

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on January 13, 1998 in Room 514-S of the Capitol.

All members were present except: Rep. Thomas Klein - excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Chairman Don Myers welcomed everyone back to the 1998 session and the House Utilities Committee. The Chairman mentioned that **SB 212** was still below the line on the House Calendar and may be re-referred to the Committee. The following items were distributed to the Committee by Staff: article on Electric Power Industry Braces for Deregulation, Pennsylvania Public Utilities Commission Dictionary for electric competitors (Attachment #1), Analysis of the Impact of Retail Wheeling on the State of Kansas by Staff (Attachment #2), a map on Electric Industry Restructuring (Attachment #3) and the Final Report of the Task Force on Retail Wheeling to the 1998 Kansas Legislature (Attachment #4).

The Chairman introduced Mary Ann Torrence, Staff, of the Revisor of Statutes Office, who began a three-day review and discussion by Staff of the Retail Wheeling Task Force bill draft. The Chairman also mentioned that there are reports by four consultants included in the Final Report of the Retail Wheeling Task Force which was distributed this morning.

Staff mentioned that the bill provides for implementation on or after July 1, 2001. The following topics were discussed: Municipal Utilities and Electric Cooperatives, Recovery of Competitive Stranded Costs, Competitive Transition Cost Recovery, Universal Service Cost and Kansas Corporation Commission Rules and Regulations. The topics are detailed in the Final Report of the Task Force on Retail Wheeling. Questions and discussion followed. The Chairman mentioned that two House Utilities Committee members, Representative Alldritt and Representative Sloan, served on the Task Force.

The Chairman asked if there were any bill introductions. The Chairman recognized Representative Sloan who made a motion on behalf of the Retail Wheeling Task Force to introduce the bill that was drafted by the Task Force so that it could be fully debated. Representative Aurand seconded the motion. Motion carried.

The Chairman reminded the Committee that the review and discussion by Staff regarding the Retail Wheeling Task Force bill draft will resume tomorrow.

The meeting was adjourned at 9:57 a.m.

The next meeting is scheduled for January 14, 1998.

Pennsylvania Public Utility Commission

P.O. Box 3265, Harrisburg, Pa. 17105-3265

Contents

- [Home](#)
- [What's New!](#)
- [About the Pennsylvania Public Utility Commission](#)
- [Consumer Information and Education](#)
- [Public Meetings](#)
- [Tariffs](#)
- [Hearings](#)
- [Electric](#)
- [Telephone](#)
- [Gas](#)
- [Water](#)
- [Miscellaneous](#)
- [Commonwealth of Pennsylvania](#)

Consumer's Dictionary for Electric Competition

Affiliate A company that is controlled by another or that has the same owner as another company.

Aggregator A firm, licensed by the commission, that signs up a large group of consumers to bargain on their behalf for the lowest possible price for electricity. The firm "aggregates" or combines many smaller customers into one large customer for purposes of negotiation. It purchases the electricity for the group.

Base Load The minimum energy level a company must provide to its customers on a constant basis.

Basic Service The four charges for generation, transmission, distribution and transition that all customers must pay in order to retain electric service.

Broker A firm, licensed by the commission, that acts as an agent or "middle man" in the sale and purchases of electricity but never owns the electricity and typically does not own generating facilities.

Bulk Power Market Wholesale purchases and sales of electricity.

Chapter 56 The Public Utility Commission's regulations that establish rules for payment of utility bills, requests for service, payment of deposits, billing, termination of service and complaint handling. These regulations are to protect residential customers of regulated electric, gas, water, steam heat, and sewer companies in Pennsylvania.

Commission The Pennsylvania Public Utility Commission

Conservation Reducing a customer's electricity use to decrease the need to generate electricity.

Consumer Education Efforts to provide consumers with skills and knowledge to use their resources wisely in the marketplace.

Customer Assistance Programs (CAPS) Alternative collection program set up between a utility company and a customer that allow customers to pay utility bills on a percentage-of-the-bill they owe or percentage-of-customer-income instead of paying the full amount owed. These programs are for low income people who can't pay their bills. These customers must agree to make regular monthly payments based on their new payment plans.

Daily Peak The maximum amount of energy or service demanded in one day from a company or utility service.

House Utilities
01-13-98
Attachment | 01/08/98 16:10:2

Demand A measure of customer or system load requirements over a measured period of time.

Departing Member A member consumer served at retail by an electric cooperative corporation that has given notice of intent to receive generation service from another source or that is otherwise in the process of changing generation suppliers. These persons shall nonetheless remain members of the electric distribution cooperative corporation for purposes of distribution service.

Deregulation Removal or relaxation of regulations or controls governing a business or service operation such as utilities.

Distribution The local wires, transformers, substations and other equipment used to distribute and deliver electricity to end-use consumers from the high-voltage transmission lines.

Distribution Charges Part of the basic service charges on every customer's bill for delivering electricity from the electric distribution company to your home or business. The distribution charge is regulated by the Public Utility Commission. This charge will vary according to how much electricity you use.

Distribution Line The local part of an electric system that delivers electricity to most customers.

Distributive Power A packaged power unit located at the point of demand. While the technology is still evolving, examples include fuel cells and photovoltaic applications.

Electric Distribution Company (EDC) The company that owns the power lines and equipment necessary to deliver purchased electricity to the customer.

Energy Conservation To reduce or manage energy consumption in a cost-effective manner.

Energy Services Company (ESCO) A company offering specialized or customized services for efficiency or financial savings to customers.

Escape Provision A contract provision which allows a party, such as an electric customer, to get out of it. Usually, there is a penalty.

Fixed Price A price which remains the same, usually for a set time period.

Flat Rate A fixed charge for goods and services that does not vary with changes in the amount used, volume consumed, or units purchased.

Formal Complaint A written dispute or disagreement about a utility problem filed by a consumer with the Public Utility Commission. A formal complaint is assigned to an Administrative Law Judge (ALJ) who holds hearings to develop a record. After the hearings, the judge issues a decision. (See informal complaint.)

Generation Production of electricity from a power plant.

Generation Charges Part of the basic service charges on every customer's bill for producing electricity. Generation service is competitively priced and is not

regulated by the Public Utility Commission. This charge depends on the terms of service between the customer and the supplier.

Green power or Greencos Demand side management and other non-polluting sources of energy generation.

Grid A network for the transmission of electricity throughout the state or nation.

Gross Receipts The total revenue for a calendar year for all electric distribution companies and electric generation suppliers which are derived from the sales of electric energy.

Hourly Metering or Time of Use Metering Tracking or recording a customer's consumption during specific periods of time that can be tied to the price of energy.

Informal Complaint A dispute or disagreement about a utility problem filed by a consumer with the Public Utility Commission's Bureau of Consumer Services (BCS). A BCS investigator reviews the informal complaint and provides the customer with a response to their dispute. Most responses are in the form of a decision that the customer or company can appeal. If an informal complaint is appealed, it becomes a formal complaint. (See Formal Complaint.)

Intangible Transition Charge The amounts on all customer bills, collected by the electric utility to recover transition bond expenses.

Interruptible Rate A special utility rate given to those who agree to have their service reduced or temporarily stopped as part of an agreement with the utility company. Circumstances for service interruptions can be periods of high demand or high cost periods of short supply for the utility and/or system emergencies.

Investor-owned Utility A utility company owned and operated by private investors.

Kilowatt (kW) (1) A measure of demand for power during a preset time--minutes, hours, days, months; (2) 1,000 watts--Ten 100 watt light bulbs use one kW of electric power.

Kilowatt-hour (kWh) The basic unit of electric energy for which most customers are charged. The amount of electricity used by ten 100-watt light bulbs left on for 1 hour. Consumers are charged for electricity in cents per kilowatt-hour.

Load The amount of electricity being used at one time by a customer, circuit or system.

Load Profile Information on a customer's usage over a period of time, sometimes shown as a graph like the one on the bill.

Load Management Shifting use of electricity from periods of high demand to periods of lower demand, when the cost of electricity usually is lower.

Marketer A company, licensed by the Commission, that buys and resells electricity, but that typically does not own generating facilities.

Non Basic Service Any category of service not related to basic services (generation, transmission, distribution and transition charges).

Office of Consumer Advocate (OCA) A government office that represents the interests of residential utility consumers before the Public Utility Commission in rate and service cases and before other state and federal regulatory agencies and courts.

Office of Small Business Advocate (OSBA) A state government office that represents the interests of small business consumers by participating in PUC rate cases and other state and federal regulatory cases.

Off-Peak/On-Peak Blocks of time when energy demand and price is low (off-peak) or high (on-peak).

Pilot A utility program offering a limited group of customers their choice of certified or licensed energy suppliers on a one year minimum trial basis.

Power Pool Combining electric power supplies. Two or more interconnected electric systems planned and operated to supply power in the most reliable and economical manner. (POOLCO)

Price Cap Situation where a price has been determined and fixed.

Public Input Hearings Meetings where consumers can give input to the PUC. Sworn or unsworn testimony to the PUC judge and to the utility, consumer advocate and PUC staff. The PUC conducts hearings in the service area of the utility who requested the rate increase. Sometimes consumers can point out problems with the quality of the utility's service, management, or policies which could affect the outcome of a case.

Public Utility Code The law which sets the powers and duties of the PA Public Utility Commission. It also sets many of the guidelines the PUC uses for utilities' rates and service standards.

Public Utility Commission (PUC) The state regulatory agency that provides oversight, policy guidance and direction to electric public utilities.

Real-time Pricing Rates that reflect the actual cost of providing service at a given time creating fluctuating prices.

Regulation A rule or law established by the federal or state government which sets procedures that a utility must follow.

Reliability The providing of adequate and dependable generation, transmission and distribution service.

Renewables Includes technologies such as solar photovoltaic energy, solar thermal energy, wind power, low head hydro power, geothermal energy, landfill and mine based methane gas, energy from waste and sustainable biomass energy.

Resellers Companies that purchase utility service from a wholesaler and resell it to consumers.

Restructuring The reorganization of traditional monopoly electric service to

allow operations and charges to be separated or "unbundled" into generation, transmission, distribution and other services. This will permit customers to buy generation services from competing suppliers.

Retail Wheeling Also known as retail customer choice--A utility company is required to transport electricity from a generating plant it does not own directly to its retail customers. This gives retail customers the ability to purchase electricity from sources they choose.

Retail Customer Choice See Retail Wheeling

Rural Electric Cooperative Customer-owned electric utility that distributes electricity to members and that receives lower-cost financing through the federal government.

Securitization The act of pledging assets to a creditor through a note, lien or bond.

Spot Market Short-term purchases of electricity from surpluses available for a short time.

Stranded benefits Special collection programs, renewable energy and demand side management programs, lifeline rates and other utility resources funded by a monopoly utility that may not be funded if the utility's competition does not have similar costs.

Stranded commitment Assets and contracts associated with shifting to competition which are above market prices and hence result in non-competitive conditions for the utility.

Stranded investments or stranded costs A utility investment, such as in facility and equipment, that is not supported by market prices.

Supplier (Electricity Supplier) A person or corporation, generator, broker, marketer, aggregator or any other entity, that sells electricity to customers, using the transmission or distribution facilities of an electric distribution company (EDC).

Title 52 The section of the Pennsylvania Code that governs utilities.

Transition Charge A charge on every customer's bill designed to recover an electric utility's transition or stranded costs as determined by the Public Utility Commission.

Transmission Interconnecting electric lines which move high voltage electricity from where it is produced to the point of distribution to customers.

Transmission Charges Part of the basic service charges on every customer's bill for transporting electricity from the source of supply to the electric distribution company. The Public Utility Commission regulates retail transmission prices and services. This charge will vary with your source of supply.

Unbundling Breaking down services offered into parts so each part can be billed separately.

Universal Service Policies, protections and services that help low-income

customers maintain electric service.

Utility Competition Two or more electric suppliers providing the same or similar goods or services in the same market place and for the same customers.

Variable Price A price which can change, by the hour, day, month etc.

Weatherization Modifying a home or structure to conserve energy. Methods include: sealing window and door frames with caulking or gaskets, installing storm doors and windows, and adding or increasing the insulation.

Wheeling The transmission of power that has been generated by one entity over the lines of another utility system.

Wholesale Competition A market structure where municipal and other utilities can exercise choice in electricity suppliers in order to meet customer needs.

Copyright © 1996 Pennsylvania Public Utility Commission. All rights reserved.

Questions or problems regarding the Public Utility Commission Internet Web Site should be directed to



webmaster@puc.state.pa.us.

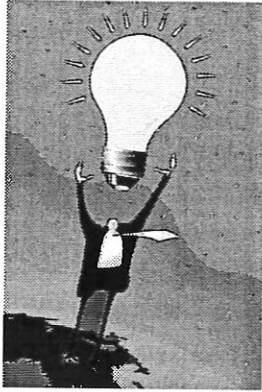
Last modified: Tuesday November 11, 1997 10:38 PM.

Email the Commissioners:

Chairman John Quain, Commissioner David Rolka, Commissioner John Hanger,
Commissioner Nora Mead Brownell

NOTE: When sending E-mail, please include your email address in the body of your message.

[Commonwealth of Pennsylvania Home Page](#)



An Analysis of the Impacts of Retail Wheeling on the State of Kansas

August 18, 1997

PREPARED FOR:

Kansas Retail Wheeling Task Force
c/o Raney Gilliland
Kansas Legislative Research Department
Room 545-N, Statehouse
300 S.W. 10th Street
Topeka, KS 66612

PREPARED BY

McFadden Consulting Group, Inc.
6158 West 84th Ave., Suite 029, Arvada, CO 80003-1209

Resource Data International, Inc.
1320 Pearl St., Suite 300, Boulder, CO 80302

CONTACT

Mr. Michael J. McFadden
303-940-6880

House Utilities
01-13-98
Attachment 2

EXECUTIVE SUMMARY

McFadden Consulting Group, Inc. (McFadden Consulting) and Resource Data International, Inc. (RDI), collectively referred to herein as McFadden Consulting/RDI, were retained by the Kansas Economic Development Institute (KEDI or Institute) on behalf of the Retail Wheeling Task Force (Task Force) to provide technical assistance and analysis to the Task Force in connection with issues pertaining to electric utility restructuring in Kansas. This report contains the results of our analysis.

OVERVIEW OF INDUSTRY CHANGES

The traditional role of the U.S. electric utility are being dramatically reshaped. In the process, the scope and character of government regulation is being redefined, creating opportunities for new participants and daunting challenges for current market players. State and federal level initiatives to unbundle and restructure the electric utility industry into a fully competitive marketplace also gives new and sometimes baffling options to customers.

The electric utility industry is responding to these changes by experimenting with a host of business strategies: aggressive efforts to reduce costs, corporate restructuring, creation of non-regulated marketing subsidiaries, strategic alliances, and consolidation through mergers and acquisitions. Emerging from these changes is a more diversified and, above all, much more competitive industry. It is an industry that during the next several years will evolve from its role of providing a limited number of energy options to customers into a heterogeneous structure where electricity is delivered to end-use customers under myriad new business and contractual arrangements.

But the evolution from the current regulatory environment to a more open, more competitive market is strewn with huge, entrenched obstacles. Their removal may be more difficult than assumed. Key thorny issues include disagreement over rules governing access to transmission and distribution systems; division of regulatory authority between state and federal agencies; and questions of cost allocation, cost recovery, and system reliability. How these questions are resolved dictates the pace and scope of change and shapes the answer to the key question asked by all regulators: How should the restructuring be accomplished to ensure maximum economic benefit for customers, while maintaining system reliability and integrity?

PROJECT SCOPE AND OBJECTIVES

It was in this environment of uncertainty about how best to accomplish restructuring that House Bill No. 2600 was approved by the Kansas Legislature in April, 1996 establishing the Task Force. The primary purpose of the Task Force is to analyze and report on issues related to the restructuring of electric service in Kansas. The purpose of this project is to assist the Task Force in analyzing and reporting on issues related to the restructuring of the electric utility industry in Kansas. Specifically, the Task Force wishes to address the impact that might be experienced if retail wheeling of electric power were allowed in Kansas. This report is intended to provide input to the Task Force as it tries to reach a consensus on the advisability, inevitability, and/or the requirements pertaining to retail wheeling in Kansas.

In general, the purpose of this project is to:

- identify the issues and areas of concern related to retail wheeling
- assess the economic and financial impact of the issues and areas of concern
- formulate multiple policy options with supporting documentation for Task Force consideration.

We viewed our task as providing information, data, and expertise to the decision-makers so that they can determine what is best for the citizens of Kansas. As such, this report is intended to provide one set of inputs into the decision-making process.

OUR APPROACH

Our approach in completing this analysis was to divide it into two parts, as follows:

- qualitative identification of the issues and policy alternatives
- quantitative assessment of the impact of the issues and policy alternatives on the various stakeholders.

In the qualitative identification of the issues and policy alternatives, we attempted to identify all major issues and policy alternatives for addressing those issues. We accomplished this task by:

- reviewing activities taking place in jurisdictions other than Kansas
- conducting focus group discussions with residential and small commercial customers
- reviewing information provided by various stakeholders to the Task Force

- interviewing the larger stakeholders, such as the investor-owned utilities (IOUs), municipally-owned systems (munis), and cooperatively owned systems (co-ops), regulatory commissions, trade associations, and consumer groups.

Utilizing this process we believe all major pertinent issues, and the various policy alternatives for addressing the issues, were identified. It also provided the foundation for the second step; quantitatively assessing the impact of the various policy alternatives.

Our approach in conducting this analysis was to act as a *conduit of information as opposed to a filter*. As such, we considered each stakeholders' assessment of the various issues and their impacts. If appropriate, each issue and policy alternative, was included in the qualitative assessment of the impacts on the various stakeholders.

BENEFITS OF RETAIL WHEELING

We identified a number of potential benefits of electric industry restructuring initiatives. This is not intended to be an exhaustive list, but merely the major factors espoused by proponents of retail wheeling.

Economic or Financial Benefits. Many experts believe restructuring of the electric utility industry will provide economic benefit to customers. Our analysis in this report supports that conclusion for the customers in Kansas. However, the treatment of stranded costs in the transition from a regulated environment to a competitive environment will be the critical factor in realizing those benefits.

Economies of Scale. Large power suppliers will realize economies of scale that benefit the customers. Many express doubt multiple suppliers will provide service more efficiently and less expensively in a specific utility's service territory than the utility itself. After all, if you divide up a utility's service territory among a number of suppliers, an individual supplier could not operate more efficiently and effectively than someone who provides service to all the customers. However, the regulated, monopolistic electric utility operates only in its service territory and the number of customers served are limited to the number of customers connected to its system.

Power supply aggregators and marketers, on the other hand, are not limited to geographic territories. In theory, as the market evolves, they will accumulate customers on electric distribution systems. For example, an aggregator could have millions of customers in a dozen major metropolitan areas. With a large number of customers spread across different geographic regions, it would be possible to manage its power supply portfolio in a more effective and efficient manner than a utility that is tied to a specific geographic area.

Bundled Utility Services. Unbundled electric service are part of a bigger picture in which a package of various services will be offered to customers. Such a package could include the following services:

- natural gas
- telephone
- cable television
- connection to the Internet
- home security systems
- remote control of appliances
- water
- sewer
- garbage.

Many believe bundling such services will provide the opportunity for significant cost savings to customers. Power supplies could be bundled with various energy efficiency systems to help customers reduce overall power costs. For example, heating, lighting, and air conditioning firms might bundle power supplies with control systems to reduce the customer's overall power costs. Of course, the bundling of these services may take some time to develop.

Competition Replaces Regulation. Competition is more effective than regulation at maintaining discipline in the marketplace. Currently, regulatory oversight ensures monopoly utility service does not take advantage of captive customers. By inducing a competitive marketplace for power supplies, competition will replace regulation for at least that portion of utility services. The fact that a customer can choose another power supplier will force all power suppliers to maintain discipline in the market and operate as efficiently and effectively as possible. In fact, just the threat of competition can be an effective deterrent to rising prices. Of course, there will remain a need for regulatory oversight of distribution and transmission services, which would continue to operate in a monopolistic environment.

Investors, Not Customers, Pay Consequences of Failed Business Strategies. Customers will no longer be liable for poor business decisions over which they have very little input and control. In the current regulatory environment, customers are required to pay for investments that were deemed prudent. For example, the decision to invest in a nuclear power plant may have been deemed prudent. However, it may not have been a good business decision. In the competitive market place, investors pay the consequences of business strategies that fail, not the customers.

Customer Choice. Many believe customers want choices in the products they purchase. Providing a choice of power suppliers will encourage communications between the customer and the supplier and will lead to customers getting the products and services they need and want: not the “one-size-fits-all” products which evolved in the regulated environment.

Many also believe customers can make intelligent decisions regarding their power supply needs. Certainly, the large industrial and commercial customers have, or will acquire, the level of sophistication required to make intelligent decision regarding power suppliers. For the vast majority of smaller customers, the choice of power suppliers is not a life and death decision, and heavy-handed regulation of competitively priced commodities is not required. Consumers’ decisions on home mortgages can have a significantly greater financial impact on their lives, and decisions on life or health insurance can be more critical than the choice of energy providers. Yet there is no heavy-handed regulatory oversight of prices for those products and services.

Innovation. A competitive market encourages innovation and creativity in meeting customers’ needs. As suppliers compete for customers’ needs, new products, services, and pricing options will be developed. For smaller customers there will probably be new marketing programs designed to attract customers, such as free frequent flier miles, reduced Internet connection fees, or other customer loyalty building tools. Creative pricing programs are likely to develop, such as a flat cost per month regardless of usage, or perhaps different rates for consumers with different power requirements or different load profiles.

We have already seen evidence of this creativity in the natural gas industry. For example, in several Wyoming towns, one supplier is offering consumers a program called “Weather Proof” in which consumers pay a flat amount per month, regardless of level of usage. Of course, there is a premium for this service, but customers are willing to pay the premium. Other customers have the choice of purchasing gas supplies on an index basis in which the price changes month to month. While other customers have chosen a per unit cost that is fixed for a one year period. Restructuring in the electric utility industry will unleash the same type of innovation and creativity.

RISKS OF RETAIL WHEELING

There are several major risks associated with retail wheeling. These risks fall into two broad categories: economic and operational. We touch on each of these below. However, these risks are directly tied to the issues identified in the complete analysis and are the underlying reason for performing this analysis. As such, the discussion below is intended to introduce the risks and provide a bridge to the discussion of the issue presented in the main body of this report.

Economic. The fundamental economic risk associated with retail wheeling is the failure of a competitive power supply market to develop. If this were to occur, it is possible competition would not replace regulation in assuring that consumers are protected from unfair pricing practices. Therefore, it is advisable that policy makers take a deliberate approach to restructuring to ensure alternate suppliers are not discouraged or inhibited from the market place.

Operational. The overwhelming operational risk is that power supplies are not delivered to the customers, compromising the reliability and integrity of the transmission and distribution systems. It is important to remember that the failure to deliver required supplies to individual customers will affect all customers, even those that have not opted to utilize an alternate supplier.

SUMMARY OF RESULTS - KEY FINDINGS

The results our quantitative assessment imply several conclusions regarding the policy cases analyzed. The case without stranded cost recovery indicates:

On an average statewide basis, prices in a deregulated market will be lower than in a regulated environment.

Comparison of the base case, which assumes continued regulation, against full access without stranded cost recovery shows substantial reductions in delivered power costs. Most of these reductions result from the non-recovery of stranded costs, or about \$3.1 billion on a net present value basis over the 10 years. Stranded costs are about 18% of total delivered costs in the base case. This savings to customers is at the expense of utility shareholders. The amount of savings declines steadily from year to year, as the generating assets would be depreciated in the regulated environment, and ends when the last asset with stranded costs would be fully depreciated.

The long run price decreases realized by customers result from market efficiencies.

With the increased efficiency in the wholesale market provided by electronic trading and reduced transaction costs, a larger number of economy energy transactions will be advantageous every day. This will reduce the overall cost of supply in Kansas.

With full wholesale competition, generation owners are incented to reduce their costs, fixed as well as variable. This will be a lasting, long-term impact of restructuring. The magnitude of this reduction is difficult to quantify. This study assumed that generation fixed costs would be reduced gradually over time, reaching a reduction of 10% by 2002.

Deregulation eliminates cross-subsidization of generation costs between customer classes.

Under existing rate structures, there is significant cross-subsidization between customer classes. Residential and commercial customers of investor owned utilities are, to varying degrees, subsidizing industrial customers. Residential customers of distribution coops and munis are on average subsidizing industrial customers. Allowing all customers in all classes direct access to wholesale markets will completely eliminate the potential for cross-subsidization.

There is a risk that some customers of low cost utilities will see price increases.

Some utilities have negative stranded costs, resulting from a portfolio of generating assets with embedded costs less than the market value of the power they produce. In the regulated environment, the customers of these utilities would pay only the embedded costs. But in the deregulated environment these customers would have to pay the higher market prices, unless a special provision were imposed on these companies to rebate to their customers the difference between market prices and their embedded costs.

The treatment of stranded cost recovery affects the timing and magnitude of the benefits.

Stranded cost recovery is the factor with the greatest impact on delivered costs. A 5-year recovery of stranded costs shows that longer-term reductions can be bought at the expense of short-term rate increases, without imposing any of the stranded costs on utility investors.

With full stranded cost recovery, customers' prices decline to the extent of increased market efficiency and competition-induced reductions in production costs.

With full stranded cost recovery customers realize only the components of savings resulting from efficient wholesale trading and full wholesale competition, until the stranded costs are recovered. After stranded costs are recovered the full benefits of retail wheeling will be realized.

The level of and mechanism for recovery has implications regarding the goals of restructuring; for example, allowing full recovery provides no incentive for utilities to reduce costs.

Utilities may not have any incentive to control costs if they are assured of 100% stranded cost recovery, with stranded costs calculated on the basis of actual costs.

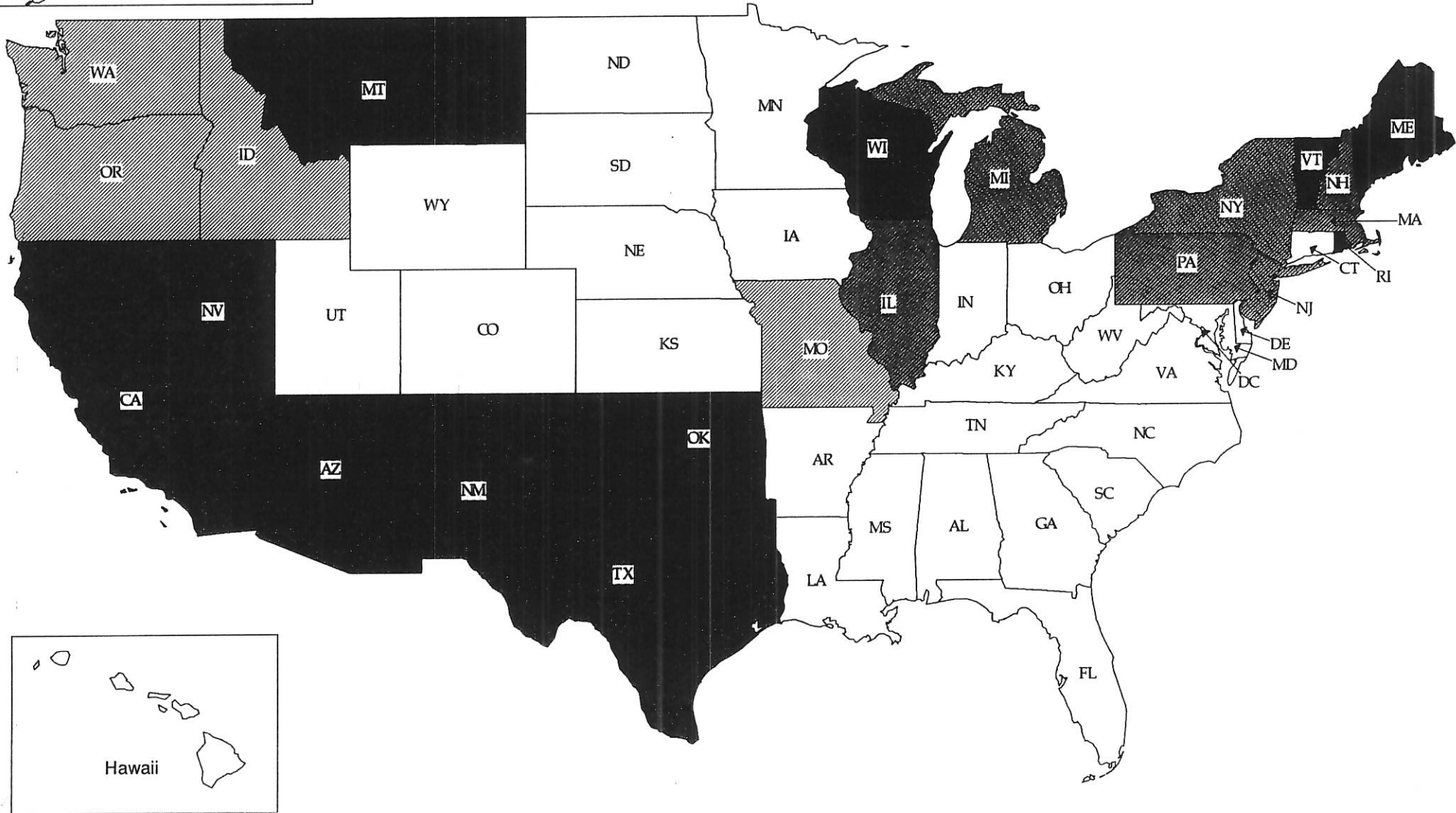
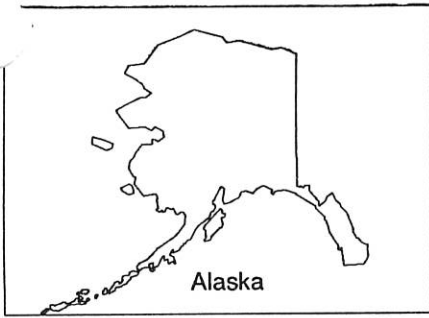
If only a portion of a utility's customers are granted early access to retail markets, remaining customers need to be protected from paying for the stranded costs of departing customers.

If only industrial customers are allowed wholesale access, for any length of time, and if the utility is allowed to recover from other customer classes the stranded costs it incurs by its industrial customers, then the other customers will be significantly harmed.

A small but prolonged gas price swing could have a large effect on the level of stranded costs in Kansas.

In a high fuel price regime, market energy prices will be higher. Market energy prices in Western System Power Pool are driven primarily by natural gas prices and by the heat rates of incremental generation. Kansas utilities' generation costs are dominated by coal. Thus market prices increase more than generation costs. For utilities with positive stranded costs, the gap between generation costs and market prices will narrow, and stranded costs will be correspondingly reduced. The mirror image of these changes occurs under low fuel prices.

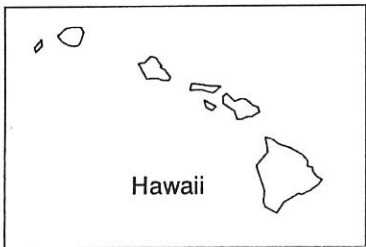
Electric Industry Restructuring



Legend

- Laws
- Commission Orders and Rules
- ▨ Pilot Programs
- ▩ Laws and Pilot Program
- ▧ Commission Orders and Rules and Pilot Program

*House Utilities
01-13-98
Attachment 3*



FINAL REPORT
of the
TASK FORCE ON
RETAIL WHEELING

to the
1998 Kansas Legislature



December, 1997

House Utilities
01-13-98
Attachment 4

TASK FORCE ON RETAIL WHEELING

In fulfillment of the requirements of 1996 H.B. 2600, the Retail Wheeling Task Force submits its final report.

H.B. 2600 required the Task Force to study issues related to competition in the furnishing of retail electric service, including but not limited to:

- actions of the Federal Energy Regulatory Commission;
- the obligation of electric utilities to serve customers;
- the economic impact of electric utilities to serve customers;
- the social impact on Kansas citizens;
- the impact on State General Fund revenues and local franchise and tax revenues;
- the status of electrical generating facilities in a competitive environment;
- savings that may be achieved by electric utility mergers and downsizing;
- recovery of stranded costs;
- unbundling of generation, transmission, and distribution services;
- leveling the financing of capital investment;
- retail wheeling, including loop losses;
- brokerage;
- incentives for renewable energy investment;
- the feasibility of establishment of retail customer service areas, consisting of all classes of customers, for which retail suppliers would compete to serve;
- stranded benefits, such as the Cold Weather Rule and charitable contributions by retail suppliers;
- nonprice issues, such as customer service, storm damage repair, energy conservation, and billing;
- the impact on municipal electric utilities and rural electric cooperatives; and
- the impact on existing statutes.

The Retail Wheeling Task Force submits this report, including the bill in Part VI, in response to the charges established by H.B. 2600.

TABLE OF CONTENTS

	<u>Page</u>
Preamble	1
PART I—INTRODUCTION	5
PART II—RETAIL WHEELING TASK FORCE AND SCOPE OF ACTIVITY	6
PART III—PROFILE OF ELECTRIC SERVICE PROVIDERS IN KANSAS	8
PART IV—POLICY ISSUES AND CONSIDERATIONS	9
Date of Commencement and Retail Competition	9
Participation of, and Specific Issues Related to, Municipal Utilities	10
Participation of, and Specific Issues Related to, Electric Cooperatives	12
Stranded Costs	13
The Concept	13
Calculation of Stranded Costs	14
Market Price	15
Netting or Who Pays for What?	15
Recoverable Stranded Costs	16
Mechanism for Stranded Cost Recovery	17
Bypass of an Incumbent's Distribution and Transmission Facilities	18
Period of Time Allowed for Stranded Cost Recovery	18
Low Level and High Level Radioactive Waste Disposal	19
Decommissioning	19
Other Generation-Related Assets	19
Electric Cooperatives	20
Municipal Electric Utilities	20
Adjustment of Rates for Stranded Cost Recovery	20
Securitization	21
Universal Service	22
Use of Fund	23
Assistance to Customers for Bill Payments	23
Assistance to Low Income Persons	23
Assistance to High Cost Service Areas	23
Research and Development	24
Inadvertent Incentives	25
Definition Too Narrow	25
Method of Finance	25
Per-Unit Charge	25
Transition Savings Account	25
Subsidy for Distribution and Transmission Services	25
Access by Competitive Providers to Fund	25
Administration of Fund	25
Divestiture/Affiliate Transactions	26

	<u>Page</u>
Consumer Information and Protection	27
Consumer Information	27
Consumer Protection	29
Default Suppliers	30
Tax Implications of Retail Competition	31
Property Tax Valuation	31
Nexus	32
Unbundled Service	32
Franchise Purchase Agreements and Fees	33
Property Tax Revenue Loss	33
PART V—REPORTS REVIEWED BY RETAIL WHEELING TASK FORCE	34
McFadden Consulting Group/Resource Data International (consultant for Retail Wheeling Task Force)	34
Hugo Wall School of Urban and Public Affairs, Wichita State University (Kansas municipal utilities)	36
Docking Institute of Public Affairs, Fort Hays State University (Kansas electric cooperatives)	37
National Regulatory Research Institute (consultant for Kansas Corporation Commission)	38
PART VI—ELECTRIC UTILITY RESTRUCTURING ACT	40
(Bill Submitted to the 1998 Legislature)	
PART VII—KANSAS CORPORATION COMMISSION RESPONSIBILITIES	71
PART VIII—EXPLANATORY NOTE ON ELECTRIC UTILITY RESTRUCTURING ACT	75
ATTACHMENTS	
Attachment 1—1996 H.B. 2600	
Attachment 2—Summary of Restructuring Legislation and Orders of Other States	
Attachment 3—Minority Reports	
Attachment 4—Table of Number of Kansas Electric Utility Customers (Residential, Commercial, and Industrial)	
Attachment 5—Table of Estimated Distribution Costs for All Kansas Investor-Owned Electric Utilities and Electric Cooperatives	
Attachment 6—Table of Estimated U.S. Electric Utility Average Revenues per kwh to Ultimate Consumers by State, and Year-to-Date 1997 and 1996	
Attachment 7—Kansas Corporation Commission 1997 Fiscal Impact Statement for the Electric Utility Restructuring Act	

PART I—INTRODUCTION

This report and proposed legislation establish a framework for the transition to competition in retail sales of electric power (hereafter referred to as retail competition). Currently, most Kansans take service from electric utilities that are vertically integrated monopolies subject to some form of regulation. This vertical integration consists of generation, transmission, and distribution services. Quite simply, electricity is generated by transforming different forms of stored energy into electric power. That transformation process known as "generation" takes place in power generating plants or generators. The transmission system—a network of high-voltage lines—delivers power from generators to local distribution systems. The distribution system comprised of lower voltage lines, poles, and substations (transformers) moves the electricity to the meter of the retail consumer. Some municipally-owned and cooperative utilities only own distribution facilities and buy electricity under wholesale contracts. Two cooperatives own generation but no distribution facilities. Unless otherwise specified, this report uses the term "utility" to mean investor-owned utility, municipal electric utility, and electric cooperative.

Deliberations concerning retail competition (also known as "retail wheeling") focus almost solely on the deregulation of the generation or energy component of the industry and not on distribution or transmission services. Retail competition would allow the source and the price of the energy component to be determined by the market and not by regulation. However, the distribution and transmission components of the industry would continue to be rate regulated because these components are very capital intensive and competition to provide these distribution and transmission services is not likely to occur, at least in the foreseeable future. Nonetheless, deregulation of the generation component does affect distribution and transmission services, as is discussed below.

Retail competition would allow end-use electricity consumers, individually or in aggregate (together with other consumers), to choose among different energy suppliers and sign a contract to have the supplier of their choice "supply" energy under a set of agreed upon terms and conditions, including quantities, times, prices, and other factors. The utility would continue to charge the consumer for the delivery of the energy supplied (including distribution and transmission services) but not for the energy itself.¹ This seemingly simple transaction has many complex implications for the existing interconnected transmission and distribution systems in terms of reliability, quality of service, and responsibility for restructured services. Moreover, this transaction has significant financial and tax implications for electric providers, shareholders, consumers, local units of government, and states. All these implications, as well as social and environmental considerations, constituted the scope of the Retail Wheeling Task Force's review.

¹Even though the utility may no longer charge for the energy, the energy cost may be included in the utility's bill, analogous to the charge for interstate long distance calls being included in a customer's telephone bill from the local telephone carrier.

