

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/9/99 S3/15/99

A Bill

SENATE BILL 661

5 By: Senators Fitch, Walters
6
7

For An Act To Be Entitled

9 "AN ACT TO RESTRUCTURE THE ELECTRIC UTILITY INDUSTRY
10 IN ARKANSAS; TO PROVIDE CONSUMER CHOICE IN THE SUPPLY
11 OF RETAIL ELECTRICITY; AND FOR OTHER PURPOSES."

Subtitle

14 "TO RESTRUCTURE THE ELECTRIC UTILITY
15 INDUSTRY IN ARKANSAS AND PROVIDE
16 CONSUMER CHOICE IN THE SUPPLY OF RETAIL
17 ELECTRICITY."
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. SHORT TITLE. This Act may be known and cited as the
23 "Arkansas Electric Utility Industry Restructuring and Consumer Choice Act."
24

25 SECTION 2. LEGISLATIVE FINDINGS AND PURPOSE.

26 (a) Legislative Findings. The General Assembly finds that:

27 (1) The supply of electricity has previously been regulated;
28 however, recent changes in the energy marketplace, technology, and federal law
29 have created an opportunity for increased competition in the electric
30 generation industry;

31 (2) Increased competition in the generation and sale of
32 electricity is in the best interest of the citizens of this state;

33 (3) Restructuring of the electric utility industry to provide
34 greater competition is a national trend and the State of Arkansas must
35 aggressively pursue restructuring and increased consumer choice in order to
36 provide electric generation service at the lowest and most competitive rates;

1 (4) Effective competition must be assured in a restructured
2 electric utility industry; and

3 (5) Creation of an Independent Transmission Entity is fundamental
4 to equal open access in a restructured environment and effective competition
5 cannot be achieved without an Independent Transmission Entity.

6 (b) Purpose. The purpose of this Act is to restructure the electric
7 utility industry in Arkansas and provide Consumer choice in the sale of
8 electricity at Retail while:

9 (1) Protecting the Consumer from, among other things,
10 unauthorized switching of service and other unfair marketing and sales
11 practices, and decreased service, reliability and safety in the delivery of
12 electricity;

13 (2) Preventing duplication of the existing electricity delivery
14 infrastructure and unfair cost shifting to residential, small business and
15 rural Consumers by maintaining Certificated Areas;

16 (3) Maintaining open and equitable access to the high-voltage
17 transmission system for all Electricity Providers; and

18 (4) Allowing recovery of reasonable Stranded Costs.

19
20 SECTION 3. DEFINITIONS. As used in this Act, unless the context
21 otherwise requires:

22 (a) "Affiliate" means any Person which controls, is controlled by or
23 which is under common control with another Person.

24 (b) "Allocated Territory" means the geographic area within which an
25 Electric Utility, Municipal Utility or Electric Cooperative Corporation was
26 exclusively entitled to sell electricity at Retail prior to the Open Retail
27 Access Date.

28 (c) "Certificated Area" means that geographic area assigned to an
29 Electric Distribution Company for the provision of Electric Distribution
30 Services on and after the Open Retail Access Date pursuant to Section 9 of
31 this Act.

32 (d) "Commission" means the Arkansas Public Service Commission.

33 (e) "Current Cost of Service Study" means a newly prepared cost of
34 service study designed to support unbundled rates or an existing cost of
35 service study used to support an Electric Utility or Electric Cooperative
36 Corporation's existing rate schedules which have been filed with the

1 Commission to become effective anytime during the period beginning three (3)
2 years prior to the effective date of this Act and ending three (3) years after
3 the effective date of this Act, modified to support unbundled rates.

4 (f) "Customer" or "Consumer" means a Retail user of electricity and
5 related services.

6 (g) "Divest" means to legally transfer ownership and control to an
7 entity that is not an Affiliate.

8 (h) "Electric Cooperative Corporation" means a cooperative, nonprofit,
9 membership corporation organized pursuant to the Electric Cooperative
10 Corporation Act, or any successor to such corporation.

11 (i) "Electric Distribution Company" means an Electric Utility or an
12 Electric Cooperative Corporation which provides Electric Distribution Services
13 to Customers within a Certificated Area. The term does not include building
14 or facility owners or operators that manage solely for the benefit of the
15 owner the internal distribution system serving the building or facility and
16 that supply electric power and other related services to occupants of the
17 building or facility.

18 (j) "Electric Distribution Services" means the delivery, metering and
19 billing of electricity in a Certificated Area or Service Area for Retail
20 consumption over (1) any transmission line, regardless of voltage level, or
21 (2) distribution facilities, including substations, oil circuit reclosers,
22 regulators, meters and other facilities and equipment generally associated
23 with the distribution for Retail consumption of electricity.

