issuance of a member's interest to any
21 third party other than a third party exercising its right to obtain a member's interest
22 under —, except that this subdivision does not apply to a member's interest that is
23 issued by the limited liability company in exchange for transmission facilities that
24 are contributed in addition to the transmission facilities that are contributed under

1 — and except that the requirements of this subdivision may be modified upon a
2 unanimous vote of the members of the limited liability company.

3 (g) *Contribution of transmission facilities.* 1. The transmission company and
4 a public utility affiliate that commits to contributing transmission facilities to the
5 transmission company under — shall structure the transfer of the transmission
6 facilities in a manner that satisfies each of the following:

****NOTE: The instructions are not clear about who has the above duty, so I imposed
the duty on both the transmission company and the public utility affiliates.

7 a. The structure of the transfer minimizes the material adverse tax
8 consequences to the public utility affiliate that result from the transfer and any other
9 material adverse tax consequence that does not result from combining transmission
10 facilities into a single zone under the control of the midwest independent system
11 operator.

12 b. To the extent practicable, the structure of the transfer satisfies the
13 requirements of the federal internal revenue service for a tax-free transfer.

14 2. If the transmission company is organized as a corporation under ch. 180, the
15 requirements under subd. 1. b. shall, if practicable, be satisfied by the transmission
16 company's issuance of preferred stock that provides the fixed cost portion of the
17 resulting capital structure of the transmission company. The transmission company
18 shall issue preferred stock under this subdivision on a basis that does not dilute the
19 voting rights of the initial shareholders relative to their initial contributions.

****NOTE: What if the transmission company is organized as a limited liability
company?

20 3. If the transmission company is organized as a corporation under ch. 180 and
21 if the transfer of transmission assets under subd. 1. results in a capital structure of
22 the transmission company in which the percentage of common equity is materially

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

****NOTE: See NOTE regarding subd. 2.

****NOTE: The phrase "than that of the public utilities that made the transfer" needs to be clarified.

****NOTE: The language regarding consistency with the requirements of this subdivision is based on the language in the instruction regarding "necessary to achieve the objectives of this section". Neither language is very clear.

****NOTE: I'm not sure about the relationship of the last sentence to the rest of the subdivision.

16 4. If, at the time that a public utility affiliate makes a binding commitment
17 under —, the public utility affiliate has applied for or obtained a certificate of public
18 convenience and necessity under s. 196.— for the construction of transmission
19 facilities, the public utility affiliate shall do each of the following:

1 a. Proceed with diligence with respect to obtaining the certificate and
2 constructing the transmission facilities.

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

****NOTE: What if the transmission company is a limited liability company?

8 6. If a public utility affiliate is not able to transfer ownership of its transmission
9 facilities to the transmission company due to merger-related accounting
10 requirements, the public utility affiliate shall transfer the transmission facilities to
11 the transmission company under a lease for the period of time during which the
12 accounting requirements are in effect and, after such requirements are no longer in
13 effect, contribute the transmission facilities to the transmission company under —.
14 A public utility affiliate that transfers transmission facilities under a lease under
15 this subdivision does not qualify for the asset cap exception under — unless, during
16 the term of the lease, the public utility affiliate does not receive any voting interest
17 in the transmission company.

****NOTE: Check draft for consistency regarding “contribute”, “transfer” and
“transfer ownership”.

****NOTE: Make sure PUA that transfers under lease under subd. 6. is eligible for
asset cap exception.

****NOTE: Improve last sentence and check logical relation to rest of draft, in
particular, the voting interest prohibition.

18 (h) *Contribution of land rights.* 1. A public utility affiliate that commits to
19 contributing land rights to the transmission company under — shall do each of the
20 following:

SECTION 2

assigned to transmission system
uniform system
Access that is transmission

1 a. Except as provided in subd. 2., if the land right has been booked to
2 transmission for ratemaking purposes] and is not jointly used for electric and gas
3 distribution facilities by the public utility affiliate, the public utility affiliate shall
4 convey or assign at book value all of its interest in the land right to the transmission
5 company, except that any conveyance or assignment under this subdivision shall be
6 subject to the rights of any joint user of the land right and to the right of the public
7 utility affiliate to nondiscriminatory access to the real estate that is subject to the
8 land right.

****NOTE: Is the term "booked to transmission for ratemaking purposes" clear?

****NOTE: The instructions provide that the above requirement also applies to land rights "that have been acquired .. and are being held for future use for transmission and not held for joint use". The "future use" component is included in the definition of land right. However, I'm not sure what your intent is regarding not being held for joint use. Are you referring to joint use for electric and gas distribution facilities? If so, the requirement is already included in the above language.

****NOTE: The instructions refer to a joint user "for communications or other facilities", but doesn't this include anybody? If so, it doesn't add anything to the above requirement.

****NOTE: I'm not sure what's intended by the above. The instructions refer to "a right in the public utility affiliate to access in the future on a nondiscriminatory basis". What's meant by the nondiscrimination language? What type of access should be allowed? Also, do you intend for the draft to create this access right, or for the draft to refer only to access rights that exist independently of the draft?

YES

9 b. If the land right is jointly used, or is intended to be jointly used, for electric
10 and gas distribution facilities by the public utility affiliate, the public utility affiliate
11 shall enter into a contract with the transmission company that grants the
12 transmission company a right to place, maintain, modify or replace the transmission
13 company's transmission facilities on the real property that is subject to the land right
14 during the life of the transmission facilities and the life of any replacements of the
15 transmission facilities. A right granted in a contract under this subdivision shall be
16 paramount to the right of any other user of the land right, except that a right granted

1 in such a contract shall be on par with the right of the public utility affiliate to use
2 the land right for electric or gas facilities.

3 2. If a public utility affiliate is prohibited from making a conveyance or
4 assignment described in subd. 1. a., the public utility affiliate shall enter into a
5 contract with the transmission company that grants the transmission company
6 substantially the same rights as under such a conveyance or assignment.

****NOTE: The above language responds to the instruction regarding a "land right that cannot be transferred or assigned to the TC". Under what circumstances would a public utility be prohibited from making such a conveyance or assignment? Shouldn't the draft specify these circumstances? Otherwise, isn't this language overbroad?

****NOTE: I'm confused over the reference to "the same price (book value) for the life of the TC's transmission facilities and any replacements thereof" in instructions. How does this reference relate to the requirement in subd. 1. a.?

Contract price for use of book value
NOT MTD

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

****NOTE: I'm not sure about the reference to compensation. Shouldn't the draft clarify that the transmission company must pay compensation for a land right to the public utility affiliate that contributes the land right to the transmission company? And, if so, is it correct to call this a "contribution"?

13 (i) *Electric utilities, transmission dependent utilities and retail electric*
14 *cooperatives.* No later than the first day of the 12 month beginning after the first
15 public utility affiliate makes a commitment under —:

****NOTE: Make commitment or file commitment?

16 1. An electric utility may transfer all of its integrated transmission facilities
17 to the transmission company on the same terms and conditions as a public utility
18 affiliate under —.

****NOTE: What is "integrated" transmission facility?

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

****NOTE: Should "net book value" requirement attach to price?

****NOTE: Define "firm electric usage"?

****NOTE: What does last sentence mean?

8 (j) *Enforcement.* A wholesale or retail customer of a public utility affiliate may
9 petition the circuit court of Dane county for specific performance of a commitment
10 under —.

11 (k) *Penalties.* A public utility affiliate that fails to complete the contribution
12 of transmission facilities to the transmission company by the completion date
13 specified in the filing under — shall forfeit \$25,000 for each day that completion of
14 the contribution is delayed if the transmission company is legally able to accept the
15 contribution.

****NOTE: The draft should clarify what is intended by "legally able to accept" a
contribution

16 **SECTION 3.** 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered
17 196.795 (6m) (b) 1., 2., 3. and 4.

18 **SECTION 4.** 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

19 **SECTION 5.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m)
20 (a) 2.

1 SECTION 6. 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m)

2 (a) 3.

3 SECTION 7. 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m)

4 (a) 4.

5 SECTION 8. 196.795 (5) (pm) 2. and 3. of the statutes are renumbered 196.795

6 (6m) (c) 1. and 2.

7 SECTION 9. 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c)

8 1. and amended to read:

9 196.795 (6m) (c) 1. The assets of a wholesale merchant plant shall not be

10 included in the sum of the assets of a public utility affiliate under par. (p) (b) 1. a.,

11 b. or c. and shall not be included in a nonutility affiliate's total assets under par. (p)

12 (b) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1. and 2. are satisfied or

13 if the wholesale merchant plant qualifies for the exemption under s. 196.491 (3m) (e).

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

14 SECTION 10. 196.795 (6m) (title) of the statutes is created to read:

15 196.795 (6m) (title) ASSET CAP.

16 SECTION 11. 196.795 (6m) (a) (intro.) of the statutes is created to read:

17 196.795 (6m) (a) Definitions. In this subsection:

18 SECTION 12. 196.795 (6m) (a) 1. of the statutes is created to read:

19 196.795 (6m) (a) 1. "Energy or telecommunications asset" means an asset of

20 a nonutility affiliate that is used for any of the following:

21 a. Producing, generating, transmitting, delivering, selling or furnishing gas,

22 oil, electricity or steam energy.

23 b. Providing an energy management, conservation or efficiency service or a

24 demand-side management service. or product

Handwritten notes: "disposable assets" circled with an arrow pointing to "asset" in Section 12. Above it, "or Spms other method" is written.

Handwritten note: "or product" written above the word "or" in Section 12b.

- 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 or other fluids,
- 5 processing or heating water, handling fluids or other related activities.

****NOTE: Please review the above language. I added "manufacturing". Is this okay? I also substituted "activities" for "businesses".

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

7 SECTION 13. 196.795 (6m) (b) (title) of the statutes is created to read:

8 196.795 (6m) (b) *In general.*

9 SECTION 14. 196.795 (6m) (c) (title) of the statutes is created to read:

10 196.795 (6m) (c) *Exceptions.*

11 SECTION 15. 196.795 (6m) (c) 3. of the statutes is created to read:

12 196.795 (6m) (c) 3. The energy or telecommunications assets of a nonutility

13 affiliate in a holding company system shall not be included in the sum of the assets

14 of the public utility affiliates under par. (b) 1. a., b. or c. and shall not be included in

15 the nonutility affiliate's total assets under par. (b) 2. a. if each of the following are

16 satisfied:

17 a. The formation of the holding company has been approved by the commission

18 under sub. (2).

19 b. Each public utility affiliate in the holding company system satisfies the

20 requirements of 196.485 —.

21 4. For purposes of subd. 3., all of the assets of a nonutility affiliate shall be

22 considered energy or telecommunications assets if each of the following is satisfied:

1 a. The bylaws of the nonutility affiliate or a resolution adopted by its board of
2 directors specifies that the business of the nonutility affiliate is limited to activities
3 involving energy or telecommunications assets.

 ****NOTE: What about a nonutility affiliate that is not a corporation?

4 b. Substantially all of the assets of the nonutility affiliate are energy or
5 telecommunications assets.

 ****NOTE: "Substantially all" is not a clear standard.

6

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3151/P1

MDK:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: control of transmission facilities by a transmission
2 company and a midwest independent system operator, ownership of nonutility
3 assets by a public utility holding company, investments in transmission
4 facilities, offers of employment to certain public utility and nonaffiliate
5 employes and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state** 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:

6 SECTION 1. 76.28 (1) (d) of the statutes is amended to read:
7 76.28 (1) (d) "Gross revenues" for a light, heat and power company other than
8 a qualified wholesale electric company or a transmission company means total

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

History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27; 1993 a. 205; 1995 a. 27, 351; 1997 a. 35.

22 **SECTION 2.** 76.28 (1) (e) (intro.) of the statutes is amended to read:

23 76.28 (1) (e) (intro.) "Light, heat and power companies" means any person,
 24 association, company or corporation, including corporations described in s. 66.069 (2)

[Handwritten scribbles and signature]
WPO: no change here

1 and including qualified wholesale electric companies and transmission companies
2 and except only business enterprises carried on exclusively either for the private use
3 of the person, association, company or corporation engaged in them, or for the private
4 use of a person, association, company or corporation owning a majority of all
5 outstanding capital stock or who control the operation of business enterprises and
6 except electric cooperatives taxed under s. 76.48 that engage in any of the following
7 businesses:

8 History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27; 1993 a. 205; 1995 a. 27, 351; 1997 a. 35.

8 SECTION 3. 76.28 (1) (e) 5. of the statutes is created to read:

9 76.28 (1) (e) 5. Transmitting electric current for light, heat or power.