PART II—RETAIL WHEELING TASK FORCE AND SCOPE OF ACTIVITY

The Retail Wheeling Task Force was established through enactment of 1996 H.B. 2600 (Attachment 1). The bill directed the Task Force to study 18 specific issues related to retail competition. The scope of the study was subsequently expanded to include 21 issues. The 23-member Task Force had representation from all types of utilities (investor-owned, rural electric cooperatives, and municipal) and each customer class (residential, commercial, and industrial). Six legislators also served on the Task Force—three from the House and three from the Senate. The Chairperson of the Task Force was Representative Carl Holmes and the Vice-Chairperson was Senator Pat Ranson. The membership of the Task Force changed since its inception. Below is a list of all the current Task Force members:

Representative Carl Holmes, Chairperson
Senator Pat Ranson, Vice-Chairperson
Representative Richard Alldritt
Senator Karin Brownlee
Senator Janis Lee
Representative Tom Sloan
Gene Argo, Midwest Energy, Inc.
Randy Burluson, Empire District Electric
David Bybee, Kansas Department of
Commerce and Housing
Chris Giles, Kansas City Power & Light
E. Leon Daggett, Board of Public Utilities
of Kansas City, Kansas
L. Joe Hamman, represented small residen-
tial customers in accordance with 1996
H.B. 2600
Gil Hanson, Kansas Municipal
Energy Agency
Walker Hendrix, Citizens' Utility
Ratepayer Board

Larry Holloway, Kansas Corporation
Commission
Dennis Lane, University of Kansas, served
as an environmental technology expert
who is an authority on renewable energy
in accordance with 1996 H.B. 2600
James Martin, Western Resources
Jon Miles, Kansas Electric Cooperatives,
Inc.
Stephen Parr, Kansas Electric Power Coop-
erative, Inc.
Randy Rohlfing, Farmland Industries, Inc.,
represented industrial electric customers
in accordance with 1996 H.B. 2600
Penny Tvrdik, Utilicorp United, Inc.
Mike Vess, Vess Oil Corporation, repre-
sented small commercial customers in
accordance with 1996 H.B. 2600
Earl Watkins, Sunflower Electric Power
Corporation

The Task Force was staffed by: Raney Gilliland and Lynne Holt, Kansas Legislative Research Department; Mary Torrence and Don Hayward, Office of the Revisor of Statutes; and Pat Talbott, Secretary.

The Task Force held its first meeting on August 5, 1996 and its last meeting on November 24, 1997. The Task Force, including a subcommittee of the Task Force, met a total of 23 times for 36 days. The Task Force: heard presentations on all aspects of electric utility restructuring; identified the major issues to be addressed in deliberations on restructuring; identified areas of agreement and disagreement on those issues; submitted a preliminary report to the 1997 Legislature; engaged a consultant (McFadden/Resource Data International (RDI)) to analyze the impacts of restructuring on Kansas, and reviewed the consultant's activities and report; received reports on studies examining the impact of restructuring on municipal electric utilities and areas served by rural electric cooperatives; reviewed an economic impact report commissioned by the Kansas Corporation Commission (hereafter referred to as the Commission); and formulated the concepts and honed the language of the proposed bill.

The Task Force held a public hearing in late October 1997 on a preliminary version of the bill; amended the bill on November 12-14, at times using input received from the hearing; and reviewed the final version of the bill and this report at its final meeting on November 24, 1997. H.B. 2600 prohibits the Commission from authorizing retail competition prior to July 1, 1999, thus affording the 1998 and 1999 Legislatures an opportunity to use the submitted bill and final report as a basis for formulating policy on restructuring issues.

Most Task Force members shared the opinion that retail competition was inevitable due to a combination of several factors: pressures exerted by multiple constituency groups (particularly large energy consumers); the restructuring activities of other states (most with high-cost electric power); Congressional bill introductions; and recent orders by the Federal Energy Regulatory Commission that ensured open access for wholesale competition. (See the table of state restructuring legislation and orders in Attachment 2.) However, Task Force members had different, and often conflicting, ideas about the best means to transition to a competitive environment, as the minority reports appended to this report in Attachment 3 reflect. The Task Force views this report and the bill as an important departure point for further deliberations on the issues related to retail competition. The discussion of select issues in Part IV on Policy Issues and Considerations should offer some guidance to that end.

PART III—PROFILE OF ELECTRIC SERVICE PROVIDERS IN KANSAS

The industry in Kansas most directly affected by the advent of retail competition includes:

- five investor-owned utilities: Western Resources (Kansas Power & Light or KPL and Kansas Gas & Electric or KGE), Kansas City Power & Light (KCPL), Empire District, Utilicorp United, and Southwestern Public Service Company;
- 33 rural electric distribution cooperatives with little or no generation or transmission facilities;
- two generation and transmission (G&T) cooperatives (Sunflower Electric Power Corporation or Sunflower and Kansas Electric Power Cooperative, Inc. or KEPCo);
- one electric cooperative owning distribution, transmission, and generation facilities (Midwest Energy); and
- 121 municipal electric utilities (of which 63 generate at least a portion of their power and 58 purchase their power).

Attachment 4 is a table of all utilities and electric cooperatives by number of Kansas customers (residential, commercial, and industrial). Attachment 5 is a table of estimated distribution costs for all Kansas investor-owned utilities and electric cooperatives. Attachment 6 is a table of estimated U.S. electric utility average revenues per kwh to ultimate consumers by state, and year-to-date 1997 and 1996. Attachment 7 is the Commission's fiscal impact statement for the Electric Utility Restructuring Act.

PART IV—POLICY ISSUES AND CONSIDERATIONS

As of December 1997, nine states had enacted legislation authorizing retail competition—California, Illinois, Maine, Massachusetts, Montana, Nevada, New Hampshire, Pennsylvania, and Rhode Island. Another state, Oklahoma, enacted comprehensive legislation which outlined a procedure for developing a framework for restructuring, to culminate in full electric retail customer choice by July 1, 2002. The Task Force considered the policies adopted by these states (with the exception of Illinois and Massachusetts which had enacted legislation after the Task Force's deliberations) and other states with regulatory commission orders in formulating the policies underlying its proposed bill. In Task Force deliberations, there were many areas of disagreement. Only the most extensively discussed of these issues is addressed below. These issues and the positions of the various affected parties, as reflected in testimony and reports to the Task Force, should provide some insight into the Task Force's final recommendations and proposed legislation. Much of the testimony referenced in this report was presented at the public hearing of the Task Force held on October 27-30, 1997. A more detailed explanation of the proposed legislation is in Part VIII.

Date for Commencement of Retail Competition

The bill affords all customers (residential, commercial, and industrial) of participating utilities on or after July 1, 2001, the right to purchase electric power directly from the competitive generation provider of the customer's choice. The implementation date for restructuring has several implications. As a precondition for implementation, participating utilities would have to unbundle or disaggregate their rates for billing purposes (currently, most rates are combined on bills of vertically-integrated electric utilities). The Commission would have to adopt rules and regulations prior to such unbundling. Prior to the implementation of restructuring, the Commission would have to adopt rules and regulations for various other issues affecting implementation. (See Part VII for a list of issues the Commission will have to address.) Testimony to the Committee reflected concern with the estimated time and expense involved in modifying the billing systems of utilities so that they could comply with the deadline for unbundling scheduled for January 1, 2000 (McPherson Board of Public Utilities).

The implementation date has several implications should the date be delayed for any reason:

- Stranded costs (discussed below) will continue to decrease and the total amount to be recovered for that purpose from electric customers likewise would be reduced.
- Consumers of electricity may have to forgo for a longer duration the opportunity of purchasing cheaper electricity.
- Incumbent utilities, through their affiliates or successors, might be at a regional disadvantage to the extent that other states initiate retail competition before Kansas.
- Competitive electricity providers (hereafter referred to as competitive providers) will not be able to enter the Kansas market.

The Task Force heard testimony from various parties (Utilicorp United, Kansas Industrial Consumers) expressing concern about making the implementation date contingent on the adoption of uniform tax policy. (That provision was in earlier versions of the bill and was subsequently deleted.) Other testimony considered the proposed implementation date as being too late (Kansas Independent Oil and Gas Association (KIOGA), city of Wichita, Enron). One argument posed in the city of Wichita's testimony is that an earlier date would make Kansas more attractive than other states for businesses considering relocation or expansion.

Other arguments for not making the implementation date earlier than July 1, 2001, as raised in Task Force deliberations, include the following:

- The Commission and the Kansas electric service providers need time to prepare for the advent of restructuring.
- No federal legislation has been enacted to date on retail wheeling.
- Kansas is actually ahead of many states in the region with respect to studying all the issues related to restructuring.
- Because several states are in the initial stages of restructuring, policymakers and regulators can learn from other states' experiences and the experiences of various utility pilot programs being implemented throughout the country.
- Kansas should not enact legislation authorizing retail competition.

Participation of, and Specific Issues Related to, Municipal Utilities

There are 121 cities with municipal electric utilities in Kansas, representing 19 percent of all cities in Kansas and 18 percent of all Kansas citizens. Most municipal utilities serve small cities, with the smallest serving less than 25 customers. Specifically, 77 municipal electric utilities serve cities with a population of less than 2,000. Of the 121 municipal electric cities, 63 generate part or all of their electric energy and the remaining 58 cities purchase all of their electric energy. The largest generating municipality is Kansas City, which annually generates 2.5 million mwh of electricity. However, most of the municipal utilities generate less than 50,000 mwh a year and their facilities are used mostly to supplement wholesale purchases of electricity on the hottest days of summer ("peaking" service). Municipal utilities are governed by elected public officials and not private boards of directors.

The bill generally would exempt municipal electric utilities from competition. If such utilities do not participate in competition, they may not sell electric power outside their respective certified territories. Moreover, in general, a competitive provider would be prohibited from selling generation service at retail to consumers within the utility's certificated territory. There are, however, two exceptions. First, retail competition could continue in any territory annexed by a municipal electric utility not participating in competition if such competition existed in that territory at the time of annexation. However, only the annexed portion of the utility would be subject to continued competition. Second, a municipal utility would be required to participate in competition if the governing body of the municipality or the voters residing in the certified territory of the municipal utility elect for the utility to do so.

In its deliberations on the bill, the Task Force had to address the policy question of why municipal electric utilities, in contrast to investor-owned utilities and rural electric cooperatives, should be presumed exempt from retail competition. To respond to that question, the Task Force received information concerning the distinguishing attributes of municipal electric utilities. Of particular importance were the findings of a study on the *Impact of Retail Wheeling on Municipal Electric Utilities in Kansas* (summarized in Part V). This study assisted the Task Force in making its recommendation to exempt municipal electric utilities from retail competition with specified exceptions. Findings from the study and testimony to the Task Force from spokespersons for Kansas Municipal Utilities and various Kansas cities underscored their needs or concerns with the prospect of retail competition:

- The need for continued local control over electric generation in affected municipalities.
- The importance of retaining the no by-pass provision in the bill to protect electric utility infrastructure investments.
- A concern about stranded debt that might place municipalities at a competitive disadvantage (prospective lower bond ratings). Kansas municipal utilities have \$302.3 million in public debt outstanding, or an average of \$1,331 per customer, with generator utilities holding most of that debt.
- The need for nearly every Kansas municipality to institute budget cuts or substitute revenues from other sources. Only one generating municipality and one distributor municipality have resale rates below the assumed market price (defined in the study as the rate of the lowest-cost market producer—presumed to be KPL). A reduced number of customers served by municipal electric utilities and increasing rates for electric power could result from retail competition. Currently, Kansas municipal electric utilities transfer an average of \$48 per capita annually to achieve municipal purposes other than electric service. These municipal purposes include a variety of infrastructure improvements and community services, such as street lighting, street repairs, and ball park lighting. Such improvements and services vary among municipalities. A reduction in revenues due to declining sales translates into reduced transfers to a city's general fund.
- A concern that many municipal generating facilities are smaller, older units that may not be as cost-effective in a competitive environment. Most generator municipalities purchase power for the normal base load and generate to cover peak load when air conditioning use is prevalent. However, retail competition might affect the prices municipalities currently pay to purchase base-load power, thus causing municipal utilities to generate more or all of their electricity at a higher price.
- A concern that municipalities electing to participate in retail competition might be adversely affected because, unlike private sector suppliers, municipal utilities are subject to the Kansas Open Meetings Act and the Kansas Open Records Act. A municipal electric utility's strategic planning activities, rates and customer base lists must therefore be open to everyone, in contrast to the plans, rates, and lists of the utility's private sector competitors.

The Task Force recognized that municipal electric utilities are governed by elected public officials who are ultimately responsible to voters. Moreover, the bill includes two provisions to invoke a decision to have a municipal electric utility participate in, or remain exempt from, retail competition. Because of the public nature of municipal electric utilities and the procedural "opt-in" measures included in the bill, the Task Force took the position that customers of municipal utilities would have adequate recourse to participate. The Task Force also recommended inclusion of provisions in the bill to address the concerns with stranded municipal debt (see Part IV) and amendments to the Kansas Open Meetings Act and Kansas Open Records Act to exempt municipal electric utilities from the provisions of these two acts for purposes of retail generation sales.

Participation of, and Special Issues Related to, Electric Cooperatives

There are 33 distribution cooperatives in Kansas, two generation and transmission (G&T) cooperatives—KEPCo and Sunflower, and one vertically-integrated cooperative (Midwest Energy). The only shareholders of electric cooperatives are their consumer members. KEPCo supplies power to 22 distribution cooperative members located primarily in central and eastern Kansas. KEPCo's power supply resources consist of a 6 percent ownership in Wolf Creek nuclear generating facility, hydro-electric power allocations from the Western Area Power Administration and the Southwestern Power Administration, and purchases from regional investor-owned utilities. Sunflower provides wholesale power to its six distribution cooperative owners, located primarily in Western Kansas. Sunflower owns three gas turbines used for meeting peak loads, and one steam turbine that is currently not in operation. These generators are located in Garden City. Sunflower also owns Holcomb Station—a base-load, coal-fired, steam turbine.

The bill would require all distribution electric cooperatives to participate in retail competition unless an election of members determines otherwise. A major concern of the rural electric cooperatives is the financing relationships they have with the federal Rural Utilities Service and private lenders. These financing arrangements are structured around the requirement that KEPCo's and Sunflower's members enter into long-term all requirements power contracts with their respective G&T cooperative. Despite the restrictive nature of these financing arrangements, the cooperatives generally took the position that they may participate in retail competition if certain safeguards for their members were in place, such as:

- retention of certified service areas;
- a prohibition against bypass of the cooperative's distribution and transmission facilities; and
- the provision that there would be universal service support for low-population density, high-cost distribution areas of the state.

The Task Force recognized that electric cooperatives are governed by boards of directors who are ultimately responsible to their members. Moreover, the bill includes provisions to invoke a decision to have an electric cooperative exempted from retail competition. Because members of cooperatives are essentially the "owners" of the cooperatives and procedural "opt-out" measures are included in the bill, the Task Force took the position that customers of electric

cooperatives, like those of municipal electric utilities, would have adequate recourse to exempt a cooperative from participation.

Stranded Costs

The Concept. The bill contains a definition of "competitive transition costs," which is another term for "stranded costs." The issue of stranded costs was undoubtedly one of the most contentious issues addressed by the Task Force. To understand the meaning of "stranded costs," one needs to understand what is meant by the "market price" for deregulated generation services. The "market price" is the price determined through the interaction of willing buyers and willing sellers in an open marketplace. The marketplace may be a physical location, an electronic bulletin board, a telephone call, or otherwise. As prices paid to power suppliers in a competitive marketplace are market-driven, a utility may expect to receive on average only the market price for power in the future. The market price may be, in some cases, below the average production costs of utilities currently embedded (included) in electric rates. Accordingly, in a competitive marketplace, certain utilities may be unable to recover all of their embedded costs—those costs associated with past commitments currently included in regulated rates. The amount by which the embedded cost of utility service exceeds the market price for that service, which is generally considered uneconomic, could be referred to as "stranded costs."

Stranded costs essentially fall into three categories that are encapsulated in the definition of "competitive transition costs" in Section 2 of the bill. (Extracted, to a large extent, from Peter Fox-Penner, *Electric Utility Restructuring*, 1997.)

- **Generating Plants That Are More Expensive than Today's Power Plants.** Competition has a tendency to drive prices down to the marginal operating costs of the lowest-price units with excess generating capacity. This particularly impacts existing utilities that own power plants that produce power at costs that are higher than the market price. Environmental cleanup liabilities associated with nuclear and fossil plants also may be unrecoverable, absent policy changes.
- **Long-Term Fuel or Purchased-Power Contracts That Are More Expensive Than Today's Prices.** Historically, public and private utilities have responded to their historic adequacy obligation by making long-term, firm investments in, or contracts for, power plants and fuel. Utilities have an obligation to pay for these contracts even though many of the contracts now specify prices higher than those available on comparable terms to buyers today. Contracts mandated by government laws and policies form an important subset of these stranded costs.
- **Regulatory Assets.** Regulatory assets are an assortment of regulatory-approved "extended payment plans" for certain large expenses. A regulatory asset allows a utility to count on its balance sheet a "promissory note," effectively promising that the utility's future revenues will be adequate for amortization of a specific liability. This technique has been used to phase-in gradual rate increases in place of large, rapid ones, much like the refinancing of a loan to reduce payments but greatly extend the payment period. If deregulation occurs in the middle of the amortization period, utilities may not

be able to charge prices high enough, or earn revenues large enough, to continue amortization. This situation might result in large utility write-offs.

Although the Task Force ultimately agreed upon certain generation-related assets to be included in the definition of "stranded costs," a conferee representing Western Resources testified to the Task Force that some states include under that definition:

- consumer education costs, surveys, marketing, and education;
- institutional start-up costs for new information systems, power exchanges, independent network operators; and
- legal and consulting fees related to restructuring.

Another conferee representing the International Brotherhood of Electrical Workers (Topeka) recommended that a portion of the proceeds from stranded cost recovery should be used for compensation, restructuring of jobs, and retraining or re-employment of stranded workers who have based important personnel and career decisions on a higher level of industry stability. In Task Force deliberations, another proposal submitted, and subsequently rejected, would have allowed stranded costs to encompass all direct and indirect costs incurred by electric utilities to comply with and implement provisions of the bill. Obviously, the more expansive the list of stranded costs, the greater the amount of potential costs to be recovered from utility ratepayers.

In addition to the policy question of what costs should be included in the definition of stranded costs, Task Force members had to address other questions: How should stranded costs be calculated? Should the utility be entitled, or have an opportunity, to recover all stranded costs? How should stranded costs be recovered and for what period of time? Should recovery plans be coupled with rate freezes or reductions in rates? Should utilities be permitted to restructure their debt?

Calculation of Stranded Costs. Estimates of stranded costs in Kansas vary considerably, as reflected in four recent studies analyzing stranded costs for Kansas utilities and cooperatives. Stranded cost estimates, regardless of methodology used, include two types of costs—variable costs and fixed costs. Variable costs are costs that vary with the amount of power produced. For example, the costs of fuel and certain other operation and maintenance are variable. Fixed costs include labor and the capital costs invested in power-producing facilities. A study (McFadden/RDI) of all Kansas investor-owned utilities, Sunflower, KEPCo, and the generating municipal electric utilities (averaged as a group) estimated approximately \$3.1 billion in stranded costs over a ten-year period. Another study of Kansas investor-owned utilities (National Regulatory Research Institute or NRRI) concluded that there would be no stranded costs over a 15-year period. (See Part V for a summary of both studies.) The stranded cost issue in Kansas is of greatest concern to those electric cooperatives (both distribution cooperatives and G&T cooperatives) with long-term power contracts, as well as to KEPCO, Western Resources, and KCPL, which jointly own Wolf Creek, and, of course, to the customers and shareholders of these utilities. Two major points of considerable controversy arose with respect to stranded cost calculations:

- Which market price should be used in calculations?

- With respect to Western Resources, who should pay for Wolf Creek?

Market Price. The McFadden/RDI and NRRRI stranded cost estimates use different assumptions, including different market prices and different methodologies, for computing stranded costs. The theory is that the generation price in a competitive market will migrate to the market price. In order to maintain system reliability, the system must be in balance at every moment in time. The demand for electricity (total load) must be perfectly balanced with supplied generation (total supply). As long as the generation price is determined while achieving system balance, the highest cost generation on line at any particular time will determine the market price. There is no consensus among industry experts on what the projected market price will be as the transition to a competitive market proceeds. Differences in market price estimates create different estimates of stranded costs. A higher projected market price means that stranded costs will be lower because the difference between the market price and the above-cost generation assets of a utility will be smaller than if the market price is assumed to be lower. If stranded costs are lower, utilities will have less to recover from ratepayers or shareholders (depending on the allowable recovery mechanism). The different market prices used in the various studies reviewed by the Task Force resulted in considerable disagreement among members. These differences notwithstanding, the important point is that many complicated variables are involved in projecting stranded costs and nobody can know with any degree of certainty how much money will be at stake and what customer bills are expected to be.

Discussions on market price are generally concerned with the transition to competition. In a competitive environment, spot and futures markets should supply consumers with reliable information about the actual price of generation. Once there is effective competition, one will no longer have to rely on studies and forecasts to establish the market price.

Netting or Who Pays for What? The McFadden/RDI study analyzed the generating assets of each investor-owned utility, generation and transmission cooperative, and municipal electric utility (above a specified generating capacity) but did not offset high-cost generating assets of a company with its low cost generating assets (otherwise known as "netting") to derive the stranded costs. The NRRRI study, in contrast to the McFadden RDI study, combined the high- and low-cost generating assets of KGE and KPL and treated these operating companies as one entity under common ownership—Western Resources.

The bill requires stranded costs to be computed on a net basis. These costs must be verifiable and nonmitigable. Moreover, the Commission must treat all affiliated utilities as a single utility in calculating recoverable stranded costs. Those costs will be recovered by a separate competitive transition charge applying to only customers within the certified territory of an affiliate, as such territory existed before July 1, 2001. This means that the netting approach, as it is applied to Western Resources, would combine the projected value of all generating facilities of its two operating companies (KGE and KPL) for purposes of calculating stranded costs. Any stranded costs of KGE and KPL would be averaged and any remaining netted stranded costs would be paid by consumers served by KGE. (Earlier versions of the bill required customers of both KGE and KPL to pay for these stranded costs.) The effect of this methodology is that Western Resources would be eligible to recover lower total stranded costs through a surcharge than if KGE and KPL were considered separately. With the netting approach, the low-cost generation assets of KPL (such as the coal-fired Jeffrey power plant) would essentially offset KGE's higher-cost generation assets (Wolf Creek).

The reasons cited by proponents of netting for using such an approach are the following: Western Resources operates KPL and KGE on a single-system basis. There are no KPL and KGE shareholders, only shareholders of Western Resources. Proponents argued that utilities should not be able to ignore the benefits of their efficient management decisions at the same time as they are rewarded, through stranded cost recovery, for their inefficient management decisions. In a somewhat different vein, a Task Force member contended that the surcharge imposed on consumers to recover stranded costs already includes profits. If netting is not included, the utility would be entitled to realize profits above the allowable rate of return. Conferees testifying to the Task Force in support of the netting concept used in the bill included: Mike Vess, city of Wichita, Jan Kruh (AARP), the Boeing Company, a spokesperson for Via Christi Health System, and the Commission staff.

The Task Force elected an approach initially suggested in testimony by Commission staff to require all generation-related assets of Wolf Creek to be netted. If stranded costs remain after netting has occurred, those costs would be recovered exclusively from KGE ratepayers. (KCPL customers would be treated the same as KGE customers under this approach if Western Resources merges with KCPL.)

The conferees representing Western Resources were adamantly opposed to the proposed netting methodology. (KCPL also shared this position.) At this point, Western Resources is the only utility directly impacted by the netting approach specified in the bill. A conferee from Western Resources argued that the netting approach would weaken that company's competitive position relative to out-of-state generation providers. He further contended that KPL and KGE are separate corporations with separate service areas, separate costs of service, separate rate structures, and long-term debt obligations that are supported by separate assets. Therefore, these utilities should be analyzed separately for stranded costs.

Recoverable Stranded Costs. One key policy question is whether stranded costs, if they even exist, should be recoverable. For example, in testimony to the Task Force, a conferee from the Sierra Club expressed opposition to such a course of action, arguing that ratepayers should not have to bail out shareholders for imprudent investments. The bill assumes, however, that there should be some procedure for allowing utilities to recover stranded costs if determined by the Commission to have been prudently incurred.

A utility is authorized to apply to the Commission for a determination of the utility's stranded costs. Any determination of stranded costs would be subject to notice and evidentiary hearings before the Commission. Although most conferees in testimony to the Task Force assumed that the Commission would be the most appropriate entity to address stranded cost issues, one conferee, Dr. Ralph Gamble, Fort Hays State University, suggested a competitive transition cost advisory panel to offer input on allowable stranded cost recovery.

The bill would require every utility participating in restructuring to mitigate or reduce stranded costs. Such mitigation would be authorized in electric utility rate cases. The concept of mitigation refers to efforts of utilities to reduce their stranded costs by renegotiating long-term, high-cost power contracts and restructuring their outstanding debt. There was no disagreement among Task Force members that such efforts would need to be undertaken to lessen the burden of stranded cost recovery on ratepayers although certain conferees in testimony to the Task Force noted that more aggressive mitigation would occur if the period for stranded cost recovery was shortened. (The allowable cost recovery time period is discussed in more detail below.)

With respect to the amount of stranded costs remaining after mitigation efforts had been taken into consideration, the policy question arises as to whether a utility should be ensured the opportunity of recovering *all* its stranded costs. As was previously discussed, the bill first requires a netting approach to determine total stranded costs projected for a given utility. After that amount has been computed, the Commission would have to determine the amount of costs a utility would be allowed to recover based on at least eight factors set forth in the bill.

Proponents of not ensuring total stranded cost recovery argue that with such assurance, the utility would have little incentive to mitigate stranded costs to the greatest extent possible. Moreover, if the utility can recover all its costs, it might even have an incentive to make stranded costs as large as possible and to include as many costs as possible in that category. Another argument is that ratepayers did not necessarily endorse utility investments in high-cost generation facilities and therefore should not have to pay for them. Yet another argument is that a utility might have profited significantly from various nonutility investment decisions after the Commission ruled on costs deemed prudent for the construction and operation of a generating plant; those investments which may not have been anticipated by the Commission at the time of its determination should be considered as potentially offsetting the amount of stranded costs to be recovered. In testimony to the Task Force in support of the approach posited in the bill, the Commission staff contended that "the premise that utilities should be allowed to recover historic costs must be coupled with an obligation to return any recovery in excess of historic costs to ratepayers."

In testimony to the Task Force, representatives of certain utilities (Western Resources, KCPL, and Sunflower) objected to the approach of not ensuring utilities the opportunity to full recovery of stranded costs. The argument offered most frequently was that foreclosure of the opportunity to recover 100 percent of a utility's stranded costs violates the regulatory compact between the utility and the Commission. The regulatory compact is essentially an implicit relationship between regulators and utilities. Utilities argue that they were granted certified territories for which they accepted an obligation to serve, develop, and maintain the necessary electricity infrastructure to provide universal service to all customers within a given territory. In exchange, they were promised by regulators a fair opportunity to recover the reasonable cost of the financial obligations incurred to satisfy their public service obligation. The regulatory compact maintains that a utility must be afforded a reasonable opportunity to recover from customers all prudent costs incurred on their behalf. Although the rules are now changing, according to the utilities, it remains true that a regulatory compact was (and remains) in place when the utility made decisions to invest considerable sums in power plants to meet its public service company obligations.

Mechanism for Stranded Cost Recovery. The bill requires stranded costs to be recovered through a unit charge per kilowatt hour of electricity delivered. The amount of the charge would be assessed equally to all customers of a utility's service area. Certain self-generators are exempted from this surcharge. In essence, the recovery formula used is based on the volume of energy consumed and not on the cost of providing the service, as has been historically the case. Large consumers of energy would pay more if costs are recovered through an energy charge than they would under a cost of service formula. However, residential customers would generally pay less if charged on a per-unit basis.

Proponents of this recovery mechanism argue that the historic cost of service approach would increase residential customers' rates too dramatically. The per-unit recovery mechanism would protect residential customers from large increases which, of course, is a politically desirable objective. One argument raised by a Task Force member in deliberations on the bill was that

the two large generating plants in Kansas with the most significant projected stranded costs are Wolf Creek and Sunflower. Both plants are base-load plants which were purposely designed to have capacity to meet the needs of all customer classes.

Large consumers of electricity opposed this provision of the bill. In testimony to the Task Force, a representative of Farmland Industries claimed that this recovery mechanism was unfair to those industrial concerns which operate at a "high load factor," using large volumes of electricity throughout the year, with no particular "peaks" for seasonal use of electricity. Proponents argue that the majority of costs of the electric systems currently in place in Kansas are constructed to serve the "peak" air-conditioning systems of residential customers. The effect of this recovery mechanism would be to have industrial customers subsidize residential customers disproportionately because meeting the uneven demand of residential customers is more expensive for utilities than meeting the demand of industrial customers who create fewer "peaks" and "valleys" in their electric consumption.

Other conferees who expressed concern with, or opposed, the per-unit recovery approach assessed equally to all customers, included those representing: Kansas Industrial Consumers; Midwest Energy, Inc.; Boeing; KIOGA; and Enron. The conferee representing Boeing argued that every one-tenth of a cent change to the company's per-kilowatt hour charge translates into \$550,000 of cost on an annual basis, placing the company at a further disadvantage over other operating locations. Enron's spokesperson argued that the recovery mechanism assessment should reflect no interclass or intraclass subsidies. One Task Force member (Mike Vess) also expressed his opposition about the cross-subsidy that would result from the equal assessment of the per-unit charge. The Task Force member representing Utilicorp United was not opposed to the per-unit basis but opposed inclusion in the bill of the manner in which a surcharge would be assessed. She considered it more appropriately addressed by the Commission in rate proceedings, noting that such proceedings use expert testimony to examine the impacts of rates on particular customers.

Bypass of an Incumbent's Distribution and Transmission Facilities. Another provision of the bill requires all customers in a utility's certified area, even those who elect to purchase power from a competitive provider, receive power through that utility's distribution and transmission facilities and require them to pay the surcharge to recover the incumbent utility's stranded costs. The argument for making that surcharge nonbypassable is that customers who benefitted from a utility's investments in generation should pay for the associated costs of those investments. If this were not the case, the costs would be shifted unfairly to other customers. Yet another argument for not permitting bypass of the utility's distribution and transmission facilities is to prevent inefficient duplication of those facilities. In general, Task Force members and conferees agreed to the principal of making the surcharge nonbypassable although a conferee from Enron, a potential competitive provider, recommended amendments to draft legislation considered by the Task Force. These amendments appeared to have the effect of allowing bypass of the incumbent utility. On the other hand, two conferees recommended an amendment to further limit the conditions under which a customer could bypass the incumbent utility. They suggested that any customers who elect to self-generate must be charged the share of the stranded cost recovery surcharge those customers would have paid if they had not elected to self-generate. The Task Force included a provision to exempt self-generators from the surcharge provided that such generators are in operation by January 1, 1998.

Period of Time Allowed for Stranded Cost Recovery. Essentially, recoverable stranded costs are those costs that would have been recovered from ratepayers in a regulatory framework over a specified period of time. With the advent of retail competition, those same costs must be

recovered instead on an accelerated basis. The bill identifies several activities eligible for stranded cost recovery and their associated recovery period:

- **Low-Level and High-Level Radioactive Waste Disposal.** The bill would allow certain stranded costs to be recovered over the life of the Wolf Creek plant: nuclear decommissioning, low-level radioactive waste disposal, and high-level radioactive waste disposal. Costs to be recovered for high level radioactive waste disposal and low-level radioactive waste disposal would have to be incurred prior to July 1, 2001, and would have to be approved by the Commission. Costs for low-level waste disposal, except for those costs associated with a low-level storage facility in Nebraska, are currently recovered in rates. Costs for high-level waste disposal also are currently recovered in rates and paid to the federal government. There is presently no permanent storage facility for high-level radioactive waste (Wolf Creek is currently storing spent fuel on site) but the federal government is expected to promulgate rules to address this issue on a national basis.
- **Decommissioning.** The Commission is statutorily required to review, at least every five years, the financing plan to decommission Wolf Creek and, subject to notice and hearing, order any necessary adjustments. (The Commission has elected to conduct such reviews on a more frequent basis.) Decommissioning costs are collected from customers through rates and placed into a separate, dedicated trust fund. After some deliberation, and with some disagreement, the Task Force decided not to impose any limitations on the recovery of decommissioning costs because of a concern, among certain members, that Commission approval of such costs, if granted at a fixed date, might dramatically increase stranded costs and result in sharp rate increases. Yet another concern with conditioning decommissioning costs was the possibility of encouraging the Nuclear Regulatory Commission to require the owners of Wolf Creek to pay such costs up front. Finally, it was argued that nobody currently knows exactly how much it will cost to decommission the plant but decommissioning requires a long-term funding commitment not appropriately tied to a shorter duration than the life of the plant and not appropriately subject to any other conditions.
- **Other Generation-Related Assets.** The bill also would allow all other stranded costs to be recovered over a period of up to 12 years. These include the costs associated with investments in Wolf Creek and all other generating facilities that would not be recoverable in a competitive environment and the costs associated with above-market long-term power contracts. After stranded costs are recovered, the price customers will pay for their electricity will be determined solely by the market and the universal service fund surcharge because the surcharge imposed to recover stranded costs will no longer be imposed.

There was considerable disagreement concerning the appropriate time period during which stranded costs should be recovered. Several conferees, in testimony to the Task Force, expressed their concern with the proposed time period. They argued that shorter periods for recovering stranded costs would bring the benefits of competition to customers earlier and provide a stronger incentive for utilities to reduce their costs (the city of Wichita, Kansas

Industrial Consumers). Another argument was that Kansas consumers will subsidize utilities that own nuclear facilities until the plants are closed but the utility can sell the cheap nuclear power it produces anywhere outside the state, thus benefitting out-of-state customers at the expense of Kansas customers (Kansas Industrial Consumers). An argument raised against a shorter recovery period was the rates would have to be increased more significantly than with a longer recovery period (Western Resources, KCPL).

Electric Cooperatives. Electric cooperatives have no shareholders other than their member-owners and are funded principally by debt. Specifically, the two generation and transmission cooperatives (Sunflower and KEPCo) are financed primarily with direct loans and Rural Utilities Service loans through the Federal Financial Bank. Their concern is that they may face complications with the proposed stranded cost recovery periods in that the acceleration of stranded cost debt collection, absent a restructuring of their respective debt obligations with the federal government, might result in consumer rate shock. The Task Force member representing Sunflower argued that Sunflower is under pressure to restructure its debt to bring rates to market-based prices. The Task Force did not include a provision in the bill to address that concern because several Task Force members remained unconvinced that such restructuring would actually benefit consumers.

Municipal Electric Utilities. Like electric cooperatives, municipal electric utilities are owned by their customers (in this case the residents of the municipality which the utility serves) and are funded principally by debt. Also like electric cooperatives, municipal electric utilities may have problems with the 12-year time period for stranded cost recovery. Cities generally issue bonds to pay for their electric utility generating facilities. However, some of these bonds may not be callable until after 2013, when all stranded costs must be recovered. Cities argue that they would incur additional costs if their bonds are retired prematurely. To resolve this problem, several conferees suggested that any municipal utility electing to participate in retail competition be allowed to retire its debt over the life of the bonds. The Task Force recommended inclusion of a provision in the bill to allow stranded costs from generation assets funded with bonds to be recovered over the life of the indebtedness. This was not a unanimous decision and the following concerns were expressed. First, these bonds were issued on a tax-exempt basis but in a competitive environment they may be considered taxable by the Internal Revenue Service. Second, there may be a legal argument raised with respect to denial of equal protection because the electric cooperatives and investor-owned utilities were not afforded the same opportunities as the municipal electric utilities.

Adjustment of Rates for Stranded Cost Recovery. Because stranded costs can only be estimated and cannot be determined with any certainty, the Task Force recommended a provision in the bill that the Commission may, upon its own motion, when evidence of need is apparent, or upon application by a utility, determine the remaining, if any, recoverable stranded costs and refine the rate of recovery. Such review would reconcile differences between actual and expected competitive or market prices and actual and expected sales levels for electricity. (Earlier versions of the bill required the Commission to make such adjustments at least every two years during the transition period.) There was some disagreement with language in earlier versions of the bill about the necessity for requiring the Commission to make such adjustments. Initially, there was disagreement about the method used to make these adjustments. With respect to the necessity of these adjustments, a conferee representing Sunflower testified to the Task Force that the ongoing 12-year review process appeared to impose unnecessary costs on consumers and uncertainties for other stakeholders. This conferee wanted the final determination of stranded costs to be made up front so that Sunflower could formulate a restructuring plan for its debt obligations with the federal government and provide its creditors

with assurance that those obligations would be met. The Commission staff recommended that the Commission be given greater flexibility to ensure that recovered stranded cost surcharges match actual stranded costs incurred. The language ultimately adopted in this version of the bill appears to accommodate the views of all affected parties with respect to adjustments.

Securitization. Securitization entails the replacement or refinancing of a utility's existing capital structure of debt and equity with lower-cost debt. Stated simply, this financing tool essentially enables utilities to refinance their stranded costs and retire their highest cost debt and buy back their equity more rapidly than they otherwise would. Under securitization, a utility transfers its right to collect stranded costs to a trust. The trust issues bonds (called transition bonds in the bill) to raise funds, which are remitted to the utilities. The trust also establishes a surcharge based on the principal and interest on the bonds which is then collected by the utilities. Neither the debt nor the revenues would appear on the utilities' financial statements. Legislation is required to permit the securitization of stranded costs and regulators must approve each securitization proposal. Such legislation would create an irrevocable right and obligation for the collection of revenues from a nonbypassable surcharge to retire the bond indebtedness. It effectively prohibits the Commission from issuing any orders subsequent to the initial authorization to change the terms and conditions governing transition bonds. According to proponents of securitization, the legislation does *not* commit the Legislature or the state of Kansas to guarantee the principal and interest on the bonds. The bonds are backed by the revenue from the nonbypassable surcharge imposed on the utility's customers.

In the bill, utilities, or their assignees, or the Kansas Development Finance Authority, may issue transition bonds. The bill would authorize the Commission to approve issuance of transition bonds in an amount less than or equal to 50 percent of stranded costs at the time transition bond financing is approved by the Commission. Earlier versions of the bill would have allowed the Commission to authorize the issuance of such bonds to recover all or a portion of such costs.

Proponents of securitization provide the following justification for securitization: The legislative prohibition against changing the terms and conditions of the surcharge to retire the bonds causes the bonds to be highly rated by bond agencies, typically AAA. The debt, therefore, carries a lower interest cost than other debt and the equity of the utility. This reduced interest cost can provide a benefit for ratepayers compared to the utility cost of capital built into existing rates. Other arguments offered by proponents of securitization are that economic risk is reduced, as well as regulatory risk. Above-market assets and contracts can be refinanced and restructuring can proceed at an accelerated pace. Proponents also argue that not all stranded costs need be subject to securitization but only a portion of such costs.

Certain Task Force members voiced concern with the required legislative commitment necessary to ensure the favorable bond ratings. Another concern raised was the inflexibility afforded the Commission in making adjustments to the surcharge should such a need be warranted. While acknowledging the value of transition bonds as a financing tool, Commission staff expressed concern that the risks associated with securitization far exceeded the benefits. Commission staff raised the following points:

- ratepayers may be required to pay higher surcharges to recover stranded costs than is necessary if market based generation prices are higher than those forecasted at the time the transition bonds are financed;

- under the previous scenario, the ratepayer would be paying higher prices for services of competitive generation providers; and
- transition bond issuances may affect the debt equity ratio on a utility's balance sheet, thus lowering its financial rating while increasing the utility's cost of capital for its remaining regulated services; therefore, little financial benefit would be gained for increased risk.

A spokesperson for Kansas Industrial Consumers observed that securitization defeats the purpose of the adjustment mechanism proposed in the bill to prevent under- and over-recovery of stranded costs. The spokesperson also observed that securitization removes from customers the ability to benefit from mitigation of stranded costs. Finally, he noted that it provides a utility a ready source of cash over which the Commission would exercise no control.

Two conferees (the spokespersons for the Kansas AARP and Enron) suggested that surcharge proceeds to recover the bonded indebtedness be used *exclusively*, and not *principally* (language proposed in the bill) to reduce stranded costs. The Task Force eliminated the word "principally" in subsequent action on the bill.

Universal Service

In a regulated environment, vertically-integrated electric utilities are able to offer certain services, such as assistance to ratepayers who are unable to pay their electric bills and support for various research and development projects. The costs associated with these benefits are implicitly included in rates charged to all customers. In essence, universal service is a subsidy which is justified by proponents as serving a greater public good. In a competitive environment, however, these benefits, sometimes referred to as "strandable benefits," can no longer be provided without placing incumbent utilities at a competitive disadvantage. This is because a portion of such costs would be assessed to the generation component of the utility. The competitive provider, absent some funding mechanism, would not be obligated to finance its share of those costs. The rationale provided by proponents of universal service assistance is that in a restructured industry, competitive providers would ignore certain market segments, such as nonpaying residential customers, customers who only pay part of their bills, or residential customers in low population density areas of the state. The argument for universal service assistance is that it would enable all customers to continue to receive electricity economically no matter where they live. This concept is not unique to provision of electric service and the most frequently cited example has been telephone service.

In Task Force deliberations and in testimony to the Task Force, two policy questions emerged. First, should those benefits which currently are provided in a regulatory environment be continued or even expanded in a competitive environment? Second, if the decision is to continue these benefits, how should they be financed and who should pay?

The bill recommends that universal service costs include: (1) costs of assuring continued electric power to customers during implementation of the Commission's Cold Weather Rule in areas served by competitive generation providers; and (2) costs that are associated with provision of distribution to rural areas served by competitive generation providers and that negatively impact the affordability or accessibility to distribution services in those areas. The Commission would determine the amount necessary to recover the universal service costs. Such costs would be

recovered, on or after the implementation date for retail competition, through license fees for competitive electricity providers and through a unit charge per kilowatt hour of electricity delivered in areas served by competitive providers. The Commission would determine the procedures and mechanisms for collection of the charge.

Testimony to the Task Force and Task Force deliberations essentially addressed three questions specifically related to the bill:

- Should universal service funds be used for the purposes identified in the proposed bill?
- Should universal service support be financed in another manner than as a per-unit surcharge on generation?
- Should universal service support be administered by an entity other than the Commission?

Use of Fund. The following issues relate to the use of the universal service fund:

- **Assistance to Customers for Bill Payments.** The Commission adopted a cold weather rule in 1983. The Commission further modified the rule in an order issued in 1989 on policies concerning bill practices, security deposits, late payment charges, and discontinuation of service (Docket No. 158,796-U). The current version of the Cold Weather Rule allows for special payment and disconnection procedures for any Kansas residential customer with unpaid arrearages to retain or restore utility service throughout the cold weather period, which extends from November 1 through March 31. Under the Rule, barring specified circumstances, a utility is prohibited from disconnecting a customer's service during the cold weather period when the local national weather service office forecasts that the temperature will drop below 35 degrees or will be in the mid-30s or colder within the 48-hour period. Disconnect notification procedures and arrearage payment requirements are outlined in the Rule. Those electric cooperatives, not regulated by the Commission, also adhere to the Cold Weather Rule, although, in some cases, with modifications. Municipal electric utilities are encouraged to adhere to the Rule although adoption of such a policy is exclusively within the purview of elected officials.
- **Assistance to Low-Income Persons.** The Commission currently has no program for utility payment assistance to low-income electric customers. This has historically been handled by the federally-funded Low-Income Energy Assistance Program in the budget of the Kansas Department of Social and Rehabilitation Services. A provision to assist low-income persons was included in earlier versions of the bill and was subsequently removed. The argument cited for removal of that provision was that low-income persons currently are not assisted through utility rates, and that there already are programs to respond to such needs.
- **Assistance to High Cost Service Areas.** In testimony to the Task Force, conferees held different views on the need to provide universal service

assistance to high-cost rural distribution service providers. For example, Task Force member, Mike Vess, supported this provision, noting that rural service areas of investor-owned utilities had been subsidized by urban areas of those utilities for years. This observation also was shared by the spokesperson for the KIOGA. Conferees testifying on behalf of the electric cooperatives likewise supported this provision, noting that it offered some protection against the price risks associated with retail competition and that it would narrow the gap between urban and rural areas in Kansas. Use of universal service funds in this manner would serve to stimulate the rural economy and thus benefit the entire state. The Task Force member from Midwest Energy acknowledged that use of those funds for that purpose would probably have a net benefit for his customers. However, he noted that universal service funds have no relationship to the products of a competitive commodity market and in particular raised the need for rural distribution assistance. The Task Force discussed this provision extensively, specifically the requirement that universal service support would be available for distribution service costing in excess of 25 percent of the statewide average cost of service, defined in the bill, for a given class of customer. Although the Task Force did not amend that specific provision, several Task Force members acknowledged the need for additional information about distribution costs. In their view, such information would help them to make an informed decision concerning the appropriate percentage to trigger universal service funding.

- **Research and Development.** Currently, Kansas investor-owned electric utilities and G&T cooperatives support electricity-related research and development initiatives through membership in the Kansas Electric Utilities Research Program. Membership payment is based on a formula that takes into account kilowatt sales and gross revenue sales to ultimate customers during the prior calendar year with parameters for increased or decreased assessments of 2.5 percent from one year to the next. Membership payments are allowable expenses which are treated as part of the member utilities' rate bases. The research and development initiatives related to distribution and transmission operations would still be supported by regulated utilities in a competitive environment. The policy question is: should generation-related research and development initiatives continue to be supported by ratepayers? If they should, should the universal service fund be used for that purpose?

Earlier versions of the bill included a provision for support from universal service funds of generation-related research, development, and demonstration projects. The Task Force subsequently removed that provision. The argument for not subsidizing such projects is that generation-related activities would be the purview of a competitive market and therefore should be financed by private sector competitors. Moreover, it was argued that funding for such projects might benefit out-of-state competitive providers and not in-state providers which Kansans might prefer to support. In testimony to the Task Force, a spokesperson for the Kansas AARP took issue with the application of universal service funds for research, development, and demonstration. She observed that those costs are usually paid for from retained earnings.

- **Inadvertent Incentives.** The Executive Director of the League of Kansas Municipalities suggested that the universal service fund not provide an inadvertent incentive for utilities to engage in less aggressive practices than is currently the case in dealing with nonpaying customers.
- **Definition too Narrow.** A representative of Western Resources noted that the term "universal service costs" is narrowly defined in the bill. He indicated that other states had included such items as customer safety and compliance, meter accuracy and reading, and billing accuracy and collection.

Method of Finance. The following ideas were raised at the public hearing in October with respect to financing universal service:

- **Per-Unit Charge.** Farmland's spokesperson testified to the Task Force that the per-unit charge to recover universal service was disproportionately onerous to industrial users. In a similar vein, the representative of Kansas Industrial Consumers took issue with the proposed funding mechanism. He further noted that the way the bill is structured, the distribution utility will likely have to deliver electricity to low-income customers. Moreover, the costs associated with universal service could easily be accomplished through the distribution utility's rate structure. He maintained that a separate financing mechanism is not needed.
- **Transition Savings Account.** In testimony to the Task Force, Dr. Ralph Gamble proposed a concept called a Transition Savings Account that the utility could draw down to pay for distribution costs in excess of costs allowed by regulation during the transition period. This account would operate in tandem with a state-wide universal service fund. The concept would be to replace a tax subsidy with an incentive for utilities to be efficient.
- **Subsidy for Distribution and Transmission Services.** The Task Force member representing Utilicorp United suggested that the distribution and transmission components of a customer's bill, not only the generation component, should be subsidized by the universal service fund. In her view, the proposed approach of subsidizing only generation would result in confusion and inequity.
- **Access by Competitive Providers to Fund.** The spokesperson for Enron recommended that competitive providers be permitted to access the universal service fund to pay costs of assuring continued generation service to low-income customers and that such customers be allowed to select their supplier.

Administration of Fund. The bill would require the Commission to use a competitive bidding process to select a third party to administer universal service costs. This provision is similar in concept to the provision in the 1996 Kansas Telecommunications Act. Earlier versions of the bill would have transferred moneys collected from a surcharge on customer bills to a universal electric service fund established in the state treasury. Expenditures from the fund would have been subject to legislative appropriations. In testimony to the Task Force, Commission staff

recommended the third-party approach ultimately incorporated into the bill. Commission staff noted in testimony that this approach would assure that the funds are used as intended and money collected would not be used as a source of state revenue.

Divestiture/Affiliate Transactions

The benefits of restructuring to consumers and the nation should come from increased cost efficiencies and service expansion. If a very small number of firms providing generation services dominate, they have the ability to exercise market power. "Market power" could be defined as the ability to profitably raise prices by "a small but significant and nontransitory amount" without other competitors forcing prices back. If market power is realized, generators will not compete effectively or efficiently and profits and prices will be higher than under effective competition. This situation would harm consumers who would not realize the benefits associated with restructuring. (Extracted from Peter Fox-Penner, *Electric Utility Restructuring*, 1997.) There are at least three options for protecting consumers from the disadvantages of market power with respect to generation services:

- **Functional Separation** allows for continued vertical integration. Books and records would be segregated to show separately the generation function from all the others. Generation would still be integrated with the utility, but all relevant costs would be removed from the regulated revenue requirement and recovered through competitively set prices.
- **Structural Separation** allows for a separate subsidiary or other structure, such as a holding company, which is identifiable and separate from other functions of the parent utility. The separate entity would have its own set of books, employees, and finances. While the utility would continue to own generation, it would be priced on the basis of the competitive market.
- **Divestiture** involves the sale or spin-off of a utility's generation assets.

The Task Force concluded that divestiture was not a necessary precondition for restructuring but adopted the approach of structural separation and standards of conduct. An investor-owned utility, municipal electric utility, or electric cooperative could still have ownership of a controlling interest in another entity (in this case the generator) but the utility and that entity would have to adhere to certain prescribed standards. Such standards would prohibit the parent corporation from giving preference to its affiliate over other providers in matters relating to distribution and transmission services. These standards also would prevent affiliates and their customers from having an unfair advantage concerning access to promotional opportunities and market information. In addition, affiliates would be required to keep separate books of accounts and records which would be subject to Commission review. As an additional safeguard, the bill provides the Commission with jurisdiction over affiliated interests and access to all accounts and records of affiliates in order to investigate and receive complaints regarding anti-competitive practices, marketing abuses, cost allocation rules, cross-subsidies, discriminatory practices, undue preferences, rates, tariffs, charges, and the rendition of efficient and sufficient services.

The policy question is whether the proper balance between consumer protection and the creation of propitious conditions to foster effective competition has been realized with this approach. In Task Force deliberations, several members were concerned that much more

discussion has focused on how to make the transition to a competitive environment and much less on the actual attributes of that environment. A concern was raised in Task Force deliberations that, if the merger between Western Resources and KCPL occurs, oligopolistic conditions might impede or even thwart effective competition.

Testimony to the Task Force included several recommendations concerning efforts to curb market power: authorization to the Commission to consider various market structures in developing a plan to permit the lowest possible prices in Kansas (Kansas AARP); the addition of two standards of conduct concerning the promotion of affiliates and the sharing of utility employees with affiliates (Enron); and authorization to require a utility to divest itself of all interests in generation service providers if the Commission determines that the standards of conduct have not provided adequate separation (Commission staff). The latter recommendation was considered in Task Force deliberations. However, a majority of the Task Force rejected that proposal. Arguments against this proposal maintained that: (1) generating assets are owned by shareholders who should not be forced to sell them; (2) investments in generating assets were business decisions and government should not intervene; and (3) adequate provisions in the bill to govern affiliates (standards of conduct and licensing requirements) would protect consumers and ensure arms-length transactions.

In deliberations on the bill, a Task Force member proposed an amendment to the bill to remove provisions granting authorization to the Commission to review affiliate books. The argument in support of the proposal was that such authorization would be very expansive and could be a barrier to entry, thus impeding competition. Moreover, affiliates would be competitive providers and should not be subject to the same regulation accorded distribution and transmission utilities. The argument in opposition to that amendment was that Commission scrutiny of affiliates' books would discourage "fly-by-night" providers and consequently protect consumers.

Consumer Information and Protection

The policy questions related to consumer information and protection are:

- Should efforts be made to inform consumers about the advent of electric utility restructuring and their options during the transition to competition?
- Who should assume responsibility for imparting that information?
- What protection should be offered consumers against abusive business practices that might emerge?

Consumer Information. As part of its study, McFadden/RDI held in April 1997 eight focus groups with residential and small commercial consumers in four regions of the state—Kansas City, Wichita, Colby, and Dodge City. One observation that applied to all focus groups was that there was a dramatic need for consumer education. The consultants reported that while each group included at least one participant with an understanding of the issues involved, most participants did not have accurate information coming into the meetings. Also noted was a great desire for more information on the part of those who were unfamiliar with retail competition. Moreover, focus group participants also strongly suggested a need for provision of consistent information statewide. The Regulatory Assistance Project (RAP) findings also

reinforced conclusions drawn from the McFadden/RDI focus group discussions.² One of RAP's findings disclosed that most people surveyed did not know the fuel source of their energy supplier.

In their review of other states' experiences, Task Force members were apprised of the confusing and often misleading information imparted to participants in pilot programs in New Hampshire. Moreover, several Task Force members, including the legislative members, expressed hope that Kansas consumers would have access to more and better information about the implications for them of electric utility restructuring than they appeared to have had when the Universal Service Fund surcharge for intrastate telecommunications services went into effect. In testimony to the Task Force, a spokesperson for Kansas AARP supported the need for consumer education with the following observation and suggestion: "At the moment there aren't many people who know about or can explain stranded costs, competitive transition charges, securitization, or differential pricing structures. A good way to approach consumer education would be to establish and fund a consumer advisory board that can develop effective ways and means for informing all citizens about the complex changes they will be faced with." However, even a more fundamental issue than the need to inform consumers about retail competition surfaced in testimony to the Task Force, namely the reasons for restructuring in the first place. Several conferees, in testimony to the Task Force, remained unconvinced that retail competition was necessary, or that it would actually lower rates and result in continued reliable, quality service for residential consumers in Kansas. In their view, the old adage seemed to apply—"if it ain't broke, don't fix it!"

The Task Force recommended certain measures be included in the bill to inform the public:

- The Commission must organize, in conjunction with the Citizens' Utility Ratepayer Board (CURB), a consumer education advisory board, to investigate and recommend methods to educate the public about the implementation of retail competition and its impact on consumers. The advisory board must address and make recommendations on: the level of funding necessary for adequate educational efforts; the aspects of retail access about which consumers will need education; the most effective means of educating consumers; the most appropriate entities to undertake the educational effort; and any other relevant information. The Commission must consider these recommendations and submit them to the Legislature no later than January 1, 1999.
- The Commission must adopt rules and regulations specifying a minimum percentage of electricity sold by a competitive provider that must be sold from renewable resources in order for the provider to represent to customers that the electricity is less detrimental to the environment than electricity sold by other providers (also a consumer protection measure).
- The Commission must adopt rules and regulations establishing minimum, enforceable, uniform standards for the form and content of disclosure and

²RAP is a nonprofit organization, formed in 1992, that provides workshops and education assistance to state public utility regulators on electric utility regulation. Workshops, addressed from the perspective of state public utility regulators, cover a wide range of topics, including electric utility restructuring, renewable resource development, performance-based regulation, Green Pricing, and others.

labeling that would allow consumers to easily compare the price, price variability, contract terms and conditions, resource mix, and environmental characteristics of their electricity purchases. Four components to be included in those standards are specified in the bill.

The latter provision, it is argued, could be viewed as a means of helping consumers compare the solicitations they might receive from various competitive providers. The argument in support of such standards is there would be some standard method for interested consumers to compare the terms and conditions of energy services offered. Otherwise consumers might be sifting through solicitations that are packaged so differently, they would experience great difficulty in making an informed decision. Disclosure of fuel source was advocated in testimony by a spokesperson for the Kansas Sierra Club. He noted that while wholesale electricity prices are complicated, power producers track financial obligations to their satisfaction; it therefore should be possible to inform customers about the fuel source of retail power they buy. The argument is that some consumers might be willing to pay more for "green power" or power from renewable energy sources. Were consumers to opt for "green" power in large numbers, a powerful signal would be sent to the energy market. Although a majority of Task Force members opted to include in the bill the provision requiring uniform standards, concerns were raised about: the definition of "environmental characteristics" (what are "renewable resources"?); the burden such standards could impose on competitive providers; and the significance of *caveat emptor* or buyer beware in a competitive market.

Consumer Protection. Closely related to the issue of consumer information is consumer protection. The need to balance the protection of consumers from unscrupulous and misrepresenting competitive providers with the conditions for fostering a competitive industry was a subject of considerable debate and disagreement. The Task Force recognized that certain safeguards needed to be in place. The standards of conduct to be imposed on affiliates would certainly provide some protection, as discussed above.

Another means of protecting consumers is the imposition of licensing requirements. In the bill, the Commission is required to adopt rules and regulations establishing standards and procedures for licensure, including standards and procedures related to: a competitive provider's reliability of service; financial and operational fitness; billing practices and customer service; disclosure of pending legal actions against the applicant; and disclosure of the names and business addresses of all affiliates of the applicant. The applicant also would be required to establish an office in the state, receive all payments from Kansas customers and Kansas distribution utilities at that office, and satisfy specified reciprocity conditions. The Commission is required to adopt rules and regulations establishing procedures for application, renewal, and issuance of licenses. There is also an enforcement provision in the bill authorizing the Commission to impose a fine of \$5,000 per day for each occurrence of violation.

Other consumer protection mechanisms include: a requirement to the Commission to adopt rules and regulations pertaining to unauthorized switching (slamming) by one competitive provider to another and a method for handling complaints about slamming; the requirement that consumers may select competitive providers only through a positive verifiable declaration; the required establishment of informal complaint procedures for situations involving retail sales of generation service in annexed municipal territories subject to competition and in municipalities with limited competition; and a requirement that the Commission ensure the preservation of

quality of generation and distribution service after July 1, 2001, and a requirement about proper representation by competitive providers in marketing renewable resource-generated energy.

On the one hand, the more extensive the set of requirements imposed on competitive providers, the higher the barrier to entry. On the other hand, several Task Force members and conferees in testimony to the Task Force expressed concern that consumers need adequate protection in this restructured environment. There was some Task Force discussion about where that fine line should be drawn.

Default Suppliers

Public utilities currently have an obligation to serve all customers within their certified territory in accordance with terms and condition of their tariffs. In exchange, they were promised by regulators a fair opportunity to recover the reasonable cost of the financial obligations incurred to satisfy their public service obligation. This is the regulatory compact referenced in the discussion on recoverable stranded costs. However, once generation services become deregulated, they are no longer part of the regulatory compact. As a general rule, generation services will no longer be furnished to the customer by the still regulated distribution and transmission utility. In light of this change, two policy questions must be addressed. First, who has the obligation to provide such services to those customers who do not elect to switch to a competitive provider? Second, who, if anyone, should be obligated to provide electric power to customers whose competitive provider has failed to meet its obligations? (The issue of how to address customers who choose not to pay their bills or who cannot afford to do so is discussed in the section on Universal Service.) With respect to the first question, the bill would require customers who do not elect to switch to competitive provider to continue to be served by their existing utility or its successor. With respect to the second question, the bill would require the distribution utility to act as the default supplier. In that case, the distribution utility would be compensated by the competitive provider at a multiple of the actual cost for that generation service. The Commission would be required to determine the multiple used. If the competitive provider fails to reimburse the distribution utility, the customer would have to reimburse the utility for the cost of the generation service plus a reasonable rate of return.

In testimony to the Task Force, one conferee (Enron) suggested that any competitive provider be afforded the opportunity to petition the Commission for approval of itself as a "default service provider" in order to serve those customers who have not switched from the utility to another provider. In Task Force deliberations on the bill, that issue was also the subject of debate. An amendment was proposed, but not adopted, to require that the Commission promulgate rules and regulations establishing procedures for competitive providers to bid for a contract to be a competitive provider for those customers who did not select a provider. The Task Force decided to retain the provision in the bill to make the utility or successor the default provider for "non-choosing" customers. The argument against the proposal to allow bids for the provision of default services was that some customers may like their existing service provider. In a competitive environment, they should not be forced to make an affirmative decision to retain a provider. The argument for the proposal to allow bids from default service providers was that assigning a utility or its successor the responsibility of default service provider affords that utility an unfair advantage over competitors.

Tax Implications of Retail Competition

During its 16-month tenure, the Task Force heard presentations by the Department of Revenue and Deloitte & Touche on tax issues related to electric utility restructuring. In addition, several studies reviewed by the Task Force, including the study by McFadden/RDI, the study on the *Impact of Retail Wheeling on Municipal Electric Utilities in Kansas*, and the *Economic Impact of Retail Wheeling on Areas Served by Kansas Electric Cooperatives*, analyze the impact of retail competition on taxes. The Task Force also heard testimony from conferees at the public hearing in October. Because tax issues related to electric utility restructuring are so complex and wide-reaching, the Task Force recommended that a joint legislative committee of 13 members be established to study, investigate, and analyze the ramifications to the taxing systems of the state and its political subdivisions arising from the deregulation of electric generation facilities and the relative tax impacts upon and among such facilities. Earlier versions of the bill provided for establishment of a 21-member task force, to include legislative members and representatives of the electric utility industry, a municipality, a county, an urban business, a rural business, and an advocate for consumers or taxpayers. The implementation date for retail competition could have been extended beyond July 1, 2001, if a uniform tax policy were not enacted by that date. The Task Force subsequently endorsed the establishment of a legislative committee with the intent of expediting resolution of the important and weighty tax issues related to electric restructuring. The bill requires the joint committee to submit a report of its findings and recommendations to the 1999 Legislature.

Below is a brief summary of a few of the most frequently discussed tax issues. Several of these issues were considered in Task Force deliberations on the bill but were deferred to the proposed legislative task force for its analysis and consideration.

Property Tax Valuation. As a precondition for retail competition, a regulated vertically-integrated utility would separate or functionally unbundle its generation component and either spin-off that component or make it an affiliate. In either case, the generation component will no longer be price regulated. Generation service providers will compete with other nonregulated electricity suppliers for sales to retail electric customers.

In Kansas, the real and personal property of public utilities has an assessed valuation of 33 percent in accordance with Article 11, Section 1 of the *Kansas Constitution*. The overarching policy question on property tax implications of retail competition is: Can the state tax at the commercial rate of 25 percent the property of an electric generator which, under restructuring, would be price deregulated and would operate separately from the still regulated transmission and distribution facilities of a public utility?

Although the Attorney General did not issue an opinion that considered this specific question, she did respond to a request for an opinion submitted by Representative Carl Holmes. In her response, she attached an earlier opinion related to long distance telephone companies. She noted that "the Legislature may define what is meant by 'public utility' and 'commercial and industrial machinery and equipment' as long as those definitions are consistent with the commonly understood meaning of those terms at the time of the current version of Article 11, Section 1 was adopted."

If Kansas generation service providers continue to be assessed at 33 percent while their out-of-state competitors are treated as commercial entities for property valuation purposes, the former will be at a competitive disadvantage. However, if Kansas providers are ultimately considered commercial entities and taxed accordingly, the state would experience a reduction in assessed

value of approximately \$30 million. According to the Department of Revenue, if retail competition had been implemented, Tax Year 1996 state education and building funds would have been reduced approximately \$600,000. The Tax Year 1996 statewide school levy would have been reduced by approximately \$9.8 million. Assuming that the reduction of real property valuation of generation service providers from 33 percent to 25 percent would depend upon a constitutional amendment and this course of action is not taken, options might include tax incentives to Kansas generation service providers to partially or totally offset their competitive disadvantage.

In an effort to clarify the property tax status of generation service providers, the Task Force opted to include a provision in the bill to amend the statute which establishes real and personal property tax assessments for various property classifications. This amendment would specifically allow competitive electricity providers to be assessed at 25 percent and explicitly exclude such providers from the 33 percent assessment.

Nexus. The term "nexus" means connection. One policy concern with retail competition is that out-of-state competitive providers may not be subject to income and sales tax and therefore will have a competitive advantage over in-state providers. Policymakers will want to know what constitutes nexus to ensure that out-of-state providers do not accrue an unfair advantage. According to information supplied by the Department of Revenue, sufficient nexus for income tax purposes is established when a corporation derives income from sources within the state, owns or leases property located or stored in the state, employs personnel in the state, or has other capital in the state. Nexus can be defined by state statute, but is subject to limitations imposed by the *U.S. Constitution's* Due Process and Commerce Clauses and Public Law No. 86-272.

Similar to the income tax, the state can impose a duty to collect sales tax on those vendors with sufficient nexus in Kansas. The state may define nexus in its statutes; however, the Due Process and Commerce Clauses of the *U.S. Constitution* create limits on the state's ability to find nexus. A 1992 U.S. Supreme Court case (*Quill Corp. v. North Dakota*) found that a company cannot be required to collect and remit sales tax if the company has no connection in the state other than through the U.S. mail or common carrier. However, there are fewer limitations for sales tax purposes than for income tax purposes.

The Task Force's bill addresses the issue of nexus in that preconditions for a competitive provider's license are the establishment of an office in Kansas and the ability to receive all payments from customers and distribution utilities in Kansas at that office. A legal question is whether this approach will prove sufficient to establish nexus. The Executive Director of the League of Kansas Municipalities posed an alternative if the licensure concept proved to be ineffective. He suggested that a use tax be applied to the use of electricity or gas distributed through in-state lines, mains, and pipes, to be measured on a billed unit of energy basis.

Unbundled Service. Kansas statutes authorize the imposition of sales tax on the "sale or furnishing" of electricity. Other statutes authorize sales tax exemptions for specific purposes involving the sales or consumption of property, including electricity. These statutes were adopted with the operating premise that the generation, transmission, and distribution services of an electric utility were integrated and their rates were bundled. The policy questions arise as to how to treat these services in a competitive environment when rates are unbundled? What statutory amendments will be required to adequately accommodate a new set of conditions? This issue was raised in memoranda presented to the Task Force by the League of Kansas Municipalities and the Department of Revenue.

Franchise Purchase Agreements and Fees. Cities that do not operate their own electric utilities generally anticipate reduced revenues in franchise fees due to retail competition for at least two reasons. First, state law authorizes Kansas cities to collect a franchise fee from any entity that wants to "manufacture, sell, and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants." Most existing franchise agreements are between the local distribution company and the city. According to the League of Kansas Municipalities, most of the franchise agreements are long term (up to 20 years). With retail competition, power may be transmitted on the company's lines from a source other than the local distribution company. No fee will be collected on that power. Second, if reduced prices paid at retail for electricity result from retail competition, gross receipts will be reduced. Franchise fees, based on gross receipts, likewise will be reduced.

A spokesperson for the city of Wichita urged the Task Force at the public hearing to enact legislation proposed by the League of Kansas Municipalities. As noted above, that legislation would provide for a per-unit charge on electricity delivered to consumers, to be charged, collected, and paid by the distribution utility that delivers the power, regardless of its source. In testimony to the Task Force, an attorney for the city of Overland Park also raised a concern with franchise fees. He noted that the city collected over \$2.8 million in revenue based upon a franchise tax of 3 percent on gross receipts from the sale of electricity. He recommended that legislation be enacted to address the impact of retail competition on local tax revenues.

According to the McFadden/RDI study, the estimated loss in municipal franchise tax revenues attributable to retail competition is \$4 million, assuming a reduction of 12 percent in gross receipts from electricity sales.

Property Tax Revenue Loss. With the prospect of retail competition, cities that operate electric utilities are concerned about the possible need to increase property taxes to offset any reduced revenues resulting from a smaller customer base (some customers could be expected to purchase electricity elsewhere); increased costs to operate electric utilities and less revenue to transfer to the general fund, and stranded investments resulting from bonded indebtedness. Presentations by various spokespersons for the League of Kansas Municipalities, various Kansas municipalities, Kansas Municipal Utilities, and others have voiced this concern to the Task Force. The issue of stranded investment, as it pertains to municipal utilities, also is addressed in the section on the Period of Time Allowed for Stranded Cost Recovery, addressed above.

PART V—REPORTS REVIEWED BY THE RETAIL WHEELING TASK FORCE

As previously noted, the Retail Wheeling Task Force commissioned one report (McFadden/RDI) and reviewed three other reports which addressed the impact of retail competition on various electric providers and their consumers. The findings of each of these reports is summarized below. All these reports may be accessed directly (McFadden/RDI) or through links on the Internet home page of the Kansas Legislative Research Department (<http://www.kumc.edu/kansas/ksleg/KLRD/klrd.html>).

An Analysis of the Impacts of Retail Wheeling on the State of Kansas. This report was prepared by **McFadden Consulting Group/RDI** for the **Kansas Retail Wheeling Task Force** and was submitted on **August 18, 1997**.

The Kansas Retail Wheeling Task Force engaged **McFadden/RDI** in January 1997 to analyze and report on issues related to the restructuring of the electric utility industry in Kansas. The consultant subcontracted with the Institute of Public Policy and Business Research at the University of Kansas for assistance in analyzing the economic impacts of retail wheeling on the state. The investor-owned utilities, municipal utilities, and electric cooperatives represented on the Task Force collectively funded the study which was administered by the Kansas Economic Development Institute, a 501-(C) (3) research subsidiary of Kansas, Inc. No state money was appropriated or expended for the study. The final report was presented to the Task Force on August 18. Although the Task Force accepted the report, that acceptance did not necessarily reflect endorsement of the findings.

The report addresses the following:

- summarizes the activities related to restructuring in other jurisdictions;
- provides results of discussion groups with residential and small commercial customers;
- identifies the issues and discusses the alternatives as provided by those individuals who were interviewed;
- furnishes the results of the quantitative analysis of the impact of various policy alternatives on the investor-owned utilities, electric cooperatives, municipal utilities, and customer classes;
- analyzes the effect of retail wheeling on income, employment, and regions of the state; and
- analyzes the tax implications of retail wheeling.

Stranded Costs. Of all the issues addressed by the Task Force, the one receiving the most discussion and scrutiny related to the analysis by **McFadden/RDI** of stranded costs. The **McFadden/RDI** study projected stranded costs by calculating short-run marginal costs and comparing those costs to existing regulated rates. This comparison was made for a period of ten years. The study assumed that regulated rates would stay constant over that period of time. The total market value of the generating facilities was not calculated because the analysis

was limited to ten years. (For example, Wolf Creek is estimated to be in operation for another 28 years.) The study used three models to model wholesale power prices using input data on demand, generating units, fuel prices, and transmission constraints for all market areas. One of the three models analyzed costs of utilities and calculated retail prices.

RDI's forecasting model estimated stranded costs for all the Kansas investor-owned utilities, municipal electric utilities, and the two G&T cooperatives—Sunflower and KEPCo—using nine scenarios or cases. All these cases assume there will be no bypass of the transmission and distribution system. One of the nine cases assumes full retail access, full wholesale competition, and full recovery by the utility of stranded costs. Under that scenario stranded costs are estimated at \$3.1 billion over the ten-year period. KGE would incur approximately half the share of stranded costs. KPL and Empire District would have negative stranded costs (costs below market clearing prices) beginning in the year 2000. The RDI model calculates the market clearing price based on the cost of generating power at every generation station in the eastern interconnect. The market clearing price, consisting of the energy price and the capacity price, averages \$.025-\$.027 per kwh over a ten-year period. The methodology used in this analysis is described in the report and more extensively in the consultant's work papers (on file at the Kansas Legislative Research Department).

Several of the key findings from the analysis are:

- on an average statewide basis, prices in a deregulated environment will be lower than in a regulated environment;
- the long run price decreases realized by customers result from market efficiencies;
- deregulation eliminates cross-subsidization of generation costs between customer classes;
- there is a risk that some customers of low-cost utilities, such as KPL and Empire, will experience price increases;
- with respect to cases with partial or full recovery of stranded costs, the timing and magnitude of stranded benefits is affected;
- with full stranded cost recovery, customers' prices decline to the extent of increased market efficiency and competition-induced reductions in production costs (otherwise, customers will realize no decrease because they will be paying off the utility's debt attributable to stranded costs on an accelerated basis);
- utilities will have no incentive to control costs if they are assured of recovering all of their stranded costs (assuming stranded costs are calculated on the basis of actual costs);
- if only a portion of a utility's customers are granted early access to retail markets, remaining customers need to be protected from paying for the stranded costs of departing customers; and

- a small, but prolonged, gas price swing could have a large effect on the level of stranded costs in Kansas.

Economic Impact. The impact of retail wheeling on the Kansas economy was analyzed for the state and four regions of the state. Generally, the impact is not particularly significant. The following scenario assumes retail wheeling is fully implemented, it was initiated ten years ago, and there has been no stranded costs recovery. Price reductions in electricity lead to price reductions in goods sold out of state. This reduction, in turn, leads to increases in sales, output, and employment. At the same time, the price reductions reduce the cost of living in Kansas, which results in a reduction in the relative price of labor in Kansas by approximately 1 percent when compared to other states. This reduction leads to an additional increase in employment and an increase in real labor income. The net effect on income and employment is 0.5 percent. A 10 percent increase in all electricity prices causes a 0.58 percent income decrease at the state level and an even more modest decrease within the four regions.

Taxes. With respect to taxation, the consultant found that retail wheeling without stranded cost recovery would result in decreases in utility property values, profits, and gross receipts. These decreases would be offset in part by increases in sales tax collections from sources other than utilities, such as personal income taxes and property taxes from nonutility property. Under this scenario, state and local taxes are expected to fall by \$31 million or less than 0.5 percent of total tax revenues. However, if stranded costs are fully or partially recovered, the impact of retail wheeling on taxes would be less than that projected amount.

The Impact of Retail Wheeling on Municipal Electric Utilities in Kansas. This report was prepared by Kansas Public Finance Center, Hugo Wall School of Urban and Public Affairs, Wichita State University and was submitted to the Kansas Municipal Energy Agency and Kansas Municipal Utilities Inc. in March of 1997.

This report examined the development of municipal electric utilities in Kansas, specified policy choices for handling retail competition, and analyzed possible implications of competition for Kansas municipal electric utilities and their customers. Several key findings are associated with the implementation of retail wheeling in Kansas:

- The average city would have to levy an additional 26.265 mills in property taxes to offset the value lost by utility transfers for nonutility functions.
- In 1995, electric rates of municipal utilities in Kansas exceeded those charged by the lowest investor-owned utility in Kansas (KPL) by nearly one-sixth.
- The amount of public debt outstanding for Kansas municipal electric utilities as of December 1995 was \$302.3 million, or an average of \$1,331 per customer, with cities with generation capacity having far more debt than cities that only distribute purchased power.
- Municipal utilities have unique problems with respect to stranded cost recovery in that: municipal bonds often extend 20 to 30 years and carry a penalty for early debt repayment. The city cannot take a tax-law write-off of uneconomical assets. Moreover, the municipal utilities have no shareholders

to incur some of the burden of the debt (city taxpayers are the owners of the municipal utilities).

- If the competitive market rate or market clearing price is defined as the rate of the lowest cost Kansas private producer (presumed to be KPL), municipal generators and distributors alike would face revenue losses that would have to be offset by increased property taxes of 25.780 mills for mean generator cities and 63.655 mills for mean distributor cities.
- Kansas municipal electric systems (oil- or gas-fired internal combustion units) have less generating capacity and efficiency than many larger utility systems operating large, modern, coal-fired steam-generating plants. Therefore, they would be less competitive than investor-owned systems if retail wheeling is implemented.
- In absolute dollars and percentage terms, commercial customers served by municipal utilities would experience the largest yearly savings of all customer classes.

Economic Impact of Retail Wheeling on Areas Served by Kansas Electric Cooperatives. This report was prepared by the Docking Institute of Public Affairs, Fort Hays State University for the Kansas Electric Cooperatives, Inc., Kansas Electric Power Cooperative, Inc., and Sunflower Electric Power Corporation, and was submitted in April of 1997.

This study selected four electric cooperatives—CMS, Norton-Decatur, Kaw Valley, and Butler—located in different quadrants of the state to assess the economic impact of retail wheeling. Three methods were used to analyze the economic effects of retail wheeling. The first method assumed a single-fee, single-rate tariff system for recovery of distribution costs, with each class of customer having a \$5 meter charge and a projected market clearing price of \$.04 per kilowatt hour (worst case scenario). The second method used an expenditure model that assumes reasonable multipliers and no effect on regional income other than electricity prices. The third method (best case scenario) assumes the four cooperatives retain their present tariff structure reflecting differences in pricing and pass through any electricity price changes to consumers. Changes in electricity prices, regional income, employment, and taxes for each method are simulated under two scenarios—no stranded costs recovered from ratepayers and full stranded cost recovery.

The projection from the models show that rates for rural residential customers under retail wheeling will rise, at least for the first few years of retail wheeling. One reason cited is that large industrial customers will be able to leave the system or induce the cooperative to give them lower rates to retain their business. This would have the effect of shifting costs to residential customers, irrigation customers, and small commercial users. The report predicts an overall drop in income in these rural areas due to rising electric rates. In the long run, competition may force economies and distribution costs to decline. The report concludes, however, that rates in rural areas will never be as low as urban, commercial, and industrial rates in Kansas and perhaps elsewhere. The report further concludes that the distances are too long, the weather too immoderate, and the population too dispersed to realize that level of rate reduction.

An Assessment of Retail Competition in Kansas' Electric Power Industry. This report was prepared by Ken Costello and Ken Rose, with assistance from John Hoag, the National Regulatory Research Institute for the Kansas Corporation Commission and was submitted in September of 1997.

This study includes an empirical analysis which attempts to estimate changes in electricity prices to retail customers and the attendant stranded costs. In addition, the report presents some general guidelines for implementing retail competition in Kansas. Other issues addressed include: funding of costs through securitization, taxes, pilot programs, anti-competitive practices, jurisdiction over distribution assets, and the meaning of bypass in the context of retail competition. The report also countered the findings and conclusions of the Docking Institute report, addressed above.