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

11 (1) 76.28 (1) (j) "Transmission company" has the meaning given ~~under~~ⁱⁿ s. 196.485
12 (1) (ge).

13 SECTION 5. 76.28 (2) (c) (intro.) of the statutes is amended to read:

14 76.28 (2) (c) (intro.) ~~For~~ Except as provided under par. (e), for private light, heat,
15 and power companies for 1986 and thereafter, an amount equal to the apportionment
16 factor multiplied by the sum of:

17 History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27; 1993 a. 205; 1995 a. 27, 351; 1997 a. 35.

17 SECTION 6. 76.28 (2) (d) of the statutes is amended to read:

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

22 History: 1983 a. 27, 405; 1985 a. 29, 120; 1987 a. 27; 1993 a. 205; 1995 a. 27, 351; 1997 a. 35.

22 SECTION 7. 76.28 (2) (e) of the statutes is created to read:

23 76.28 (2) (e) For transmission companies, an amount equal to the gross
24 revenues multiplied by the rates under par. (c).

1 SECTION 8. 196.485 (title) of the statutes is repealed and recreated to read:

2 196.485 (title) **Transmission system requirements.**

3 SECTION 9. 196.485 (1) (am) of the statutes is created to read:

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

7 SECTION 10. 196.485 (1) (f^b) of the statutes is created to read:

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

11 SECTION 11. 196.485 (1) (g^b) of the statutes is created to read:

12 196.485 (1) (g^b) "Electric utility" has the meaning given in s. 196.491 (1) (d).

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

14 196.485 (1) (dm) (intro.) "Independent transmission owner" means:

15 1m. Means a person that satisfies each of the following:

History: 1997 a. 204.

16 SECTION 13. 196.485 (1) (dm) 1. ~~and~~ of the statutes ~~are~~ ^{is} renumbered 196.485

17 (1) (dm) 1m. a. ~~and~~ **Ino. 4-17: ✓**

18 SECTION 14. 196.485 (1) (dm) 2. of the statutes is created to read:

19 196.485 (1) (dm) 2. Does not include the transmission company.

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

21 196.485 (1) (do) "Land right" means any right in real property, including fee
22 simple ownership or a right-of-way or easement, that has been acquired for a
23 transmission facility that is located or intended to be located on the real property.

24 SECTION 16. 196.485 (1) (dq) of the statutes is created to read:

1 196.485 (1) (dq) “Manager” means, with respect to a transmission company
2 organized as a limited liability company under ch. 183, a manager, as defined in s.
3 183.0102 (13), of the transmission company.

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

5 196.485 (1) (dr) “Merger enforcement policy” means the enforcement policy of
6 the federal department of justice and the federal trade commission regarding
7 horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

8 **SECTION 18.** 196.485 (1) (ds) of the statutes is created to read:

9 196.485 (1) (ds) “Midwest independent system operator” means the
10 independent system operator the establishment of which the federal energy
11 regulatory commission has conditionally authorized in an order issued ^{on} September
12 16, 1998 ¹ or the successor to such independent system operator.

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

14 196.485 (1) (dt) “Nontransmission utility security holder” means a security
15 holder that is not a transmission utility security holder.

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

17 196.485 (1) (dv) “Organizational start-up date” means, with respect to a
18 transmission company that is organized as a limited liability company under ch. 183,
19 the date on which the articles of organization become effective under s. 183.0111 or,
20 with respect to a transmission company that is organized as a corporation under ch.
21 180, the date on which the articles of incorporation become effective under s.
22 180.0123.

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

24 196.485 (1) (em) “Retail electric cooperative” means a cooperative that provides
25 retail electric service.

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

2 196.485 (1) (fe) "Security" means, with respect to a transmission company
3 organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and,
4 with respect to a transmission company organized as a limited liability company
5 under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

6 SECTION 23. 196.485 (1) (ge) of the statutes is created to read:

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

14 SECTION 24. 196.485 (1) (gm) of the statutes is created to read:

15 196.485 (1) (gm) "Transmission dependent utility" means a public utility that
16 is dependent on the transmission system of another person for delivering electricity
17 to the public utility's customers.

18 SECTION 25. 196.485 (1) ^j of the statutes is created to read:

19 196.485 (1) ^j "Transmission utility shareholder" means a person that is a
20 shareholder of a transmission company organized as a corporation under ch. 180, is
21 an investor-owned transmission utility in the transmission area and has
22 contributed its transmission facilities to the transmission company.

23 SECTION 26. 196.485 (1m) of the statutes is created to read:

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

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

4 (b) After beginning operations, the transmission company shall have the
5 exclusive duty to provide transmission service in the transmission area. The duty
6 under this paragraph shall terminate on the date, as determined by the commission
7 under sub. (2) (d), that the midwest[✓] independent system operator is authorized to
8 begin operations.

9 (c) After beginning operations, the midwest[✓] independent system operator shall
10 have the exclusive duty to provide transmission service in the transmission area and
11 shall ensure that each transmission facility in the transmission area that is under
12 its operational control is planned, constructed, operated, maintained and controlled
13 as part of a single transmission system.

14 **SECTION 27.** 196.485 (2) (a) (intro.) of the statutes is amended to read:

15 196.485 (2) (a) (intro.) By June 30, 2000, if a transmission utility has not
16 transferred control over its transmission facilities to an independent system
17 operator that is approved by the applicable federal agency or divested, with approval
18 of the applicable federal agency and, for a public utility, the commission, its interest
19 in its transmission facilities to an independent transmission owner, the commission
20 shall, subject to ~~par. pars.~~ [✓] (am) and (ar), order the transmission utility to apply to the
21 applicable federal agency to do one of the following:

22 History: 1997 a. 204.

SECTION 28. 196.485 (2) (ar) of the statutes is created to read:

23 196.485 (2) (ar) The commission shall waive the requirement to issue an order
24 against a transmission utility under par. (a) if the transmission utility shows, to the

1 satisfaction of the commission, that the transmission utility has proposed to transfer
 2 control of its transmission facilities to the midwest independent system operator and
 3 that the proposed transfer may have the effect of jeopardizing the tax-exempt status
 4 of the transmission utility or its securities under the ~~Internal~~ ^I internal ^R revenue ^C code.
 5 A waiver under this paragraph shall be in effect until the commission determines
 6 that the proposed transfer does not have the effect described in this paragraph.

7 **SECTION 29.** 196.485 (2) (bx) of the statutes is created to read:

8 196.485 (2) (bx) If the commission determines that the midwest independent
 9 system operator has failed to commence operations or ~~cease~~ ^{de} operations, the
 10 commission shall, by order, designate an independent system operator to fulfill the
 11 duties of the midwest independent system operator under this section. The
 12 commission may not designate an independent system operator under this
 13 paragraph unless the independent system operator is authorized under federal law
 14 to operate in this state. In issuing an order under this paragraph, the commission
 15 shall require that any transfer of transmission utilities to the designated
 16 independent system operator satisfy the requirements of this section.

17 **SECTION 30.** 196.485 (2) (d) of the statutes is created to read:

18 196.485 (2) (d) The commission shall determine each of the following:

19 1. The date on which the transmission company is authorized to begin
 20 operations.

21 2. Whether the midwest independent system operator is authorized to begin
 22 operations and the date on which such operations are authorized to begin.

23 **SECTION 31.** 196.485 (2) (e) of the statutes is created to read:

24 196.485 (2) (e) The commission shall determine the effective date of s. 196.807
 25 as provided under s. 196.807 (5).

1 **SECTION 32.** 196.485 (3) (bm) of the statutes is repealed.

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

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

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

7 b. Subject to any approval required under state or federal law, contract with
8 each transmission utility that has transferred transmission facilities to the
9 transmission company for the transmission utility to provide reasonable and
10 cost-effective operation and maintenance services to the transmission company
11 during the 3-year period after the transmission company first begins operations.
12 The transmission company and a transmission utility may agree to an extension of
13 such 3-year period. The transmission company shall provide notice to the
14 commission of any extension that is agreed to under this subd. 1. b.

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

22 d. Apply for membership in the midwest independent system operator as part
23 of a single zone that includes the transmission area and, upon a determination by

24 the commission under sub. (2) (d) that the midwest independent system operator is

1 authorized to begin operations, transfer operational control of the transmission
2 company's transmission facilities to the midwest independent system operator.

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

8 f. Except as provided in subd. 4., elect to be included in a single zone for the
9 purpose of any tariff proposed by the midwest independent system operator.

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

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

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

17 c. Own electric generation facilities or sell, market or broker electric capacity
18 or energy in a relevant wholesale or retail market as established under the merger
19 enforcement policy, except that, if authorized or required by the federal energy
20 regulatory commission, the transmission company may procure or resell ancillary
21 services from ~~third~~ ^{third} parties, engage in redispatch activities that are necessary to
22 relieve transmission constraints or take other actions related to operating a control
23 area.

24 3. Notwithstanding subd. 1. a., the transmission company may not begin
25 operations until it provides an opinion to the commission from a nationally

1 recognized investment banking firm that the transmission company is able to
2 finance, at a reasonable cost, its start-up costs, working capital, operating expenses
3 and the cost of any new facilities that are planned. and

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

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

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

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

4 (c) *Organization.* The articles of organization, as defined in s. 183.0102 (1), of
5 a transmission company that is organized as a limited liability company under ch.
6 183 or the bylaws of a transmission company that is organized as a corporation under
7 ch. 180 shall provide for each of the following:

8 1. That the transmission company has no less than 5 and no more than 14
9 managers or directors, except that the articles of incorporation or bylaws may allow
10 the requirements of this subdivision to be modified upon a unanimous vote of the
11 managers or directors during the 10-year period after the organizational start-up
12 date or upon a two-thirds vote of the board of directors after such 10-year period.

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

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

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

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

8 c. ~~that~~^{of} each person that receives at least 5% of the securities of the
9 transmission company under sub. (6) (a) or (b) may appoint one manager or director
10 of the transmission company for a one-year term if the person continues to hold at
11 least a 5% equity interest in the transmission company during the one-year term.

12 d. ~~that~~^{of} each transmission utility security holder may appoint one manager or
13 director ~~of~~^{of} the transmission company for a one-year term.

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

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5. ~~(1)(a)~~ ^{stet} beginning 3 years after the organizational start-up date, any holder of 10% or more of the securities of the transmission company may require the transmission company to comply with any state or federal law that is necessary for the security holder to sell or transfer its shares.

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

SECTION 34. 196.485 (4) (a) (intro.) of the statutes is amended to read:

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

History: 1997 a. 204.

SECTION 35. 196.485 (4) (am) of the statutes is created to read:

196.485 (4) (am) If the commission determines under sub. (2) (d) 2. that the midwest independent system operator is authorized to begin operations, each transmission utility in the transmission area that is a public utility shall transfer operational control over its transmission facilities to the midwest independent system operator and each such ~~a~~ transmission utility that has not contributed its transmission facilities to the transmission company shall elect to become part of a single zone within the midwest independent system operator.

SECTION 36. 196.485 (5) of the statutes is created to read:

196.485 (5) PUBLIC UTILITY AFFILIATES. (a) *Asset cap exception.* Section 196.795 (6m) (c) ~~5~~ ^e does not apply to the eligible assets of a nonutility affiliate in a holding

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1 company system unless each public utility affiliate in the holding company system
2 does each of the following:

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

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

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

19 4. Notifies the commission in writing that the public utility affiliate has become
20 a member of the midwest independent system operator and has committed not to
21 withdraw its membership prior to the date on which the public utility affiliate
22 contributes transmission facilities to the transmission company under par. (b).