Stranded Costs. To determine potential stranded costs, NRRI first calculated market revenue based on forecasted prices of the U.S. Energy Information Administration, subtracting costs of generating and delivering power to customers, and then subtracting depreciation expense and taxes. A net present value of the company's cash flow was then calculated and net book value of the plant was deducted to determine the firm's generation net worth over the 15 years under consideration. All plants owned by the companies were analyzed together as a group. This allowed a "netting" of plants that may have total costs exceeding market revenue (stranded costs) to be offset by those plants with a net competitive advantage. This analysis was applied only to KPL, KGE, and the Kansas power plants of KCPL for the period 1998-2015.

One finding of this analysis is that, with the netting approach, Western Resources and KCPL have no projected net generation stranded costs in Kansas. With respect to Western Resources, the projected net loss or stranded cost of Wolf Creek (which has relatively high fixed costs but very low operating costs) was offset by other generating plants owned or partly owned by Western Resources, particularly the low-cost coal plants, Jeffrey and LaCygne. The authors emphasized that any state stranded-cost policy should not focus on an individual plant or other asset that may face a competitive loss when all costs are included.

Two price scenarios were used for the NRRI estimates (moderate consumer response case and high efficiency competitive case). These prices reflect the average cost to end use retail customers (all customer classes). Under the moderate scenario, the market price for generation in 1995 dollars was estimated at \$.038 per kwh in 1998 and decreased to \$.034 per kwh in 2015. Under the high efficiency scenario, the market price for generation in 1995 dollars was estimated at \$.037 per kwh in 1998 and decreased to \$.032 per kwh in 2015.

Ten General Guidelines for Retail Competition in Kansas. The following guidelines were outlined and explained in the report:

- All retail customers should have choice.
- True customer choice requires the availability of different unbundled services offered by various providers.
- Quality of electric service should not be jeopardized.
- Cost-shifting should not be allowed to harm any consumer who is unable to choose among different service providers.

- The local utility should be obligated to provide service for which it continues to have monopoly power.
- Utilities should be compensated for any service they continue to provide or any costs imposed on them by third parties.
- All providers of unbundled service should have equal opportunities.
- Regulatory rules for individual unbundled services should be commensurate with the market environment within which they are transacted.
- Anti-competitive behavior should be minimized.
- Customer information and education should be made available.

PART VI—ELECTRIC UTILITY RESTRUCTURING ACT

Although the Task Force voted on the provisions of the bill outlined below, the Task Force did not vote on the entire bill. Therefore, the bill does not necessarily reflect consensus on the part of Task Force members.

PROPOSED BILL NO. _____

By

AN ACT concerning the electric utility industry; relating to competition in retail electric generation; enacting the electric utility restructuring act; amending K.S.A. 66-128e, 66-128f, 66-128g, 75-4319 and 79-1439 and K.S.A. 1997 Supp. 45-221 and 66-128 and repealing the existing sections; also repealing K.S.A. 66-1,159 through 66-1,165, 66-1,168, 66-1,169a and 66-1,169c and K.S.A. 1997 Supp. 66-1,158 and 66-1,169b.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 27 may be cited as the electric utility restructuring act.

(b) This act establishes a framework for the transition to competition in retail sales of generation service.

New Sec. 2. As used in the electric utility restructuring act:

(a) "Affiliated with" refers to:

(1) Ownership of a controlling interest in another entity by a municipal electric utility or electric cooperative; or

(2) with respect to any other utility, ownership of an interest by or in another entity described in K.S.A. 66-1401 and amendments thereto as an affiliated interest.

(b) "Aggregate" means combine the loads of retail customers for the purpose of purchasing generation service.

(c) "Aggregator" means any entity that, as an intermediary, purchases and may or may not take title to generation service for sale to retail customers whose loads are aggregated.

(d) "Assignee" means any corporation, public authority, trust or other entity to which:

(1) A utility or a utility's successor assigns, sells or transfers other than as security all or a portion of the utility's or successor's interest in or right to intangible transition property; or

(2) a direct assignee of a utility or a utility's successor may assign, sell or transfer other than as security the utility's or successor's interest in or right to intangible transition property.

(e) "Broker" or "marketer" means any entity that acts as an agent or intermediary in the sale and purchase of generation service to retail customers and may or may not take title to the generation service.

(f) "Certified territory" means the service territory certified to a utility pursuant to K.S.A. 66-1,170 et seq. and amendments thereto.

(g) "Commission" means the state corporation commission.

(h) (1) "Competitive electricity provider" means a marketer, broker, aggregator or other entity selling generation service to consumers at retail.

(2) "Competitive electricity provider" does not include any exempt utility.

(i) "Competitive transition charge" means a charge established under section 9.

(j) (1) "Competitive transition costs" means:

(A) The amount by which the costs of all generation assets deemed prudent by the commission or by another governmental entity operating or regulating a utility and included in the utility's rate base on July 1, 1998, exceed the amount recoverable for all such assets in a competitive marketplace;

(B) the amount by which the value of all generation contracts and other generation-related legal obligations deemed prudent by the commission or by another governmental entity operating or regulating a utility and included in a utility's rates on July 1, 1998, exceeds the amount recoverable for all such contracts and obligations in a competitive marketplace;

(C) nuclear decommissioning costs;

(D) low level radioactive waste disposal costs;

(E) high level radioactive waste disposal costs; and

(F) generation-related regulatory assets.

(2) "Competitive transition costs" does not include contingency debt.

(k) "Contingency debt" means long term debt without scheduled amortization.

(l) "Cost of service" means the costs reasonably incurred by a distribution utility in order to provide distribution services, including a reasonable rate of return.

(m) "Distribution services" means services provided from the point where electricity enters the distribution system to the point at which the electricity is delivered to consumers.

(n) "Distribution utility" means any utility engaged in the furnishing of distribution services to consumers under a service certificate issued by the commission or any municipal electric distribution system.

(o) "Electric cooperative" means any cooperative, as defined by K.S.A. 17-4603 and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state.

(p) "Exempt utility" means any municipal electric utility owned or operated by a municipality that has not elected under subsection (b)(1) of section 5 to participate fully in competition in retail sales of generation service or any electric cooperative that has elected under section 6 not to participate in competition in retail sales of generation service.

(q) "Financing party" means a holder of transition bonds, including trustees, collateral agents and other entities acting for the benefit of such holder.

(r) "Generation assets" means all real property, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, generation of electricity.

(s) "Generation service" means electricity or capacity to generate electricity but does not include transmission or distribution services.

(t) "High level radioactive waste disposal costs" means costs of disposal of high level radioactive waste, as defined by K.S.A. 48-1603 and amendments thereto, from a nuclear generating facility, which costs are

incurred before July 1, 2001, and are approved by the commission or another governmental entity operating or regulating a utility.

(u) "Intangible transition property" means the property right in any order of the commission, and in all revenues from competitive transition charges, declared by section 12 to be irrevocable. Intangible transition property shall exist only to the extent provided in an order authorizing issuance of transition bonds under section 11.

(v) "Low level radioactive waste disposal costs" means costs of disposal of low level radioactive waste, as defined by K.S.A. 48-1603, and amendments thereto, from a nuclear generating facility, which costs are incurred before July 1, 2001, and are approved by the commission or by another governmental entity operating or regulating a utility.

(w) "Nuclear decommissioning costs" means costs that the federal nuclear regulatory commission considers to be nuclear decommissioning costs and that are approved by the commission.

(x) "Public utility" means a public utility, as defined by K.S.A. 66-104 and amendments thereto, the rates of which are regulated by the commission.

(y) "Recoverable competitive transition costs" means competitive transition costs that a utility is allowed to recover under section 7.

(z) "Regulatory asset" means an asset that is created when a utility must capitalize all or part of a cost, incurred before July 1, 2001, that would normally be charged to expense in an enterprise that is not rate regulated and that is presumed to have a stream of future revenue at least equal in value to the capitalized cost of the asset. "Regulatory asset" includes but is not limited to renegotiated fuel supply contracts, deferred income taxes, post-retirement benefits, expenses related to refinancing debt, commission-approved recovery of impaired generation assets, commission-approved phase-in plans for generation assets and nonnuclear decommissioning costs.

(aa) "Regulatory liability" means a liability created pursuant to an order of the commission or pursuant to the application of generally accepted accounting principles.

(bb) "Statewide average cost of service" means the average cost of service of all distribution utilities in the state.

(cc) "Transmission services" means services provided from the point where electricity is generated to the point at which the electricity enters the distribution system.

(dd) "Transmission utility" means any utility engaged in the furnishing of transmission services.

(ee) "Universal service charge" means the charge established under section 10.

(ff) "Universal service costs" means:

(1) Costs of assuring continued provision of generation service to customers during implementation of the cold weather rule (issued by the commission in its order in docket number 158,796-U) in areas served by competitive electricity providers; and

(2) costs that are associated with provision of distribution services in low population density, high cost areas served by competitive electricity providers and that negatively impact the affordability of or accessibility to distribution services in those areas.

(gg) "Utility" means any electric public utility, municipal electric utility or electric cooperative.

New Sec. 3. Except as otherwise provided by this act, on and after July 1, 2001:

(a) All consumers of electricity in areas of the state served by competitive electricity providers shall have the right to purchase

generation service directly from the competitive electricity provider of the consumer's choice. That choice shall be exercised by the consumer's positive verifiable declaration. If a consumer makes no such declaration, the consumer shall continue to be served by the consumer's existing utility or its successor.

(b) Sale of generation service by competitive electricity providers shall not be subject to rate regulation by the commission.

New Sec. 4. On and after July 1, 2001:

(a) Certified territories of distribution utilities shall be retained and distribution utilities that are subject to the jurisdiction of the commission shall continue to be regulated by the commission as provided by law.

(b) Generation service purchased at retail shall be delivered to the consumer only through a distribution utility having the certified territory where the service is delivered and through transmission utilities holding certificates of convenience issued by the commission and serving the territory where the service is delivered. There shall be no bypass of distribution or transmission facilities by distribution or transmission utilities.

(c) Transmission and distribution utilities shall be required to provide open access to their transmission or distribution services on a nondiscriminatory basis, as provided by section 15.

New Sec. 5. (a) (1) Competition in retail sales of generation service shall continue in any territory annexed by a municipality that has not elected under subsection (b)(1) or (2) to participate in such competition if such competition exists in the annexed territory at the time of annexation. In such case the municipal electric utility shall not be subject to the provisions of this act other than the provisions of section 17 and section 10 as it pertains to annexed customers and shall not sell generation service at retail to consumers outside the utility's certified territory.

(2) In the case of annexation described in subsection (a)(1), the municipal electric utility shall be required to provide all competitive electricity providers open access to the utility's transmission and distribution services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates. Any competitive electricity provider denied such access shall have a cause of action in the district court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electricity provider access to the utility's distribution services in the annexed territory on a nondiscriminatory basis at fair and reasonable rates, the court may enjoin the utility from further denial of such access and may order the utility to pay the competitive electricity provider any damages arising from the denial.

(3) The commission shall adopt informal procedures for hearing and resolution of any party's complaint, other than complaints concerning rates, arising from retail sales of generation service within annexed territory described in subsection (a)(1).

(b) Except as provided by subsection (a), a municipal electric utility shall not participate in competition in retail sales of generation service and the provisions of this act shall not apply to such utility unless:

(1) The governing body of the municipality owning or operating the utility or the voters residing in the certified territory of the utility elect as provided in subsection (c) for the utility to participate fully

in competition in retail sales of generation service. If the governing body or voters elect full participation, the municipal electric utility shall be subject to all provisions of this act in the same manner as any other nonexempt utility and may sell generation service at retail to any consumer, regardless of the consumer's location.

(2) (A) The governing body of the municipality owning or operating the utility or the voters residing in the certified territory of the utility elect as provided in subsection (c) for the utility to participate in competition in retail sales of generation service only within the utility's certified territory. If the governing body or voters elect such participation, the municipal electric utility shall not be subject to the provisions of this act other than the provisions of sections 7, 9, 10 and 17.

(B) A municipal electric utility owned or operated by a municipality that elects to participate in competition in retail sales of generation under subsection (b) (2) (A) shall be required to provide all competitive electricity providers open access to the utility's transmission and distribution services on a nondiscriminatory basis at fair and reasonable rates. Any competitive electricity provider denied such access shall have a cause of action in the district court of the county where the municipality is located or, if the municipality is located in more than one county, the county where the greatest portion of the population of the municipality resides. If the court finds that the municipal electric utility denied the competitive electricity provider open access to the utility's distribution services on a nondiscriminatory basis at fair and reasonable rates, the court may enjoin the utility from further denial of such access and may order the utility to pay the competitive electricity provider any damages arising from the denial.

(C) The commission shall adopt informal procedures for hearing and resolution of any party's complaint, other than complaints concerning rates, arising from retail sales of generation service within the certified territory of a municipal electric utility owned or operated by a municipality that has elected to participate in competition in retail sales of generation service as provided by this subsection (b) (2).

(c) (1) The governing body of a municipality owning or operating a municipal electric utility may submit, by ordinance, to the qualified voters residing in the utility's certified territory a proposition for the utility to participate in competition in retail sales of generation service. If a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the final canvass of the election results.

(2) Upon a petition filed in accordance with subsection (d), the governing body of a municipality owning or operating a municipal electric utility shall submit to the qualified voters residing in the utility's certified territory a proposition for the utility to participate in competition in retail sales of generation service. If a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the final canvass of the election results.

(3) The governing body of a municipality owning or operating a municipal electric utility may elect, by ordinance, to participate in competition in retail sales of generation service, subject to a protest petition filed in accordance with subsection (d) within 30 days after the adoption of the ordinance. If such petition is so filed, there shall be submitted to the qualified voters residing in the utility's certified

territory a proposition for the utility to participate in competition in retail sales of generation service. If a valid protest petition is not submitted or if, upon submission of a valid protest petition and an election, a majority of the voters voting on the proposition vote in favor of the proposition, the municipal electric utility shall commence participation in competition in retail sales of generation service not later than one year after the adoption of the ordinance or the final canvass of the election results.

(d) (1) A petition provided for by this section shall be filed with the county election officer and shall be signed by qualified voters residing in the service utility's certified territory equal in number to not less than 10% of such voters who voted for the office of secretary of state at the last preceding general election of that office.

(2) If the petition requests an election to participate fully in competition in retail sales of generation service as provided by subsection (b)(1), the following shall appear on the petition: "We request an election to determine whether the municipal electric utility of the city of _____ shall be allowed to sell generation service to customers outside the utility's current territory and shall allow its current customers to choose their provider of generation services."

(3) If the petition requests an election to participate in competition in retail sales of generation service only within the utility's certified territory as provided by subsection (b)(2), the following shall appear on the petition: "We request an election to determine whether the municipal electric utility of the city of _____ shall allow its customers to choose their provider of generation services."

(e) (1) When a proposition is submitted pursuant to this section to participate fully in competition in retail sales of generation service as provided by subsection (b)(1), the county election officer shall cause the following proposition to be placed on the ballot in the utility's certified territory at an election called and held in the manner provided by K.S.A. 10-120 and amendments thereto: "Shall the municipal electric utility of the city of _____ be allowed to sell generation service to customers outside the utility's current territory and allow its current customers to choose their provider of generation services?"

(2) When a proposition is submitted pursuant to this section to participate in competition in retail sales of generation service only within the utility's certified territory as provided by subsection (b)(2), the county election officer shall cause the following proposition to be placed on the ballot in the utility's certified territory at an election called and held in the manner provided by K.S.A. 10-120 and amendments thereto: "Shall the municipal electric utility of the city of _____ allow its customers to choose their provider of generation services?"

(f) An election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(g) The governing body of a municipality is authorized to spend public moneys of the municipality to inform voters in an unbiased manner about probable impacts of participation in retail competition.

(h) (1) If a municipality owning or operating a municipal electric utility has elected to participate in competition in retail sales of generation service as provided by subsection (b)(1) or (b)(2), the municipality shall not subsequently elect to discontinue participation in competition in retail sales of generation service.

(2) If a municipality owning or operating a municipal electric utility has elected to participate in competition in retail sales of

generation service only within the utility's certified territory as provided by subsection (b)(2), the municipality may subsequently elect to participate fully in competition in retail sales of generation service as provided by subsection (b)(1).

(i) If a municipality owning or operating a municipal electric utility does not elect to participate fully in competition in retail sales of generation service as provided by subsection (b)(1):

(1) The utility shall not sell generation service at retail to consumers outside the utility's certified territory; and

(2) except as provided by subsections (a) and (b)(2), no competitive electricity provider shall sell generation service at retail to consumers within the utility's certified territory.

New Sec. 6. (a) Before July 1, 2001, an electric cooperative may elect not to participate in competition in retail sales of generation service. To elect not to participate, the cooperative shall call a special election. The election may be called by the board of trustees or shall be called within 180 days after receipt of a valid petition signed by not less than 10% of the members of the cooperative. The proposition appearing on the ballot at the election shall be: "Shall (name of the cooperative) allow members to choose their provider of generation services?" Written notice of the election shall be delivered to the members not less than 21 nor more than 45 days before the date of the election. Voting on the proposition shall be by mail ballot. If a majority of the members voting on the proposition vote against the proposition, the electric cooperative shall not participate in competition in retail sales of generation service and no competitive electricity provider shall sell generation service at retail to consumers within the cooperative's certified territory.

(b) If an electric cooperative has elected not to participate in competition in retail sales of generation service, the cooperative may subsequently elect to participate. To elect to participate, the cooperative shall call a special election in the same manner as provided by subsection (a). If a majority of the members voting on the proposition at such election vote in favor of the proposition, the electric cooperative shall participate in competition in retail sales of generation service.

(c) Any person wishing to disseminate to members of an electric cooperative any information relating to a proposition to be submitted at an election under this section may submit the information to the electric cooperative. The electric cooperative shall mail the information to the members of the cooperative as soon as practicable. All expenses incidental to mailing the information shall be paid by the person submitting the information to the electric cooperative.

(d) Once an electric cooperative participates in competition in retail sales of generation service, the cooperative shall not subsequently elect to discontinue participation.

(e) If an electric cooperative has elected not to participate in competition in retail sales of generation service, the cooperative shall not sell generation service at retail to consumers outside the cooperative's certified territory unless the cooperative subsequently elects to participate in competition in retail sales of generation service.

New Sec. 7. (a) A utility or utility's successor may apply to the commission for a determination of the utility's recoverable competitive transition costs. The commission, after notice and evidentiary hearings in accordance with the provisions of the Kansas administrative procedure act, shall determine the amount of the utility's recoverable competitive transition costs. Such costs shall be computed on a net basis and shall

be verifiable and nonmitigable. If two or more utilities or their successors are affiliated, the commission shall treat all such utilities and successors as a single utility in determining recoverable competitive transition costs.

(b) The commission shall allow a utility or utility's successor to recover all amounts of the following determined by the commission: Nuclear decommissioning costs, low level radioactive waste disposal costs, high level radioactive waste disposal costs and generation-related regulatory assets as offset by regulatory liabilities that can be credited back to consumers. For all amounts of other competitive transition costs determined by the commission, the commission shall determine the amount that a utility or utility's successor shall be allowed to recover, based on traditionally used considerations deemed relevant by the commission, including but not limited to:

(1) The extent to which the utility was legally required to incur the costs;

(2) the effectiveness of the efforts of the utility and any successor to increase and realize the market value of the assets and to decrease the costs of the contracts and other legal obligations;

(3) the extent to which rates previously established by the commission have compensated shareholders for the risk of not recovering the costs;

(4) the effects of the difference between the market value and the cost, including but not limited to tax considerations, for the assets, contracts and other legal obligations;

(5) if the utility had the discretion to determine whether to incur the costs and if the utility or any successor had the discretion to determine whether to mitigate the costs;

(6) the extent to which: (A) The costs have been deemed by a regulatory authority of proper jurisdiction to have been just and reasonable, either specifically by order or by inclusion in rates; and (B) the costs will not be recoverable in a competitive marketplace;

(7) the efforts of the federal government in restructuring or settling the debt of electric cooperatives in Kansas as the federal government has done in other states; and

(8) the extent to which the utility's restructuring efforts promote and provide for competition in sales of generation service.

(c) The commission, upon its own motion when evidence of need is apparent, or upon application by a utility or a utility's successor, may review and determine the remaining, if any, recoverable competitive transition costs. Such review shall reconcile differences between actual and expected competitive prices and actual and expected sales levels for electricity. Any overrecovery or underrecovery shall be incorporated into a revised competitive transition charge to be applied prospectively. The revised competitive transition charge also shall assure continued timely payment of interest and principal on transition bonds issued in accordance with section 11.

(d) The time limit for recovery of nuclear decommissioning costs, low level radioactive waste disposal costs and high level radioactive waste disposal costs shall end when decommissioning of the nuclear generating facility is complete. The commission shall establish reasonable time limits for recovery of each other type of competitive transition cost, but no such limit shall extend more than 12 years after July 1, 2001, except that the time limit for recovery of any bonded indebtedness incurred for financing generation assets and included in recoverable competitive transition costs of a municipal electric utility shall be the remaining life of such indebtedness.

(e) Except as provided by subsection (b)(2) of section 5, the provisions of this section shall not apply to any exempt utility.

New Sec. 8. (a) Each utility, other than an exempt utility, and any successor, shall have the duty to mitigate competitive transition costs.

(b) The commission shall allow for mitigation of competitive transition costs in electric public utility rate cases or in special, single-issue filings.

New Sec. 9. (a) Recoverable competitive transition costs shall be recovered through a unit charge per kilowatt hour of electricity delivered to consumers or, in the case of consumers that begin to generate electricity for their own use on or after January 1, 1998, per kilowatt hour of electricity used, based on the consumer's history of usage as determined by the commission. The unit charge shall be assessed equally to all customers, including consumers that begin to generate electricity for their own use on or after January 1, 1998. The amount of the competitive transition charge shall be determined by the commission for each utility or utility's successor, based on the amount necessary to recover the recoverable competitive transition costs in the period established for recovery. Except for costs that have resulted from provision of wholesale electricity to another utility:

(1) The charge for competitive transition costs of a utility other than an electric cooperative shall apply only to retail customers within the certified territory of the utility or the utility's predecessor, as the territory existed before July 1, 2001; and

(2) the charge for competitive transition costs of an electric cooperative shall apply only to retail customers within the certified territories or portions thereof, as they existed before July 1, 2001, that are covered by a generation and transmission electric cooperative's all power requirements contract.

(b) The competitive transition charge shall include amounts sufficient to provide for the payment of principal of, interest on, acquisition or redemption premium of and any other expenses related to issuing, servicing and retiring transition bonds issued pursuant to authorization by the commission under section 11.

(c) The commission shall establish procedures and mechanisms for collection and distribution of the competitive transition charge.

(d) If two or more utilities or their successors are affiliated, the commission shall treat all such utilities and successors as a single utility in determining the competitive transition charge to be imposed under this section and the customers to which the charge will apply, except that any recoverable competitive transition costs attributable to an affiliate's share of ownership of generation assets shall be recovered by a separate competitive transition charge applying to only customers within the certified territory of such affiliate, as such territory existed before July 1, 2001.

New Sec. 10. (a) The commission, after notice and evidentiary hearings in accordance with the provisions of the Kansas administrative procedure act, shall determine the amount necessary to recover universal service costs in areas served by competitive electricity providers, subject to the provisions of subsection (c).

(b) On and after July 1, 2001, universal service costs shall be recovered through fees for licensure and renewal of licensure to engage in business as a competitive electricity provider pursuant to section 19 and through a unit charge per kilowatt hour of electricity delivered to consumers in this state in areas served by competitive electricity providers. The amount of the universal service charge shall be determined by the commission. The commission shall establish procedures and

mechanisms for collection and distribution of the charge, subject to the provisions of subsection (c).

(c) (1) In determining costs that are associated with provision of distribution services in low population density, high cost areas served by competitive electricity providers and that negatively impact the affordability of or accessibility to distribution services in those areas, the commission shall base its determination on:

(A) The statewide average cost of service for classes of customers established by the commission based on one or more of the following criteria, which shall not include the physical location of a customer in the state: Annual kilowatt-hour usage, peak kilowatt usage, character of service, load factor, revenue, plant investment, customer type or seasonal demand;

(B) the cost of service for such classes of customers for each distribution utility other than an exempt utility; and

(C) standards, established by commission rules and regulations, that the commission deems necessary to provide a basic level of distribution services to low population density, high cost areas, including but not limited to line extensions, customer service obligations and utility service obligations.

(2) The commission shall establish the initial statewide average cost of service for classes of customers on or before January 1, 2000.

(3) (A) Subject to the provisions of subsection (c)(2)(B), a distribution utility shall be eligible to receive moneys from the universal service fund to pay costs that are associated with provision of the basic level of distribution services in low population density, high cost areas served by competitive electricity providers and that negatively impact the affordability of or accessibility to distribution services in those areas to the extent that the cost of service for a class of customer of the utility exceeds by 25% or more the statewide average cost of service for that class of customer.

(B) No exempt utility, other than a municipal utility owned or operated by a municipality that has elected to participate in retail sales of generation service under subsection (b)(2) of section 5, shall be eligible to receive moneys pursuant to subsection (c)(2)(A).

(d) At least every two years the commission shall audit and reconcile the costs of and need for the universal service charge.

(e) (1) On or before July 1, 2001, the commission shall establish the universal electric service fund. The commission shall utilize a competitive bidding process to select a neutral, competent and bonded third party to administer the fund. The administrator shall be responsible for:

(A) Collecting and auditing all relevant information from all persons or other entities receiving moneys from or providing moneys to the fund;

(B) verifying the amount of the universal service charge necessary to generate the moneys required by the fund;

(C) collecting all moneys due to the fund; and

(D) distributing amounts on a monthly basis due to persons or other entities receiving moneys from the fund.

(2) Any information made available or received by the administrator from persons or other entities receiving moneys from or providing moneys to the fund shall not be subject to any provisions of the Kansas open records act and shall be considered confidential and proprietary.

(3) The administrator shall be authorized to maintain an action to collect any moneys owed to the fund by any person or other entity in the district court in the county of the registered office of such person or

entity or, if such person or entity does not have a registered office in the state, such an action may be maintained in the county where such person's or entity's principal office is located. If such person or entity has no principal office in the state, such an action may be maintained in the district court of any county in which such person or entity provides service.

(4) The administrator shall be responsible for ensuring that moneys credited to the fund do not fall below the level necessary to pay all amounts payable from the fund. The administrator shall have the authority to retain and invest in a prudent and reasonable manner any excess moneys collected in any period to help ensure that adequate moneys are available to pay all amounts payable in other periods.

New Sec. 11. (a) A utility or utility's successor may apply to the commission for authorization to issue transition bonds to recover a portion of the utility's recoverable competitive transition costs. The commission, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, shall determine whether to issue an order authorizing issuance of such bonds. The commission may authorize the issuance of such bonds in an amount not exceeding 50% of the utility's recoverable competitive transition costs, as determined at the time of the commission's authorization of issuance of the bonds. The order shall include the amount of recoverable competitive transition costs authorized to be recovered through the bond issuance. If the commission authorizes the issuance of transition bonds, the utility or utility's successor shall retain sole discretion whether to assign, sell or otherwise transfer intangible transition property or to cause transition bonds to be issued, including the right to defer or postpone issuance.

(b) The principal of and interest on transition bonds shall be paid from amounts received from competitive transition charges established for recovery of recoverable competitive transition costs pursuant to section 9. Any order authorizing the issuance of transition bonds shall require that the proceeds from the issuance of transition bonds, and any proceeds from the assignment, sale or transfer or other financing of intangible transition property, shall be used to reduce the utility's recoverable competitive transition costs and to reduce the related capitalization, in accordance with the terms of the order.

(c) The effect of any subsequent refinancing of transition bonds upon the rates authorized in a qualified rate order shall be as provided in the commission's order authorizing issuance of the bonds.

(d) In an order authorizing the issuance of transition bonds, the commission shall afford flexibility in establishing the terms and conditions of the bonds, including repayment schedules, interest rates and other financing costs. The utility or utility's successor shall file the final terms of issuance with the commission.

(e) Notwithstanding any other provision of law to the contrary and on such conditions as the commission may approve, all or portions of the interest of a utility or utility's successor in intangible transition property may be assigned, sold or transferred to an assignee and may be pledged or assigned as security by a utility, utility's successor or assignee to or for the benefit of a financing party. To the extent that an interest is assigned, sold or transferred or is pledged or assigned as security, the commission shall authorize the utility or utility's successor to contract with the assignee or financing party that the utility or successor will continue to operate the utility's or successor's system to provide service to the utility's or successor's customers and

will account for and remit the applicable competitive transition charge to or for the account of the assignee or financing party.

(f) Any right that a utility or utility's successor has in intangible transition property prior to the property's sale or transfer or any other right created under this section or by commission order and assignable under this section or assignable pursuant to order of the commission shall be only a contract right.

(g) (1) Neither intangible transition property nor any right, title or interest of a utility, utility's successor or assignee in intangible transition property shall be deemed proceeds of any right or interest other than in the order and the intangible transition property arising from the order.

(2) The granting, perfection and enforcement of security interests in intangible transition property to secure transition bonds authorized pursuant to this section is governed by this section rather than by the uniform commercial code.

(3) A valid and enforceable security interest in intangible transition property shall attach and be perfected only by means of a separate filing with the commission, under rules and regulations adopted by the commission. For this purpose:

(A) The lien of the transition bonds authorized pursuant to this section shall attach automatically to the intangible transition property from the time of issuance of the bonds.

(B) The lien under (A) shall be deemed a valid and enforceable security interest in the intangible transition property securing the bonds and shall be continuously perfected if, before the date of issuance specified in (A) or within 10 days after that date, a filing has been made by or on behalf of the financing party to protect that security interest in accordance with the procedures prescribed by the commission under this subsection. Any filing in respect to such bonds shall take precedence over any other filing.

(C) The lien under (A) is enforceable against the assignee and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the intangible transition property previously perfected in the manner described in this subsection if value has been given by the purchasers of the transition bonds. A perfected lien in intangible transition property is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated intangible transition property, whether or not revenues have accrued. Intangible transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenues have accrued. The lien created under this subsection is perfected and ranks prior to any other lien, including any judicial lien, which subsequently attaches to the intangible transition property; to the competitive transition charges; and to the commission's order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this subsection is not defeated or adversely affected by changes to the commission's order or to the competitive transition charges payable by any customer.

(D) The relative priority of a lien created under this subsection is not defeated or adversely affected by the commingling of revenues arising with respect to intangible transition property with funds of the utility or utility's successor or other funds of the assignee.

(E) If an event of default occurs under authorized transition bonds, the holders of the bonds or the holders' authorized representatives, as secured parties, may foreclose or otherwise enforce the lien in the intangible transition property securing the bonds, subject to the rights

of any third parties holding prior security interests in the intangible transition property perfected in the manner provided in this subsection. Upon application by the holders or their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the intangible transition property pledged to the holders. An order under this subsection shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the utility, utility's successor or assignee.

(4) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings under this subsection and may provide that transfers of intangible transition property to an assignee be filed in accordance with the same system.

(h) A transfer of intangible transition property by a utility or utility's successor to an assignee which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a qualified rate order, shall be treated as an absolute transfer of all of the transferor's right, title and interest, as in a true sale, and not as a pledge or other financing, of the intangible transition property, other than for federal and state income and franchise tax purposes. Granting to holders of transition bonds a preferred right to the intangible transition property or the provision by the utility or utility's successor of any credit enhancement with respect to transition bonds shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes. A transfer of intangible transition property shall be deemed perfected as against third persons, including any judicial lien creditors, when all of the following have taken place:

(1) The commission has issued the qualified rate order creating intangible transition property.

(2) A sale or transfer of the intangible transition property in writing has been executed and delivered to the assignee.

(i) (1) Nothing in this act shall authorize an action against a retail customer for nonpayment of any competitive transition charge except by the utility, the utility's successor or any other entity that sells generation service at retail to customers within the utility's certified territory as the territory existed before July 1, 2001.

(2) The commission has exclusive jurisdiction over any dispute arising out of the obligations to impose and collect competitive transition charges.

(j) The Kansas development finance authority may issue transition bonds. The activities of the commission in administering and performing the powers, duties and functions prescribed by the provisions of this act from the proceeds of such bonds are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of such bonds by the Kansas development finance authority in accordance with that statute. The provisions of subsection (a)(1) of K.S.A. 74-8905 and amendments thereto shall not prohibit the issuance of such bonds when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a)(1) of K.S.A. 74-8905 and amendments thereto.

(k) Transition bonds authorized pursuant to this act shall be special obligations in accordance with their terms and shall not constitute an indebtedness of the state of Kansas or the commission, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

New Sec. 12. (a) Notwithstanding any other provision of law to the contrary, the final order of the commission authorizing the issuance of transition bonds and any competitive transition charge established for recovery of the competitive transition costs to be recovered from issuance of the bonds shall be irrevocable.

(b) If transition bonds have been issued pursuant to this act, neither the commission, nor any successor commission or agency exercising functions similar to the commission, shall:

(1) Revalue or revise the competitive transition costs to be recovered from issuance of the bonds;

(2) reduce, postpone, impair, terminate or determine unjust or unreasonable any competitive transition charge established for recovery of the competitive transition costs to be recovered from issuance of the bonds; or

(3) directly or indirectly take into account, when setting other rates for the utility, any competitive transition charge established for recovery of the competitive transition costs to be recovered from issuance of the bonds.

(c) The state pledges and agrees with the bondholders that the state may not limit or alter any competitive transition charge established for the competitive transition costs to be recovered from the issuance of transition bonds authorized under this act, any order authorizing issuance of such bonds or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged.

(d) Notwithstanding any other provision of law to the contrary and on such conditions as the commission may approve, all or portions of the interest of a utility or utility's successor in intangible transition property may be assigned, sold or transferred to an assignee and may be pledged or assigned as security by a utility, utility's successor or assignee to or for the benefit of a financing party. To the extent that an interest is assigned, sold or transferred or is pledged or assigned as security, the commission shall authorize the utility or utility's successor to contract with the assignee or financing party that the utility or successor will continue to operate the utility's or successor's system to provide service to the utility's or successor's customers and will account for and remit the applicable competitive transition charge to or for the account of the assignee or financing party.

New Sec. 13. (a) Before January 1, 1999, the commission shall adopt rules and regulations requiring that, on and after January 1, 2000, utilities' retail electric bills to consumers shall disclose such components as the commission determines adequately informs consumers. Separate components shall include but not be limited to:

- (1) Generation service charges;
- (2) distribution service charges;
- (3) transmission service charges;
- (4) competitive transition charges;
- (5) universal service charges; and
- (6) transactional taxes relating to the sale or furnishing of electricity.

(b) On and after January 1, 2000, municipal electric utilities' bills to retail customers shall disclose all budgeted transfers to the city general fund. Nothing in this subsection shall be construed to grant the commission jurisdiction over exempt utilities.

(c) Before January 1, 2000, the commission shall adopt rules and regulations establishing procedures:

(1) To ensure that generation service of a customer of a competitive electricity provider is not switched to another competitive electricity

provider without reliable confirmation of the customer's intent to make the change; and

(2) for handling of complaints of unauthorized switching of a customer's generation service from one competitive electricity provider to another.

(d) Before January 1, 2000, the commission shall adopt rules and regulations establishing procedures and standards for a competitive electricity provider to discontinue a customer's generation service for the customer's nonpayment and to reconnect the customer's service.

(e) The commission shall have the duty to ensure that the quality of generation and distribution service and quality of service to customers of such services does not decrease on or after July 1, 2001.

(f) Before July 1, 2001, the commission shall adopt rules and regulations specifying a minimum percentage of electricity sold by a competitive electricity provider that must be generated from renewable resources (including but not limited to wind, solar, hydropower, biomass and landfill gas sources) in order for the provider to represent that electricity sold by the provider is produced in a manner that is less detrimental to the environment than electricity sold by other competitive electricity providers.

(g) Before July 1, 2001, the commission shall adopt rules and regulations establishing minimum, enforceable, uniform standards for the form and content of disclosure and labeling that the commission determines will enable retail electric customers easily to compare the price, price variability, contract terms and conditions, resource mix and environmental characteristics of retail electricity purchases. At a minimum such standards shall require that all competitive electricity providers provide the following to prospective retail customers:

- (1) The duration of the agreement with the provider;
- (2) the prices for all components of generation service and any other fees that the provider may charge or levy separately at any time during the term of the agreement;
- (3) clear specification of the degree of variability of each charge over time, including whether the price for each component is fixed, any minimum or maximum level for any price that is not fixed and any index, formula or objective measure by which prices that are not fixed will be ascertained; and
- (4) the effective price in cents per kilowatt hour for all generation service sold under the agreement for various levels of consumption.

New Sec. 14. (a) On and after July 1, 2001, each distribution utility other than an exempt utility, upon request by a customer, shall enter into a contract with such customer, whereby the customer may attach or connect to the utility's delivery and metering system an apparatus or device for the purpose of feeding excess electricity which is generated by such customer's energy producing system into the utility's system. No such apparatus or device shall cause damage to the distribution utility's system or equipment or present an undue hazard to utility personnel. Such contract shall include, but need not be limited to, provisions relating to fair and equitable compensation on such customer's monthly bill for energy supplied to the utility by such customer, and each of the following terms and conditions:

- (1) The utility, on the customer's monthly bill, will compensate the customer for electricity supplied by the customer. Compensation shall be at the market price for electricity being purchased by the utility at that time.

(2) The utility will supply, own and maintain all necessary meters and associated equipment utilized for billing. In addition, for the purposes of monitoring customer generation and load, the utility, at its expense, may install load research metering. The customer, at no expense to the utility, shall supply a suitable location for meters and associated equipment used for billing and load research.

(3) For the purpose of insuring the safety and quality of electricity distributed by the utility's facilities, the utility shall have the right to require the customer, at certain times and as electrical operating conditions warrant, to limit the production of electrical energy from the generating facility to an amount no greater than the load at the customer's facility of which the generating facility is a part.

(4) The customer shall furnish, install, operate and maintain in good order and repair and without cost to the utility, any relays, locks and seals, breakers, automatic synchronizers and other control and protective apparatus designated by the utility as required as suitable for the operation of the generator in parallel with electricity distributed by the utility's facilities.

(5) The utility may install, own and maintain a disconnecting device located near the electric meter or meters.

(6) Interconnection facilities between the customer's and the utility's equipment shall be accessible at all reasonable times to utility personnel.

(7) The customer may be required to reimburse the utility for any equipment or facilities required as a result of the installation by the customer of generation in parallel with electricity distributed by the utility's facilities.

(8) The customer shall notify the utility prior to the initial energizing and start-up testing of the customer-owned generator and the utility shall have the right to have a representative present at such test.

(9) The utility may require a special agreement for conditions related to technical and safety aspects of generation in parallel with electricity distributed by the utility's facilities.

(b) If a customer and a distribution utility cannot agree to terms and conditions of a contract provided for by this section, the commission shall establish the terms and conditions for such contract.

(c) Service under any contract provided for by this section shall be subject to the utility's rules and regulations on file with the commission.

(d) The provisions of this section shall require a distribution utility to accept and purchase only electricity generated by a system that was in operation before January 1, 1998, and shall require such utility to accept and purchase such electricity only while a competitive transition charge is being collected to recover recoverable competitive transition costs of the utility or its predecessor.

New Sec. 15. (a) The commission shall adopt rules and regulations requiring that, on and after July 1, 2001, a transmission or distribution utility, other than an exempt utility, shall provide the utility's transmission or distribution services to all generation service customers in the utility's certified territory, to all municipal electric utilities and electric cooperatives that are not exempt utilities and to all competitive electricity providers, whether affiliated with the utility or not, at rates and on terms of access and conditions comparable to the transmission or distribution utility's own use of its system.

(b) (1) The commission shall adopt rules and regulations, effective on and after July 1, 2001, establishing standards of conduct for

transmission and distribution utilities that are competitive electricity providers or that are affiliated with a competitive electricity provider, for the purpose of ensuring that:

(A) The competitive electricity provider, with respect to the provision of the generation service, maintains an arm's length relationship with the utility.

(B) The business or organizational relationship, or both, between the utility and the competitive electricity provider shall not interfere with the development of effective competition in retail sales of generation service.

(2) Such standards shall include, but not be limited to, a requirement that:

(A) The utility shall not give, through a tariff provision or otherwise, the utility's affiliated competitive electricity provider or customers of the utility's affiliated competitive electricity provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to distribution or transmission services.

(B) All regulated distribution and transmission services offered by the utility, including any discount, rebate or fee waiver, must be available to all similarly situated customers and competitive electricity providers simultaneously and on the same basis, to the extent technically possible, and without undue or unreasonable discrimination.

(C) The utility shall not sell or otherwise provide distribution or transmission services to the utility's affiliated competitive electricity provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for those services.

(D) The utility shall process all similar requests for a distribution or transmission service in the same manner and within the same period of time.

(E) The utility shall not condition or tie the provision of any distribution or transmission service or rate agreement by the utility to the provision of any service in which an affiliated competitive electricity provider is involved.

(F) The utility shall process all similar requests for information in the same manner and within the same period of time. The utility shall not provide information to an affiliated competitive electricity provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. The utility shall not allow an affiliated competitive electricity provider preferential access to any nonpublic information regarding the distribution or transmission system or customers taking service from the utility that is not made available to nonaffiliated competitive electricity providers upon request, and the utility shall instruct all of its employees not to provide affiliated competitive electricity providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information.

(G) Except with the customer's consent, employees of the utility shall not share with any affiliated competitive electricity provider or any nonaffiliated competitive electricity provider: (i) Any market information acquired from the affiliated competitive electricity provider or from any nonaffiliated competitive electricity provider; or (ii) any market information developed by the utility in the course of responding to requests for distribution or transmission service.

(H) The utility and competitive electricity provider affiliated with the utility shall keep separate books of accounts and records, which are subject to review by the commission.

New Sec. 16. (a) On or before February 1, 2000, each utility shall file with the commission a plan for restructuring such utility to implement the provisions of this act. Hearings on utilities' restructuring plans shall be set on agreement of the parties but shall be set without agreement not later than June 1, 2000. Not later than December 31, 2000, and after notice and hearing in accordance with the Kansas administrative procedure act, the commission shall issue orders determining recoverable transition costs and such other matters as appropriate to implement competition in retail sales of generation service.

(b) The commission shall have jurisdiction over a utility's affiliates and access to all accounts and records of such affiliates to investigate or receive complaints regarding anticompetitive practices, marketing abuses, cost allocation rules, cross-subsidies, discriminatory practices, undue preferences, rates, tariffs, charges and the rendition of efficient and sufficient services.

New Sec. 17. (a) A distribution utility shall act as an emergency supplier of generation service to any noninterruptable customer in the utility's certified territory if the customer's competitive electricity provider fails to supply generation service for reasons other than the customer's nonpayment.

(b) A competitive electricity provider that fails to provide generation service to the provider's customer for reasons other than the customer's nonpayment shall reimburse the distribution utility acting as an emergency supplier at a multiple of the actual cost for that generation service. The commission shall determine and authorize the multiple used.

(c) If a competitive electricity provider fails to reimburse a distribution utility as required by subsection (b), the customer shall be responsible for reimbursing the utility for the cost of the generation service provided by the utility plus a reasonable rate of return.

(d) Except as provided by subsections (a) and (b)(2) of section 5, the provisions of this section shall not apply to any exempt utility.

New Sec. 18. (a) In areas of the state served by competitive electricity providers, customers of all classes shall be entitled to aggregate their electrical loads on a voluntary basis if each customer agrees to do so by a positive written declaration. Aggregation may be accomplished by private entities, by political or taxing subdivisions or on any other basis made available by market opportunities.

(b) If a political or taxing subdivision seeks to serve as an aggregator on behalf of retail customers, the political or taxing subdivision shall offer the opportunity to purchase generation service to all retail customers within the subdivision's jurisdiction. However, if a political or taxing subdivision serves as an aggregator, the subdivision shall not require consumers within the subdivision's jurisdiction to purchase generation service from the subdivision.

New Sec. 19. (a) On and after July 1, 2001, no competitive electricity provider shall engage in business as such within this state without having first obtained a license from the commission.

(b) The commission shall adopt rules and regulations establishing procedures and conditions that a competitive electricity provider shall be required to comply with to obtain a license to engage in business as a competitive electricity provider. Such procedures and conditions shall include requirements relating to:

(1) Reliability of service, including but not limited to a requirement that the applicant file with the commission evidence

satisfactory to the commission that the applicant has the ability to enter into binding interconnection arrangements for transmission and distribution services;

(2) financial and operational fitness, including but not limited to:

(A) A requirement that the applicant file with the commission evidence satisfactory to the commission that the applicant has financial capacity sufficient to refund deposits to retail customers in the case of bankruptcy, nonperformance or any other reason; and (B) a requirement that, when the commission determines necessary, the applicant shall file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to the applicant's customers;

(3) billing practices and customer service, including but not limited to a requirement of disclosure of customer complaints filed against the applicant with a regulatory agency other than the commission during the 12 months before the filing of the application;

(4) disclosure of pending legal actions against the applicant; and

(5) disclosure of the names and business addresses of all affiliates of the applicant.

(c) In addition to complying with any requirements adopted pursuant to subsection (b), a competitive electricity provider, in order to qualify for a license, shall:

(1) Establish an office in this state;

(2) receive all payments from customers and distribution utilities in this state at such office;

(3) submit evidence satisfactory to the commission that the provider complies with the provisions of subsection (d); and

(4) make an appointment, in writing, of the secretary of state, or the secretary's successor in office, to be the competitive electricity provider's agent for service of process in any action or proceeding arising out of the competitive electricity provider's engaging in business as such in this state. Such appointment, in writing, shall be evidence of the competitive electricity provider's agreement that any such process that is served on the secretary of state shall be of the same legal force and validity as if served upon the competitive electricity provider personally within the state.

(d) (1) If a competitive electricity provider or an affiliate of a provider had a certified territory in this state before July 1, 2001, the provider shall not be eligible for a license unless there is competition in generation service in such territory.

(2) If a competitive electricity provider or an affiliate of the provider did not have a certified territory in this state before July 1, 2001, the provider shall not be eligible for a license unless all electricity delivered to the provider's retail customers in this state is generated in states that have provided for competition in retail sales of generation service.

(e) If, after reviewing the license application of a competitive electricity provider, the commission finds that the applicant is qualified to be a competitive electricity provider, the commission shall issue a license to the applicant.

(f) After notice and an opportunity for hearing in accordance with the Kansas administrative procedure act, the commission may deny an application for a license to engage in business as a competitive electricity provider or may limit, suspend or revoke a license if the action is necessary to protect the interests of the public or to enforce the provisions of this act or a rule and regulation of the commission.

(g) In determining whether an applicant is qualified for a license to engage in business as a competitive electricity provider or whether to deny an application for a license or to limit, suspend or revoke a license, the commission may consider whether the applicant for or holder of the license, or any affiliate thereof, has engaged in any activities that are inconsistent with provision of reliable service to customers or with effective competition in retail sales of generation service.

(h) A license to engage in business as a competitive electricity provider shall be valid for a term of five years and shall be renewable under the same terms and conditions as an original license.

(i) The commission shall adopt rules and regulations establishing fees and procedures for application, renewal and issuance of licenses. Application fees shall be in an amount determined by the commission to be necessary to pay the costs of processing applications and issuing licenses. License and renewal fees shall be in amounts determined by the commission to be necessary to administer and enforce the provisions of this act, pay for administration of the universal service fund and contribute to payment of universal service costs.

(j) Rules and regulations adopted pursuant to this section:

(1) Shall not be unduly burdensome;

(2) shall not unnecessarily delay or inhibit the initiation and development of competition in retail sales of generation service; and

(3) may establish, when appropriate to carry out the provisions of this act, different requirements for licensing competitive electricity providers of: (A) Different services; or (B) similar services to different classes of customers.

(k) The provisions of this section shall not apply to:

(1) An electric cooperative engaging in business as a competitive electricity provider solely within the cooperative's certified territory;

(2) a municipal utility engaging in business as a competitive electricity provider solely within the utility's certified territory; or

(3) any other political or taxing subdivision engaging in business as a competitive electricity provider solely within the boundaries of the subdivision.

New Sec. 20. (a) The commission may adopt such rules and regulations as the commission deems necessary to administer and enforce the provisions of the electric utility restructuring act.

(b) For the purpose of administering and enforcing the provisions of the electric utility restructuring act, the commission shall have the same powers and duties with respect to distribution utilities, whether or not rate regulated, as the commission has to administer and enforce the provisions of chapter 66 of the Kansas Statutes Annotated with respect to distribution utilities that are rate regulated by the commission.

(c) After notice and an opportunity for hearing, the commission may impose an administrative fine in an amount not exceeding \$5,000 per day for each occurrence of a violation of section 13, 15 or 19 or any rule and regulation of the commission adopted thereunder. Such fine shall be in addition to any other penalty provided by law.

New Sec. 21. The state, the commission and Kansas utilities shall work with the federal government, other states in the region and interstate power pools to establish independent system operators or their functional equivalents to operate the transmission system and interstate power pools.

New Sec. 22. On and after July 1, 1998, nothing shall preclude the commission from approving, proposing or endorsing performance-based or incentive rate mechanisms and rate caps as part of the commission's rate making process for electric public utilities for the purpose of benefiting

both customers and utilities, allowing more expeditious setting of rates with consideration of factors other than cost of service and allowing the greatest possible mitigation of competitive transition costs.

New Sec. 23. The department of health and environment shall be the lead agency to coordinate state and local governments' review of environmental impact statements filed for siting of electric generation facilities.

New Sec. 24. (a) There is hereby created the electric utility deregulation oversight committee. The committee shall consist of the following members:

(1) The chairpersons, vice-chairpersons and ranking minority members of the house and senate standing committees on utilities, or a member of the respective committee designated by such chairperson, vice-chairperson or ranking minority member; and

(2) the chairpersons and ranking minority members of the house standing committee on appropriations and the senate standing committee on ways and means, or a member of the respective committee designated by such chairperson or ranking minority member.

(b) The legislative coordinating council shall designate one member of the oversight committee to serve as chairperson of the committee and one member of the committee from the opposite house to serve as vice-chairperson. The chairperson and vice-chairperson shall serve for terms of two years.

(c) The oversight committee shall meet on call of the chairperson. Members of the oversight committee shall receive compensation and travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212 and amendments thereto, when attending meetings of the committee.

(d) The provisions of the acts contained in article 12 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, applicable to special committees shall apply to the oversight committee to the extent that such provisions do not conflict with the specific provisions of this section.

(e) The oversight committee shall:

(1) Monitor and review implementation of the provisions of this act;

(2) recommend to the house and senate standing committees on utilities, the house standing committee on appropriations and the senate standing committee on ways and means any legislation that the oversight committee determines advisable to further the purposes of this act;

(3) recommend to the commission any rules and regulations or other measures that the oversight committee determines advisable to further the purposes of this act;

(4) review and make recommendation regarding commission staff and funding as the committee determines necessary to administer the provisions of this act;

(5) monitor federal legislation and administrative actions that have an impact on the implementation of this act;

(6) monitor and report to the house and senate standing committees on utilities, the house standing committee on appropriations and the senate standing committee on ways and means regarding whether the commission treats fairly all affected parties while implementing the legislative intent of this act that all retail customers will benefit from restructuring of the electric utility industry without unduly onerous regulatory requirements; and

(7) perform such other responsibilities as the committee determines will promote fair competition in the provision of generation service.

(f) On or before the first day of each legislative session, the oversight committee shall submit to the house and senate standing

committees on utilities, the house standing committee on appropriations and the senate standing committee on ways and means a report of the committee's findings and recommendations.

(g) The electric deregulation oversight committee is hereby abolished on July 1, 2006.

New Sec. 25. The commission, in conjunction with the citizens' utility ratepayer board, shall organize a consumer education advisory board to investigate and recommend methods of educating the public about the implementation of competition in retail sales of generation service and its impact on consumers. The advisory board shall address and make recommendations on the level of funding necessary for adequate educational efforts, the aspects of retail access on which consumers need education, the most effective means of educating consumers, the appropriate entities to undertake the educational effort and any other relevant matters. The commission shall consider the board's recommendations and submit them to the legislature on or before the first day of the 1999 regular legislative session.

New Sec. 26. (a) There is hereby established the joint committee on taxation of electric public utilities. The joint committee shall consist of 13 members, as follows: The chairpersons, vice-chairpersons and ranking minority members of the house and senate standing committees on taxation and assessment and taxation, the house and senate standing committees on utilities and the chairperson of the retail wheeling task force.

(b) Within 30 days after the effective date of this act, the joint committee shall organize and elect a chairperson and vice chairperson. The joint committee may meet at any time and at any place within the state on call of the chairperson. Members of the joint committee shall receive compensation, travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto, when attending meetings of such committee. Amounts paid under authority of this section shall be paid from appropriations for legislative expense and vouchers therefor shall be prepared by the director of legislative administrative services and approved by the chairperson or vice-chairperson of the legislative coordinating council.

(c) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as may be requested by the joint committee and authorized by the legislative coordinating council. The legislative division of post audit shall provide such assistance as may be requested by the committee and authorized by the legislative post audit committee. The department of revenue, the commission and all other state agencies shall provide assistance to the joint committee as may be requested by the committee.

(d) The joint committee shall study, investigate and analyze the ramifications to the taxing systems of the state and its political subdivisions arising from the deregulation of electric generation public utilities and the relative tax impacts upon and among electric generation public utilities. The joint committee shall submit to the legislature on or before January 11, 1999, a final report of the committee's findings and recommendations. The committee may introduce such legislation as it deems necessary in the performance of its function.

(e) The joint committee is hereby abolished on and after January 11, 1999.

New Sec. 27. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect

without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 28. K.S.A. 1997 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person;

and
(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information

for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, including names and addresses of customers of a municipal electric utility owned or operated by a municipality that has elected to participate in competition in retail sales of generation service as provided by section (b)(1) or (2) of section 5, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those

records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(36) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(37) Information which would reveal the precise location of an archeological site.

(38) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(39) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 1997 Supp. 40-2c20, and amendments thereto.

(40) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(41) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 1997 Supp. 40-2,156, and amendments thereto.

(42) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(43) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(44) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(45) Records relating to sales of generation service by a municipal electric utility owned or operated by a municipality that has elected to participate in competition in retail sales of generation service as provided by subsection (b)(1) or (2) of section 5.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature

required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 29. K.S.A. 1997 Supp. 66-128 is hereby amended to read as follows: 66-128. (a) The state corporation commission shall determine the reasonable value of all or whatever fraction or percentage of the property of any common carrier or public utility governed by the provisions of this act which property is used and required to be used in its services to the public within the state of Kansas, whenever the commission deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges. In making such valuations the commission may avail itself of any reports, records or other things available to the commission in the office of any national, state or municipal officer or board.

(b) For the purposes of this act, property of any public utility which has not been completed and dedicated to commercial service shall not be deemed to be used and required to be used in the public utility's service to the public, except that, any property of a public utility may be deemed to be completed and dedicated to commercial service if: (1) Construction of the property will be commenced and completed in one year or less; (2) the property is an electric generation facility that has a capacity of 100 megawatts or less and converts wind, solar, biomass, landfill gas or any other renewable source of energy; or (3) construction of the property has been authorized by a siting permit issued under former K.S.A. 66-1,158 et seq. or 66-1,177 et seq., ~~and amendments thereto.~~

Sec. 30. K.S.A. 66-128e is hereby amended to read as follows: 66-128e. In the event the commission finds that a portion of the costs were attributable either to investment in excess capacity which were

incurred due to lack of prudence in facility planning or were incurred due to lack of prudence in plant acquisition, construction or operation, the commission shall exclude that portion of the carrying or finance charges incurred after the date of its finding, and no part of the carrying or finance costs excluded shall ever be or become part of the reasonable value of public utility property so used and required to be used. For the purposes of this section only, a finding of lack of prudence in capacity planning for a facility which in whole or in part represents excess capacity shall not be made by the commission when a siting permit authorizing the construction of the facility ~~has been was~~ issued under former K.S.A. 66-1,162 ~~and amendments thereto prior to the passage of this act before April 19, 1984~~. The commission also shall not authorize the recovery as operating expense or in any other manner of the carrying or finance costs so excluded.

Nothing in this act shall limit the commission's authority to adjust revenue requirements of any public utility if the commission determines the revenue requirement requested results in whole or in part from inefficiency or a lack of prudence.

If the commission determines that a public utility, which generates and sells electricity as its main activity, has borrowed funds in order to pay dividends and such borrowing as the result of lack of prudence, increases the revenue requirement of the utility, the commission may adjust the revenue requirement accordingly.

Sec. 31. K.S.A. 66-128f is hereby amended to read as follows: 66-128f. Any public utility subject to the provisions of K.S.A. 66-128b to 66-128g, inclusive, which constructs an electric generating facility ~~and was not required to obtain an advance permit under K.S.A. 66-1,159 et seq.~~ shall make and send monthly financial reports to the state corporation commission. Such reports shall include the following information, as of the date of the report, the: (a) Actual costs incurred; (b) total estimated cost of the facility; (c) percentage of the facility which is actually completed; (d) estimated date of first commercial operation; (e) copies of informational filings provided federal agencies having regulatory authority over such construction; and (f) any other information required by the commission. Such reports shall be prepared and certified in the manner and form required by the commission. Nothing in this section shall limit the commission's authority to require filing of data in any format by any regulated utility the commission deems necessary to accomplish its regulatory duties.

Sec. 32. K.S.A. 66-128g is hereby amended to read as follows: 66-128g. (a) The factors which shall be considered by the commission in making the determination of "prudence" or lack thereof in determining the reasonable value of electric generating property, as contemplated by this act shall include without limitation the following:

(1) A comparison of the existing rates of the utility with rates that would result if the entire cost of the facility were included in the rate base for that facility;

(2) a comparison of the rates of any other utility in the state which has no ownership interest in the facility under consideration with the rates that would result if the entire cost of the facility were included in the rate base;

(3) a comparison of the final cost of the facility under consideration to the final cost of other facilities constructed within a reasonable time before or after construction of the facility under consideration;

(4) a comparison of the original cost estimates made by the owners of the facility under consideration with the final cost of such facility;

(5) the ability of the owners of the facility under consideration to sell on the competitive wholesale or other market electrical power generated by such facility if the rates for such power were determined by inclusion of the entire cost of the facility in the rate base;

(6) a comparison of any overruns in the construction cost of the facility under consideration with any cost overruns of any other electric generating facility constructed within a reasonable time before or after construction of the facility under consideration;

(7) whether the utility having an ownership interest in the facility being considered has provided a method to ensure that the cost of any decommissioning, any waste disposal or any cost of clean up of any incident in construction or operation of such facility is to be paid by the utility;

(8) inappropriate or poor management decisions in construction or operation of the facility being considered;

(9) whether inclusion of all or any part of the cost of construction of the facility under consideration, and the resulting rates of the utility therefrom, would have an adverse economic impact upon the people of Kansas;

(10) whether the utility acted in the general public interest in management decisions in the acquisition, construction or operation of the facility;

(11) whether the utility accepted risks in the construction of the facility which were inappropriate to the general public interest to Kansas;

(12) any other fact, factor or relationship which may indicate prudence or lack thereof as that term is commonly used.

(b) The portion of the cost of a plant or facility which exceeds 200% of the "original cost estimate" thereof shall be presumed to have been incurred due to a lack of prudence. The commission may include any or all of the portion of cost in excess of 200% of the "original cost estimate" if the commission finds by a preponderance of the evidence that such costs were prudently incurred. As used in this act "original cost estimate" means:

(1) For property of an electric utility which has been constructed without obtaining an advance permit under former K.S.A. 66-1,159 *et seq.*, and ~~amendments thereto~~, the "definitive estimate"; and

(2) for property of an electric utility which has been constructed after obtaining an advance permit under former K.S.A. 66-1,159 *et seq.*, and ~~amendments thereto~~, the cost estimate made by the utility in the process of obtaining the advance permit.

Sec. 33. K.S.A. 75-4319 is hereby amended to read as follows: 75-4319. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations; partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (a)(2)(J) of K.S.A. 38-1507 and amendments thereto or subsection (f) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 1997 Supp. 39-7,119 and amendments thereto; ~~and~~

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact; ~~and~~

(13) matters relating to sales of generation service by a municipal electric utility owned or operated by a municipality that has elected to participate in competition in retail sales of generation service as provided by subsection (b)(1) or (2) of section 5.

(c) No binding action shall be taken during closed or executive recesses except with regard to matters described in subsection (b)(13), and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

Sec. 34. K.S.A. 79-1439 is hereby amended to read as follows: 79-1439. (a) All real and tangible personal property which is subject to general ad valorem taxation shall be appraised uniformly and equally as to class and, unless otherwise specified herein, shall be appraised at its fair market value, as defined in K.S.A. 79-503a, and amendments thereto.

(b) Property shall be classified into the following classes and assessed at the percentage of value prescribed therefor:

(1) Real property shall be assessed as to subclass at the following percentages of value:

(A) Real property used for residential purposes including multi-family residential real property, real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located and residential real property used partially for day care home purposes if such home has been registered or licensed pursuant to K.S.A. 65-501 et seq., and amendments thereto at 11.5%;

(B) land devoted to agricultural use valued pursuant to K.S.A. 79-1476, and amendments thereto, at 30%;

(C) vacant lots at 12%;

(D) real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code and included herein pursuant to K.S.A. 79-1439a, and amendments thereto, at 12%;

(E) public utility real property, except railroad property which shall be assessed at the average rate all other commercial and industrial property is assessed, at 33%. ~~As used in this paragraph, "public utility" shall have the meaning ascribed thereto by K.S.A. 79-5a01, and amendments thereto;~~

(F) real property used for commercial and industrial purposes, competitive electricity provider real property and buildings and other improvements located upon land devoted to agricultural use at 25%; and

(G) all other urban and rural real property not otherwise specifically subclassed at 30%.

(2) Personal property shall be classified into the following classes and assessed at the percentage of value prescribed therefor:

(A) Mobile homes used for residential purposes at 11.5%;

(B) mineral leasehold interests, except oil leasehold interests the average daily production from which is five barrels or less, and natural gas leasehold interests, the average daily production from which is 100 mcf or less, which shall be assessed at 25%, at 30%;

(C) public utility tangible personal property including inventories thereof, except railroad personal property including inventories thereof, which shall be assessed at the average rate all other commercial and industrial property is assessed, at 33%. ~~As used in this paragraph, "public utility" shall have the meaning ascribed thereto by K.S.A. 79-5a01, and amendments thereto;~~

(D) all categories of motor vehicles listed and taxed pursuant to K.S.A. 79-306d, and amendments thereto, and over-the-road motor vehicles defined pursuant to K.S.A. 79-6a01, and amendments thereto, at 30%;

(E) commercial and industrial machinery and equipment, including rolling equipment defined pursuant to K.S.A. 79-6a01, and amendments thereto, and competitive electricity provider machinery and equipment, which, if its economic life is seven years or more, shall be valued at its retail cost when new less seven-year straight-line depreciation, or which, if its economic life is less than seven years, shall be valued at its retail cost when new less straight-line depreciation over its economic life, except that, the value so obtained for such property as long as it is being used shall not be less than 20% of the retail cost when new of such property at 25%; and

(F) all other tangible personal property not otherwise specifically classified at 30%.

(c) As used in this section, "public utility" means any public utility, as defined in K.S.A. 79-5a01 and amendments thereto, except a competitive electricity provider as defined in section 2.

(d) The provisions of the amendments to this section by this act shall be applicable to all taxable years commencing on or after July 1, 2001.

Sec. 35. K.S.A. 66-128e, 66-128f, 66-128g, 66-1,159 through 66-1,165, 66-1,168, 66-1,169a, 66-1,169c, 75-4319 and 79-1439 and K.S.A. 1997 Supp. 45-221, 66-128, 66-1,158 and 66-1,169b are hereby repealed.

Sec. 36. This act shall take effect and be in force from and after its publication in the statute book.

PART VII—KANSAS CORPORATION COMMISSION RESPONSIBILITIES

Retail competition has the effect of redefining the responsibilities of the Kansas Corporation Commission. Whereas the Commission no longer would price regulate electric generation services, it would assume other responsibilities specifically attributable to the restructuring initiative. The bill also removes some responsibility from the Commission to the extent that new Kansas generating facilities would not be subject to the Electric Generating Facility Sitings Act. As reflected in the Task Force's proposed legislation, the Commission would or must:

- adopt informal procedures for hearing and resolution of any complaint, other than complaints concerning rates, by any party arising from retail sales of generation service exists within annexed territory subject to competition (**New Section 5**);
- adopt informal procedures for hearing and resolution of any party's complaint, other than complaints concerning rates, arising from sales of generation service within the certified territory of a municipal utility which has elected to participate on a limited basis in retail competition (**New Section 5**);
- after notice and hearing, determine the amount of a utility's recoverable competitive transition costs, to be computed on a net basis, and to be verifiable and nonmitigable (**New Section 7**);
- determine the amount of all competitive transition costs; and for costs other than high-level and low-level waste disposal and nuclear decommissioning, determine the recoverable amount, based on consideration of eight factors; such costs must be determined in orders issued no later than December 31, 2000, following hearings on utilities' restructuring plans (**New Section 7**; **New Section 16**);
- determine the remaining competitive transition costs, upon the Commission's own motion, when evidence of need is apparent, or upon application by a utility; adjust the rate of recovery; reconcile differences between actual and expected competitive prices and actual and expected sales levels for electricity and revise the surcharge accordingly (**New Section 7**);
- establish a reasonable time period recovery of each type of competitive transition cost (excluding high-level and low-level waste disposal and nuclear decommissioning) not to exceed 12 years from July 1, 2001 (**New Section 7**);
- allow the mitigation of competitive transition costs in electric utility public rate cases or in special, single-issue filings (**New Section 8**);
- determine the surcharge for each utility to collect recoverable competitive transition costs (**New Section 9**);
- establish procedures and mechanisms for collection and distribution of the competitive transition charge (**New Section 9**);

- after notice and hearings, determine the amount necessary to recover universal service costs in areas served by competitive providers (**New Section 10**);
- determine the amount of the universal service surcharge (**New Section 10**);
- establish the procedures and mechanisms for collection and distribution of the universal service surcharge, subject to various determinations that need to be made with respect to costs in low-population density, high cost areas of the state; these include a determination of the statewide cost of service for customer classes (to be determined initially on or before January 1, 2000), the cost of service for customer classes of each distribution utility, and standards governing the provision of basic level distribution services (**New Section 10**);
- audit and reconcile the costs of and need for the universal service surcharge at least every two years (**New Section 10**);
- use a competitive bidding process to select a neutral, competent, and bonded third party to administer the Universal Electric Service Fund (**New Section 10**);
- after notice and hearing, determine whether to issue an order authorizing issuance of competitive transition bonds; orders issued authorizing such bonds must address various specified items (**New Section 11**);
- with respect to competitive transition bonds, establish and maintain a separate system of records to reflect the date and time of receipt of all filings (**New Section 11**);
- with respect to competitive transition bonds, adhere to certain procedures to ensure that a transfer of intangible transition property has been executed properly (**New Section 11**);
- with respect to competitive transition bonds, authorize the utility to contract with an assignee or financing party that the utility will continue operation of its system to serve its customers and will account for and remit the surcharge to or for the account of the assignee or financing party (**New Section 12**);
- adopt rules and regulations by January 1, 1999 that, on or after January 1, 2000, utilities' retail electric bills must disclose components determined by the Commission to inform consumers, to include at least six specified items (**New Section 13**);
- prior to January 1, 2000, adopt rules and regulations establishing procedures to ensure that generation service of a customer of a competitive provider is not switched without the customer's express consent (slamming) (**New Section 13**);
- prior to January 1, 2000, adopt rules and regulations establishing procedures for handling complaints pertaining to slamming (**New Section 13**);

- prior to January 1, 2000, adopt rules and regulations establishing procedures and standards for a competitive provider to discontinue a customer's generation service for nonpayment (**New Section 13**);
- ensure that the quality of generation and distribution service and quality of service to customers does not decrease on or after July 1, 2001 (**New Section 13**);
- before July 1, 2001, adopt rules and regulations specifying the minimum percentage of electricity sold by a competitive provider that must be generated from renewable resources in order for the provider to represent to customers that the electricity is less detrimental to the environment than electricity sold by other providers (**New Section 13**);
- before July 1, 2001, adopt rules and regulations establishing minimum, enforceable, uniform standards for the form and content of disclosure and labeling that would allow retail customers to easily compare the price, price variability, contract terms and conditions, resource mix, and environmental characteristics of their electricity purchases; four informational items to be included in the standards are specified in the bill (**New Section 13**);
- adopt rules and regulations requiring distribution and transmission utilities to provide open access on or after July 1, 2001 (**New Section 15**);
- adopt rules and regulations on or after July 1, 2001, establishing standards of conduct, the nature of which is specified in the bill, for distribution and transmission utilities that are competitive providers or affiliates (**New Section 15**);
- have jurisdiction over, and thus be able to review, all accounts and records of affiliated interests in order to receive complaints regarding anti-competitive practices, marketing abuses, cost allocation rules, cross-subsidies, discriminatory practices, undue preferences, rates, tariffs, charges, and the rendition of efficient and sufficient services (**New Section 16**);
- determine and authorize the multiple used to calculate the amount to be reimbursed by a competitive service provider to a distribution utility that serves as an emergency supplier of generation service (**New Section 17**);
- adopt rules and regulations establishing procedures and standards, including those set forth in the bill, for licensure of competitive providers (**New Section 19**);
- determine when applicants should receive a license; alternatively, deny the application for licensure after notice or hearing; other options for cause include limiting, suspending, or revoking a license (**New Section 19**);
- adopt rules and regulations establishing procedures for fees and procedures application, renewal, and issuance of licenses (**New Section 19**);

- adopt rules and regulations as deemed necessary to administer and enforce the provisions of the Electric Utility Restructuring Act; impose fines not to exceed \$5,000 per day for each occurrence of a violation (**New Section 20**);
- together with the state and Kansas utilities, work with the federal government, other states in the region, and interstate power pools to establish independent power pools or their functional equivalents to operate the transmission system and interstate power pools (**New Section 21**);
- organize, in conjunction with the Citizen Utilities' Ratepayer Board, a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail competition and its impact on consumers (**New Section 25**); and
- consider recommendations of the consumer education advisory board and submit them to the Legislature no later than January 1, 1999 (**New Section 25**).

The Commission has been requested to prepare a fiscal note for the legislation included in this report.

PART VIII—EXPLANATORY NOTE ON ELECTRIC UTILITY RESTRUCTURING ACT

As Proposed by Task Force on Retail Wheeling

The proposed bill establishes a framework for the transition to competition in retail sales of electric power. Currently, electric utilities are vertically integrated monopolies subject to some form of regulation. The effect of restructuring of the electric industry would be to deregulate the generation or energy component of the industry and allow its prices to be determined by the market rather than by regulation. The distribution and transmission components of the industry would continue to be rate regulated. The proposed bill includes the following provisions:

- **Name of Act.** **New Section 1** identifies the proposed bill, excluding amendments to existing statutes, as the Electric Utility Restructuring Act. The bill also establishes a framework for the transition to competition in retail sales of generation service (hereafter referred to as competition).
- **Definitions.** **New Section 2** defines the major terms used in the bill.
- **Initiation of Customer Choice.** **New Section 3** would afford all Kansas electricity consumers (residential, commercial, and industrial), on or after July 1, 2001, the right to purchase electric power directly from the competitive electricity provider of the customer's choice. A "competitive electricity provider," hereafter referred to as a competitive provider, is defined as a marketer, broker, aggregator, or other entity selling generation service to consumers at retail. This term expressly excludes "exempt utilities," which are municipal electric utilities (hereafter referred to as municipal utilities) not participating fully in competition and electric cooperatives not participating in competition. Customers afforded choice must select their competitive providers by means of a positive verifiable declaration. If they fail to do so, they will continue to be served by their existing utility or its successor.
- **Continuation of Certified Territories.** **New Section 4** would retain the certified territories of distribution utilities under the jurisdiction of the Kansas Corporation Commission (Commission). Electric power purchased at retail would have to be delivered and transmitted to customers by utilities certified to serve them. Transmission and distribution utilities also would be required to provide open access to other utilities and providers on a nondiscriminatory basis (addressed in more detail below). Moreover, transmission and distribution utilities would not be permitted to bypass transmission and distribution facilities.
- **Municipal Utilities.** **New Section 5** generally would exempt municipal utilities from competition. If such utilities do not participate in competition, they may not sell electric power outside their respective certified territories. There are, however, two exceptions to this exemption from competition. First, a municipal utility annexing territory would be required to participate in competition within that territory if such competition existed in that territory at the time of annexation. Second, a municipal utility would be required to participate in competition if the governing body of the municipality or the voters residing in the certified territory of the municipal utility elect for the

utility to do so. The municipal utility could participate fully in competition and sell generation service anywhere. Alternatively, the municipal utility could participate in competition only within its certified territory. The more limited participation would allow customers served by the utility to purchase electric power from other providers. However, the municipal utility would not be authorized to sell generation service beyond its certified territory. It also would be subject to fewer requirements than a municipal utility participating fully in competition.

The procedure under which a decision would be made to participate in competition is outlined in this section. The governing body of the municipality may elect by ordinance to participate in competition either by submitting a proposition to voters or by making such a decision subject to protest petition. With the exception of situations in which valid protest petitions are not submitted, all decisions would result from an election of qualified voters. If a majority of such voters who voted on this issue opt for competition, they may not subsequently decide to discontinue participation. However, if the decision is to continue to confine electric power sales to the municipal utility's certified territory, voters may subsequently elect to participate fully in competition.

Municipal utilities that have annexed territory subject to competition or that are engaged in limited competition would have to provide competitive providers access to their transmission and distribution facilities on a nondiscriminatory basis at fair and reasonable rates. The Commission would be required to adopt informal procedures for handling complaints concerning retail sales of electric power in annexed territory subject to competition or in municipal utility certified territories engaged in limited competition.

- **Electric Cooperatives.** As a general rule, all electric cooperatives would participate in competition. **New Section 6** outlines the procedure for cooperatives that elect to be exempt from participation in competition. To elect not to participate, a cooperative would have to call a special election prior to July 1, 2001. The election may be called by the board of trustees or must be called within 180 days after receipt of a valid petition by not less than 10 percent of the members of the cooperative. If an electric cooperative has elected not to participate in competition, the cooperative may subsequently elect to participate. However, once an affirmative decision is made to participate in competition, such participation cannot be subsequently discontinued. If a cooperative does not participate in competition, it may not sell electric power outside its certified territory.
- **Recovery of Competitive Transition Costs.** Generation-related costs generally would have been recovered in the rate base of a regulated vertically integrated utility if competition were not permitted. However, the transition to competition requires such costs to be handled in a different manner than historically has been the case. **New Section 7** sets forth the procedure for the treatment of such costs, sometimes referred to as "stranded costs" and referred to as "competitive transition costs" in the bill.

A utility that participates in competition may apply to the Commission for a determination of its recoverable competitive transition costs. These costs are defined as: (1) the amount by which the costs of generation assets deemed prudent by the Commission or by another governmental entity operating or regulating a utility and included in a utility's rate base on July 1, 1998, exceed the amount recoverable for all such assets in a competitive marketplace; and (2) the amount by which the value of all generation contracts and other generation-related legal obligations deemed prudent by the Commission or by another governmental entity operating or regulating a utility and included in a utility's rate base on July 1, 1998, exceed the amount recoverable for all such contracts and obligations in a competitive marketplace. Other costs that are competitive transition costs include: nuclear decommissioning costs, low-level radioactive waste disposal costs, high-level radioactive waste disposal costs, and generation-related regulatory assets. All waste disposal costs and generation-related regulatory assets would have to be incurred prior to July 1, 2001. (All these terms are defined in **New Section 2.**)

Utilities would be allowed to recover all of the following competitive transition costs, as determined by the Commission: nuclear decommissioning costs, low-level radioactive waste disposal costs, high-level radioactive waste disposal costs, and generation-related regulatory assets offset by regulatory liabilities that can be credited back to consumers. The Commission would be required after evidentiary hearings to determine amounts that a utility would be allowed to recover for other types of competitive transition costs based on, at a minimum, eight factors outlined in **New Section 7**. Among those factors is the utility's effort to increase and realize the market value of generation-related regulatory assets and to mitigate or decrease the costs of its contracts and other legal obligations.

The Commission could periodically review and determine the remaining, if any, competitive transition costs and adjust the rate of recovery. This review could be invoked one of two ways: (1) by the Commission's own motion when evidence of need is apparent, or (2) upon application by a utility. Such review would have to reconcile differences for under-recovery or over-recovery and the adjusted amount would be incorporated into a revised competitive transition charge. The time limit for recovery of nuclear decommissioning costs and both low-level and high-level radioactive waste disposal costs would end when decommissioning of the nuclear generating facility is complete. The recovery period for other types of competitive transition costs would be set by the Commission but could not exceed 12 years from July 1, 2001. The only exception would be any municipal utility's bonded indebtedness incurred to finance generating assets. Such debt may be recovered over the life of the bonds.