23 (b) *Contribution of transmission facilities.* 1. A public utility affiliate may not
24 contribute a transmission facility to the transmission company until the commission
25 has reviewed the terms and conditions of the transfer to determine whether the

1 transfer satisfies the requirements of this paragraph and has issued an order
2 approving or modifying the terms and conditions of the transfer. An order under this
3 subdivision that modifies the terms and conditions of a transfer may allow a public
4 utility affiliate to recover in retail rates any adverse tax consequences of the transfer
5 as a transition cost.

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

9 a. The structure of the transfer minimizes the material adverse tax
10 consequences to the public utility affiliate that result from the transfer and any other
11 material adverse tax consequence that does not result from combining transmission
12 facilities into a single zone under the control of the midwest independent system
13 operator.

14 b. To the extent practicable, the structure of the transfer satisfies the
15 requirements of the ~~federal~~ Internal Revenue Service for a tax-free transfer.

16 3. The requirements under subd. 2. b. shall, if practicable, be satisfied by the
17 transmission company's issuance of a preferred class of securities that provides the
18 fixed[✓] cost portion of the resulting capital structure of the transmission company. The
19 transmission company shall issue preferred securities under this subdivision on a
20 basis that does not dilute the voting rights of the initial security holders relative to
21 their initial contributions.

22 4. If the transfer of transmission assets under this paragraph [✓] results in a
23 capital structure of the transmission company in which the percentage of common
24 equity is materially higher than that of the public utility affiliates who made the
25 transfer, or if the cost of the fixed-cost portion of the capital structure of the

1 transmission company is materially higher than that of the public utility affiliates
2 who made the transfer, the public utility affiliates shall enter into a contract with the
3 transmission company under which the public utility affiliates agree to accept from
4 the transmission company a return on common equity based upon the equity rate of
5 return approved by the federal energy regulatory commission and upon an imputed
6 capital structure that assigns to a portion of the public utility affiliates' common
7 equity holdings an imputed debt return that is consistent with the requirements of
8 this subdivision. A contract under this subdivision shall specify that the public
9 utility affiliates shall be required to accept the return on common equity described
10 in this subdivision only until such time that the federal energy regulatory
11 commission determines that the actual capital structure and capital costs of the
12 transmission company are appropriate and consistent with industry practice for a
13 regulated public utility that provides electric transmission service in interstate
14 commerce.

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

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

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

1 6. If the construction of a transmission facility specified in subd. 5. a. is not
2 completed within 3 years after a certificate of public convenience and necessity is
3 issued for the transmission facility under s. 196.491 (3), the transmission company
4 may assume responsibility for completing construction of the transmission facility.
5 If the transmission company assumes responsibility for completing construction
6 under this subdivision, the transmission company shall carry out any obligation
7 under any contract entered into by the public utility with respect to the construction
8 until the contract is modified or rescinded by the transmission company to the extent
9 allowed under the contract.

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

12 (bm) *Lease of transmission facilities.* If a public utility affiliate is not able to
13 transfer ownership of its transmission facilities to the transmission company due to
14 merger-related accounting requirements, the public utility affiliate shall transfer
15 the transmission facilities to the transmission company under a lease for the period
16 of time during which the accounting requirements are in effect and, after such
17 requirements are no longer in effect, contribute the transmission facilities to the
18 transmission company under par. (b). A public utility affiliate that transfers
19 transmission facilities under a lease under this paragraph does not qualify for the
20 asset cap exception under par. (a) unless, during the term of the lease, the public
21 utility affiliate does not receive any voting interest in the transmission company.

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

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

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

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

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

7 **SECTION 37.** 196.485 (6) of the statutes is created to read:

8 196.485 (6) ELECTRIC UTILITIES, TRANSMISSION DEPENDENT UTILITIES AND RETAIL
9 ELECTRIC COOPERATIVES. No later than the first day of the 12th month beginning after
10 the first public utility affiliate files a commitment under sub. (5) (a) 2.: ✓

11 (a) An electric utility may transfer all of its integrated transmission facilities
12 to the transmission company on the same terms and conditions as a contribution of
13 transmission facilities by a public utility affiliate under sub. (5) (b).

14 (b) A transmission-dependent utility or retail electric cooperative may
15 purchase equity interests in the transmission company at a price that is equivalent
16 to net book value and on terms and conditions that are comparable to those for public
17 utility affiliates that have contributed transmission facilities to the transmission
18 company. A purchaser under this paragraph shall contribute funds to the
19 transmission company that are no less than the value of its ~~private~~ ^{pro-rated} shares based on
20 firm electric usage in this state in 1999.

21 **SECTION 38.** 196.485 (6m) of the statutes is created to read:

22 196.485 (6m) DIVIDENDS, PROFITS AND GAINS. The commission may not treat any
23 dividend received by a transmission utility from the transmission company or any
24 gain or profit of a transmission utility from the sale or other disposition of securities

1 issued by the transmission company as a credit against the retail revenue
2 requirements of the transmission utility.

3 **SECTION 39.** 196.485 (7) of the statutes is created to read:

4 196.485 (7) ENFORCEMENT. A wholesale or retail customer of a public utility
5 affiliate may petition the circuit court ^{for} Dane County for specific performance of a
6 commitment filed under sub. (5) (a) 2.

7 **SECTION 40.** 196.485 (8) of the statutes is created to read:

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

13 **SECTION 41.** 196.487 of the statutes is created to read:

14 **196.487 Reliability of electric service. (1) DEFINITIONS.** In this section:

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

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

17 **(2) COMMISSION ORDER.** If the commission determines that a public utility
18 affiliate or the transmission company is not making investments in the facilities
19 under its control that are sufficient to ensure reliable electric service, the commission
20 shall order the public utility affiliate or transmission company to make adequate
21 investments in its facilities that are sufficient to ensure reliable electric service. An
22 order under this subsection shall require the public utility affiliate or transmission
23 company to provide security in an amount and form that, to the satisfaction of the
24 commission, is sufficient to ensure that the public utility affiliate or transmission
25 expeditiously makes any investment that is ordered.

company

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

4 **SECTION 42.** 196.491 (3m) (b) 2. of the statutes is amended to read:

5 196.491 **(3m)** (b) 2. The analytical process specified in subd. 1. b. shall, to the
6 extent practicable, be consistent with the analytical process described in the merger
7 enforcement policy of the federal department of justice and the federal trade
8 commission regarding horizontal acquisitions and mergers that are subject to 15
9 USC 1, 18 or 45, as defined in s. 196.485 (1) (dr).

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204.

10 **SECTION 43.** 196.52 (3) (a) of the statutes is amended to read:

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

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

History: 1981 c. 390; 1983 a. 53, 538; 1985 a. 297; 1993 a. 496; 1995 a. 225; 1997 a. 184.

17 **SECTION 44.** 196.795 (1) (g) 1. of the statutes is amended to read:

18 196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of
19 the outstanding voting securities of a public utility, other than a transmission
20 company, with the unconditional power to vote those securities.

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

21 **SECTION 45.** 196.795 (1) (g) 2. of the statutes is amended to read:

22 196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting
23 securities of a public utility, other than a municipality or other political subdivision
24 or a transmission company, for or into the voting securities of a company organized,

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

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

3 **SECTION 46.** 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 47.** 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 48.** 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;

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

13 **SECTION 49.** 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 50.** 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

16 **SECTION 51.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m)

17 (a) 3.

18 **SECTION 52.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m)

19 (a) 5.

20 **SECTION 53.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m)

21 (a) 6.

22 **SECTION 54.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c)

23 and amended to read:

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

7 ~~History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 333; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1991 a. 213; 1997 a. 140, 204.~~

8 ~~SECTION 55. 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d)~~
9 and amended to read:

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

14 ~~History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.~~

15 **SECTION 56.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d)

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

17 **SECTION 57.** 196.795 (6m) (a) (intro.) of the statutes is created to read:

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

19 **SECTION 58.** 196.795 (6m) (a) 1. of the statutes is created to read:

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

23 **SECTION 59.** 196.795 (6m) (a) 2. of the statutes is created to read:

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

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

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

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

6 d. Recovering or producing energy from waste materials.

7 e. Processing waste materials.

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

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

12 SECTION 61. 196.795 (6m) (a) ~~β~~^γ of the statutes is created to read:

13 196.795 (6m) (a) ~~β~~^γ. "Generation assets" means assets that are classified as
14 electric generation assets on the books of account of a public utility, as determined
15 by the commission.

16 SECTION 62. 196.795 (6m) (b) (title) of the statutes is created to read:

17 196.795 (6m) (b) *In general.*

18 SECTION 63. 196.795 (6m) (e) of the statutes is created to read:

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

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

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

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

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

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

18 **SECTION 64.** 196.795 (11) (c) of the statutes is created to read:

19 196.795 (11) (c) The commission may not impose upon a holding company the
20 formation of which is ~~deemed~~ ^{considered} to be legalized and confirmed under par. (b) any term,
21 limitation or condition under par. (b) that establish ^{res} the sum of the holding company's
22 nonutility affiliate assets at less than 25% of the sum of the holding company's utility
23 affiliate assets. For purposes of this paragraph, any term, limitation or condition on
24 nonutility affiliate assets shall not apply to the ownership, operation, management

1 or control of any eligible asset, as defined under sub. (6m) (a) 2., or an asset that is
2 used for manufacturing, distributing or selling swimming pools or spas.

3 SECTION 65. 196.807 of the statutes is created to read:

4 **196.807 Energy affiliate and utility employes.** (1) DEFINITIONS. In this
5 section:

6 (a) "Acquire an energy unit" means to lease, purchase or otherwise acquire
7 ownership or control of the energy unit.

8 (b) "Affiliate or utility" means a nonutility affiliate, as defined in s. 196.795 (1)
9 (j), [✓] a holding company system, as defined in s. 196.795 (1) (i), [✓] or an electric utility,
10 as defined in s. 196.491 (1) (d). [✓]

11 (c) "Energy unit" means a unit that is engaged in activities related to the
12 production, generation, transmission or distribution of electricity, gas or steam or the
13 recovery of energy from waste materials.

14 (d) "Holding company system" has the meaning given in s. 196.795 (1) (i). [✓]

15 [✓] (j) "Unit" means a division, department or other operational business unit of
16 an affiliate or utility.

17 (2) OFFER OF EMPLOYMENT. (a) Except as provided in par. (b), a person that
18 acquires an energy unit shall offer employment to the nonsupervisory employes who
19 are employed with the energy unit immediately prior to the acquisition and who are
20 necessary for the operation and maintenance of the energy unit.

21 (b) A nonutility affiliate that acquires an energy unit of a public utility affiliate
22 in the same holding company system shall offer employment to all of the
23 nonsupervisory employes who are employed with the energy unit immediately prior
24 to the acquisition.

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

4 1. Wage rates shall be no less than the wage rates in effect immediately prior
5 to the acquisition.

6 2. Fringe benefits shall be substantially equivalent to the fringe benefits in
7 effect immediately prior to the acquisition.

8 3. Terms and conditions of employment, other than wage rates and fringe
9 benefits, shall be substantially equivalent to the terms and conditions in effect
10 immediately prior to the acquisition.

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

13 (4) COMMISSION APPROVAL. No person may acquire an energy unit unless the
14 commission determines that the person has satisfied subs. (2) and (3).

15 (5) APPLICABILITY. This section does not apply until the expiration date of the
16 3-year period specified in s. 196.485 (3m) (a) 1. b., as determined by the commission,
17 or the expiration date of any extension of the 3-year period that is agreed to under
18 s. 196.485 (3m) (a) 1. b., as determined by the commission, whichever is later. The
19 commission shall publish a notice in the Wisconsin Administrative Register that
20 specifies the date that the commission determines is the effective date of this section.

21 **SECTION 66.** 200.01 (2) of the statutes is amended to read:

22 200.01 (2) "Public service corporation" means and embraces every corporation,
23 except municipalities and other political subdivisions, which is a public utility as
24 defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02,
25 but shall not include a public utility corporation receiving an annual gross revenue

1 of less than \$1,000 for the calendar year next preceding the issuance of any securities
 2 by it. "Public service corporation" includes a holding company, as defined under s.
 3 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). "Public service
 4 corporation" does not include a telecommunications utility, as defined in s. 196.01
 5 (10). "Public service corporation" does not include any other holding company unless
 6 the holding company was formed after November 28, 1985, and unless the
 7 commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate,
 8 as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do
 9 at least one of the items specified in s. 196.795 (7) (a). "Public service corporation"
 10 does not include a company, as defined in s. 196.795 (1) (f), which owns, operates,
 11 manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless
 12 such company also owns, operates, manages or controls a public utility which is not
 13 a telecommunications utility. "Public service corporation" does not include a
 14 transmission company, as defined in s. 196.485 (1) (ge).