- **Mitigation.** **New Section 8** would require each utility fully participating in competition to mitigate or reduce competitive transition costs. The Commission would be required to allow for mitigation of competitive transition costs in rate cases of electric utilities or in special, single-issue filings.
- **Competitive Transition Cost Recovery.** **New Section 9** establishes the formula for recovering competitive transition costs. The basis for recovery would be

through a unit charge per kilowatt hour of electric power delivered to consumers. Self-generators commencing generation on or after January 1, 1998, would be assessed on the basis of per kilowatt hour used. Excluding costs incurred for wholesale transactions (sales to other electric utilities or public entities for resale), the charge for competitive transition costs of a utility or cooperative would apply only to customers within the utility's or cooperative's certified territory, as the territory existed prior to July 1, 2001. In addition, with respect to electric cooperatives, an all power requirements contract of a generation and transmission cooperative (Kansas Electric Power Cooperative, Inc. or Sunflower Electric Power Corporation) would have had to cover such territory. The competitive transition charge would be required to cover any expenses associated with issuing, servicing, and retiring transition bonds, addressed below. The Commission would be required to establish procedures and mechanisms for the collection and distribution of the competitive transition charge. The Commission also would be required to treat affiliates as a single utility for purposes of determining the competitive transition costs. This would be accomplished by "netting" (offsetting high-cost generation assets of all affiliates of a utility with low-cost generating assets of the same affiliates). After the netting has occurred, any remaining competitive transition costs would be recovered from the customers of the affiliate with original ownership in the high-cost generation assets.

- **Universal Service Costs.** There is a concern that in a restructured electric industry, competitive providers would ignore certain market segments. Universal service would enable all customers to continue to receive electricity economically no matter where they live. **New Section 10** sets forth the method for recovery of universal service costs, the means for determining the amount of some of those costs, and the funding mechanism.

Universal service costs would include: (1) costs of assuring continued provision of generation service to customers during implementation of the Commission's Cold Weather Rule in areas served by competitive providers; and (2) costs that are associated with provision of distribution services to customers in rural areas served by competitive electricity providers and that negatively impact the affordability or accessibility to distribution services in those areas.

The Commission would be required to hold evidentiary hearings and then determine the amount necessary to recover universal service costs in areas served by competitive providers. Such costs would be recovered through licensure fees imposed on competitive providers, as well as through a unit charge per kilowatt hour of electricity delivered to Kansas consumers in areas served by competitive providers. The Commission would be required to determine the amount of the charge and the procedures and mechanisms for its collection and distribution.

The Commission would be required to base its determination of universal service costs associated with service in rural areas on three factors outlined in this section. Moreover, a distribution utility would be eligible under specified circumstances to receive moneys from the Universal Service Electric Fund to pay costs associated with the basic level of distribution services in

rural areas. This fund would be established by the Commission and would be administered on a contractual basis, to be selected by the Commission through a competitive bidding process. At least every two years, the Commission would be required to audit and reconcile the costs of and needs for the universal service charge.

- **Transition Bonds.** Transition bonds have been authorized in legislation enacted in California, Montana, Pennsylvania, and Rhode Island. Often referred to as "securitization," a utility generally transfers its right to collect competitive transition costs (in this bill the "intangible transition property") to a trust. The trust, in turn, issues debt to raise funds which are remitted to the utility. With securitization, statutory authority is conveyed to the trust to recover the competitive transition costs. Therefore, the debt instruments are highly rated and carry a low interest rate in comparison to a utility's debt. The cost of capital associated with financing competitive transition costs would be reduced.

New Section 11 would establish the conditions under which transition bonds may be issued. This section provides that transition bonds would be special obligations and would not constitute indebtedness of either the state or the Commission. Nor would such bonds constitute indebtedness within the meaning of any provision of the statute or *Constitution* limiting the incurring of indebtedness.

A utility could apply to the Commission for authorization to issue transition bonds to recover no more than 50 percent of the utility's recoverable competitive transition costs. The Commission would have to determine after a hearing whether to issue an order authorizing issuance of such bonds. The Kansas Development Finance Authority also would be authorized to issue transition bonds on behalf of the utilities. If the Commission authorizes the issuance of the transition bonds, the utility would retain sole discretion as to whether to assign, sell, or otherwise transfer intangible transition property or cause the transition bonds to be issued, including the right to defer or postpone issuance.

New Section 11 addresses the disposition of intangible transition property, which is defined, for purposes of transition bond issuances authorized by the Commission's order, as the utility's property right in all revenues from competitive transition costs declared to be irrevocable. In essence, this property right ensures bondholders the continued presence of a dedicated revenue stream from competitive transition charges needed to service and retire or securitize the bonds.

Any order by the Commission authorizing issuance of transition bonds would require that bond proceeds and proceeds from other related transactions be used to reduce the utility's recoverable competitive transition costs and related capitalization. The Commission would be afforded flexibility in determining the terms and conditions of the bonds, including repayment schedules, interest rates, and other financing costs.

- **Irrevocability of Transition Bonds.** **New Section 12** would make irrevocable the order issued by the Commission authorizing the issuance of transition bonds and any charge established for the recovery of competitive transition costs to be recovered from transition bond issuances. This section essentially prohibits the Commission from revaluing the competitive transition costs to be recovered from issuance of the bonds or the charges necessary to collect that revenue. This section also would commit the state to not limit or alter the competitive transition costs. However, a utility would be allowed to assign, sell, or transfer its interest in intangible transition property under conditions approved by the Commission, provided that the utility contract with the assignee or financing party that the utility would continue to operate its system, provide service to its customers, and remit the applicable charge to the assignee or financing party.
- **Commission Rules and Regulations.** **New Section 13** would require the Commission to adopt rules and regulations for the following: (1) disclosure of specified information on customers' bills; (2) procedures to ensure that competitive providers will not engage in unauthorized switching (slamming); (3) procedures to handle complaints of slamming; (4) procedures and standards for the disconnection of generation services resulting from nonpayment and for reconnection of such service; (5) specification of the minimum percentage of electricity sold by competitive providers that must be generated from renewable resources if advertised as generated from sources that are not detrimental ("green power"); and (6) minimum, enforceable, uniform standards for the form and content of disclosure and labeling to enable customers to compare price, price variability, contract terms and conditions, resource mix, and environmental characteristics of retail electricity purchases. In addition, the Commission would be required to ensure that the quality of distribution and generation service does not decrease after July 1, 2001.
- **Parallel Generation.** **New Section 14** would require each distribution utility after July 1, 2001, to enter into a contract with any customer, upon request, authorizing that customer to supply excess electricity generated by the customer's energy producing system to the utility. The customer would be entitled to compensation at the market price for electricity purchased by the utility at that time. Several conditions governing both the utility and customer are set forth in this section.
- **Open Access/Standards of Conduct.** **New Section 15** would require the Commission to adopt certain other rules and regulations effective on or after July 1, 2001. These rules and regulations would require any transmission or distribution utility participating in competition to provide its services to all electric power customers in its certified territory, to all participating municipal utilities and electric cooperatives, and to all competitive providers, whether affiliated with the utility or not. These services would have to be provided at rates and on terms of access and conditions comparable to the utility's own use of its system.

This section would require the Commission to adopt rules and regulations effective on or after July 1, 2001, establishing standards of conduct for

transmission and distribution utilities that are competitive providers or that are affiliated with such providers. The purpose of such standards, as outlined in this section, would be to ensure that the competitive provider, with respect to the provision of electric power, maintains an arm's length relationship with the utility and that this relationship would not impede effective competition.

- **Restructuring Plans/Jurisdiction Over Affiliates.** New Section 16 would require each utility to file a restructuring plan on or prior to February 1, 2000. Hearings on the plans may be set no later than June 1, 2000. No later than December 31, 2000, the Commission would have to issue orders determining recoverable transition costs and other matters relevant to implementing competition.

With respect to jurisdiction over affiliates, the Commission would have access to all accounts and records of affiliated interests to investigate or receive complaints regarding anti-competitive practices, marketing abuses, cost allocation rules, discriminatory practices, undue preferences, rates, tariffs, charges, and the rendition of efficient and sufficient services.

- **Emergency Supplier.** New Section 17 would require a distribution utility to serve as an emergency supplier of electric power if the customer's competitive provider fails to supply electric power for reasons other than customer nonpayment. This section specifies the formula for reimbursement by the competitive provider to the distribution utility, should this situation arise. In the event that no reimbursement is made, the customer would be responsible for reimbursement of the electric power plus a reasonable rate of return.
- **Aggregation.** New Section 18 would authorize customers of all classes (residential, commercial, and industrial) to aggregate or combine their electrical load on a voluntary basis through written customer consent. Aggregation may be accomplished in any manner. If a political or taxing subdivision, such as a municipality or public utility board, serves as an aggregator for retail customers, all retail customers within that subdivision would be afforded the opportunity to purchase electric power but no customer would be required to do so.
- **Licensure.** New Section 19 would require all competitive providers, with specified exceptions, to be licensed by the Commission to sell electric power to retail customers in Kansas. This section would require the Commission to adopt rules and regulations establishing procedures and standards for licensure, including requirements, related to: reliability of service; financial and operational fitness; billing practices and customer service; disclosure of pending legal actions against the applicant; and disclosure of the names and business addresses of all affiliates of the applicant. In addition, as a precondition for licensure, the competitive provider would have to comply with several other conditions, including having an office in Kansas, receiving customer and distribution utility payments at that office, and furnishing the Commission with evidence that competition in electric power exists in the certified territory held by a competitive provider or affiliate prior to July 1, 2001. If a competitive provider or affiliate did not have a certified territory

in Kansas prior to that date, the provider would not be eligible for licensure unless all electricity delivered to the provider's Kansas customers is generated in states that allow competition in retail power sales.

This section provides for the Commission, after a hearing, to deny an application for a license or limit, suspend, or revoke a license. A license would be valid for five years and could be renewed on the same basis and terms as the original license. The Commission would be required to adopt rules and regulations establishing procedures for application, renewal, and issuance of licenses. The Commission may establish different requirements for licensure to accommodate differences in services or in customer classes receiving similar services.

- **Enforcement. New Section 20** would authorize the Commission to adopt any rules or regulations necessary to administer and enforce the Electric Utility Restructuring Act. To that end, the Commission would be authorized to treat distribution utilities that are not rate regulated the same as their rate regulated counterparts. This section also would authorize the Commission to impose an administrative fine, not to exceed \$5,000 per day for each violation pertaining to rules and regulations promulgated to implement the Act, open access, standards of conduct, and licensure.
- **Independent System Operators.** Independent system operators must be approved by the Federal Energy Regulatory Commission. They are conceived in the Electric Utility Restructuring Act as operating on a regional basis. **New Section 21** would require the state, the Commission, and Kansas utilities to collaboratively work with the federal government, other states in the region, and interstate power pools to establish independent system operators or their functional equivalents to operate the transmission system and interstate power pools.
- **Alternative Rates. New Section 22** would not preclude, on or after July 1, 1998, the Commission from approving, proposing, or endorsing performance-based or incentive rate mechanisms and rate caps for electric utilities. One of the purposes of authorizing the Commission to adopt alternative ratemaking in place of cost of service considerations would be to allow the greatest possible mitigation of competitive transition costs.
- **Environmental Impact Statements. New Section 23** would establish the Department of Health and Environment as the lead agency to coordinate review by state and local governments of environmental impact statements filed for the siting of electric generation facilities.
- **Electric Utility Deregulation Oversight Committee. New Section 24** would establish the Electric Utility Deregulation Oversight Committee. This Committee would consist of ten legislative members—six members from the House and Senate Utilities Committees and four from the House Appropriations and Senate Ways and Means Committees. The Oversight Committee would meet on the call of the chairperson, to be designated by the Legislative Coordinating Council. This Committee, among several other specified

responsibilities, would be required to monitor and review implementation of this act and perform responsibilities to promote fair competition in the provision of generation service. This Committee would be abolished on July 1, 2006.

- **Consumer Education Advisory Board.** **New Section 25** would require the Commission, in conjunction with the Citizens' Utility Ratepayer Board, to organize a consumer education advisory board to investigate and recommend methods of educating the public about competition and its impact on consumers. The issues to be addressed are outlined in this section. The Commission would be required to consider the board's recommendations and submit them to the 1999 Legislature.
- **Joint Committee on Taxation of Electric Public Utilities.** **New Section 26** would establish the Joint Committee on Taxation of Electric Public Utilities. This 13-member committee would consist of the chairpersons, vice-chairpersons, and ranking minority members of the House and Senate Utilities Committees, the House Taxation Committee, and the Senate Committee on Assessment and Taxation. In addition, the chairperson of the Retail Wheeling Task Force would be a member. The joint committee would study, investigate, and analyze the ramifications to the taxing systems of the state and its political subdivisions arising from the deregulation of electric generation facilities and the relative tax impacts upon and among such facilities. The joint committee would submit a final report with its findings and recommendations to the 1999 Legislature and would cease to exist at that time.
- **Severability.** **New Section 27** is the severability clause.
- **Amendments to Existing Statutes.** **Sections 28-34** would amend several statutes to: except municipal utilities engaged in retail competition from the Kansas Open Records Act (**Section 28**) and Kansas Open Meetings Act (**Section 33**); conform to the intent of repealing the Electric Generation Facility Sitings Act (K.S.A. 66-1,159-66-1,165) (**Sections 29-32**); and assess the real and personal property of competitive providers at 25 percent instead of 33 percent accorded public utilities (**Section 34**).

HOUSE BILL No. 2600

An Act concerning retail electric service; establishing the retail wheeling task force to study competition in such service; relating to authorization of such competition by the state corporation commission.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) There is hereby established the retail wheeling task force. The task force shall consist of 23 members, as follows:

- (1) Two members of the house of representatives appointed by the speaker of the house of representatives and one member of the house of representatives appointed by the minority leader of the house of representatives;
- (2) two members of the senate appointed by the president of the senate and one member of the senate appointed by the minority leader of the senate;
- (3) a member of the staff of the state corporation commission designated by the chairperson of the commission;
- (4) a representative of the citizens' utility ratepayer board designated by the chairperson of the board;
- (5) a representative of the department of commerce designated by the secretary of commerce;
- (6) an environmental technology expert who is an authority on renewable energy, designated by the legislative coordinating council;
- (7) a large commercial or industrial electric customer, designated by the legislative coordinating council;
- (8) one representative of each of the following, designated by the governing body of the association: Kansas electric cooperatives, inc., and Kansas municipal utilities, inc.;
- (9) one representative of each of the following, designated by the chief

administrative officer of the company: Kansas City Power and Light, Kansas City Board of Public Utilities, Kansas Electric Power Cooperative, Empire District Electric Company, Midwest Energy, Sunflower Electric Power Corporation, Western Resources and West Plains Energy;

(10) a small commercial or industrial electric customer, designated by the legislative coordinating council; and

(11) a residential electric customer, designated by the legislative coordinating council.

(b) Not more than two members of the legislature appointed to membership on the task force shall be residents of the same congressional district. No members designated pursuant to subparts (7), (10) and (11) of subsection (a) shall be residents of the same congressional district. The legislative coordinating council shall designate two of the legislative members of the task force to serve, respectively, as chairperson and vice-chairperson of the task force.

(c) The task force shall meet at least four times a year on call of the chairperson of the task force.

(d) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as may be requested by the task force and authorized by the legislative coordinating council. The legislative division of post audit shall provide such assistance as may be requested by the task force and authorized by the legislative post audit committee. The state corporation commission and each other state agency shall provide assistance to the task force as may be requested by the task force.

(e) Task force members enumerated in subparts (1), (2), (6), (7), (10) and (11) of subsection (a) shall receive amounts provided by subsection (e) of K.S.A. 75-3223 and amendments thereto for each day of actual attendance at any meeting of the task force or any subcommittee meeting approved by the task force. Such amounts paid to members shall be paid from appropriations to the legislative coordinating council pursuant to vouchers prepared by the director of legislative administrative services and approved by the chairperson or vice-chairperson of the legislative

coordinating council.

(f) The task force shall study issues related to competition in the furnishing of retail electric service in this state, including but not limited to:

- (1) Actions of the federal energy regulatory commission;
- (2) the obligation of electric utilities to serve customers;
- (3) the economic impact on each class of electric utility customer;
- (4) the social impact on Kansas citizens;
- (5) the impact on state general fund revenues and local franchise and tax revenues;
- (6) the status of electrical generating facilities in a competitive environment;
- (7) savings that may be achieved by electric utility mergers and downsizing;
- (8) recovery of stranded costs;
- (9) unbundling of generation, transmission and distribution services;
- (10) leveling the financing of capital investment;
- (11) retail wheeling, including loop losses;
- (12) brokerage;
- (13) incentives for renewable energy investment;
- (14) the feasibility of establishment of retail customer service areas, consisting of all classes of customers, for which retail suppliers would compete to serve;
- (15) stranded benefits such as the cold weather rule and charitable

Tom's idea

contributions by retail suppliers;

(16) nonprice issues such as customer service, storm damage repair, energy conservation and billing;

(17) the impact on municipal electric utilities and rural electric cooperatives; and

(18) the impact on existing statutes.

(g) The task force shall submit a preliminary report to the house and senate committees on energy and natural resources on or before January 15, 1997, and a final report of its findings and recommendations to the house and senate committees on energy and natural resources on or before January 11, 1998.

Sec. 2. Before July 1, 1999, the state corporation commission shall continue to regulate retail electric suppliers in accordance with the provisions of K.S.A. 66-1,170 through 66-1,176, and amendments thereto, and shall not authorize competition in the furnishing of retail electric service in this state. The commission may open one or more generic dockets to study the issue of competition in the furnishing of retail electric service.

Sec. 3. The provisions of sections 1 and 2 shall expire on July 1, 1999.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 10, 1996.

Published in the Kansas Register: April 18, 1996.

ATTACHMENT NO. 2

SUMMARY OF STATES' LEGISLATION AND COMMISSION ORDERS ON RESTRUCTURING—SELECT ISSUES

Prepared by Kansas Legislative Research Department¹

Nine states have enacted legislation to date on electric utility restructuring—California, Illinois, Maine, Massachusetts, Montana, Nevada, New Hampshire, Pennsylvania, and Rhode Island.² A summary of select provisions of the legislation of eight of these states, combined with information concerning orders issued by several of these states' public utility commissions, provides some insight into the approach taken by these states on the issues addressed in Part IV of this report. A summary of Illinois' legislation is not included because, at the time of writing, the Governor had not taken any action on the bill.

States use different *terms of art* for electric utility companies, electric suppliers, and public utility commissions. For purposes of consistency, the word "utility" refers to any investor-owned electric utility (after retail competition begins, the term may only encompass distribution or transmission and distribution utilities, depending on a given state's intent); the term "competitive provider" or "supplier" refers to any generation service supplier; and the term "commission" refers to any public utility commission or state department with state regulatory jurisdiction over electric utilities.

California

Implementation Date: Retail competition was supposed to begin January 1, 1998 for all customers. However, implementation was delayed due to persistent computer problems.

Municipal Utilities/Electric Cooperatives: "Publicly owned electric utilities" (principally municipal utilities and rural irrigation districts) may "opt in." Such utilities, like investor-owned utilities, must commit control of their transmission facilities to an independent system operator. Each publicly-owned utility is required to establish a nonbypassable, usage-based charge on local distribution service to fund energy efficiency and conservation, research and development, renewable energy resources and technologies, and low-income assistance programs. Publicly-owned utilities may begin to phase in competition on January 1, 2000 (two years after investor-owned utilities) and may recover stranded costs through a nonbypassable transition charge to be established by their respective local regulatory bodies.

Valuation of Stranded Costs: The Commission is to identify and determine those uneconomic costs and categories of costs for generation-related assets and obligations, consisting of

¹ This attachment was prepared by the Kansas Legislative Research Department after the Retail Wheeling Task Force's meeting of November 24. Therefore, it was not subject to review by the Task Force.

² In its deliberations, the Retail Wheeling Task Force reviewed the legislative policies of seven states. The Illinois and Massachusetts Legislatures enacted retail competition legislation after the Task Force had completed its work.

generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, that were being collected in Commission-approved rates on December 20, 1995. The Commission also may include as stranded costs those costs incurred after December 20, 1995 for capital additions to generating facilities, if such additions are deemed necessary to maintain the facilities until the end of the transition period. Recoverable stranded costs must be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation-related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value must be determined no later than December 31, 2001, and must be based on appraisal, sale, or other divestiture.

Stranded Cost Recovery: The uneconomic costs must be recovered from all customers on a nonbypassable basis through a charge established by the Commission. On August 1, 1997, the Commission established a general methodology for calculating the transition charge. The legislation prohibits imposition of the charge on customers for new load or incremental load met through a direct transaction that does not require the use of transmission and distribution facilities. Municipalization does not exempt a customer from an obligation to pay the transition charge.

Time Period for Stranded Cost Recovery: Each electric utility must submit a cost recovery plan for each customer class, rate schedule, contract, or tariff option, at levels equal to the level shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers will be reduced by at least 10 percent for 1998 through 2002. (An additional rate reduction of 10 percent is scheduled after stranded costs have been recovered.) These rate levels would remain in effect until the earlier of March 31, 2002, or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered.

Securitization: The issuance of transition bonds is authorized. The bonds may be applied to a mandated 10 percent rate reduction for residential and eligible small commercial customers effective January 1, 1998.

Universal Service: A nonbypassable charge is imposed until January 1, 2002 to fund: public interest research, development, and demonstration projects; energy efficiency and conservation activities; low-income rate assistance; and investments in commercialization of new technologies. This charge is to be collected by distribution companies on the basis of usage.

Divestiture/Affiliate Transactions: The Commission encouraged electric utilities to divest a minimum of 50 percent of their fossil generating assets. To that end, the Commission has authorized the auction of specified fossil plants of Pacific Gas & Electric and Southern California Edison. With respect to affiliate transactions, the Commission initiated a proceeding on April 9, 1997 to establish standards to govern relationships between electric utilities and unregulated affiliates that provide energy and energy-related services, and to determine whether electric utilities should be required to conduct their unregulated activities through affiliated companies.

Consumer Protection and Information: The utility is required to disclose each component of the bill and a notice that if the consumer elects to switch providers, the customer will still be liable for payment of the transition charge. A customer's consent is required for changes to be made in selection of aggregators or competitive providers, to be confirmed for residential and small commercial customers by an independent third-party telephone verification. Suppliers are required to furnish the following information to residential and small commercial customers: a

written notice describing the prices, terms, and conditions of service; an explanation of the applicability and amount of the transition charge; and a notice describing the customer's right to rescind the contract. The Commission may suggest inclusion of other information of use to the customer. The Commission is required to accept, compile, and help resolve consumer complaints regarding registered suppliers of electrical service. In conjunction with the Commission, utilities must establish a consumer education program to inform customers of changes to the electric industry. Such program must be subject to Commission approval.

Standard Offer/Default Suppliers: Returning customers and customers who do not initiate the process needed to change their provider, will, by default, be provided power by the utility with energy purchased from the power exchange.

Taxes: Provisions concerning taxation are not included in legislation and in Commission orders.

Maine

Implementation Date: Retail competition will begin on March 1, 2000.

Municipal Utilities/Electric Cooperatives: Termed "consumer-owned utilities," in Maine's legislation, municipal utilities, and electric cooperatives may sell retail generation service only within their respective service territories. They are prohibited from selling wholesale generation service except for incidental sales necessary to reduce the cost of providing retail service. The Commission may, by rule, limit or prohibit sale of generation services by competitive providers within a municipal utility's or electric cooperative's service territory upon determination that the municipal utility or cooperative may lose its tax exempt status.

Valuation of Stranded Costs: For each utility, the Commission is to determine the sum of the following stranded costs: (1) the costs of a utility's regulatory assets related to generation; (2) the difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and (3) the difference between future contract payments and the market value of a utility's purchased power contracts.

Stranded costs to be recovered are the utility's legitimate, verifiable, and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry. The Commission may increase or reduce the amount of stranded costs that the Commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs. The Commission must set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds in excess of book costs against the aggregate value of all other stranded electricity generation assets.

Stranded Cost Recovery: Prior to March 1, 2000, the Commission must estimate stranded costs for each electric utility. These estimates will serve as the basis for the transition charge when retail competition begins. In 2003 and every three years thereafter until the utility is no longer recovering stranded costs, the charges may be adjusted to correct estimates. In making such adjustments, the Commission may only act prospectively and not reconcile past estimates to reflect actual values. The Commission, following notice and hearing, will determine the design of cost recovery of stranded costs. The Commission opened a docket in September 1997 on Central Maine Power's stranded costs, revenue requirements, and rate design and will

initiate proceedings on these issues for the other utilities under Commission jurisdiction in 1998. The Commission is prohibited from shifting cost recovery among customer classes.

Time Period of Stranded Cost Recovery: This is not addressed in legislation but will be determined by the Commission.

Securitization: This issue was not included in the legislation.

Universal Service: The Commission must, by rule, establish a program to fund renewable resource research and development. Moneys are to be collected by utilities and allocated to specified educational and technical institutions for research and development. The Commission initiated a proceeding in November 1997 to develop rules for conservation and energy efficiency. With respect to low-income assistance, the Commission must receive funds from utilities at a rate set by the Commission in periodic rate cases. The Commission is prohibited from terminating this revenue source unless moneys from the State General Fund were appropriated to completely replace such assistance. The Commission is required to propose legislation to the 1998 Legislature, including a recommendation for a low-income assistance program. In addition, the Commission has scheduled a proceeding for June 1998 on developing rules for low-income assistance.

Divestiture/Affiliate Transactions: The legislation outlines the standards of conduct pertaining to utilities and their affiliates. The legislation requires each utility to divest its generation assets by March 1, 2000. Exceptions in the legislation include: contracts with qualifying facilities or demand-side management or conservation providers; ownership interest in nuclear power facilities and facilities outside the United States; and ownership interest in generation assets if the Commission determines it necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner. The Commission has subsequently determined that by January 2006, Central Maine Power and Bangor Hydro Electric must divest and may have no marketing affiliates. Maine Public Service need not divest and may have a marketing affiliate. The legislation provides that if 10 percent or more of a utility's stock is purchased by an entity, that entity is prohibited from selling, or offering for sale, generation service at retail. The Commission may order divestiture upon a finding that an affiliated provider obtains an unfair market advantage as a result of that purchase.

Consumer Protection and Information: The Commission must establish by rule standards to protect retail consumers from fraud and other unfair and deceptive business practices. The Commission must resolve disputes between competitive providers and retail consumers concerning consumer protection standards to be adopted by the Commission. The Commission must establish, by rule, standards for publishing and disseminating information that enhances the ability of consumers to make competitive choices in a competitive electricity market. As required by legislation, the Commission organized the Consumer Education Advisory Board to investigate and recommend methods to educate the public about the implementation of retail competition and its impact on consumers. The Board submitted its recommendations to the Commission and the Commission issued a proposed rule. The rule calls for the creation of the Consumer Education Program to be funded in the amount of up to \$1.6 million, and to be recovered by utility customers.

Standard Offer/Default Suppliers: The Commission must adopt rules establishing: (1) terms and conditions for standard offer service; and (2) a methodology for the bid process to select a standard offer service provider. The Commission initiated a proceeding in September 1997.

Taxes: The legislation includes no tax provisions.

Massachusetts

Implementation Date: Retail competition will begin on March 1, 1998.

Municipal Utilities/Electric Cooperatives: Municipal utilities, termed "municipal lighting plants," are exempt from the requirements governing retail competition unless they are dissolved in accordance with existing statutory procedures. A municipal utility may sell electricity at retail outside its own service territory if outside suppliers provide generation service within the municipal utility's service territory on mutually agreed upon terms. If a municipal utility is exempt from retail competition requirements, it still may sell wholesale electricity in bulk, or electricity at retail, in an adjoining utility's service territory. If a municipal utility has not offered retail access to customers in its service area by March 1, 2003, the city must conduct a study and hold hearings, to culminate in possible recommendations, including conducting a referendum. Municipal utilities are allowed to form cooperative public corporations for the purpose of furnishing efficient, low cost, and reliable electric power. Municipal utilities also are authorized to associate with other municipal utilities and with other public corporations as a municipal cooperative for the transaction of lawful retail or wholesale energy or energy-related business. This business must be conducted primarily for the benefit of its members.

Valuation of Stranded Costs: Generally, net, unmitigable stranded costs may be recovered for certain specified generation-related assets, investments, and obligations incurred or committed to prior to January 1, 1996. The Commission is required to develop guidelines and parameters to identify recoverable stranded costs, including prudently incurred generation-related assets and obligations, the costs of which were collected in rates on January 1, 1997; costs of nuclear entitlements approved by the Commission for recovery by utilities that have divested their non-nuclear generation assets; certain post-shut-down and decommissioning costs; unrecovered generation-related regulatory assets; and the above-market costs of existing purchased power contracts reflected in a divestiture plan approved by the Commission. Utilities also may recover certain costs incurred after January 1, 1996, to include: specified employee transition costs (until March 1, 2005); any payments to affected municipal utilities or host communities of taxes or payments in lieu of taxes associated with restructuring; and any costs to remove and decommission retired structures at fossil fuel-fired generation facilities. The valuation of stranded costs for nondivesting utilities is different than for divesting utilities. For nondivesting utilities, the Commission will determine recoverable stranded costs to be net of any market value in excess of book value of the nondivested nonnuclear facilities. A nondivesting utility's nonnuclear facilities, nuclear facilities and purchased power contracts would be subject to market valuation whereby the market value is determined on the basis of the highest price obtained for generation in New England.

Stranded Cost Recovery: Transition charges are specified in approved or pending company restructuring settlements. Transition charges are to be collected by the utility on a nonbypassable basis. The Commission must impose a cap upon the level of the charge. The charge can only be altered by the Commission but cannot be adjusted to reflect inflation. All transition charge proceeds must be applied to stranded cost reduction.

Time Period for Stranded Cost Recovery: The Commission is to determine the recovery period on a company-by-company basis.

Securitization: Securitization is permitted through the issuance by the Commission of finance orders. In general, repayment of bonds should not exceed 15 years. Utilities are allowed to use securitization as a means to realize a required rate reduction of 15 percent to standard offer customers. Securitization proceeds must be used to refinance equity and debt. Utilities must demonstrate to the Commission they have satisfied five specified conditions prior to being permitted use of securitization. Securitization is not available as a financing mechanism for utilities that elect not to divest their nonnuclear generation facilities and assets. The Commission must review its financing orders at least every 18 months to reconcile the assumed costs and assumed mitigation and adjust the reimbursable amounts for differences. If collected amounts are found to be in excess, the utility must provide a uniform credit to ratepayers based on usage for the excess plus carrying costs. Alternatively, the utility may pay the excess amounts to the financing entity to reduce the principal of the transition bonds. Such transfers or adjustments must not affect the level or collection of the transition charge or the transfer to the bondholder trustee of the charges which have been collected.

Universal Service: The Commission must require all utilities to provide discounted rates for low income customers. The costs of such discounts will be borne by all other customers. Each company must guarantee payment to the generation supplier for all power sold to low-income customers. Eligibility for discounted rates must be established upon verification of a low-income customer's receipt of any means tested public benefit. Eligibility may not exceed 175 percent of the federal poverty level based on a household's gross income. The Massachusetts Renewable Energy Trust Fund was established to fund renewable energy research, projects, and educational initiatives. Beginning on March 1, 1998, a mandatory charge per kWh will be imposed on all electricity customers except for those served by municipal utilities. The existing Massachusetts Technology Park Corporation will oversee the fund. Expenditures from the fund may be used for grants, contracts, loans, equity investments, energy production credits, bill credits, rebates to customers, and debt obligation assistance. Beginning on March 1, 1998, and for a five-year period, a mandatory charge per kWh will be imposed on all electricity customers, except for those served by municipal utilities, to fund energy efficiency activities, including, but not limited to, demand-side management programs.

Divestiture/Affiliate Transactions: Utilities are not required to divest their generation facilities. However, in order to recover the full value of their stranded costs and securitize their debt, they must divest their existing nonnuclear generation. Divestiture may be accomplished through sale of such facilities in a competitive auction or sale in a process approved by the Commission (an affiliate may bid in such an auction or sale) or through the transfer of such nonnuclear facilities and purchased power contracts to an affiliate at a value determined to be reasonable and appropriate by the Commission. All proceeds from divestiture and sale of generation facilities, net of taxes and other Commission-approved adjustments, must be applied to the reduction of the utility's stranded costs. Any marketing company established by a utility must assume the form of an affiliate. The Commission must promulgate standards of conduct to be consistent with provisions specified in the legislation.

Consumer Protection and Information: The Commission must establish a code of conduct applicable to the provision of distribution and transmission services and retail sales of electricity to all consumers, including rules and regulations governing customer record confidentiality, metering, bills, and information systems, and conformance with fair labor practices. The Commission also is directed to handle customer complaints related to generation. Moreover, the Commission is directed to promulgate rules and regulations on service quality standards. A procedure for the Commission to address customer complaints regarding slamming is specified in the legislation. Civil penalties for slamming and violations of codes of conduct and rules and

regulations are specified in the legislation. The Commission is authorized to establish and advertise a toll-free telephone hotline to respond to consumer questions and complaints about their electricity service. With respect to information to consumers, the legislation requires the Commission, in consultation with consumer groups, to develop consumer education materials to enable consumers to compare products and services on a consistent and reliable basis. The Commission must submit a consumer education plan to the Legislature for its consideration. The Commission also is required to promulgate rules and regulations concerning disclosure of information to customers and labeling information. (Disclosure and labeling information is specified in the legislation.) Such information must be made available to prospective and existing customers.

Standard Offer/Default Suppliers: Beginning on March 1, 1998, each utility must provide its customers with default service under the following conditions: (1) a competitive provider failed to provide generation service, as contracted for; (2) the customer, for any reason, has stopped receiving such service; or (3) the term of the standard offer is completed. The utility is required to procure generation service through a competitive bid. The default service rate may not exceed the average monthly market price of electricity. All bids must include payment options with rates that remain uniform for periods of up to six months. The Commission may authorize a competitive provider to provide default service, if service provided in this manner is in the public interest. The legislation requires a 10 percent rate reduction on March 1, 1998 for all standard offer customers and a total rate reduction of 15 percent in September 1999.

Taxes: Any utility must make transition payments to a municipality if that utility recovers generation-related transition costs. A generation company or its affiliate, subsidiary, or parent which does not currently have a binding agreement to pay taxes or payment in lieu of taxes to a municipality where the company's generation facilities are located, also must make transition payments to the municipality. Such payments will offset any property tax reductions resulting from any devaluation of a generation facility. These transition payments are to compensate the municipality fully for revenue losses in fiscal years 1998, 1999, and 2000. From fiscal year 2001 to 2009, the utility's obligation to make such payments is reduced by 10 percent until 2010, when no further obligation is expected. An alternative payment plan applies to utilities with in-state generation facilities which exceed 250 MW in size, whether or not they are in service. In each fiscal year 1999, 2000, and 2001, these utilities are required to pay the host community of the generating facility the equivalent amount paid in taxes in 1998. Payments in subsequent years for up to 15 years or when the operating license of the facility terminates (whichever is longer) will be governed by an agreement with the "host community." The Commission may not approve any plan from a utility seeking to use securitization if a tax agreement has not been executed. Various income tax deductions are allowed for individuals and businesses for purchases of renewably-generated electricity in excess of minimum portfolio standard requirements and for purchases of qualifying energy efficiency equipment.

Montana

Implementation Date: Retail competition will begin on July 1, 1998 for large customers and on July 1, 2002 for all other customers. The latter date could be extended for two years if the Commission determines that it is not administratively feasible or actual competition does not exist. Montana Dakota Utilities may defer retail competition until 2006.

Municipal Utilities/Electric Cooperatives: Termed "cooperative utilities" in legislation, a municipal utility or electric cooperative will participate in retail competition unless it elects to "opt out" by May 2, 1998. To receive an exemption, a municipal utility or electric cooperative must file a notice with the Commission. If exempt, it may elect to participate at a later date. In addition, it is prohibited from using a public utility's distribution facilities unless pre-existing contracts exist. If a municipal utility or electric cooperative participates in retail competition, it must adopt a transition plan on or before July 1, 2001. Such plan must contain a transition period that may end later than July 1, 2002. Unmitigable stranded costs may be recovered on a nonbypassable, nondiscriminatory basis.

Valuation of Stranded Costs: The Commission must allow recovery of the following unmitigable costs: qualifying facility contracts (including reasonable buy-out or buy-down costs); energy supply-related regulatory assets and deferred charges that can be accounted for up to the effective date of the Commission's final order on a utility's transition plan (including transition bond costs); and generation and other power purchase contracts (but the amount is limited to amounts accruing during the first four years after the Commission's order on the utility's transition plan.) Recoverable stranded costs must reflect all reasonable mitigation by a utility. Moreover, the value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis. The methods for determining value must include, but not be limited to: estimating future market values of electricity and ancillary services provided by the assets; appraisal by independent third-party professionals; or a competitive bid sale. Investments and power purchase contracts must have been previously allowed in rates. Alternatively, they must be determined to be used and useful to ratepayers in connection with the Commission's approval of a utility's transition plan.

Stranded Cost Recovery: Stranded costs may be recovered through a nonbypassable charge on all customers except for customers with new or additional loads of 1,000 kWh or greater that were first served by the utility after December 31, 1996 or loads served by that customer's own generation. Transition charges are to be determined on a case-by-case basis by the Commission. Separate exit fees will not be allowed. Transition charges are subject to a rate moratorium. Participating municipal utilities and electric cooperatives are prohibited from collecting stranded costs from a customer from whom it does not have or never has had an obligation to incur costs for supply service unless the unmitigated costs have been incurred solely on behalf of the customer.

Time Period for Stranded Cost Recovery: The recovery period must be approved by the Commission on a case-by-case basis. Recovery of stranded costs for generation and other power purchase contracts is limited to a four-year period.

Securitization: After July 1, 1997, a utility may apply to the Commission for stranded cost recovery through transition bonds. Unless the utility applies for an extension or renewal of a financing order, bonds must be issued within four years of the financing order. The terms of transition bonds may not exceed 20 years. Any savings resulting from securitization must be applied to the rate moratorium and must benefit customers. Rates and charges must be nonbypassable. After bonds are issued, the Commission is prohibited from rescinding, altering, or amending the financing order or taking other actions specified in the legislation. The bonds are not an indebtedness of the state.

Universal Service: A charge, to be assessed at the meter, will be imposed on all customers, including those served by nonparticipating electric cooperatives and municipal utilities. This charge will be applied to continued funding of energy conservation, renewable resources, and

low-income energy assistance programs. Beginning July 1, 1999 and until July 1, 2003, 2.4 percent of each utility's 1995 retail sales revenue is established as the annual funding level for universal service. A minimum annual funding requirement for assistance for low income energy bills and weatherization is established at 17 percent of each utility's universal service funding level. Utilities and large customers will receive credit toward their obligations for their internal universal programs. Cooperatives and municipal utilities may collectively pool their credit on a statewide basis to satisfy their universal service funding requirements. Utilities, cooperatives, and municipal utilities must file annual reports on universal service program benefits to the Legislative Transition Oversight Committee on Electricity Restructuring established by the legislation.

Divestiture/Affiliate Transactions: A vertically-integrated utility must functionally separate its generation, transmission, and distribution, and regulated and unregulated retail energy services operations. The utility must apply to and receive approval from the Commission to accomplish this separation. The Commission may not order the utility to divest itself of any generation assets or prohibit the utility from voluntary divestiture of any generation assets. A utility may satisfy conditions outlined in the legislation for codes of conduct if it adopts and complies with the code of conduct approved by the Federal Energy Regulatory Commission. The Commission must promulgate rules related to the codes of conduct.