History: 1971 c. 164 s. 88; 1977 c. 29; 1981 c. 347 s. 80 (2); 1983 a. 189; 1985 a. 79; 1985 a. 297 ss. 13, 76; 1993 a. 16, 123, 496, 1997 a. 140 s. 11; Stats. 1997 s. 200.01.

SECTION 67. Initial applicability.

16 (1) LICENSE FEE FOR TRANSMISSION COMPANIES. The treatment of sections 76.28
 17 (1) (d) ^{and} (e) (intro.) ^{and} (2) (c) (intro.) and ~~and~~ (d) and 196.485 (1) (ge) of the statutes and
 18 the creation of section 76.28 (1) (c) 5. ^{and} (j) and (2) (e) ^{of the statutes} first ~~apply~~ ^{apply} to taxable years
 19 beginning on January 1 of the year in which this subsection takes effect, except that
 20 if this subsection takes effect after July 31 the treatment of sections 76.28 (1) (d) ^{and} (e)
 21 (intro.) ^{and} (2) (c) (intro.) and ~~and~~ (d) of the statutes and the creation of section 76.28 (1)
 22 (e) 5. (j) and (2) (e) ^{of the statutes} first ~~apply~~ ^{apply} to taxable years beginning on January 1 of the year
 23 following the year in which this subsection takes effect.

(END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

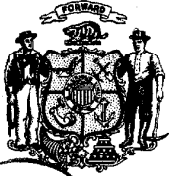
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INSERT 4-17 ✓

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

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

History: 1997 a. 204.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3151/P1
MDK:kmg:ch

now

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

P2

ad see pages 27, 30 & 31

RM NOT RUN

Sen. Cat.

1 **AN ACT to repeal** 196.485 (3) (bm) and 196.795 (5) (pm) 1. (intro.); **to renumber**
2 196.485 (1) (dm) 1., 196.795 (5) (p) 1., 2., 3. and 4., 196.795 (5) (pm) 1. a., 196.795
3 (5) (pm) 1. b. and 196.795 (5) (pm) 1. c.; **to renumber and amend** 196.485 (1)
4 (dm) 3., 196.795 (5) (pm) 2. and 196.795 (5) (pm) 3.; **to amend** 76.28 (1) (d), 76.28
5 (1) (e) (intro.), 76.28 (2) (c) (intro.), 76.28 (2) (d), 196.485 (1) (dm) (intro.),
6 196.485 (2) (a) (intro.), 196.485 (4) (a) (intro.), 196.491 (3m) (b) 2., 196.52 (3) (a),
7 196.795 (1) (g) 1., 196.795 (1) (g) 2., 196.795 (5) (i) 1. and 200.01 (2); **to repeal**
8 **and recreate** 196.485 (title); and **to create** 76.28 (1) (e) 5., 76.28 (1) (j), 76.28
9 (2) (e), 196.485 (1) (am), 196.485 (1) (be), 196.485 (1) (bs), 196.485 (1) (dm) 2.,
10 196.485 (1) (do), 196.485 (1) (dq), 196.485 (1) (dr), 196.485 (1) (ds), 196.485 (1)
11 (dt), 196.485 (1) (dv), 196.485 (1) (em), 196.485 (1) (fe), 196.485 (1) (ge), 196.485
12 (1) (gm), 196.485 (1) (j), 196.485 (1m), 196.485 (2) (ar), 196.485 (2) (bx), 196.485
13 (2) (d), 196.485 (2) (e), 196.485 (3m), 196.485 (4) (am), 196.485 (5), 196.485 (6),
14 196.485 (6m), 196.485 (7), 196.485 (8), 196.487, 196.795 (1) (h) 3., 196.795 (1)
15 (p), 196.795 (6m) (title), 196.795 (6m) (a) (intro.), 196.795 (6m) (a) 1., 196.795

1 (6m)(a) 2., 196.795 (6m)(a) 4., 196.795 (6m)(b) (title), 196.795 (6m)(e), 196.795
2 (11) (c) and 196.807 of the statutes; **relating to:** control of transmission
3 facilities by a transmission company and a Midwest independent system
4 operator, ownership of nonutility assets by a public utility holding company,
5 investments in transmission facilities, offers of employment to certain public
6 utility and nonaffiliate employes and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state** 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:

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

8 76.28 (1) (d) "Gross revenues" for a light, heat and power company other than
9 a qualified wholesale electric company or a transmission company means total
10 operating revenues as reported to the public service commission except revenues for
11 interdepartmental sales and for interdepartmental rents as reported to the public
12 service commission and deductions from the sales and use tax under s. 77.61 (4),
13 except that the company may subtract from revenues either the actual cost of power
14 purchased for resale, as reported to the public service commission, by a light, heat
15 and power company, except a municipal light, heat and power company, that
16 purchases under federal or state approved wholesale rates more than 50% of its
17 electric power from a person other than an affiliated interest, as defined in s. 196.52
18 (1), if the revenue from that purchased electric power is included in the seller's gross

1 revenues or the following percentages of the actual cost of power purchased for
2 resale, as reported to the public service commission, by a light, heat and power
3 company, except a municipal light, heat and power company that purchases more
4 than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for
5 the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50%
6 for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric
7 company, “gross revenues” means total business revenues from those businesses
8 included under par. (e) 1. to 4. For a transmission company, “gross revenues” means
9 total operating revenues as reported to the public service commission, except
10 revenues for transmission service that is provided to a public utility that is subject
11 to the license fee under sub. (2) (d) or to a public utility, as defined in s. 196.01 (5).

12 **SECTION 2.** 76.28 (1) (e) (intro.) of the statutes is amended to read:

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

22 **SECTION 3.** 76.28 (1) (e) 5. of the statutes is created to read:

23 76.28 (1) (e) 5. Transmitting electric current for light, heat or power.

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

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

3 **SECTION 5.** 76.28 (2) (c) (intro.) of the statutes is amended to read:

4 76.28 (2) (c) (intro.) ~~For~~ Except as provided under par. (e), for private light, heat
5 and power companies for 1986 and thereafter, an amount equal to the apportionment
6 factor multiplied by the sum of:

7 **SECTION 6.** 76.28 (2) (d) of the statutes is amended to read:

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

12 **SECTION 7.** 76.28 (2) (e) of the statutes is created to read:

13 76.28 (2) (e) For transmission companies, an amount equal to the gross
14 revenues multiplied by the rates under par. (c).

15 **SECTION 8.** 196.485 (title) of the statutes is repealed and recreated to read:

16 **196.485 (title) Transmission system requirements.**

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

18 196.485 (1) (am) “Contribute a transmission facility” means to divest a person’s
19 interest in the transmission facility and to transfer ownership of the transmission
20 facility and associated deferred tax reserves to another person.

21 **SECTION 10.** 196.485 (1) (be) of the statutes is created to read:

22 196.485 (1) (be) “Director” means, with respect to a transmission company
23 organized as a corporation under ch. 180, a member of the board of directors of the
24 transmission company.

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

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

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

3 196.485 (1) (dm) (intro.) “Independent transmission owner” ~~means:~~

4 1m. Means a person that satisfies each of the following:

5 **SECTION 13.** 196.485 (1) (dm) 1. of the statutes is renumbered 196.485 (1) (dm)

6 1m. a.

7 **SECTION 14.** 196.485 (1) (dm) 2. of the statutes is created to read:

8 196.485 (1) (dm) 2. Does not include the transmission company.

9 **SECTION 15.** 196.485 (1) (dm) 3. of the statutes is renumbered 196.485 (1) (dm)

10 1m. b. and amended to read:

11 196.485 (1) (dm) 1m. b. The person is not an affiliated interest of a person
12 specified in subd. ~~1.~~ 1m. a.

13 **SECTION 16.** 196.485 (1) (do) of the statutes is created to read:

14 196.485 (1) (do) “Land right” means any right in real property, including fee
15 simple ownership or a right-of-way or easement, that has been acquired for a
16 transmission facility that is located or intended to be located on the real property.

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

18 196.485 (1) (dq) “Manager” means, with respect to a transmission company
19 organized as a limited liability company under ch. 183, a manager, as defined in s.
20 183.0102 (13), of the transmission company.

21 **SECTION 18.** 196.485 (1) (dr) of the statutes is created to read:

22 196.485 (1) (dr) “Merger enforcement policy” means the enforcement policy of
23 the federal department of justice and the federal trade commission regarding
24 horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

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

1 196.485 (1) (ds) “Midwest independent system operator” means the
2 independent system operator the establishment of which the federal energy
3 regulatory commission has conditionally authorized in an order issued on September
4 16, 1998, or the successor to such independent system operator.

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

6 196.485 (1) (dt) “Nontransmission utility security holder” means a security
7 holder that is not a transmission utility security holder.

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

9 196.485 (1) (dv) “Organizational start-up date” means, with respect to a
10 transmission company that is organized as a limited liability company under ch. 183,
11 the date on which the articles of organization become effective under s. 183.0111 or,
12 with respect to a transmission company that is organized as a corporation under ch.
13 180, the date on which the articles of incorporation become effective under s.
14 180.0123.

15 **SECTION 22.** 196.485 (1) (em) of the statutes is created to read:

16 196.485 (1) (em) “Retail electric cooperative” means a cooperative that provides
17 retail electric service.

18 **SECTION 23.** 196.485 (1) (fe) of the statutes is created to read:

19 196.485 (1) (fe) “Security” means, with respect to a transmission company
20 organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and,
21 with respect to a transmission company organized as a limited liability company
22 under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

23 **SECTION 24.** 196.485 (1) (ge) of the statutes is created to read:

24 196.485 (1) (ge) “Transmission company” means a corporation organized under
25 ch. 180 or a limited liability company organized under ch. 183 that has as its sole

1 purpose the planning, constructing, operating, maintaining and expanding of
2 transmission facilities that it owns to provide for an adequate and reliable
3 transmission system that meets the needs of all users that are dependent on the
4 transmission system and that supports effective competition in energy markets
5 without favoring any market participant.

6 **SECTION 25.** 196.485 (1) (gm) of the statutes is created to read:

7 196.485 (1) (gm) "Transmission dependent utility" means a public utility that
8 is dependent on the transmission system of another person for delivering electricity
9 to the public utility's customers.

10 **SECTION 26.** 196.485 (1) (j) of the statutes is created to read:

11 196.485 (1) (j) "Transmission utility shareholder" means a person that is a
12 shareholder of a transmission company organized as a corporation under ch. 180, is
13 an investor-owned transmission utility in the transmission area and has
14 contributed its transmission facilities to the transmission company.

15 **SECTION 27.** 196.485 (1m) of the statutes is created to read:

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

21 (b) After beginning operations, the transmission company shall have the
22 exclusive duty to provide transmission service in the transmission area. The duty
23 under this paragraph shall terminate on the date, as determined by the commission
24 under sub. (2) (d), that the Midwest independent system operator is authorized to
25 begin operations.

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

6 **SECTION 28.** 196.485 (2) (a) (intro.) of the statutes is amended to read:

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

14 **SECTION 29.** 196.485 (2) (ar) of the statutes is created to read:

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

23 **SECTION 30.** 196.485 (2) (bx) of the statutes is created to read:

24 196.485 (2) (bx) If the commission determines that the Midwest independent
25 system operator has failed to commence operations or has ceased operations, the

1 commission shall, by order, designate an independent system operator to fulfill the
2 duties of the Midwest independent system operator under this section. The
3 commission may not designate an independent system operator under this
4 paragraph unless the independent system operator is authorized under federal law
5 to operate in this state. In issuing an order under this paragraph, the commission
6 shall require that any transfer of transmission utilities to the designated
7 independent system operator satisfy the requirements of this section.

8 **SECTION 31.** 196.485 (2) (d) of the statutes is created to read:

9 196.485 (2) (d) The commission shall determine each of the following:

10 1. The date on which the transmission company is authorized to begin
11 operations.

12 2. Whether the Midwest independent system operator is authorized to begin
13 operations and the date on which such operations are authorized to begin.

14 **SECTION 32.** 196.485 (2) (e) of the statutes is created to read:

15 196.485 (2) (e) The commission shall determine the effective date of s. 196.807
16 as provided under s. 196.807 (5).

17 **SECTION 33.** 196.485 (3) (bm) of the statutes is repealed.

18 **SECTION 34.** 196.485 (3m) of the statutes is created to read:

19 196.485 (3m) TRANSMISSION COMPANY. (a) *Duties.* 1. The transmission company
20 shall do each of the following:

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

23 b. Subject to any approval required under state or federal law, contract with
24 each transmission utility that has transferred transmission facilities to the
25 transmission company for the transmission utility to provide reasonable and

1 cost-effective operation and maintenance services to the transmission company
2 during the 3-year period after the transmission company first begins operations.

3 The transmission company and a transmission utility may agree to an extension of
4 such 3-year period. The transmission company shall provide notice to the
5 commission of any extension that is agreed to under this subd. 1. b.

6 c. Assume the obligation of a transmission utility that has transferred
7 ownership of its transmission facilities to the transmission company under any
8 agreement by the transmission utility to provide transmission service over its
9 transmission facilities or under any credit received by the transmission utility for the
10 use of its transmission facilities, except that the transmission company may modify
11 such an agreement or credit to the extent allowed under the agreement or credit and
12 to the extent allowed under state or federal law.

13 d. Apply for membership in the Midwest independent system operator as part
14 of a single zone that includes the transmission area and, upon a determination by
15 the commission under sub. (2) (d) that the Midwest independent system operator is
16 authorized to begin operations, transfer operational control of the transmission
17 company's transmission facilities to the Midwest independent system operator.

18 e. Remain a member of the Midwest independent system operator, or any
19 independent system operator that has been approved under federal law to succeed
20 the Midwest independent operator, for at least the 6-year transition period that is
21 specified in the agreement conditionally approved by the federal energy regulatory
22 commission that establishes the Midwest independent system operator.

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

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

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

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

7 c. Own electric generation facilities or sell, market or broker electric capacity
8 or energy in a relevant wholesale or retail market as established under the merger
9 enforcement policy, except that, if authorized or required by the federal energy
10 regulatory commission, the transmission company may procure or resell ancillary
11 services from 3rd parties, engage in redispatch activities that are necessary to relieve
12 transmission constraints or take other actions related to operating a control area.

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

18 4. If the transmission costs of any transmission utility in the transmission area
19 are 10% or more below the average transmission costs of the transmission utilities
20 in the transmission area on the date, as determined by the commission, that the last
21 public utility affiliate files a commitment with the commission under sub. (5) (a) 2.,
22 the transmission company shall, after consulting with each public utility affiliate
23 that has filed a commitment under sub. (5) (a) 2., prepare a plan for phasing in a
24 combined single zone for the purpose of pricing network use by users of the
25 transmission system operated by the Midwest independent system operator and

1 shall seek plan approval by the federal energy regulatory commission and the
2 Midwest independent system operator. A plan under this subdivision shall phase in
3 an average-cost price for the combined single zone in equal increments over a 5-year
4 period, except that, under the plan, transmission service shall be provided to all
5 users of the transmission system on a single-zone basis during the phase-in period.

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

7 1. Subject to the approval of the commission under s. 196.491 (3), construct
8 transmission facilities, including high-voltage transmission lines, as defined in s.
9 196.491 (1) (f), in the transmission area or in any other area of the state in which
10 transmission facilities that have been contributed to the transmission company are
11 located. This subdivision does not affect the right or duty of an electric utility that
12 is not located in the transmission area or that has not contributed its transmission
13 facilities to the transmission company to construct transmission facilities.

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

17 (c) *Organization.* The articles of organization, as defined in s. 183.0102 (1), of
18 a transmission company that is organized as a limited liability company under ch.
19 183 or the bylaws of a transmission company that is organized as a corporation under
20 ch. 180 shall provide for each of the following:

21 1. That the transmission company has no less than 5 and no more than 14
22 managers or directors, except that the articles of incorporation or bylaws may allow
23 the requirements of this subdivision to be modified upon a unanimous vote of the
24 managers or directors during the 10-year period after the organizational start-up
25 date or upon a two-thirds vote of the board of directors after such 10-year period.

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

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

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

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

21 c. Each person that receives at least 5% of the securities of the transmission
22 company under sub. (6) (a) or (b) may appoint one manager or director of the
23 transmission company for a one-year term if the person continues to hold at least a
24 5% equity interest in the transmission company during the one-year term.

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

3 4. That, during the 5-year period after the organizational start-up date, no
4 public utility affiliate that contributes transmission facility assets to the
5 transmission company under sub. (5) (b) and no affiliate of such a public utility
6 affiliate may increase its percentage share of the outstanding securities of the
7 transmission company prior to any initial issuance of securities by the transmission
8 company to any 3rd party other than a 3rd party exercising its right to purchase
9 securities under sub. (6) (b), except that this subdivision does not apply to securities
10 that are issued by the transmission company in exchange for transmission facilities
11 that are contributed in addition to the transmission facilities that are contributed
12 under sub. (5) (b) and except that the requirements of this subdivision may be
13 modified upon a unanimous vote of the managers or directors.

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

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

21 **SECTION 35.** 196.485 (4) (a) (intro.) of the statutes is amended to read:

22 196.485 (4) (a) (intro.) ~~A~~ Except as provided in par. (am), a transmission utility
23 may not transfer control over, or divest its interest in, its transmission facilities to
24 an independent system operator or independent transmission owner unless, to the
25 satisfaction of the commission, each of the following requirements is satisfied:

1 **SECTION 36.** 196.485 (4) (am) of the statutes is created to read:

2 196.485 (4) (am) If the commission determines under sub. (2) (d) 2. that the
3 Midwest independent system operator is authorized to begin operations, each
4 transmission utility in the transmission area that is a public utility shall transfer
5 operational control over its transmission facilities to the Midwest independent
6 system operator and each such transmission utility that has not contributed its
7 transmission facilities to the transmission company shall elect to become part of a
8 single zone within the Midwest independent system operator.

9 **SECTION 37.** 196.485 (5) of the statutes is created to read:

10 196.485 (5) PUBLIC UTILITY AFFILIATES. (a) *Asset cap exception.* Section 196.795
11 (6m) (e) does not apply to the eligible assets of a nonutility affiliate in a holding
12 company system unless each public utility affiliate in the holding company system
13 does each of the following:

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

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

24 3. Files with the commission an unconditional, irrevocable and binding
25 commitment to contribute, and to cause each entity into which it merges or

1 consolidates or to which it transfers substantially all of its assets to contribute, any
2 transmission facility in this state the ownership or control of which it acquires after
3 the effective date of this subdivision [revisor inserts date], and land rights, to the
4 transmission company.

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

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

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

20 a. The structure of the transfer minimizes the material adverse tax
21 consequences to the public utility affiliate that result from the transfer and any other
22 material adverse tax consequence that does not result from combining transmission
23 facilities into a single zone under the control of the Midwest independent system
24 operator.

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

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

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

1 regulated public utility that provides electric transmission service in interstate
2 commerce.

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

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

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

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

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

1 (bm) *Lease of transmission facilities.* If a public utility affiliate is not able to
2 transfer ownership of its transmission facilities to the transmission company due to
3 merger-related accounting requirements, the public utility affiliate shall transfer
4 the transmission facilities to the transmission company under a lease for the period
5 of time during which the accounting requirements are in effect and, after such
6 requirements are no longer in effect, contribute the transmission facilities to the
7 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

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 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 38.** 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 may transfer all of its integrated transmission facilities
24 to the transmission company on the same terms and conditions as a contribution of
25 transmission facilities by a public utility affiliate under sub. (5) (b).

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

8 **SECTION 39.** 196.485 (6m) of the statutes is created to read:

9 196.485 (6m) DIVIDENDS, PROFITS AND GAINS. The commission may not treat any
10 dividend received by a transmission utility from the transmission company or any
11 gain or profit of a transmission utility from the sale or other disposition of securities
12 issued by the transmission company as a credit against the retail revenue
13 requirements of the transmission utility.

14 **SECTION 40.** 196.485 (7) of the statutes is created to read:

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

18 **SECTION 41.** 196.485 (8) of the statutes is created to read:

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

24 **SECTION 42.** 196.487 of the statutes is created to read:

25 **196.487 Reliability of electric service. (1) DEFINITIONS.** In this section:

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

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

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

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

15 SECTION 43. 196.491 (3m) (b) 2. of the statutes is amended to read:

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

21 SECTION 44. 196.52 (3) (a) of the statutes is amended to read:

22 196.52 (3) (a) In this subsection, "contract or arrangement" means a contract
23 or arrangement providing for the furnishing of management, supervisory,
24 construction, engineering, accounting, legal, financial or similar services and any
25 contract or arrangement for the purchase, sale, lease or exchange of any property,

1 right, or thing, or for the furnishing of any service, property, right, or thing, other
2 than management, supervisory, construction, engineering, accounting, legal,
3 financial or similar services, but “contract or arrangement” does not include a
4 contract or arrangement under which a transmission utility, as defined in s. 196.485
5 (1) (i), sells or transfers securities, as defined in s. 196.485 (1) (fe), that have been
6 issued by a transmission company, as defined in s. 196.485 (1) (ge). Except as
7 provided under par. (b), unless and until the commission gives its written approval,
8 any contract or arrangement is not valid or effective if the contract or arrangement
9 is made between a public utility and an affiliated interest after June 7, 1931. Every
10 public utility shall file with the commission a verified copy of any contract or
11 arrangement, a verified summary of any unwritten contract or arrangement, and
12 any contract or arrangement, written or unwritten, which was in effect on June 7,
13 1931. The commission shall approve a contract or arrangement made or entered into
14 after June 7, 1931, only if it shall clearly appear and be established upon
15 investigation that it is reasonable and consistent with the public interest. The
16 commission may not approve any contract or arrangement unless satisfactory proof
17 is submitted to the commission of the cost to the affiliated interest of rendering the
18 services or of furnishing the property or service to each public utility or of the cost
19 to the public utility of rendering the services or of furnishing the property or service
20 to each affiliated interest. No proof is satisfactory under this paragraph unless it
21 includes the original (or verified copies) of the relevant cost records and other
22 relevant accounts of the affiliated interest, or an abstract of the records and accounts
23 or a summary taken from the records and accounts if the commission deems the
24 abstract or summary adequate. The accounts shall be properly identified and duly

1 authenticated. The commission, where reasonable, may approve or disapprove a
2 contract or arrangement without submission of the cost records or accounts.

3 **SECTION 45.** 196.795 (1) (g) 1. of the statutes is amended to read:

4 196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of
5 the outstanding voting securities of a public utility, other than a transmission
6 company, with the unconditional power to vote those securities.

7 **SECTION 46.** 196.795 (1) (g) 2. of the statutes is amended to read:

8 196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting
9 securities of a public utility, other than a municipality or other political subdivision
10 or a transmission company, for or into the voting securities of a company organized,
11 created, appointed or formed by or at the direction of the public utility or of a
12 subsidiary of such company.

13 **SECTION 47.** 196.795 (1) (h) 3. of the statutes is created to read:

14 196.795 (1) (h) 3. “Holding company” does not include a transmission company.

15 **SECTION 48.** 196.795 (1) (p) of the statutes is created to read:

16 196.795 (1) (p) “Transmission company” has the meaning given in s. 196.485
17 (1) (ge).

18 **SECTION 49.** 196.795 (5) (i) 1. of the statutes is amended to read:

19 196.795 (5) (i) 1. Shall consider the public utility affiliate as a wholly
20 independent corporation and shall impute a capital structure to the public utility
21 affiliate and establish a cost of capital for the public utility affiliate on a stand-alone
22 basis;

23 **SECTION 50.** 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered
24 196.795 (6m) (b) 1., 2., 3. and 4.