Consumer Protection and Information: The Commission is required to promulgate rules establishing procedures to prevent slamming. No changes in electric supplier may be made without the customer's written permission. The Commission is authorized to initiate a proceeding to revoke or suspend a license or impose a penalty, or both, upon a Commission-initiated investigation or in response to a consumer's complaint that a supplier intentionally provided false information to the Commission, engaged in unauthorized switching, failed to supply a reasonably adequate supply of electricity to its customers, or committed fraud or engaged in deceptive practices. With respect to consumer information, public utilities, cooperatives, and municipal utilities must educate their customers about retail competition. This education process must give special emphasis to education efforts during the transition period.

Standard Offer/Default Suppliers: Public utilities must propose a method for customers to select their electric supplier. There must be a proposed method in the utility's plan to accommodate those customers who have not chosen an electric supplier by the end of the transition period. During the four-year transition period, the Commission may establish cost-based prices for electricity for customers who do not have a choice of supply or who have not yet chosen a supplier. With respect to emergency suppliers, the distribution utility must provide service in that capacity. The supplier that should have provided electricity and related services must reimburse the distribution utility at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The Commission must determine and authorize the multiple used. The market rate is specified in the legislation. The distribution utility is not required to purchase any reserve electricity to fulfill this obligation. The Commission may require electricity suppliers that provide electricity to small customers to make a standard offer that ensures them access to affordable electricity. To that end, the Commission issued draft electricity supplier rules to specify the characteristics of such offers.

Taxes: A revenue oversight committee is required to analyze the amount of state and local revenue derived from previously regulated electric suppliers that will enter the competitive market. On or before November 30, 1998, this committee must recommend any legislative changes concerning the tax burdens on all market participants with the intent of placing comparable burdens upon all market participants.

Nevada

Implementation Date: Retail competition is scheduled to begin for all customers on December 31, 1999, unless the Commission determines that a different date is necessary to protect the public interest.

Municipal Utilities/Electric Cooperatives: Municipal utilities and electric cooperatives will participate in retail competition if they have annual operating revenues of less than \$250 million. However, to be subject to provisions of the legislation, the utility or cooperative must either request licensure as a competitive provider or compete for customers outside of its own service area, either directly or indirectly. Municipal utilities and electric cooperatives are exempt from the renewable portfolio mix requirements in the legislation. Municipal utilities and electric cooperatives may provide transmission and distribution services to competitive providers without participating in retail competition.

Valuation of Stranded Costs: The Commission is required to determine the recoverable stranded costs. In determining recoverable costs, the Commission is required to consider six factors specified in the legislation. In an order instituting an investigation, the Commission outlined its proposed procedure for stranded costs. The Commission first plans to promulgate regulations which establish the process by which entitlement to, and the method of, recovering past costs will be determined, as well as the date by which utilities must make submissions (for services already deemed potentially competitive). After receipt of requests from the utilities for stranded costs, the Commission will hold hearings, if necessary. Finally, the Commission will issue orders determining the treatment of past costs of each utility.

Stranded Cost Recovery: Shareholders of the utility must be compensated fully for all such costs determined by the Commission. In addition, the Commission may impose a procedure to recover through a nonbypassable mechanism a portion of stranded costs determined by the Commission to be owed the ratepayers. The Commission may also assess charges on those customers on whose behalf the utilities incurred costs but who are no longer receiving transmission or distribution service, or both. Although not necessarily tied to stranded cost recovery, residential rates may not exceed rates in effect on July 1, 1997 for a two-year period from the date the Commission repeals price regulation for generation, aggregation, and other potentially competitive services.

Time Period for Stranded Cost Recovery: The Commission is to determine the period over which stranded costs would be recovered.

Securitization: The legislation includes no provisions concerning securitization.

Universal Service: In its first procedural order, the Commission required utilities to identify the different services for which costs will need to be separately stated, including low-income programs. The Commission then intends to hold proceedings to determine whether such services should be classified as potentially competitive or noncompetitive. The Commission will then promulgate regulations prescribing nonprice terms and conditions for each monopoly service.

Divestiture/Affiliate Transactions: A utility is prohibited from providing a potentially competitive service unless it is through an affiliate on or after December 31, 1999, or on the date on which the Commission determines the service to be potentially competitive, whichever is later. The

legislation outlines the conditions an affiliate must satisfy in order to provide potentially competitive service. In an order instituting an investigation, the Commission outlined its procedural intent.

Consumer Protection and Information: The legislation requires the Commission to establish procedures against slamming and authorizes the Commission to resolve complaints concerning the conduct of nonregulated competitive providers. In an order instituting an investigation, the Commission noted its intent to issue a Notice of Request for comments concerning slamming and labeling and any other consumer protections deemed important, and to host workshops to develop ideas and provide a written report containing proposed regulations. After formal notice and comment rulemaking, the Commission will promulgate regulations on slamming, labeling, and other items. With respect to information to be provided to consumers, the Commission is required to establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by competitive providers. Prior to commencement of retail competition, the Commission must establish an education program which informs customers of changes in providing electric services, including the availability of suppliers; informs customers of requirements governing disclosures, explanations, or sales information for suppliers; and provides assistance to customers in understanding and using the information about competitive service choices. The Commission is authorized to expend up to \$500,000 from its reserve account for this purpose.

Standard Offer/Default Supplier: The legislation requires the Commission to designate a utility to provide electric service to customers who are unable to obtain electric service from a competitive provider or who fail to select one. Such a utility will be allowed to recover costs for provision of that service. The Commission may prescribe alternative methods for securing electric services for those customers. Such methods may include: (1) the direct assignment of customers to competitive providers or affiliates of utilities or (2) a competitive bidding process. The Commission must establish minimum terms and conditions under which the electric service must be provided. The rate charged for residential service for such customers may not exceed the rate charged on July 1, 1997, but there is a specified time limitation for the application of that rate.

Taxes: The legislation contains no provisions concerning taxes.

New Hampshire

Implementation Date: Retail competition was to begin on January 1, 1998 for all customers but is expected to be delayed because of litigation on the Commission's Final Rule (February 28, 1997) by Public Service New Hampshire. The case is currently pending before the Federal Court of Appeals.

Municipal Utilities/Electric Cooperatives: The legislation includes electric cooperatives under the jurisdiction of the Commission.

Valuation of Stranded Costs: These are costs that are unrecoverable as a result of restructured industry regulation. Stranded costs may only include costs of: existing commitments or obligations incurred prior to the effective date of the legislation; renegotiated commitments approved by the Commission; and new mandated commitments approved by the Commission. Stranded costs must be determined on a net basis, should be verifiable, should not include

transmission and distribution assets, and should be reconciled to actual electricity market conditions from time to time.

Stranded Cost Recovery: Legislation requires unmitigable stranded costs to be recovered through a nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all customer classes, constitutional, limited in duration and consistent with the promotion of fully competitive markets. These charges should only apply to customers within a utility's retail service territory, except for such costs that have resulted from the provision of wholesale power to another utility. Entry and exit fees are not encouraged. In its Final Rule, the Commission allows distribution utilities to levy a per kWh surcharge on self-generation customers. The legislation requires the Commission to establish "interim" stranded cost charges to be effective for two years from the implementation of utility compliance filings. In the Commission's Final Rule, which is being litigated, it was determined that utilities with rates exceeding the regional average will not be authorized to recover all their costs. The Commission took the position in the Final Rule that shareholders of New Hampshire utilities did not have a reasonable expectation of full recovery.

Time Period for Stranded Cost Recovery: There is a two-year interim period during which stranded cost recovery may occur. After the two-year interim, utilities are required to divest themselves of generation assets.

Securitization: This funding mechanism is not addressed in the legislation. However, the Commission noted in its Final Rule that: "While there is no specific expectation of this activity in New Hampshire, securitization does institutionalize a cost which could otherwise be mitigated or absorbed in a reconsolidation of electric companies. Therefore, we recommend that the Legislature proceed cautiously in its investigation of securitization."

Universal Service: The legislation requires a restructured electric utility industry to provide adequate safeguards to ensure universal service. The legislation further provides that programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity be included as part of industry restructuring. In the Final Rule, the Commission required funding for a low income assistance program to be collected through a systems benefit charge. All customers are required to contribute at the same rate, irrespective of their distribution company or rate class. The charge is to be established, after notice and hearing, as a flat amount per kWh used. The charge is to be applied equally to all customers.

Divestiture/Affiliate Transactions: The legislation requires generation services to be functionally unbundled from distribution and transmission services which would remain regulated. However, utilities should not be absolutely precluded from owning small scale distributed generation resources as part of a strategy for minimizing transmission and distribution services. The legislation authorizes the Commission to require that distribution and electricity supply services be provided by separate affiliates. In the Final Rule, the Commission required any jurisdictional utility that elects to be a distribution utility to submit a plan by December 31, 1997 to divest its generation and aggregation/marketing functions by the end of the two-year period following the initiation of competition. The Commission justified its recommendation by noting that "the implementation of affiliate transaction rules insufficiently restricts the incentive to exercise market power. We believe the corporate ties between regulated and competitive functions must be severed in order to eliminate this incentive."

Consumer Protection and Information: In the Final Rule, the Commission requires suppliers to disclose their resource mix to prospective customers (portfolio requirements for renewables are

not mandated). Suppliers also must disclose information regarding the environmental characteristics in their resource mix. The Final Rule also requires the Commission's Consumer Assistance Department to maintain a listing of all suppliers registered to provide service in New Hampshire, to be made available upon request and to be maintained on the Commission's home page. The Consumer Assistance Program will continue to mediate and resolve disputes. With respect to public education, the legislation requires the Commission to ensure that customer confusion will be minimized and customers will be well informed about changes resulting from restructuring and increased customer choice. In the Final Rule, the Commission opted to establish a working group to develop and implement a public education program. Part of the responsibilities of the working group would be to solicit bids from consultants to develop a comprehensive media program.

Standard Offer/Default Suppliers: In the Final Rule, the Commission allows the utilities to administer default service. Customers should not be charged above market prices and the Final Rule specifies the manner in which such transactions should be accomplished. Default service would be made available for two years to residential and small commercial customers and for a six-month duration to large industrial and large commercial customers. Distribution customers must submit proposals in their compliance filings for reconciling the actual cost of default power with the forecasted average cost.

Taxes: The legislation contains no provisions on taxes.

Pennsylvania

Date of Implementation: Retail competition will be available to 33 percent of each utility's customers on January 1, 1999; 66 percent by January 1, 2000; and all customers by January 1, 2001.

Municipal Utilities/Electric Cooperatives: Municipal utilities may opt in or out of restructuring. If a municipal utility prohibits other suppliers from serving in its service area, it cannot serve end users outside its municipal limits. Cooperatives are exempt from pilot program requirements of other utilities. Moreover, they are not required to provide direct access until adjacent transmission and distribution systems are open. For cooperatives to supply power to customers outside their systems before 2001, they must provide reciprocity. Cooperatives may petition the Commission to establish streamlined terms, conditions, or standards to provide services to persons outside their systems.

Valuation of Stranded Costs: Recoverable stranded costs include prudently incurred unmitigable costs related to: regulatory assets and other deferred charges; unfunded portion of nuclear decommissioning costs; nonutility generating contracts; existing generating plants and facilities; spent fuel disposal; long-term purchase power commitments; retirement; employee transition; and corporate restructuring.

Stranded Cost Recovery: Each utility will be provided the opportunity to recover its stranded costs following the Commission's determination. The utility must file a restructuring plan which will include a recovery plan. The recovery plan must include a competitive transition charge and supporting documentation. Following notice and hearings, the Commission will make determinations on the recovery plan and proposed charges. The costs to be recovered through the nonbypassable charge must be allocated to customer classes in a manner that does not shift

costs and adheres to the allocation methodology used in the utility's most recent base rate proceeding. The Commission must adjust for any over recoveries or under recoveries of stranded costs. A utility's transmission and distribution rates will be capped or frozen for four and one-half years from December 3, 1996 (date of enactment) or the date stranded costs and intangible transition charges related to securitization have been recovered and all customers have retail access, whichever is shorter. There are certain exceptions to the rate freeze.

Time Period for Stranded Cost Recovery: The transition charge is to be included on customers' bills for a period not to exceed nine years from the effective date of legislation unless an alternative payment methodology is agreed upon by the customer and the utility or unless the Commission orders otherwise.

Securitization. The legislation authorizes securitization. Transition bonds may be issued by or on behalf of a utility pursuant to a qualified rate order of the Commission. These bonds will be repaid through a nonbypassable intangible transition charge which will be applied in the same manner as the competitive transition charge. These bonds must reach maturity within a ten-year period.

Universal Service: The legislation requires the Commission to establish for each utility a nonbypassable rate mechanism to fully recover the utility's costs for low-income assistance costs and energy conservation. The Commission is required to encourage the use of community-based organizations with the necessary technical and administrative expertise to directly provide services to reduce energy consumption and assist low-income customers. The Commission must ensure that such services are appropriately funded and available in each electric distribution territory. The Commission will exercise administrative program oversight.

Divestiture/Affiliate Transactions: The Commission is authorized but cannot require an electric utility to divest itself of facilities or to reorganize its corporate structure. The legislation does not include standards of conduct.

Consumer Protection and Information: The Commission must establish regulations to require each utility, supplier, marketer, aggregator, or broker to provide adequate and accurate information to enable consumers to make informed decisions regarding the purchase of a provider's services. Information must be provided in an understandable format that enables consumers to compare prices and services on a uniform basis. Prior to implementation of retail competition, each utility, in conjunction with the Commission, must implement a consumer education program informing customers of changes in the electric utility industry. This program must be subject to Commission approval.

Standard Offer/Default Supplier: A utility has an obligation to serve until it collects either a competitive transition charge or an intangible transition charge (to retire transition bonds) or all of its customers have choice, whichever takes longer. At the end of the transition period, the Commission must promulgate regulations to define the utility's obligation at the end of the transition period to connect and deliver and acquire electricity. If a customer contracts for electricity and it is not delivered or if a customer does not choose a supplier, the utility or Commission-approved competitive provider must acquire electricity at prevailing market prices to serve the customer. The utility is entitled to recover all reasonable costs. If a customer chooses to switch from a competitive provider to the utility for generation service, the utility must treat the customer the same as any new applicant for energy service.

Taxes: The legislation provides for the continuation of the gross receipts tax, supplemented by a revenue neutral reconciliation formula, to maintain tax revenues at the 1995-1996 fiscal year levels. The proportional tax burden is to be maintained among customer classes and individual utilities. The tax applies to new providers, as well as to municipal utilities and electric cooperatives. In order to obtain a license, all competitive providers, including those from out-of-state, must pay the tax.

Rhode Island

Implementation Date: Retail competition was phased in for certain large commercial and industrial customers beginning July 1, 1997, and for all other customers by July 1, 1998, or within three months after retail competition is available for 40 percent of kWh sales in New England. The Commission may extend the final deadline for up to six months.

Municipal Utilities/Electric Cooperatives: The legislation includes no provisions concerning cooperatives. Municipal utilities are required to file reports addressing any unique circumstances affecting them, including special contract requirements or charter restrictions and the conditions that the municipal utilities must satisfy in order to participate in retail competition.

Valuation of Stranded Costs: Utilities are authorized to recover stranded costs related to: generation-related regulatory assets; nuclear decommissioning costs and estimated operation and maintenance costs that would be incurred if the units ceased operating as of December 31, 1995; above-market priced purchased power contracts existing as of December 31, 1995, including buy-outs and renegotiations; and commitments and capital costs of utilities owning generating plants directly or indirectly. Suppliers may retain 10 percent of the savings expected from any sale or renegotiation of purchased power contracts.

Stranded Cost Recovery: Utilities will impose a nonbypassable charge of \$.028 per kWh for the period July 1, 1997 to December 31, 2000. After the year 2000, the transition charge will be established by the Commission. The Commission is authorized to adjust the charge for any over or under recoveries of stranded costs occurring during the three and one-half year period. Each utility is required to implement a performance based rate plan with the intent of preventing residential customers from paying higher rates as retail competition is being phased in. The Commission will use performance based methods to set distribution rates from January 1, 1997 until December 31, 1998. Beginning January 1, 1999, base rates may increase only as determined by the Commission. Any rate increases must be capped at the rate of inflation.

Time Period for Stranded Cost Recovery: Stranded costs are to be recovered over the period July 1, 1997 through December 31, 2009. However, this time limit does not apply to nuclear decommissioning and purchased power contracts. Costs associated with those items will be recovered until the liabilities have been retired.

Securitization: Legislation enacted in 1997 authorizes the Commission to issue securitization orders. A utility must ask the Commission to issue an order permitting all or some of the contract termination fees to be paid to its wholesale power supplier. The utility seeking securitization must file an application with the Commission which addresses six specified items. The Commission may approve the application if: the transactions are reasonably certain to result in quantifiable savings; the terms of the utility's proposed financing plan are commercially reasonable; all of the savings net the costs will be credited to the customer through the

transition charges; and the procedures and terms proposed in the application are consistent with provisions of the securitization legislation. The Commission must approve or disapprove the application within 120 days.

Universal Service: A charge of \$.0023 per kWh will be imposed over a five-year period to fund demand-side management programs, renewable resources, and existing low-income assistance programs. The Commission is authorized during the five-year period to increase the charge to fund those programs. Subject to the Commission's approval, special rates or programs for low-income customers may be offered if different from those that existed when the law was passed.

Divestiture/Affiliate Transactions: Legislation enacted in 1997 amended several provisions of the original Restructuring Act. Each utility must file with the Commission a plan to transfer ownership of its generation facilities to a separate affiliate that is a nonregulated power producer. Its transmission facilities may be, but are not required to be, transferred. The generation plant, equipment, and facilities must be priced at an amount equal to book value, net depreciation, and deferred taxes, as of the transfer date. If a utility's wholesale supplier decides to transfer generation to a nonaffiliate and the transfer is specified in the utility's restructuring plan, the utility may transfer the generation directly to the nonaffiliate. A condition for stranded cost recovery is divestiture of 15 percent of nonnuclear generation. However, if another state requires a utility under Rhode Island's jurisdiction to divest more than 15 percent of nonnuclear generation, the same requirement would be imposed under Rhode Island's law.

Consumer Protection and Information: The Retail Electric Licensing Commission was required to submit a plan to the 1997 Legislature which was to include, among other issues, proposals for consumer protection. The Public Utility Commission must maintain a toll-free telephone service for complaints registered against competitive providers.

Standard Offer/Default Suppliers: During the transition period, each utility is required to arrange for a standard power supply offer to customers who have not elected to take power from a competitive provider. The power supply contract required for the standard offer must be awarded by public competitive bid to the lowest price power supplier. The formula for the standard offer price is specified in the legislation. The standard offer is to be a price cap and may be less than the maximum amount allowed for the generation component of the standard offer. Once a customer has entered into a power supply arrangement with a competitive provider, the utility is no longer required to arrange for the standard offer.

Taxes: Tax provisions were included in 1997 legislation. All utilities, municipal utilities, and competitive providers participating in retail competition are subject to the gross earnings tax regardless of whether the participant's principal business is the manufacturing, sale, distribution, or transmission of electricity within or outside the state. These entities will be taxed 4 percent of their gross earnings. The revenues and expenses subject to the gross earnings tax must not be included in the calculation used to determine net income taxes.

PROPOSED ADDITION TO FINAL REPORT BY THE RETAIL WHEELING TASK FORCE

November 24, 1997

The undersigned members of the retail wheeling task force (task force) feel privileged to have served in this capacity. The process by which the task force was created and, more importantly, the fairness and thoroughness of its deliberations, have assured that the legislature has a solid basis for considering further action. It is clear that **the time is not yet right to pass retail wheeling legislation in Kansas**, though the time IS right to proceed with interim measures to prepare for retail wheeling. The retail wheeling bill included with this final report provides a starting point for these interim measures.

Despite a strong commitment to cooperation and hard work, the task force was unable to resolve many retail wheeling issues in a manner that would enable the 1998 legislature to pass comprehensive legislation. The primary reason is that **much of the required information does not yet exist**. The task force fulfilled its responsibilities with a thorough review of activities in other states, additional research assisted by professional consultants, development of options for Kansas, and inclusion of those options in the bill submitted with the final report. After all of this work, there is no consensus on very basic questions such as:

Will electric bills go up or down with retail wheeling? (Estimates vary widely, with no analysis indicating that everybody's bill will decrease.)

What is the level of stranded costs? (Estimates vary from 0 to \$3 billion, with the \$3 billion estimate covering only 10 years worth of stranded costs.)

Which subsidies should be retained and which introduced with retail competition? Also, what will the subsidies cost and who will pay?

What lessons have been learned from retail competition experience in other states?

That these questions remain unanswered is unavoidable. Only now is retail competition being implemented on more than a "pilot program" basis. It is no surprise that the four retail wheeling studies reviewed by the task force varied so

widely with respect to stranded costs and expected rates. The task force commissioned the most detailed study, that submitted by McFadden/RDI. The other studies were conducted by the Docking Institute at Fort Hays State University for the rural cooperatives, Wichita State University for the municipal electric cities, and NRRI for the Kansas Corporation Commission. The four studies used widely varying estimates of competitive prices, with no ability to validate the estimates against actual retail competition experience.

The states expediting retail competition are generally those where customers pay the highest rates. Whether and when benefits will fully materialize is not yet known. **The benefits Kansans may expect from retail wheeling are less certain.** The information gathered by the task force indicates both winners and losers with respect to expected rate levels. The reports issued by McFadden/RDI, the Docking Study and the Wichita State University study made varying rate projections. The NRRI study did not estimate rates customers of different utilities and in different classes (residential, commercial, industrial) would pay with retail wheeling.

In the absence of conclusive findings on stranded cost issues and others such as taxes and consumer protection, the task force wisely chose to defer decisions. Tax issues are to be considered by a legislative task force. Most other tasks are delegated to the Kansas Corporation Commission. As indicated in the final report of this task force, the Commission has been given numerous charges by the draft legislation, many of which will be ongoing responsibilities. The fiscal impact of these charges on state government has not yet been estimated. The cost to customers, regulated utilities, and competitive electric providers is also unknown.

For these reasons, **the undersigned urge that the 1998 Kansas Legislature delay consideration of the retail wheeling bill included in this final report.**

Specifically, the following information should be available and used to develop a retail wheeling bill for consideration by the legislature:

- 1) The impact of retail wheeling on the **total monthly bill** for electricity;
- 2) The extent of **cost-shifting** between high-cost and low-cost utilities and between rural and urban customers;

- 3) Resolution of property tax assessment, sales tax imposition, and franchise fee collection issues in a manner that assures **revenue stability** to the affected units of government and **competitive neutrality** among all competitors in Kansas;
- 4) The **results** of implementing full retail wheeling in California, New Hampshire and Rhode Island;
- 5) Based on the experience of the aforementioned states, the recommended content of an ongoing **customer education** program;
- 6) Based on the experience of the aforementioned states, specific measures to assure **continued reliability of service and availability of service**; and
- 7) Based on the experience of the aforementioned states, **more precise direction to the KCC** with respect to facilitating a smooth transition to competition and continuing regulation of services not open to competition.

In the interim period, the legislature is encouraged to act on preparatory measures including utility tax and franchise issues (as envisioned by the task force bill), determination of the subsidies that may be required to assure continued access to reasonably priced electric service, and encouragement for reducing stranded costs before retail wheeling begins. The legislature is also encouraged to solicit a report on the implementation of retail wheeling in California, New Hampshire and other early adopting states for use in the 1999 legislature.

Respectfully submitted,

William David Byler
(name)

KDOCH
(representing)

S. Leo Foggatt
(name)

BP4
(representing)

Chris Liles
(name)

KCPL
(representing)

Glenn

(name)

A. D. R.

(name)

Jim

(name)

Richard E. Hanson, 2

(name)

Paul

(name)

Stephen

(name)

(name)

(name)

(name)

(name)

(name)

(name)

Sunflower Elec. Power Corp.

(representing)

ENERGY, ENVIRONMENT, EDUCATION

(representing)

Western Resources

(representing)

Kansas Municipal Utilities

(representing)

Empire State Electric

(representing)

Kansas Electric Power Cooperative

(representing)

(representing)

(representing)

(representing)

(representing)

(representing)

(representing)

1995 Kansas Electric Utility Customers

Electric Utility	Utility Type	Customer Type			Totals
		Residential	Commercial	Industrial	
Empire District Electric Co	Investor Owned	8,519	1,252	49	9,820
Kansas City Power & Light Co	Investor Owned	156,274	18,990	1,281	176,545
Kansas Gas & Electric Co	Investor Owned	245,994	24,706	3,802	274,502
Southwestern Public Service Co	Investor Owned	1,070	385	15	1,470
UtiliCorp United Inc	Investor Owned	51,595	14,303	69	65,967
Western Resources Inc	Investor Owned	283,890	40,675	1,724	326,289
Alma City of	Municipal	363	102	2	467
Altamont City of	Municipal	522			522
Anthony City of	Municipal	1,334	260		1,594
Arcadia City of	Municipal	184	14		198
Arma City of	Municipal	736	62	3	801
Ashland City of	Municipal	530	164		694
Attica City of	Municipal	361	92	7	460
Augusta City of	Municipal	3,671	302		3,973
Axtell City of	Municipal	204	36		240
Baldwin City City of	Municipal	1,180	100		1,280
Belleville City of	Municipal	1,250	239		1,489
Beloit City of	Municipal	1,746	298	13	2,057
Blue Mound City of	Municipal	170			170
Bronson City of	Municipal	165	21		186
Burlingame City of	Municipal	545	82	1	628
Burlington City of	Municipal	1,252	288		1,540
Cawker City City of	Municipal	377	57		434
Centralia City of	Municipal	265	40		305
Chanute City of	Municipal	4,603	848	89	5,540
Chapman City of	Municipal	556	54		610
Chetopa City of	Municipal	681	71		752
Cimarron City of	Municipal	756	143	15	914
Clay Center City of	Municipal	2,259	321	161	2,741
Coffeyville City of	Municipal	6,935	964		7,899
Colby City of	Municipal	2,237	488	67	2,792
Dighton City of	Municipal	686	124		810
Ellinwood City of	Municipal	1,081	165		1,246
Elsmore City of	Municipal	57	3		60
Elwood City of	Municipal	400	30	1	431
Enterprise City of	Municipal	325	55	2	382
Erie City of	Municipal	546	103	2	651
Eudora City of	Municipal	1,507	74	3	1,584
Fredonia City of	Municipal	1,417	303		1,720
Galva City of	Municipal	293	51		344
Garden City City of	Municipal	8,857	570		9,427
Gardner City of	Municipal	2,059	197	8	2,264
Garnett City of	Municipal	1,543	216	42	1,801
Girard City of	Municipal	1,343	249	16	1,608
Glasco City of	Municipal	355	41		396
Glen Elder City of	Municipal	306	58		364
Goodland City of	Municipal	2,318	442	46	2,806

1995 Kansas Electric Utility Customers

Electric Utility	Utility Type	Customer Type			Totals
		Residential	Commercial	Industrial	
Greensburg City of	Municipal	883	139		1,022
Haven City of	Municipal	536	116		652
Herington City of	Municipal	1,348	200	1	1,549
Herndon City of	Municipal	136	30		166
Hill City City of	Municipal	841	259		1,100
Hillsboro City of	Municipal	1,241	209		1,450
Hoisington City of	Municipal	1,590	139	48	1,777
Holton City of	Municipal	1,856	311	14	2,181
Holyrood City of	Municipal	294	22		316
Horton City of	Municipal	890	123	1	1,014
Hugoton City of	Municipal	1,493	342		1,835
Iola City of	Municipal	3,268	686	3	3,957
Isabel City of	Municipal	82	1		83
Iuka City of	Municipal	100	23		123
Jetmore City of	Municipal	433	139		572
Johnson City of	Municipal	523	243	4	770
Kansas City City of	Municipal	58,688	6,726	121	65,535
Kingman City of	Municipal	1,580	330	9	1,919
Kiowa City of	Municipal	635	141	29	805
La Crosse City of	Municipal	661	153	7	821
La Harpe City of	Municipal	310	14		324
Lakin City of	Municipal	852	117	14	983
Larned City of	Municipal	2,163	382	14	2,559
Lincoln Center City of	Municipal	706	198	6	910
Lindsborg City of	Municipal	1,279	233		1,512
Lucas City of	Municipal	261	69		330
Luray City of	Municipal	128	38		166
Mankato City of	Municipal	516	146	3	665
Marion City of	Municipal	850	250	2	1,102
McPherson City of	Municipal	6,617	1,026	10	7,653
Meade City of	Municipal	738	170	18	926
Minneapolis City of	Municipal	887	193	5	1,085
Montezuma City of	Municipal	369	74		443
Moran City of	Municipal	254	46		300
Morrill City of	Municipal	127	34		161
Moundridge City of	Municipal	689	97	27	813
Mount Hope City of	Municipal	330	15		345
Mulberry City of	Municipal	290	10		300
Mulvane City of	Municipal	1,740	201		1,941
Muscotah City of	Municipal	100	4		104
Neodesha City of	Municipal	1,389	235	43	1,667
Norton City of	Municipal	1,435	342		1,777
Oakley City of	Municipal	965	288	5	1,258
Oberlin City of	Municipal	1,044	257		1,301
Osage City City of	Municipal	1,259	233	3	1,495
Osawatomie City of	Municipal	1,857	222	4	2,083
Osborne City of	Municipal	927	151	34	1,112

1995 Kansas Electric Utility Customers

Electric Utility	Utility Type	Customer Type			Totals
		Residential	Commercial	Industrial	
Ottawa City of	Municipal	4,791	523	94	5,408
Oxford City of	Municipal	534	67	23	624
Pomona City of	Municipal	478	47		525
Pratt City of	Municipal	3,421	680		4,101
Prescott City of	Municipal	125	31		156
Radium City of	Municipal	19	2		21
Robinson City of	Municipal	135	45		180
Russell City of	Municipal	2,434	567	256	3,257
Sabetha City of	Municipal	1,262	248	69	1,579
Savonburg City of	Municipal	54	9		63
Scranton City of	Municipal	279	31		310
Seneca City of	Municipal	953	180	51	1,184
Severance City of	Municipal	60			60
Seward City of	Municipal	40	6		46
Sharon Springs City of	Municipal	462	99	21	582
St Francis City of	Municipal	832	255		1,087
St John City of	Municipal	701	160		861
St Marys City of	Municipal	798	153		951
Stafford City of	Municipal	712	98		810
Sterling City of	Municipal	1,011	193		1,204
Stockton City of	Municipal	754	153		907
Summerfield Town of	Municipal	106	34		140
Toronto City of	Municipal	203	23		226
Troy City of	Municipal	591	8		599
Udall City of	Municipal	353	48		401
Vermillion City of	Municipal	80	13		93
Wamego City of	Municipal	1,532	242	16	1,790
Washington City of	Municipal	604	147		751
Waterville City of	Municipal	363	79		442
Wathena City of	Municipal	573	103		676
Wellington City of	Municipal	3,797	453	49	4,299
Winfield City of	Municipal	5,646	1,233	100	6,979
Alfalpa Electric Coop Inc	Rural Cooperative	254	525		779
Ark Valley Elec Coop Assn Inc	Rural Cooperative	3,926	553	25	4,504
Brown-Atchison E C A Inc	Rural Cooperative	2,678	192		2,870
Butler Rural El Coop Assn Inc	Rural Cooperative	5,251	520		5,771
C & W Rural Elec Coop Assn Inc	Rural Cooperative	2,393	361	62	2,816
Caney Valley El Coop Assn Inc	Rural Cooperative	3,585	1,457		5,042
CMS Electric Coop Inc	Rural Cooperative	1,887	1,065	1,685	4,637
D S & O Rural E C A Inc	Rural Cooperative	5,848	687	2	6,537
Doniphan Elec Coop Assn Inc	Rural Cooperative	1,395	80		1,475
Flint Hills Rural E C A Inc	Rural Cooperative	4,199	404		4,603
Jewell-Mitchell Coop Elec Inc	Rural Cooperative	4,085	305	1	4,391
Kaw Valley Electric Coop Inc	Rural Cooperative	6,290	331	20	6,641
Lane-Scott Electric Coop Inc	Rural Cooperative	1,613	655		2,268
Leavenworth-Jefferson E C Inc	Rural Cooperative	6,086	467		6,553
Lyon-Coffey Electric Coop Inc	Rural Cooperative	4,921	1,468	3	6,392

1995 Kansas Electric Utility Customers

Electric Utility	Utility Type	Customer Type			Totals
		Residential	Commercial	Industrial	
Midwest Energy Inc	Rural Cooperative	22,032	9,157	3,538	34,727
N C K Electric Coop Inc	Rural Cooperative	2,455	151	339	2,945
Nemaha-Marshall E C A Inc	Rural Cooperative	2,937	227		3,164
Ninnescah Rural E C A Inc	Rural Cooperative	2,429	730	1	3,160
Northwest Kansas E C A Inc *	Rural Cooperative	1,125	208	9	1,342
Norton-Decatur Coop El Co Inc *	Rural Cooperative	2,756	1,186		3,942
P R & W Electric Coop Assn Inc	Rural Cooperative	2,813	184		2,997
Pioneer Electric Coop Inc	Rural Cooperative	4,631	7,532	11	12,174
Radiant Electric Coop Inc	Rural Cooperative	2,608	824		3,432
Sedgwick Cnty El Coop Assn Inc	Rural Cooperative	3,588	625	1	4,214
Sekan Electric Coop Assn Inc **	Rural Cooperative	3,824	383		4,207
Smoky Hill Elec Coop Assn Inc	Rural Cooperative	2,302	501	22	2,825
Sumner-Cowley Elec Coop Inc	Rural Cooperative	3,632	404		4,036
Twin Valley Electric Coop Inc	Rural Cooperative	2,076	173		2,249
United Electric Coop Inc **	Rural Cooperative	4,804	720		5,524
Victory Electric Coop Assn Inc	Rural Cooperative	2,372	400	2	2,774
Western Coop Electric Assn Inc	Rural Cooperative	2,819		1,486	4,305
Wheatland Electric Coop Inc	Rural Cooperative	9,364	5,143	30	14,537
Total		1,075,158	166,963	15,759	1,257,880

* Merged in 1997 to form Prairie Land

**Merged in 1997 to form Heartland

Based on 1995 information from the Energy Information Administration of the US Department of Energy [Electric Sales and Revenue 1995]

Estimated Distribution Costs for MidWest Energy and Kansas Investor Owned Utilities
provided by Kansas Corporation Commission Staff

Distribution costs on a kwh basis were estimated for MidWest Energy and the Kansas Investor Owned utilities for a rough comparison of costs within the state. Because MidWest Energy and the Investor Owned Utilities also own transmission and generation facilities, estimating distribution costs requires different methods than that used by the distribution cooperatives. The numbers given here are only a general approximation, in an actual rate case analysis some of the assumptions used in this estimate would likely be contested by the utilities, the commission staff, or other interveners. Furthermore, this estimate only uses 1996 data and does not normalize or adjust that data for weather or other conditions and this estimate only provides overall numbers, not a detailed allocation based on costs to serve specific customer classes.

The results are as follows

Utility	Estimated Distribution Cost
Empire District Electric	20.845 mills / kwh [1]
KCPL	19.839 mills / kwh
KGE	21.164 mills / kwh
KPL	20.151 mills / kwh
MidWest Energy	29.658 mills / kwh
Southwestern Public Service	12.726 mills / kwh [1, 2]
Westplains Energy	22.018 mills / kwh

[note 1: based on total company allocation due to small percentage of Kansas customers]

[note 2: numbers are suspect on annual FERC and state report, Staff investigating, calculated costs may be suspect]

Description of Estimation Method

Expenses from the annual report were allocated to distribution based on the assumption that all expenses due to customer accounts and customer service and information were distribution related and that all expenses related to sales were wholesale and not assigned to distribution. Administrative and general expenses and payroll related taxes, as well as depreciation expenses for general and common plant were based on an allocation ratio of distribution salary and wages to the total for distribution, generation and transmission, since these expenses were assumed to be related to personnel allocations.

Ratebase related components were allocated based upon the distribution net plant ratio to the total of net distribution, transmission and generation plant. This same net plant ratio was used to allocate materials and supplies as well as property tax. The capital structure was roughly calculated assuming an ROE of 11% and an estimated corporate tax rate of 40%.

Line losses were calculated by assuming 1/2 of the total system losses can be assigned to distribution. The estimated distribution costs without line losses were then subtracted from the overall retail revenue per kwh and multiplied by the distribution line losses to determine overall line loss costs. The overall line loss costs were divided by retail sales kwh and added to the distribution cost per kwh without line losses to yield the overall distribution costs.

A Level Electric Distribution Rate as Part of a Statewide Public Interest Fund

Prepared by
Kansas Electric Cooperatives, Inc.

While the focus of this task force is to address the competitive generation market, the concept of leveling the cost of electric distribution has also been discussed. The question is often raised as to why urban consumers should subsidize electric rates in rural areas. However, a different question is often raised by rural consumers. For example, why should rural consumers of NCK Electric Cooperative in Republic, Washington and Cloud counties pay some of the highest distribution rates (6.5 cents/kWh, not including generation) while their urban neighbors in the City of Concordia enjoy some of the lowest distribution rates (2.0 cents/kWh)?

Many studies have concluded that while there will be winners and losers from retail wheeling, the losers will tend to be consumers located in rural areas. Leveling the cost of distribution would allow all consumers to benefit from a competitive generation market. This is not unlike already accepted plans of leveling the costs of highways, public education and postage rates. Unequal costs are averaged to allow equal and affordable access for all. This task force has the opportunity to also level the playing field for distribution services as well.

The implementation of a levelized distribution cost concept would require a statewide cost of service study which would establish rate classifications for end-consumers based on certain criteria. This criteria could follow traditional rate class definitions based on customer type such as residential, commercial, industrial and lighting or some other innovative classification using criteria such as, annual usage, peak demand, character of service, load factor, revenue or plant investment.

In the absence of an accurate cost of service study for each cooperative in the state, the attached study estimates the average distribution cost for each cooperative. This is done by calculating the average retail rate and subtracting the cost of power generated or delivered to the utilities' system. The remaining figure should represent the embedded distribution costs which would include distribution line losses, O&M, A&G, depreciation, taxes and operating margin. This operating margin includes the utilities' allowed rate of return which is used to cover its cost of debt and equity capital.

This methodology used should not be construed to be the desired approach to determining level distribution rates, only as a guide as to the overall impact on each utility. Current rate making methodologies already recognize that different classes of customers have different costs of distribution and current rates reflect this differential. This is the reason that large users with high load factors typically pay lower unit costs for distribution service than residential or seasonal use customers. As mentioned above, it is recommended that different distribution rates be determined for different classes of customers.

There are some admitted flaws with the attached estimate in that it doesn't recognize a utilities' current costs. This approach calculates the average distribution cost at the time the rates were last adjusted. In addition, many utilities have special contracts with large consumers with relatively little or no distribution costs which skew their overall average costs. Therefore, these known special contracts were excluded from the study to arrive at a net distribution rate.