25 **SECTION 51.** 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

1 **SECTION 52.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m)
2 (a) 3.

3 **SECTION 53.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m)
4 (a) 5.

5 **SECTION 54.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m)
6 (a) 6.

7 **SECTION 55.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c)
8 and amended to read:

9 196.795 (6m) (c) Wholesale merchant plants. The assets of a wholesale
10 merchant plant shall not be included in the sum of the assets of a public utility
11 affiliate under par. ~~(p)~~ (b) 1. a., b. or c. and shall not be included in a nonutility
12 affiliate's total assets under par. ~~(p)~~ (b) 2. a. if the requirements specified in s. 196.491
13 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the
14 exemption under s. 196.491 (3m) (e).

15 **SECTION 56.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d)
16 and amended to read:

17 196.795 (6m) (d) Foreign affiliates. The assets of a foreign affiliate shall be
18 included in the sum of the assets of a public utility affiliate under par. ~~(p)~~ (b) 1. a.,
19 b. or c. and shall not be included in a nonutility affiliate's total assets under par. ~~(p)~~
20 (b) 2. a.

21 **SECTION 57.** 196.795 (6m) (title) of the statutes is created to read:

22 196.795 (6m) (title) ASSET CAP.

23 **SECTION 58.** 196.795 (6m) (a) (intro.) of the statutes is created to read:

24 196.795 (6m) (a) Definitions. (intro.) In this subsection:

25 **SECTION 59.** 196.795 (6m) (a) 1. of the statutes is created to read:

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

4 **SECTION 60.** 196.795 (6m) (a) 2. of the statutes is created to read:

5 196.795 (6m) (a) 2. “Eligible asset” means an asset of a nonutility affiliate that
6 is used for any of the following:

7 a. Producing, generating, transmitting, delivering, selling or furnishing gas,
8 oil, electricity or steam energy.

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

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

12 d. Recovering or producing energy from waste materials.

13 e. Processing waste materials.

14 f. Manufacturing, distributing or selling products for filtration, pumping water
15 or other fluids, processing or heating water, handling fluids or other related
16 activities.

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

18 **SECTION 61.** 196.795 (6m) (a) 4. of the statutes is created to read:

19 196.795 (6m) (a) 4. “Generation assets” means assets that are classified as
20 electric generation assets on the books of account of a public utility, as determined
21 by the commission.

22 **SECTION 62.** 196.795 (6m) (b) (title) of the statutes is created to read:

23 196.795 (6m) (b) *In general.*

24 **SECTION 63.** 196.795 (6m) (e) of the statutes is created to read:

1 196.795 (6m) (e) *Contributor public utility affiliates*. 1. The eligible assets of
2 a nonutility affiliate in a holding company system that includes a contributor public
3 utility affiliate shall not be included in the sum of the assets of the public utility
4 affiliates under par. (b) 1. a., b. or c. and shall not be included in the nonutility
5 affiliate's total assets under par. (b) 2. a.

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

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

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

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

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

25 SECTION 64. 196.795 (11) (c) of the statutes is created to read:

INSERT 27-24 ✓

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

10 **SECTION 65.** 196.807 of the statutes is created to read:

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

13 (a) "Acquire an energy unit" means to lease, purchase or otherwise acquire
14 ownership or control of the energy unit.

15 (b) "Affiliate or utility" means a nonutility affiliate, as defined in s. 196.795 (1)
16 (j), a holding company system, as defined in s. 196.795 (1) (i), or an electric utility,
17 as defined in s. 196.491 (1) (d).

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

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

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

24 (2) OFFER OF EMPLOYMENT. (a) Except as provided in par. (b), a person that
25 acquires an energy unit shall offer employment to the nonsupervisory employees who

1 are employed with the energy unit immediately prior to the acquisition and who are
2 necessary for the operation and maintenance of the energy unit.

3 (b) A nonutility affiliate that acquires an energy unit of a public utility affiliate
4 in the same holding company system shall offer employment to all of the
5 nonsupervisory employees who are employed with the energy unit immediately prior
6 to the acquisition.

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

10 1. Wage rates shall be no less than the wage rates in effect immediately prior
11 to the acquisition.

12 2. Fringe benefits shall be substantially equivalent to the fringe benefits in
13 effect immediately prior to the acquisition.

14 3. Terms and conditions of employment, other than wage rates and fringe
15 benefits, shall be substantially equivalent to the terms and conditions in effect
16 immediately prior to the acquisition.

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

19 (4) COMMISSION APPROVAL. No person may acquire an energy unit unless the
20 commission determines that the person has satisfied subs. (2) and (3).

21 (5) APPLICABILITY. This section does not apply until the expiration date of the
22 3-year period specified in s. 196.485 (3m) (a) 1. b., as determined by the commission,
23 or the expiration date of any extension of the 3-year period that is agreed to under
24 s. 196.485 (3m) (a) 1. b., as determined by the commission, whichever is later. The

1 commission shall publish a notice in the Wisconsin Administrative Register that
2 specifies the date that the commission determines is the effective date of this section.

3 **SECTION 66.** 200.01 (2) of the statutes is amended to read:

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

22 **SECTION 67. Initial applicability.**

23 (1) LICENSE FEE FOR TRANSMISSION COMPANIES. The treatment of sections 76.28
24 (1) (d) ~~and~~ (e) (intro.) and (2) (c) (intro.) ~~and~~ (d) and 196.485 (1) (g) of the statutes
25 ~~and the creation of section 76.28 (1) (c) ~~and~~ (d) and (2) (c) of the statutes first apply~~

and 5. and (j) ✓

applies ✓

and 5. and (j)

1 to taxable years beginning on January 1 of the year in which this subsection takes
 2 effect, except that if this subsection takes effect after July 31 the treatment of
 3 sections 76.28 (1) (d) ⁹ and (e) (intro.) and (2) (c) (intro.) and (d) ⁹ of the statutes and the
 4 ~~creation of section 76.28 (1) (e) 5. and (j) and (2) (e) of the statutes~~ first ² *applies* to
 5 taxable years beginning on January 1 of the year following the year in which this
 6 subsection takes effect.

(END)

7

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3151/P2ins
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SECTION 1. 196.795 (11) (b) of the statutes is amended to read:

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

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 196.485 (3) (bm) and 196.795 (5) (pm) 1. (intro.); **to renumber**
2 196.485 (1) (dm) 1., 196.795 (5) (p) 1., 2., 3. and 4., 196.795 (5) (pm) 1. a., 196.795
3 (5) (pm) 1. b. and 196.795 (5) (pm) 1. c.; **to renumber and amend** 196.485 (1)
4 (dm) 3., 196.795 (5) (pm) 2. and 196.795 (5) (pm) 3.; **to amend** 76.28 (1) (d), 76.28
5 (1) (e) (intro.), 76.28 (2) (c) (intro.), 76.28 (2) (d), 196.485 (1) (dm) (intro.),
6 196.485 (2) (a) (intro.), 196.485 (4) (a) (intro.), 196.491 (3m) (b) 2., 196.52 (3) (a),
7 196.795 (1) (g) 1., 196.795 (1) (g) 2., 196.795 (5) (i) 1., 196.795 (11) (b) and 200.01
8 (2); **to repeal and recreate** 196.485 (title); and **to create** 76.28 (1) (e) 5., 76.28
9 (1) (j), 76.28 (2) (e), 196.485 (1) (am), 196.485 (1) (be), 196.485 (1) (bs), 196.485
10 (1) (dm) 2., 196.485 (1) (do), 196.485 (1) (dq), 196.485 (1) (dr), 196.485 (1) (ds),
11 196.485 (1) (dt), 196.485 (1) (dv), 196.485 (1) (em), 196.485 (1) (fe), 196.485 (1)
12 (ge), 196.485 (1) (gm), 196.485 (1) (j), 196.485 (1m), 196.485 (2) (ar), 196.485 (2)
13 (bx), 196.485 (2) (d), 196.485 (2) (e), 196.485 (3m), 196.485 (4) (am), 196.485 (5),
14 196.485 (6), 196.485 (6m), 196.485 (7), 196.485 (8), 196.487, 196.795 (1) (h) 3.,
15 196.795 (1) (p), 196.795 (6m) (title), 196.795 (6m) (a) (intro.), 196.795 (6m) (a)

1 1., 196.795 (6m) (a) 2., 196.795 (6m) (a) 4., 196.795 (6m) (b) (title), 196.795 (6m)
2 (e), 196.795 (11) (c) and 196.807 of the statutes; **relating to:** control of
3 transmission facilities by a transmission company and a Midwest independent
4 system operator, ownership of nonutility assets by a public utility holding
5 company, investments in transmission facilities, offers of employment to
6 certain public utility and nonaffiliate employees and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the *state* 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:

7 **SECTION 1.** 76.28 (1) (d) of the statutes is amended to read:
8 76.28 (1) (d) “Gross revenues” for a light, heat and power company other than
9 a qualified wholesale electric company or a transmission company means total
10 operating revenues as reported to the public service commission except revenues for
11 interdepartmental sales and for interdepartmental rents as reported to the public
12 service commission and deductions from the sales and use tax under s. 77.61 (4),
13 except that the company may subtract from revenues either the actual cost of power
14 purchased for resale, as reported to the public service commission, by a light, heat
15 and power company, except a municipal light, heat and power company, that
16 purchases under federal or state approved wholesale rates more than 50% of its
17 electric power from a person other than an affiliated interest, as defined in s. 196.52
18 (1), if the revenue from that purchased electric power is included in the seller’s gross

1 revenues or the following percentages of the actual cost of power purchased for
2 resale, as reported to the public service commission, by a light, heat and power
3 company, except a municipal light, heat and power company that purchases more
4 than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for
5 the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50%
6 for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric
7 company, “gross revenues” means total business revenues from those businesses
8 included under par. (e) 1. to 4. For a transmission company, “gross revenues” means
9 total operating revenues as reported to the public service commission, except
10 revenues for transmission service that is provided to a public utility that is subject
11 to the license fee under sub. (2) (d) or to a public utility, as defined in s. 196.01 (5).

12 **SECTION 2.** 76.28 (1) (e) (intro.) of the statutes is amended to read:

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

22 **SECTION 3.** 76.28 (1) (e) 5. of the statutes is created to read:

23 76.28 (1) (e) 5. Transmitting electric current for light, heat or power.

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

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

3 **SECTION 5.** 76.28 (2) (c) (intro.) of the statutes is amended to read:

4 76.28 (2) (c) (intro.) ~~For~~ Except as provided under par. (e), for private light, heat
5 and power companies for 1986 and thereafter, an amount equal to the apportionment
6 factor multiplied by the sum of:

7 **SECTION 6.** 76.28 (2) (d) of the statutes is amended to read:

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

12 **SECTION 7.** 76.28 (2) (e) of the statutes is created to read:

13 76.28 (2) (e) For transmission companies, an amount equal to the gross
14 revenues multiplied by the rates under par. (c).

15 **SECTION 8.** 196.485 (title) of the statutes is repealed and recreated to read:

16 **196.485 (title) Transmission system requirements.**

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

18 196.485 (1) (am) “Contribute a transmission facility” means to divest a person’s
19 interest in the transmission facility and to transfer ownership of the transmission
20 facility and associated deferred tax reserves to another person.

21 **SECTION 10.** 196.485 (1) (be) of the statutes is created to read:

22 196.485 (1) (be) “Director” means, with respect to a transmission company
23 organized as a corporation under ch. 180, a member of the board of directors of the
24 transmission company.

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

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

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

3 196.485 (1) (dm) (intro.) “Independent transmission owner” ~~means:~~

4 1m. Means a person that satisfies each of the following:

5 **SECTION 13.** 196.485 (1) (dm) 1. of the statutes is renumbered 196.485 (1) (dm)

6 1m. a.

7 **SECTION 14.** 196.485 (1) (dm) 2. of the statutes is created to read:

8 196.485 (1) (dm) 2. Does not include the transmission company.

9 **SECTION 15.** 196.485 (1) (dm) 3. of the statutes is renumbered 196.485 (1) (dm)

10 1m. b. and amended to read:

11 196.485 (1) (dm) 1m. b. The person is not an affiliated interest of a person
12 *specified in subd. 1. 1m. a.*

13 **SECTION 16.** 196.485 (1) (do) of the statutes is created to read:

14 196.485 (1) (do) “Land right” means any right in real property, including fee
15 simple ownership or a right-of-way or easement, that has been acquired for a
16 transmission facility that is located or intended to be located on the real property.

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

18 196.485 (1) (dq) “Manager” means, with respect to a transmission company
19 organized as a limited liability company under ch. 183, a manager, as defined in s.
20 183.0102 (13), of the transmission company.

21 **SECTION 18.** 196.485 (1) (dr) of the statutes is created to read:

22 196.485 (1) (dr) “Merger enforcement policy” means the enforcement policy of
23 the federal department of justice and the federal trade commission regarding
24 horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

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

1 196.485 (1) (ds) “Midwest independent system operator” means the
2 independent system operator the establishment of which the federal energy
3 regulatory commission has conditionally authorized in an order issued on September
4 16, 1998, or the successor to such independent system operator.

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

6 196.485 (1) (dt) “Nontransmission utility security holder” means a security
7 holder that is not a transmission utility security holder.

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

9 196.485 (1) (dv) “Organizational start-up date” means, with respect to a
10 transmission company that is organized as a limited liability company under ch. 183,
11 the date on which the articles of organization become effective under s. 183.0111 or,
12 with respect to a transmission company that is organized as a corporation under ch.
13 180, the date on which the articles of incorporation become effective under s.
14 180.0123.

15 **SECTION 22.** 196.485 (1) (em) of the statutes is created to read:

16 196.485 (1) (em) “Retail electric cooperative” means a cooperative that provides
17 retail electric service.

18 **SECTION 23.** 196.485 (1) (fe) of the statutes is created to read:

19 196.485 (1) (fe) “Security” means, with respect to a transmission company
20 organized as a corporation under ch. 180, a share, as defined in s. 180.0103 (15), and,
21 with respect to a transmission company organized as a limited liability company
22 under ch. 183, a limited liability company interest, as defined in s. 183.0102 (11).

23 **SECTION 24.** 196.485 (1) (ge) of the statutes is created to read:

24 196.485 (1) (ge) “Transmission company” means a corporation organized under
25 ch. 180 or a limited liability company organized under ch. 183 that has as its sole

1 purpose the planning, constructing, operating, maintaining and expanding of
2 transmission facilities that it owns to provide for an adequate and reliable
3 transmission system that meets the needs of all users that are dependent on the
4 transmission system and that supports effective competition in energy markets
5 without favoring any market participant.

6 **SECTION 25.** 196.485 (1) (gm) of the statutes is created to read:

7 196.485 (1) (gm) "Transmission dependent utility" means a public utility that
8 is dependent on the transmission system of another person for delivering electricity
9 to the public utility's customers.

10 **SECTION 26.** 196.485 (1) (j) of the statutes is created to read:

11 196.485 (1) (j) "Transmission utility shareholder" means a person that is a
12 shareholder of a transmission company organized as a corporation under ch. 180, is
13 an investor-owned transmission utility in the transmission area and has
14 contributed its transmission facilities to the transmission company.

15 **SECTION 27.** 196.485 (1m) of the statutes is created to read:

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

21 (b) After beginning operations, the transmission company shall have the
22 exclusive duty to provide transmission service in the transmission area. The duty
23 under this paragraph shall terminate on the date, as determined by the commission
24 under sub. (2) (d), that the Midwest independent system operator is authorized to
25 begin operations.

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

6 **SECTION 28.** 196.485 (2) (a) (intro.) of the statutes is amended to read:

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

14 **SECTION 29.** 196.485 (2) (ar) of the statutes is created to read:

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

23 **SECTION 30.** 196.485 (2) (bx) of the statutes is created to read:

24 196.485 (2) (bx) If the commission determines that the Midwest independent
25 system operator has failed to commence operations or has ceased operations, the

1 commission shall, by order, designate an independent system operator to fulfill the
2 duties of the Midwest independent system operator under this section. The
3 commission may not designate an independent system operator under this
4 paragraph unless the independent system operator is authorized under federal law
5 to operate in this state. In issuing an order under this paragraph, the commission
6 shall require that any transfer of transmission utilities to the designated
7 independent system operator satisfy the requirements of this section.

8 **SECTION 31.** 196.485 (2) (d) of the statutes is created to read:

9 196.485 (2) (d) The commission shall determine each of the following:

10 1. The date on which the transmission company is authorized to begin
11 operations.

12 2. Whether the Midwest independent system operator is authorized to begin
13 operations and the date on which such operations are authorized to begin.

14 **SECTION 32.** 196.485 (2) (e) of the statutes is created to read:

15 196.485 (2) (e) The commission shall determine the effective date of s. 196.807
16 as provided under s. 196.807 (5).

17 **SECTION 33.** 196.485 (3) (bm) of the statutes is repealed.

18 **SECTION 34.** 196.485 (3m) of the statutes is created to read:

19 196.485 (3m) TRANSMISSION COMPANY. (a) *Duties.* 1. The transmission company
20 shall do each of the following:

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

23 b. Subject to any approval required under state or federal law, contract with
24 each transmission utility that has transferred transmission facilities to the
25 transmission company for the transmission utility to provide reasonable and

1 cost-effective operation and maintenance services to the transmission company
2 during the 3-year period after the transmission company first begins operations.

3 The transmission company and a transmission utility may agree to an extension of
4 such 3-year period. The transmission company shall provide notice to the
5 commission of any extension that is agreed to under this subd. 1. b.

6 c. Assume the obligation of a transmission utility that has transferred
7 ownership of its transmission facilities to the transmission company under any
8 agreement by the transmission utility to provide transmission service over its
9 transmission facilities or under any credit received by the transmission utility for the
10 use of its transmission facilities, except that the transmission company may modify
11 such an agreement or credit to the extent allowed under the agreement or credit and
12 to the extent allowed under state or federal law.

13 d. Apply for membership in the Midwest independent system operator as part
14 of a single zone that includes the transmission area and, upon a determination by
15 the commission under sub. (2) (d) that the Midwest independent system operator is
16 authorized to begin operations, transfer operational control of the transmission
17 company's transmission facilities to the Midwest independent system operator.

18 e. Remain a member of the Midwest independent system operator, or any
19 independent system operator that has been approved under federal law to succeed
20 the Midwest independent operator, for at least the 6-year transition period that is
21 specified in the agreement conditionally approved by the federal energy regulatory
22 commission that establishes the Midwest independent system operator.

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

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

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

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

7 c. Own electric generation facilities or sell, market or broker electric capacity
8 or energy in a relevant wholesale or retail market as established under the merger
9 enforcement policy, except that, if authorized or required by the federal energy
10 regulatory commission, the transmission company may procure or resell ancillary
11 services from 3rd parties, engage in redispatch activities that are necessary to relieve
12 *transmission constraints or take other actions related to operating a control area.*

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

18 4. If the transmission costs of any transmission utility in the transmission area
19 are 10% or more below the average transmission costs of the transmission utilities
20 in the transmission area on the date, as determined by the commission, that the last
21 public utility affiliate files a commitment with the commission under sub. (5) (a) 2.,
22 the transmission company shall, after consulting with each public utility affiliate
23 that has filed a commitment under sub. (5) (a) 2., prepare a plan for phasing in a
24 combined single zone for the purpose of pricing network use by users of the
25 transmission system operated by the Midwest independent system operator and

1 shall seek plan approval by the federal energy regulatory commission and the
2 Midwest independent system operator. A plan under this subdivision shall phase in
3 an average-cost price for the combined single zone in equal increments over a 5-year
4 period, except that, under the plan, transmission service shall be provided to all
5 users of the transmission system on a single-zone basis during the phase-in period.

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

7 1. Subject to the approval of the commission under s. 196.491 (3), construct
8 transmission facilities, including high-voltage transmission lines, as defined in s.
9 196.491 (1) (f), in the transmission area or in any other area of the state in which
10 transmission facilities that have been contributed to the transmission company are
11 located. This subdivision does not affect the right or duty of an electric utility that
12 is not located in the transmission area or that has not contributed its transmission
13 facilities to the transmission company to construct transmission facilities.

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

17 (c) *Organization.* The articles of organization, as defined in s. 183.0102 (1), of
18 a transmission company that is organized as a limited liability company under ch.
19 183 or the bylaws of a transmission company that is organized as a corporation under
20 ch. 180 shall provide for each of the following:

21 1. That the transmission company has no less than 5 and no more than 14
22 managers or directors, except that the articles of incorporation or bylaws may allow
23 the requirements of this subdivision to be modified upon a unanimous vote of the
24 managers or directors during the 10-year period after the organizational start-up
25 date or upon a two-thirds vote of the board of directors after such 10-year period.

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

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

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

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

21 c. Each person that receives at least 5% of the securities of the transmission
22 company under sub. (6) (a) or (b) may appoint one manager or director of the
23 transmission company for a one-year term if the person continues to hold at least a
24 5% equity interest in the transmission company during the one-year term.

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

3 4. That, during the 5-year period after the organizational start-up date, no
4 public utility affiliate that contributes transmission facility assets to the
5 transmission company under sub. (5) (b) and no affiliate of such a public utility
6 affiliate may increase its percentage share of the outstanding securities of the
7 transmission company prior to any initial issuance of securities by the transmission
8 company to any 3rd party other than a 3rd party exercising its right to purchase
9 securities under sub. (6) (b), except that this subdivision does not apply to securities
10 that are issued by the transmission company in exchange for transmission facilities
11 that are contributed in addition to the transmission facilities that are contributed
12 under sub. (5) (b) and except that the requirements of this subdivision may be
13 modified upon a unanimous vote of the managers or directors.

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

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

21 **SECTION 35.** 196.485 (4) (a) (intro.) of the statutes is amended to read:

22 196.485 (4) (a) (intro.) ~~A~~ Except as provided in par. (am), a transmission utility
23 may not transfer control over, or divest its interest in, its transmission facilities to
24 an independent system operator or independent transmission owner unless, to the
25 satisfaction of the commission, each of the following requirements is satisfied:

1 **SECTION 36.** 196.485 (4) (am) of the statutes is created to read:

2 196.485 (4) (am) If the commission determines under sub. (2) (d) 2. that the
3 Midwest independent system operator is authorized to begin operations, each
4 transmission utility in the transmission area that is a public utility shall transfer
5 operational control over its transmission facilities to the Midwest independent
6 system operator and each such transmission utility that has not contributed its
7 transmission facilities to the transmission company shall elect to become part of a
8 single zone within the Midwest independent system operator.

9 **SECTION 37.** 196.485 (5) of the statutes is created to read:

10 196.485 (5) PUBLIC UTILITY AFFILIATES. (a) *Asset cap exception.* Section 196.795
11 (6m) (e) does not apply to the eligible assets of a nonutility affiliate in a holding
12 company system unless each public utility affiliate in the holding company system
13 does each of the following:

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

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

24 3. Files with the commission an unconditional, irrevocable and binding
25 commitment to contribute, and to cause each entity into which it merges or

1 consolidates or to which it transfers substantially all of its assets to contribute, any
2 transmission facility in this state the ownership or control of which it acquires after
3 the effective date of this subdivision [revisor inserts date], and land rights, to the
4 transmission company.

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

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

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

20 a. The structure of the transfer minimizes the material adverse tax
21 consequences to the public utility affiliate that result from the transfer and any other
22 material adverse tax consequence that does not result from combining transmission
23 facilities into a single zone under the control of the Midwest independent system
24 operator.

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

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

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

1 regulated public utility that provides electric transmission service in interstate
2 commerce.

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

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

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

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

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

1 (bm) *Lease of transmission facilities.* If a public utility affiliate is not able to
2 transfer ownership of its transmission facilities to the transmission company due to
3 merger-related accounting requirements, the public utility affiliate shall transfer
4 the transmission facilities to the transmission company under a lease for the period
5 of time during which the accounting requirements are in effect and, after such
6 requirements are no longer in effect, contribute the transmission facilities to the
7 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

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 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 38.** 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 may transfer all of its integrated transmission facilities
24 to the transmission company on the same terms and conditions as a contribution of
25 transmission facilities by a public utility affiliate under sub. (5) (b).