However, the final results fall in line with what would be expected, i.e., the cost to serve rural areas is generally 4.1 to 4.4 cents per kilowatt-hour, while the cost to serve urban areas is approximately 1.9 to 2.2 cents per kilowatt-hour (from KCC study).

Following are some definitions used in the table:

Net Sales-Total retail sales less special contract sales

Net Distribution Rate-Net average retail rate less net power costs

Distribution Cost-Net sales multiplied by the Net Distribution Rate (used for weighting)

Change (mill/%)-Increase/decrease from utilities' current Net Distribution Rate to statewide average

4-115

Kansas Electric Cooperatives, Inc.
 Calculation of Distribution Costs for Co-ops
 For the Year Ending December 31, 1996¹

		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
Cooperative		Total Revenue \$	Total Sales MWh	Total Power Cost \$	Total Purchases MWh	Total Avg Dist Rate	Special Revenue \$	Special Sales MWh	Special Power Cost \$	Special Purchases MWh	Net Avg Rate	Net Power Cost	Net Dist Cost
											106.32	53.62	52.70
K	ARK VALLEY	7,127,302	67,034	4,107,716	76,607	52.70					100.03	54.70	45.33
K	BROWN-ATCHISON	3,406,486	34,054	2,082,882	38,080	45.33					105.09	54.21	50.89
K	BUTLER	8,926,188	87,255	5,214,316	97,413	48.77	117,654	3,440	120,400	3,440	117.22	55.16	62.07
K	CANEY VALLEY	5,608,661	48,151	2,936,566	53,842	61.94	156,909	1,643	57,505	1,643	93.07	47.09	45.98
K	CMS	8,064,257	93,417	4,740,521	103,390	40.47	357,061	10,605	371,175	10,605	100.04	55.12	44.92
K	C&W	3,485,061	37,741	2,144,293	40,689	39.64	239,816	5,302	193,854	5,302	78.58	34.96	43.62
K	DONIPHAN	1,267,002	16,123	616,371	17,629	43.62					89.60	56.92	32.68
K	DS&O	8,040,167	89,737	5,591,530	98,237	32.68					107.17	56.96	50.21
K	FLINT HILLS	6,838,288	63,809	3,910,683	68,659	50.21					100.73	54.11	46.62
K	JEWELL-MITCHELL	4,338,042	44,009	2,649,108	49,544	45.10	73,207	1,670	58,450	1,670	83.36	34.71	48.66
K	KAW VALLEY	8,625,074	103,463	3,892,570	112,153	48.66					96.71	66.44	30.27
S	LANE-SCOTT	5,327,319	56,985	4,108,234	64,557	29.85	764,531	9,806	470,688	9,806	105.54	61.22	44.33
K	LEAVENWORTH-JEFF	7,397,785	70,092	4,700,587	76,784	44.33					102.65	53.28	49.37
K	LYON-COFFEY	8,339,825	83,543	4,839,643	92,584	47.55	287,333	5,098	178,430	5,098	122.96	58.40	64.56
K	NCK	3,391,368	29,836	1,853,977	33,418	58.19	236,138	4,176	146,160	4,176	73.80	33.84	39.96
K	NEMAHA-MARSHALL	3,119,088	42,262	1,553,235	45,894	39.96					94.91	52.48	42.44
K	NINNESCAH	5,194,736	61,438	3,237,965	66,555	35.90	746,563	14,573	510,055	14,573	116.41	67.26	49.15
S	NORTHWEST	2,851,373	26,095	1,901,298	29,736	45.33	410,117	5,123	245,904	5,123	109.44	60.51	48.93
S/K	NORTON-DECATUR	8,358,075	97,334	5,396,330	105,530	34.73	842,046	28,657	744,771	28,657	87.26	53.38	33.88
S	PIONEER	24,886,970	285,198	16,329,968	305,906	33.88					116.67	59.14	57.53
K	PR&W	3,827,487	32,806	2,130,426	36,026	57.53					103.28	55.42	47.87
K	RADIANT	3,911,546	40,481	2,366,514	44,611	43.58	192,057	4,469	141,941	4,469	93.82	59.94	33.88
K	SEDGWICK COUNTY	6,644,856	70,827	4,626,669	77,187	33.88					102.68	54.74	47.93
K	SEKAN	4,858,949	48,424	2,895,850	53,790	46.51	140,997	2,474	86,590	2,474	105.16	51.87	53.30
K	SMOKY HILL	3,621,146	34,433	1,960,035	37,791	53.30					114.16	55.37	58.79
K	SUMNER-COWLEY	6,544,821	57,331	3,504,847	63,296	58.79					115.66	58.18	57.48
K	TWIN VALLEY	2,706,847	23,404	1,527,050	26,248	57.48					109.01	53.96	55.05
K	UNITED	6,029,165	55,309	3,395,217	62,923	55.05					92.73	56.01	36.73
K/S	VICTORY	7,922,068	112,069	5,709,465	117,787	22.22	2,728,311	56,061	2,252,363	56,061	87.49	60.21	27.29
S	WESTERN	9,458,805	108,108	7,133,256	118,481	27.29					106.41	63.53	42.87
S	WHEATLAND	45,739,986	640,521	35,887,781	663,014	17.28	20,141,151	399,942	18,771,570	393,607	98.86	55.15	43.71
	TOTAL	235,858,743	2,661,289	152,944,903	2,878,361	35.49	27,433,891	553,039	24,349,856	546,704			
	Summary												
	KEPCo Members	126,312,253	1,282,253	76,063,233	1,413,010	44.68	4,898,793	104,030	3,815,405	104,030	103.05	55.19	47.85
	Sunflower Members	96,535,327	1,217,188	70,819,494	1,289,675	24.40	22,535,098	449,009	20,534,451	442,674	96.33	59.37	36.96
	Non G&T REC	13,011,164	161,848	6,062,176	175,676	45.88	0	0	0	0	80.39	34.51	45.88
	TOTAL	235,858,743	2,661,289	152,944,903	2,878,361	35.49	27,433,891	553,039	24,349,856	546,704	98.86	55.15	43.71

¹Cooperative data is for 1996

²Special cost of power assumed to be \$0.035/kWh

³Special cost of power assumed to be \$0.048/kWh

4-116

Table 55. Estimated U.S. Electric Utility Average Revenue per Kilowatthour to Ultimate Consumers by Sector Census Division, and State, Year-to-Date 1997 and 1996 (Cents)

Census Division and State	Residential		Commercial		Industrial		Other1/		All
	1997	1996	1997	1996	1997	1996	1997	1996	1997
New England.....	12.0	11.8	10.3	10.2	8.0	8.0	14.8	14.8	10.4
Connecticut.....	12.1	12.0	10.3	10.3	7.7	7.8	13.9	14.5	10.5
Maine.....	12.7	12.6	10.6	10.6	6.6	6.6	23.7	23.8	9.7
Massachusetts.....	11.4	11.2	10.1	9.9	8.7	8.4	15.2	14.8	10.3
New Hampshire.....	13.4	13.5	11.2	11.3	8.9	9.3	13.7	14.0	11.5
Rhode Island.....	12.3	12.1	10.4	10.2	8.7	8.6	12.6	12.3	10.8
Vermont.....	11.8	11.0	10.7	10.1	7.5	7.7	15.3	16.8	10.2
Middle Atlantic.....	11.9	11.7	10.5	10.4	6.0	6.1	9.9	9.5	9.7
New Jersey.....	12.1	11.9	10.4	10.3	8.2	8.2	19.1	19.0	10.6
New York.....	14.1	14.0	12.0	11.9	5.3	5.3	9.3	9.0	11.1
Pennsylvania.....	9.7	9.6	8.3	8.3	5.8	5.9	11.4	11.1	7.9
East North Central.....	8.6	8.4	7.3	7.4	4.4	4.4	7.0	7.0	6.5
Illinois.....	10.4	10.2	7.9	7.9	5.4	5.2	6.9	6.7	7.7
Indiana.....	7.1	6.8	6.1	6.0	4.0	3.9	10.0	9.5	5.4
Michigan.....	8.7	8.5	7.9	8.0	5.1	5.2	11.8	11.6	7.2
Ohio.....	8.7	8.5	7.6	7.6	4.0	4.2	6.0	6.2	6.1
Wisconsin.....	8.5	8.5	7.6	7.6	4.0	4.2	6.0	6.2	6.1
West North Central.....	6.9	6.9	5.5	5.7	3.7	3.7	6.8	7.0	5.2
Iowa.....	7.2	7.2	6.2	6.2	4.3	4.3	6.5	6.4	5.9
Kansas.....	8.1	8.2	6.6	6.6	3.9	3.9	6.4	6.0	5.9
Minnesota.....	7.6	7.7	6.4	6.6	4.6	4.7	10.0	11.8	6.3
Missouri.....	7.4	7.2	6.3	6.1	4.4	4.3	7.7	7.6	5.7
Nebraska.....	7.1	7.0	6.0	6.1	4.5	4.6	7.2	7.3	6.1
North Dakota.....	7.1	7.0	6.0	6.1	4.5	4.6	5.5	5.7	5.2
South Dakota.....	6.3	6.2	5.4	5.5	3.8	3.8	5.5	5.7	5.2
North Atlantic.....	6.3	6.2	5.4	5.5	3.8	3.8	4.4	3.8	5.7
South Atlantic.....	6.2	6.1	6.3	6.2	4.6	4.6	4.4	3.8	5.7
Delaware.....	7.1	7.0	6.7	6.7	4.5	4.5	4.8	4.9	6.3
District of Columbia.....	7.1	7.0	6.6	6.6	4.3	4.4	6.4	6.3	6.6
Florida.....	8.0	7.8	6.6	6.6	4.3	4.4	6.4	6.3	6.6
Georgia.....	9.1	8.7	7.2	7.0	4.8	4.8	12.3	11.7	7.0
Maryland.....	7.8	7.8	7.2	7.2	4.2	4.1	6.5	6.4	7.2
North Carolina.....	7.8	7.8	7.2	7.2	4.2	4.1	6.5	6.4	7.2
South Carolina.....	8.2	8.0	6.8	6.7	5.3	5.2	7.0	7.0	7.3
Virginia.....	7.7	7.8	7.1	7.2	4.1	4.5	8.5	8.4	6.3
West Virginia.....	8.3	8.2	6.9	6.8	4.2	4.2	9.2	9.3	7.0
East South Central.....	8.1	7.9	6.4	6.3	4.7	4.7	7.1	6.7	6.5
Alabama.....	7.6	7.5	6.4	6.4	3.6	3.9	6.0	6.1	5.5
Mississippi.....	7.6	7.5	6.4	6.4	3.6	3.9	6.0	6.1	5.5
Louisiana.....	7.8	7.6	6.0	5.9	4.0	4.0	5.3	5.3	6.2
Arkansas.....	6.3	6.4	5.5	5.8	3.7	4.0	9.1	9.2	5.0
Texas.....	6.3	6.4	5.5	5.8	3.7	4.0	9.1	9.2	5.0
West South Central.....	6.2	6.1	6.1	6.2	3.7	3.7	6.0	5.9	5.0
Oklahoma.....	6.2	6.1	6.1	6.2	3.7	3.7	6.0	5.9	5.0
Montana.....	6.7	6.5	6.4	6.4	3.7	3.8	7.3	6.1	5.3
Wyoming.....	6.7	6.5	6.4	6.4	3.7	3.8	7.3	6.1	5.3

4-117

Kentucky.....	5.7	5.6	5.2	5.3	2.9	2.9	4.7	4.7	4.0
Mississippi.....	7.0	6.9	6.8	7.1	4.2	4.3	8.2	8.7	5.9
Tennessee.....	5.9	5.9	6.1	6.2	4.3	4.3	7.9	7.3	5.2
West South Central.....	7.5	7.4	6.7	6.6	4.2	4.1	6.1	6.3	6.0
Arkansas.....	7.8	7.7	6.8	6.7	4.3	4.4	7.2	6.6	6.1
Louisiana.....	7.5	7.6	7.1	7.2	4.3	4.4	6.6	8.0	5.9
Oklahoma.....	6.6	6.5	5.6	5.5	3.6	3.6	4.6	4.9	5.3
Texas.....	7.6	7.5	6.8	6.6	4.1	4.0	6.2	6.2	6.1
Mountain.....	7.5	7.5	6.4	6.5	4.0	4.2	4.8	5.5	5.9
Arizona.....	8.7	8.9	7.7	7.9	5.1	5.3	4.8	5.0	7.3
Colorado.....	7.5	7.5	5.8	6.0	4.3	4.5	8.0	7.5	6.0
Idaho.....	5.1	5.3	4.2	4.3	2.6	2.7	4.6	4.6	3.9
Montana.....	6.5	6.2	5.9	5.5	3.3	3.6	7.6	6.2	5.1
Nevada.....	6.8	6.9	6.4	6.6	4.4	4.7	2.3	4.3	5.4
New Mexico.....	9.1	8.9	8.0	7.9	4.6	4.3	6.0	6.1	6.9
Utah.....	6.9	6.9	5.7	5.9	3.5	3.7	4.1	4.6	5.2
Wyoming.....	6.1	6.0	5.3	5.0	3.4	3.4	3.4	6.1	4.3
Pacific Contiguous.....	8.7	8.7	8.2	8.1	4.8	5.1	5.7	4.6	7.3
California.....	11.4	11.2	9.6	9.4	6.4	6.8	7.6	5.0	9.3
Oregon.....	5.6	5.7	5.1	5.2	3.1	3.4	5.1	5.7	4.6
Washington.....	5.0	5.1	4.8	4.9	2.5	2.9	3.6	3.7	4.1
Pacific Noncontiguous.....	13.5	12.8	11.7	11.3	10.1	9.5	16.3	14.9	11.8
Alaska.....	11.5	11.1	9.6	9.4	8.0	8.2	17.4	15.7	10.2
Hawaii.....	14.8	14.0	13.5	12.8	10.5	9.7	13.3	12.7	12.6
U.S. Average.....	8.41	8.28	7.61	7.6	4.51	4.6	6.85	6.73	6.82

1/ Includes public street and highway lighting, other sales to public authorities, sales to railroads and rail interdepartmental sales.

Notes: *Values for 1997 are estimates based on a cutoff model sample; see Technical Notes for a discussion sample design for the Form EIA-826. Values for 1996 have been revised and are preliminary. *Values for 1996 in the retail and industrial sectors for Maryland, the South Atlantic Census Division, and the U.S. Total reflect an electricity's reclassification for this information by Standard Industrial Classification Code (SIC). *Retail sales and net electricity may not correspond exactly for a particular month for a variety of reasons (i.e., sales data may include purchased electricity from nonutilities or imported electricity). Net generation is for the calendar month while retail sale associated revenue accumulate from bills collected for periods of time (28 to 35 days) that vary dependent upon customer and consumption occurring in and outside the calendar month. *Totals may not equal sum of components because of in rounding.

Source: Energy Information Administration, Form EIA-826, "Monthly Electric Utility Sales and Revenue Report Distributions."

KCC 1997 FISCAL IMPACT STATEMENT
FOR THE
ELECTRIC UTILITY RESTRUCTURING ACT

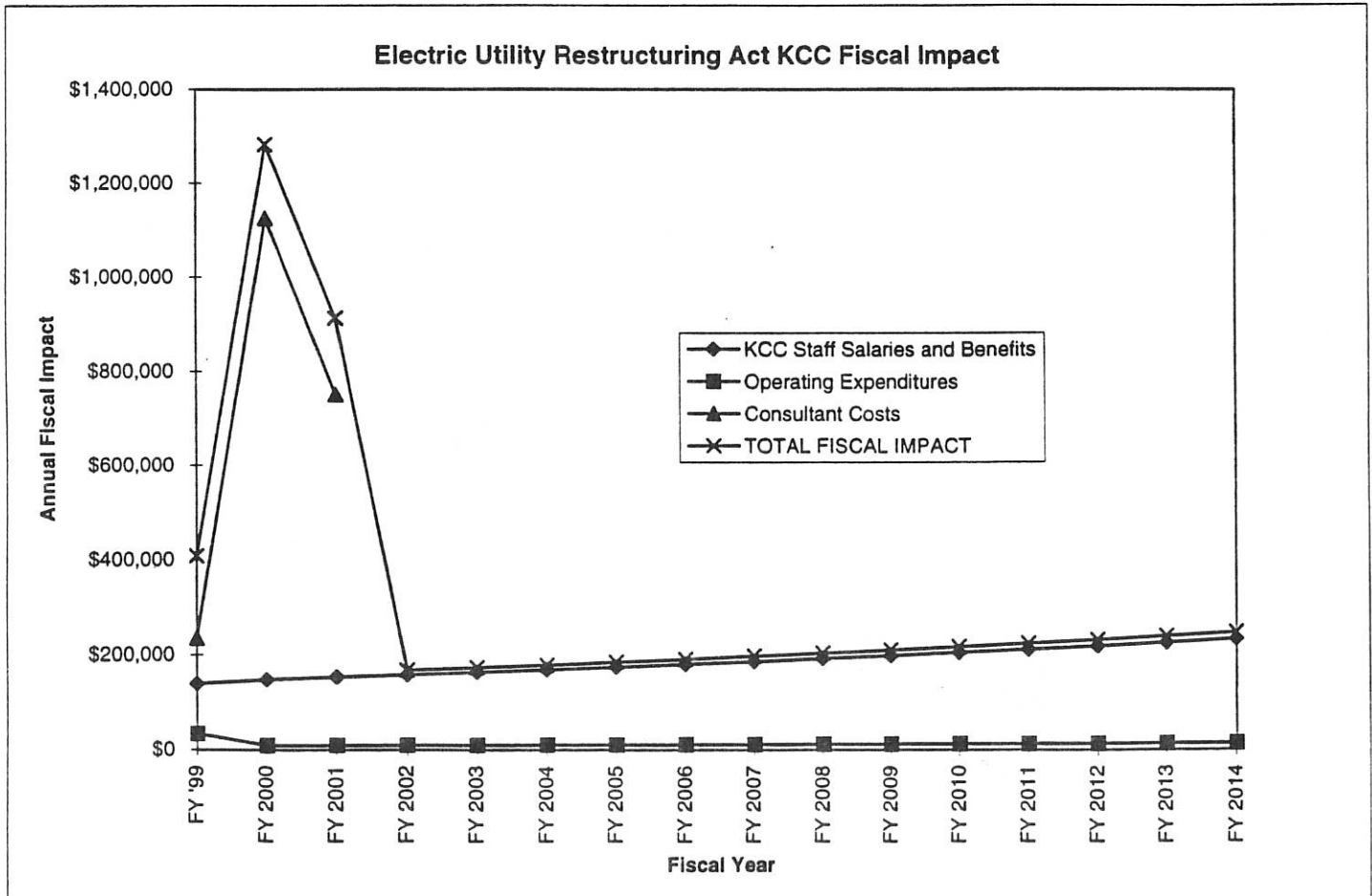
Object of Expenditure	Amount FY '99	Amount FY 2000	Amount FY 2001	Amount FY 2002	Amount FY 2003	Amount FY 2004	Amount FY 2005	Amount FY 2006
Salaries & Wages Combined Utility Staff and Legal Staff 3 Positions @ \$40,000/yr	\$120,000	\$123,600	\$127,308	\$131,127	\$135,060	\$139,113	\$143,286	\$149,385
TOTAL W/FRINGES	\$139,423	\$148,297	\$153,015	\$157,893	\$162,935	\$168,152	\$173,544	\$179,122
Operating Expenditures (Including Start-up Costs)	\$33,819	\$9,067	\$9,340	\$9,620	\$9,900	\$10,205	\$10,500	\$10,825
Consultant Costs	\$235,000	\$1,125,000	\$750,000					
TOTAL FISCAL IMPACT	\$408,242	\$1,282,364	\$912,355	\$167,513	\$172,835	\$178,357	\$184,044	\$189,947

KCC Staff has estimated that the workload to implement the proposed Electric Restructuring Act will require 4 combined staff positions in FY '99, 11 combined staff positions in FY 2000, 9 combined staff positions in FY 2001 and 3 combined staff positions in FY 2002 through 2014 and out. Assuming three positions will remain constant from FY 99 through FY 2014, staff has estimated fiscal impact costs based on three FTE positions for each fiscal year, building in inflationary factors for merit increases and health care cost increases, and have supplemented the need for additional positions with estimated consultant costs for fiscal years 1999, 2000, and 2001.

Researching past consultant fees which utilize numerous tasks through a variety of professional disciplines, consultant services would be equivalent to \$375,000 for a 5,000 hour contract with 3-4 individuals within a firm working on the project. With this equation, FY '99 would include \$235,000 for consulting; FY 2000 would be \$375,000 x 3 for a total estimated amount of \$1,125,000 and FY 2001 would be \$375,000 x 2 for a total estimated amount of \$750,000. All three years take into consideration the 3 FTE which would remain constant.

**KCC 1997 FISCAL IMPACT STATEMENT
FOR THE
ELECTRIC UTILITY RESTRUCTURING ACT**

Object of Expenditure	Amount FY 2007	Amount FY 2008	Amount FY 2009	Amount FY 2010	Amount FY 2011	Amount FY 2012	Amount FY 2013	Amount FY 2014
Salaries & Wages Combined Utility Staff and Legal Staff 3 Positions @ \$40,000/yr	\$152,013	\$156,573	\$161,271	\$166,107	\$171,090	\$176,223	\$181,509	\$186,954
TOTAL W/FRINGES	\$184,892	\$190,860	\$197,036	\$203,425	\$210,038	\$216,884	\$223,971	\$231,309
Operating Expenditures (Including Start-up Costs)	\$11,150	\$11,485	\$11,830	\$12,185	\$12,550	\$12,930	\$13,315	\$13,715
Consultant Costs								
TOTAL FISCAL IMPACT	\$196,042	\$202,345	\$208,866	\$215,610	\$222,588	\$229,814	\$237,286	\$245,024



KANSAS CORPORATION COMMISSION

Fiscal Summary Information

for

Division of the Budget

Legislative Research Department

BILL NUMBER: N/A

REVIEWED FORM: Report to Legislature

Prepared by

Title

Date

Larry Holloway

Chief of Electric Operations

December 17, 1997

BILL SUMMARY

This Fiscal Impact Estimate addresses the Electric Utility Restructuring Act as prepared by the retail wheeling task force as part of a final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

EXPLANATION OF ESTIMATED FISCAL IMPACT

In performing this fiscal impact statement the bill was divided into separate sections each requiring specific KCC actions. These sections are:

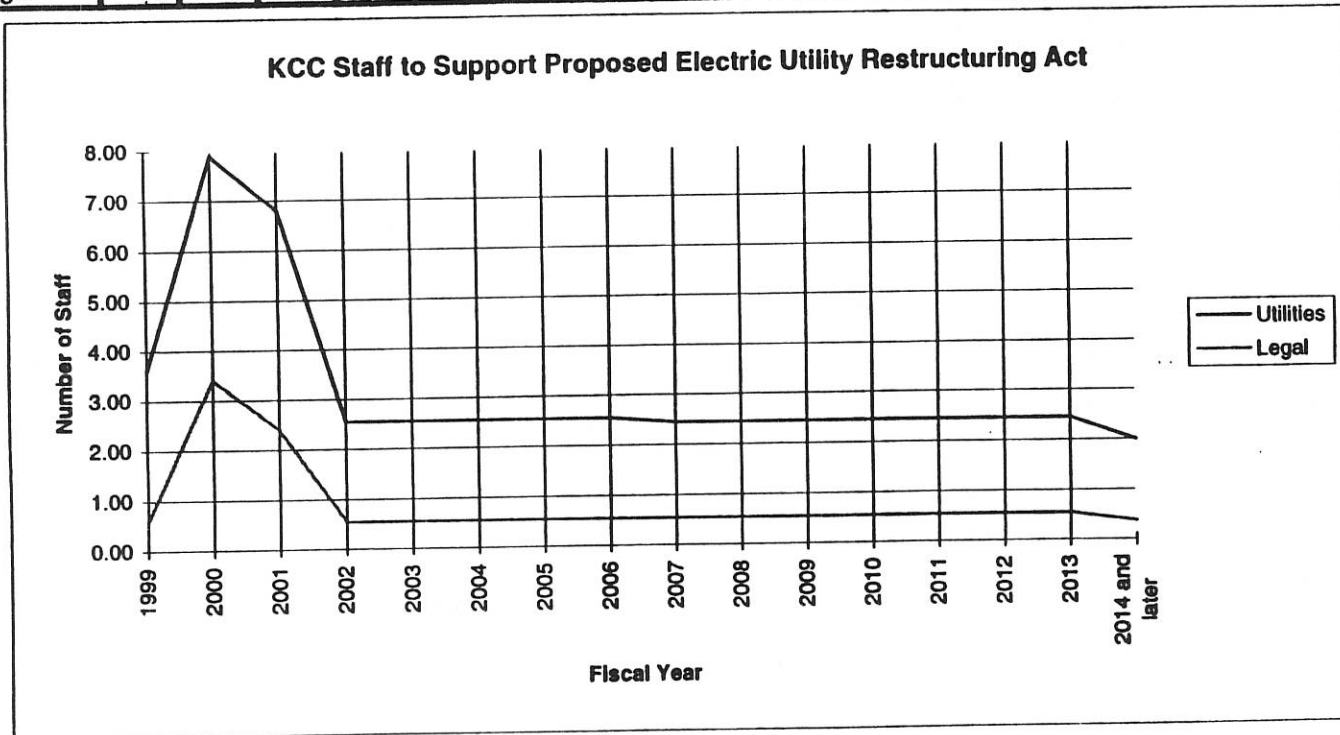
- **Informal Complaints from Retail Competition Customers of Municipal Utilities**
- **Competitive Transition Costs and Restructuring Plans**
- **Mitigation of Stranded Costs**
- **Universal Service Charge**
- **Transition Bonds**
- **Unbundling of Retail Electric Bills**
- **Customer Service**
- **Open Access of Transmission and Distribution**
- **Affiliate Transactions**
- **Licensure of Competitive Electricity Providers**
- **Additional Procedures Necessary to Enforce Act**
- **Miscellaneous Commission Requirements**

Overall estimated additional KCC staff requirements are given on the attached spreadsheet. Staff requirements for each section are attached as a separate summary statement for that section.

Combined KCC Staff Requirements by Fiscal Year

4-121

	Fiscal Year															2014 and later
Total Staff Required	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014 and later
Utilities	3.60	7.90	6.80	2.55	2.55	2.55	2.55	2.55	2.45	2.45	2.45	2.45	2.45	2.45	2.45	2.00
Legal	0.6	3.4	2.4	0.55	0.55	0.55	0.55	0.55	0.55	0.55	0.55	0.55	0.55	0.55	0.55	0.38



KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Informal Complaints from Retail Competition Customers of Municipal Electric Utilities

EXPLANATION OF ESTIMATED FISCAL IMPACT

Sections 5.a.3 and 5.b.2.C of the proposed bill require the Commission to adopt procedures to informally deal with complaints regarding annexed retail competition customers in exempt municipals or all retail competition customers in nonexempt municipals. Rules and Regulations (i.e. KARs) do not currently address informal complaints.

Assumptions

- Formal revision of KARs by July 1, 2001 (date and method of adopting procedures not specified in proposed legislation) - primarily in fiscal year 2001
- Approximately 30 weeks for KAR development and approval process
- Ongoing staff support after 2001

Estimated Fiscal Impact:

Fiscal year 2001 : 0.1 utilities staff-years
 0.1 legal staff-years

Ongoing after year 2001: 0.1 utilities staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only specific portions of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Competitive Transition Costs and Restructuring Plans

EXPLANATION OF ESTIMATED FISCAL IMPACT

Sections 7.a, 7.b, 7.c, 7.d, 9.a, 9.c, and 16.a of the proposed bill address requirements for approval of utility restructuring plans and determination of competitive transition costs. Specifically the Commission is required to complete review and approval of utility restructuring plans and competitive transition costs (CTCs) prior to December 31, 2000. All CTCs except nuclear decommissioning and radioactive waste disposal costs are required to be collected in 12 years or less. During the CTC recovery period the Commission may review CTC recovery at any time, upon its own initiative.

Assumptions

- CTC determination and utility restructuring plan approval for 8 utilities between July 1, 1999 and December 31, 2000
- Approximately 1.0 utilities staff-years and 0.5 legal staff-years per utility
- 2 CTC reviews every year from July 1, 2001 through July 1, 2013
- 0.25 CTC reviews for decommissioning and radioactive waste costs every year after July 1, 2013
- 0.25 utilities staff-years and 0.1 legal staff-years per review

Estimated Fiscal Impact:

Fiscal year 2000 :	6.0 utilities staff-years and 3.0 legal staff-years
Fiscal year 2001:	2.0 utilities staff-years and 1.0 legal staff-years
Fiscal years 2002 through 2013:	0.5 utilities staff-years and 0.2 legal staff-years
Fiscal years after 2013:	0.05 utilities staff-years and 0.025 legal staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Mitigation of Stranded Costs

EXPLANATION OF ESTIMATED FISCAL IMPACT

Section 8.b of the proposed bill requires the Commission to consider one issue special competitive transition cost mitigation filings.

Assumptions

- Special filings are only relevant prior to consideration of utility restructuring plans
- 2 filings in fiscal year 1999
 - estimated impact 0.5 utility staff-years and 0.1 legal staff years per filing

Estimated Fiscal Impact:

Fiscal year 1999 : 1.0 utilities staff-years
 0.2 legal staff-years

KANSAS CORPORATION COMMISSION

Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Universal Service Charge

EXPLANATION OF ESTIMATED FISCAL IMPACT

Sections 10.a, 10.b, 10.c.1.A, 10.c.1C, 10.c.2, 10.d, and 10.e of the proposed bill address requirements for determining universal service costs and charges. Specifically the Commission is required to determine amount to be recovered, determine statewide average costs of distribution, establish rules and regs addressing basic level of customer service, determine kwh charge for different customer classes, select independent administrator, and review need and costs every 2 years.

Assumptions

- Adopt rules and regulations for basic levels of service by January 1, 2000 - approximately 45 weeks for KAR development and approval process (0.4 utilities staff-years and 0.1 legal staff-years)
- Adopt rules and regulations regarding collection and distribution of universal service costs by January 1, 2000 - approximately 40 weeks for KAR development and approval process (0.2 utilities staff-years and 0.1 legal staff-years)
- Determine statewide average distribution costs and amount to be recovered per customer class (0.5 utilities staff-years) by January 1, 2000
- Set kwh charge for different customer classes (0.5 utilities staff-years and 0.1 legal staff years) by January 1, 2000
- Review need and cost of universal service every 2 years after July 1, 2001 (0.5 utilities staff-years and 0.1 legal staff years)
- Select independent fund administrator by July 1, 2001

Estimated Fiscal Impact:

Fiscal year 1999:	0.8 utilities staff-years and 0.2 legal staff-years
Fiscal year 2000 :	0.8 utilities staff-years and 0.2 legal staff-years
Fiscal years 2002 and later:	0.25 utilities staff-years and 0.05 legal staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only specific portions of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Transition Bonds

EXPLANATION OF ESTIMATED FISCAL IMPACT

Sections 11.a, 11.g.4, 11.g.3 and 12.d of the proposed bill require the Commission to adopt rules and regulations, establish records and to approve issuance and assigning obligations regarding transition bonds for competitive transition costs.

Assumptions

- Formal revision of KARs by January 1, 2001 (date and method of adopting procedures not specified in proposed legislation)
- Approximately 30 weeks for KAR development and approval process (assume 0.1 utility staff-years and 0.1 legal staff years primarily in 2001 fiscal year)
- Approval of transition bond insurance - assume for 5 utilities - 0.2 utility staff-years and 0.1 legal staff-years per approval (primarily in 2001 fiscal year)
- Establishing record keeping and receipt of filings and other approvals - negligible additional staff resources

Estimated Fiscal Impact:

Fiscal year 2001 : 1.1 utilities staff-years
 0.6 legal staff-years

KANSAS CORPORATION COMMISSION

Fiscal Summary Information

for

Division of the Budget

Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Unbundling of Retail Electric Bills

EXPLANATION OF ESTIMATED FISCAL IMPACT

Section 13.a of the proposed bill requires the Commission to adopt rules and regulations regarding unbundling of electric bills by January 1, 1999. Additionally utilities are required to unbundle bills by January 1, 2000.

Assumptions

- Formal revision of KARs by January 1, 1999 (date and method of adopting procedures not specified in proposed legislation)
- Approximately 48 weeks for KAR development and approval process (assume 0.5 utility staff-years and 0.1 legal staff years) due to complexity - expedited to 30 weeks
- Approval of rate unbundled by utilities by January 1, 2000
- rate cases for 4 utilities - 1 utility staff-year and 0.2 legal staff years each
- rate allocation for all affected utilities - 1 utility staff-year and 0.1 legal staff-year

Estimated Fiscal Impact:

Fiscal year 1999 : 1.5 utilities staff-years
 0.2 legal staff-years

Fiscal year 2000: 1 utilities staff-years
 0.2 legal staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific section of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Customer Service

EXPLANATION OF ESTIMATED FISCAL IMPACT

Sections 13.c.1, 13.c.2, 13.d, 13.e, 13.f, 13.g, and 17.b of the proposed bill require the Commission to address specific customer service issues. The Commission is required to adopt rules and regulations regarding generation service providers involving unauthorized switching, complaints, discontinuing service, requirements for "green" energy and labeling and disclosure requirements. The Commission is also required to establish multipliers for emergency generation services purchases by distribution providers for retail competition customers and to ensure there is no degradation in quality of generation, distribution and customer service.

Assumptions

- Formal revision of KARs by January 1, 2001
- Approximately 48 weeks for KAR development and approval process (assume 0.5 utility staff-years and 0.1 legal staff years) due to complexity
- Determine multipliers for each utility by July 1, 2001
- assume 0.5 utility staff-years and 0.1 legal staff-years in fiscal year 2001
- Degradation of quality requirements - no major change to current responsibilities - negligible impact
- Enforcement of other provisions primarily in license oversight

Estimated Fiscal Impact:

Fiscal year 2001: 1 utilities staff-years
 0.2 legal staff-years

KANSAS CORPORATION COMMISSION

Fiscal Summary Information

for

Division of the Budget

Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Open Access of Transmission and Distribution

EXPLANATION OF ESTIMATED FISCAL IMPACT

Section 15.a of the proposed bill requires the Commission to adopt rules and regulations regarding open access of transmission and distribution utilities by January 1, 2001.

Assumptions

- Formal revision of KARs by January 1, 2001
- Approximately 48 weeks for KAR development and approval process (assume 0.5 utility staff-years and 0.1 legal staff years) due to complexity
- Filing requirements for open access - initially 0.5 utility staff-years and 0.1 legal staff years - later 0.1 utility staff-years on an ongoing basis

Estimated Fiscal Impact:

Fiscal year 2001: 1 utilities staff-years
 0.2 legal staff-years

Fiscal years After Fiscal year 2001: 0.1 utilities staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only specific portions of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Affiliate Transactions

EXPLANATION OF ESTIMATED FISCAL IMPACT

Sections 15.b and 16.b of the proposed bill require the Commission to adopt rules and regulations regarding standards of conduct for affiliate transactions between transmission and distribution utilities and their own generation service companies by January 1, 2001, and to investigate complaints regarding these affiliates on an ongoing basis after July 1, 2001.

Assumptions

- Formal revision of KARs by January 1, 2001
- Approximately 48 weeks for KAR development and approval process (assume 0.5 utility staff-years and 0.1 legal staff years) due to complexity
- Affiliate transaction investigations after July 1, 2001
- 0.5 utility staff-years and 0.1 legal staff years

Estimated Fiscal Impact:

Fiscal year 2001: 0.5 utilities staff-years
 0.1 legal staff-years

Fiscal years After Fiscal year 2001: 0.5 utilities staff-years
 0.1 legal staff-years

KANSAS CORPORATION COMMISSION

Fiscal Summary Information

for

Division of the Budget

Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by **Title** **Date**
Larry Holloway Chief of Electric Operations December 17, 1997

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Licensure of Competitive Electricity Providers

EXPLANATION OF ESTIMATED FISCAL IMPACT

Section 19 generally and sections 19.b, 19.c, and 19.l specifically of the proposed bill require the Commission to adopt rules and regulations regarding licensure of competitive electricity providers and to oversee licensure on an ongoing basis after July 1, 2001.

Assumptions

- Formal revision of KARs by January 1, 2001
- Approximately 48 weeks for KAR development and approval process (assume 0.5 utility staff-years and 0.1 legal staff years) due to complexity
- Licensure applications and oversight after July 1, 2001 (assume 1 utility staff-year and 0.2 legal staff years every year based on telecom experience)

Estimated Fiscal Impact:

Fiscal year 2001: 0.5 utilities staff-years
 0.1 legal staff-years

Fiscal years After Fiscal year 2001: 1 utilities staff-years
 0.2 legal staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portion of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Additional Procedures Necessary to Enforce Act

EXPLANATION OF ESTIMATED FISCAL IMPACT

Section 20.a of the proposed bill allows the Commission to adopt additional rules and regulations as necessary to administer and enforce provisions of this act.

Assumptions

- Formal revision of KARs by January 1, 2001
- Approximately 48 weeks for KAR development and approval process (assume 0.5 utility staff-years and 0.1 legal staff years) due to complexity

Estimated Fiscal Impact:

Fiscal year 2001: 0.5 utilities staff-years
 0.1 legal staff-years

KANSAS CORPORATION COMMISSION
Fiscal Summary Information
for
Division of the Budget
Legislative Research Department

BILL NUMBER: N/A **REVIEWED FORM:** Report to Legislature

Prepared by	Title	Date
<u>Larry Holloway</u>	<u>Chief of Electric Operations</u>	<u>December 17, 1997</u>

BILL SUMMARY

This summary addresses only a specific portions of the **Electric Utility Restructuring Act** prepared by the retail wheeling task force and included as a part of the task force's final report to the 1998 legislature as required by the passage of HB 2600 in the 1996 legislative session.

This portion of the fiscal summary address the following:

Miscellaneous Commission Requirements

EXPLANATION OF ESTIMATED FISCAL IMPACT

Section 21 of the proposed bill requires the Commission to work with others to support independent power pools. Section 24 of the proposed bill establishes a legislative oversight committee through July 1, 2006. Section 25 of the proposed bill requires the Commission to work with CURB to make recommendations for customer education for 99 legislative session. Section 26 of the proposed bill requires the Commission to serve in an ex-officio capacity for the joint electric utility taxation committee.

Assumptions

- Section 21 impact is negligible as the Commission already participates in regional discussions on this issue
- Section 24 requires answering questions and providing information beyond normal processes
- estimate 0.1 utility staff-years each year through the end of 2006 fiscal year
- Section 25 - estimate 0.1 utility staff-years in fiscal year 1999
- Section 26 - estimate 0.1 utility staff-years in fiscal year 1999

Estimated Fiscal Impact:

Fiscal year 1999: 0.3 utilities staff-years

Fiscal years 2000 through 2006: 0.1 utilities staff-years