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

8 **SECTION 39.** 196.485 (6m) of the statutes is created to read:

9 196.485 (6m) DIVIDENDS, PROFITS AND GAINS. The commission may not treat any
10 dividend received by a transmission utility from the transmission company or any
11 gain or profit of a transmission utility from the sale or other disposition of securities
12 issued by the transmission company as a credit against the retail revenue
13 requirements of the transmission utility.

14 **SECTION 40.** 196.485 (7) of the statutes is created to read:

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

18 **SECTION 41.** 196.485 (8) of the statutes is created to read:

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

24 **SECTION 42.** 196.487 of the statutes is created to read:

25 **196.487 Reliability of electric service. (1) DEFINITIONS.** In this section:

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

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

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

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

15 **SECTION 43.** 196.491 (3m) (b) 2. of the statutes is amended to read:

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

21 **SECTION 44.** 196.52 (3) (a) of the statutes is amended to read:

22 196.52 **(3)** (a) In this subsection, “contract or arrangement” means a contract
23 or arrangement providing for the furnishing of management, supervisory,
24 construction, engineering, accounting, legal, financial or similar services and any
25 contract or arrangement for the purchase, sale, lease or exchange of any property,

1 right, or thing, or for the furnishing of any service, property, right, or thing, other
2 than management, supervisory, construction, engineering, accounting, legal,
3 financial or similar services, but “contract or arrangement” does not include a
4 contract or arrangement under which a transmission utility, as defined in s. 196.485
5 (1) (i), sells or transfers securities, as defined in s. 196.485 (1) (fe), that have been
6 issued by a transmission company, as defined in s. 196.485 (1) (ge). Except as
7 provided under par. (b), unless and until the commission gives its written approval,
8 any contract or arrangement is not valid or effective if the contract or arrangement
9 is made between a public utility and an affiliated interest after June 7, 1931. Every
10 public utility shall file with the commission a verified copy of any contract or
11 arrangement, a verified summary of any unwritten contract or arrangement, and
12 any contract or arrangement, written or unwritten, which was in effect on June 7,
13 1931. The commission shall approve a contract or arrangement made or entered into
14 after June 7, 1931, only if it shall clearly appear and be established upon
15 investigation that it is reasonable and consistent with the public interest. The
16 commission may not approve any contract or arrangement unless satisfactory proof
17 is submitted to the commission of the cost to the affiliated interest of rendering the
18 services or of furnishing the property or service to each public utility or of the cost
19 to the public utility of rendering the services or of furnishing the property or service
20 to each affiliated interest. No proof is satisfactory under this paragraph unless it
21 includes the original (or verified copies) of the relevant cost records and other
22 relevant accounts of the affiliated interest, or an abstract of the records and accounts
23 or a summary taken from the records and accounts if the commission deems the
24 abstract or summary adequate. The accounts shall be properly identified and duly

1 authenticated. The commission, where reasonable, may approve or disapprove a
2 contract or arrangement without submission of the cost records or accounts.

3 **SECTION 45.** 196.795 (1) (g) 1. of the statutes is amended to read:

4 196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of
5 the outstanding voting securities of a public utility, other than a transmission
6 company, with the unconditional power to vote those securities.

7 **SECTION 46.** 196.795 (1) (g) 2. of the statutes is amended to read:

8 196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting
9 securities of a public utility, other than a municipality or other political subdivision
10 or a transmission company, for or into the voting securities of a company organized,
11 created, appointed or formed by or at the direction of the public utility or of a
12 subsidiary of such company.

13 **SECTION 47.** 196.795 (1) (h) 3. of the statutes is created to read:

14 196.795 (1) (h) 3. "Holding company" does not include a transmission company.

15 **SECTION 48.** 196.795 (1) (p) of the statutes is created to read:

16 196.795 (1) (p) "Transmission company" has the meaning given in s. 196.485
17 (1) (ge).

18 **SECTION 49.** 196.795 (5) (i) 1. of the statutes is amended to read:

19 196.795 (5) (i) 1. Shall consider the public utility affiliate as a wholly
20 independent corporation and shall impute a capital structure to the public utility
21 affiliate and establish a cost of capital for the public utility affiliate on a stand-alone
22 basis;

23 **SECTION 50.** 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered
24 196.795 (6m) (b) 1., 2., 3. and 4.

25 **SECTION 51.** 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

1 **SECTION 52.** 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m)

2 (a) 3.

3 **SECTION 53.** 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m)

4 (a) 5.

5 **SECTION 54.** 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m)

6 (a) 6.

7 **SECTION 55.** 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c)

8 and amended to read:

9 196.795 (6m) (c) Wholesale merchant plants. The assets of a wholesale
10 merchant plant shall not be included in the sum of the assets of a public utility
11 affiliate under par. (p) (b) 1. a., b. or c. and shall not be included in a nonutility
12 affiliate's total assets under par. (p) (b) 2. a. if the requirements specified in s. 196.491
13 (3m) (a) 1. and 2. are satisfied or if the wholesale merchant plant qualifies for the
14 exemption under s. 196.491 (3m) (e).

15 **SECTION 56.** 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d)

16 and amended to read:

17 196.795 (6m) (d) Foreign affiliates. The assets of a foreign affiliate shall be
18 included in the sum of the assets of a public utility affiliate under par. (p) (b) 1. a.,
19 b. or c. and shall not be included in a nonutility affiliate's total assets under par. (p)
20 (b) 2. a.

21 **SECTION 57.** 196.795 (6m) (title) of the statutes is created to read:

22 196.795 (6m) (title) ASSET CAP.

23 **SECTION 58.** 196.795 (6m) (a) (intro.) of the statutes is created to read:

24 196.795 (6m) (a) Definitions. (intro.) In this subsection:

25 **SECTION 59.** 196.795 (6m) (a) 1. of the statutes is created to read:

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

4 **SECTION 60.** 196.795 (6m) (a) 2. of the statutes is created to read:

5 196.795 (6m) (a) 2. “Eligible asset” means an asset of a nonutility affiliate that
6 is used for any of the following:

7 a. Producing, generating, transmitting, delivering, selling or furnishing gas,
8 oil, electricity or steam energy.

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

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

12 d. Recovering or producing energy from waste materials.

13 e. Processing waste materials.

14 f. Manufacturing, distributing or selling products for filtration, pumping water
15 or other fluids, processing or heating water, handling fluids or other related
16 activities.

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

18 **SECTION 61.** 196.795 (6m) (a) 4. of the statutes is created to read:

19 196.795 (6m) (a) 4. “Generation assets” means assets that are classified as
20 electric generation assets on the books of account of a public utility, as determined
21 by the commission.

22 **SECTION 62.** 196.795 (6m) (b) (title) of the statutes is created to read:

23 196.795 (6m) (b) *In general.*

24 **SECTION 63.** 196.795 (6m) (e) of the statutes is created to read:

1 196.795 (6m) (e) *Contributor public utility affiliates.* 1. The eligible assets of
2 a nonutility affiliate in a holding company system that includes a contributor public
3 utility affiliate shall not be included in the sum of the assets of the public utility
4 affiliates under par. (b) 1. a., b. or c. and shall not be included in the nonutility
5 affiliate's total assets under par. (b) 2. a.

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

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

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

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

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

25 **SECTION 64.** 196.795 (11) (b) of the statutes is amended to read:

1 196.795 (11) (b) This section shall be deemed to legalize and confirm the
2 formation, prior to November 28, 1985, of any holding company, which is not itself
3 a public utility, and shall be deemed to legalize and confirm the operations and
4 issuances of securities of the holding company, except that nothing in this section
5 shall be deemed to prevent the commission from imposing reasonable terms,
6 limitations or conditions on any holding company which are consistent with the
7 requirements of sub. ~~(5) (pm)~~ (6m) (c) or (d) or which are consistent with and
8 necessary to satisfy the requirements of sub. (5) (b) to (o) and (q) to (s) or which relate
9 to future investments by the holding company unless the holding company owns,
10 operates, manages or controls a telecommunications utility and does not also own,
11 operate, manage or control a public utility which is not a telecommunications utility.

12 **SECTION 65.** 196.795 (11) (c) of the statutes is created to read:

13 196.795 (11) (c) The commission may not impose upon a holding company the
14 formation of which is considered to be legalized and confirmed under par. (b) any
15 term, limitation or condition under par. (b) that establishes the sum of the holding
16 company's nonutility affiliate assets at less than 25% of the sum of the holding
17 company's utility affiliate assets. For purposes of this paragraph, any term,
18 limitation or condition on nonutility affiliate assets shall not apply to the ownership,
19 operation, management or control of any eligible asset, as defined under sub. (6m)
20 (a) 2., or an asset that is used for manufacturing, distributing or selling swimming
21 pools or spas.

22 **SECTION 66.** 196.807 of the statutes is created to read:

23 **196.807 Energy affiliate and utility employes.** (1) DEFINITIONS. In this
24 section:

1 (a) “Acquire an energy unit” means to lease, purchase or otherwise acquire
2 ownership or control of the energy unit.

3 (b) “Affiliate or utility” means a nonutility affiliate, as defined in s. 196.795 (1)
4 (j), a holding company system, as defined in s. 196.795 (1) (i), or an electric utility,
5 as defined in s. 196.491 (1) (d).

6 (c) “Energy unit” means a unit that is engaged in activities related to the
7 production, generation, transmission or distribution of electricity, gas or steam or the
8 recovery of energy from waste materials.

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

10 (e) “Unit” means a division, department or other operational business unit of
11 an affiliate or utility.

12 **(2) OFFER OF EMPLOYMENT.** (a) Except as provided in par. (b), a person that
13 acquires an energy unit shall offer employment to the nonsupervisory employes who
14 are employed with the energy unit immediately prior to the acquisition and who are
15 necessary for the operation and maintenance of the energy unit.

16 (b) A nonutility affiliate that acquires an energy unit of a public utility affiliate
17 in the same holding company system shall offer employment to all of the
18 nonsupervisory employes who are employed with the energy unit immediately prior
19 to the acquisition.

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

23 1. Wage rates shall be no less than the wage rates in effect immediately prior
24 to the acquisition.

1 2. Fringe benefits shall be substantially equivalent to the fringe benefits in
2 effect immediately prior to the acquisition.

3 3. Terms and conditions of employment, other than wage rates and fringe
4 benefits, shall be substantially equivalent to the terms and conditions in effect
5 immediately prior to the acquisition.

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

8 (4) COMMISSION APPROVAL. No person may acquire an energy unit unless the
9 commission determines that the person has satisfied subs. (2) and (3).

10 (5) APPLICABILITY. This section does not apply until the expiration date of the
11 3-year period specified in s. 196.485 (3m) (a) 1. b., as determined by the commission,
12 or the expiration date of any extension of the 3-year period that is agreed to under
13 s. 196.485 (3m) (a) 1. b., as determined by the commission, whichever is later. The
14 commission shall publish a notice in the Wisconsin Administrative Register that
15 specifies the date that the commission determines is the effective date of this section.

16 **SECTION 67.** 200.01 (2) of the statutes is amended to read:

17 200.01 (2) “Public service corporation” means and embraces every corporation,
18 except municipalities and other political subdivisions, which is a public utility as
19 defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02,
20 but shall not include a public utility corporation receiving an annual gross revenue
21 of less than \$1,000 for the calendar year next preceding the issuance of any securities
22 by it. “Public service corporation” includes a holding company, as defined under s.
23 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). “Public service
24 corporation” does not include a telecommunications utility, as defined in s. 196.01
25 (10). “Public service corporation” does not include any other holding company unless

1 the holding company was formed after November 28, 1985, and unless the
2 commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate,
3 as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do
4 at least one of the items specified in s. 196.795 (7) (a). “Public service corporation”
5 does not include a company, as defined in s. 196.795 (1) (f), which owns, operates,
6 manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless
7 such company also owns, operates, manages or controls a public utility which is not
8 a telecommunications utility. “Public service corporation” does not include a
9 transmission company, as defined in s. 196.485 (1) (ge).

10 **SECTION 68. Initial applicability.**

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

18 (END)