24 (k) "Electric Utility" means an investor-owned utility or any other
25 Person, other than a Municipal Utility or Electric Cooperative Corporation,
26 which owns or operates in this state equipment or facilities for producing,
27 generating, transmitting, delivering or furnishing electricity for the
28 production of light, heat or power to, or for, the public for compensation.

29 (l) "Electricity Provider" means a Person that utilizes the regulated
30 transmission or distribution facilities of an Electric Distribution Company
31 and brokers, markets, aggregates, or sells electricity in this state to
32 Customers at retail or Electric Distribution Companies. The term also
33 includes Participating Municipal Utilities and Generation and Transmission
34 Electric Cooperative Corporations. The term also includes a Person that
35 produces electricity for its own use and uses the Electric Distribution
36 Services of an Electric Distribution Company to transmit or deliver such

1 electricity.

2 (m) "Generation and Transmission Electric Cooperative Corporation"
3 means an Electric Cooperative Corporation providing electricity for resale to
4 Electric Cooperative Corporations.

5 (n) "Generation Assets" includes all real estate, fixtures and
6 personal property owned, controlled, operated or managed in connection with,
7 or to facilitate, the generation of electric power.

8 (o) "Independent Transmission Entity" or "ITE" means an entity which
9 meets all of the following principles:

10 (1) An ITE's governance shall be structured in a fair and non-
11 discriminatory manner.

12 (2) An ITE and its employees shall have no financial interest in
13 the economic performance of any Electricity Provider which participates in the
14 ITE. An ITE shall adopt and enforce strict conflict of interest standards.

15 (3) An ITE shall provide open access to the transmission system
16 and all services under its control pursuant to a single, unbundled, grid-wide
17 tariff that applies to all eligible users in a non-discriminatory manner.
18 Transition and ancillary services shall be provided at single, system rates.

19 (4) An ITE shall have the primary responsibility in ensuring
20 short-term reliability of transmission grid operations. Its role in this
21 responsibility shall be well-defined and comply with applicable standards set
22 by the North American Electric Reliability Council and the regional
23 reliability council.

24 (5) An ITE shall have control over the operation of
25 interconnected transmission facilities within its region.

26 (6) An ITE shall identify constraints on the system and be able
27 to take operational actions to relieve those constraints within the trading
28 rules established by the governing body. These rules shall promote efficient
29 trading.

30 (7) An ITE shall have appropriate incentives for efficient
31 management and administration and shall procure the services needed for such
32 management and administration in an open competitive market.

33 (8) An ITE's transmission and ancillary services pricing
34 policies shall promote the efficient use of and investment in generation,
35 transmission, and consumption.

36 (9) An ITE shall make transmission system information publicly

1 available on a timely basis via an electronic information network consistent
2 with the Federal Energy Regulatory Commission's requirements.

3 (10) An ITE shall develop mechanisms to coordinate with control
4 areas.

5 (11) An ITE shall establish an alternate dispute resolution
6 process to resolve disputes in the first instance.

7 (p) "Municipal Utility" means any city, town, or improvement district
8 which, either itself, or through an agency, instrumentality or other corporate
9 entity created thereby, provides Electric Distribution Services or brokers,
10 markets, aggregates, or sells electricity to Customers.

11 (q) "Open Retail Access Date" means the date set forth in Section 4 of
12 this Act on which Consumers of electricity may purchase electricity at Retail
13 from any Electricity Provider.

14 (r) "Option Period" means the twenty-four (24) or thirty-six (36)
15 month period set forth in Section 4 of this Act during which a Consumer may
16 continue receiving electricity at a Regulated Rate.

17 (s) "Participating Municipal Utility" means a Municipal Utility that
18 elects to participate in a competitive market pursuant to Section 14 of this
19 Act.

20 (t) "Person" means any natural person, association, corporation,
21 business trust, partnership, limited liability company or any other entity, or
22 state or political subdivision thereof, agency of the federal government or
23 any body politic.

24 (u) "Premises" means lands and tenements to which electricity is
25 provided for use by a Consumer.

26 (v) "Qualifying Facility" means a cogeneration or small power
27 production facility entitled to the rights and privileges of a qualifying
28 facility under the Public Utility Regulatory Policies Act of 1978.

29 (w) "Recovery Period" means that period of time over which an Electric
30 Utility or Electric Cooperative Corporation may impose a Stranded Cost
31 Surcharge.

32 (x) "Regulated Rate" means the rate approved by the Commission at which
33 a Consumer may purchase electricity from an Electric Utility or Electric
34 Cooperative Corporation during the Option Period.

35 (y) "Retail" means the sale of electricity to a Person for that
36 Person's use and not for resale.

1 (z) "Service Area" means, for the period beginning on the effective
2 date of this Act and ending on the Open Retail Access Date, the geographic
3 area in which a Municipal Utility provided Electric Distribution Services, as
4 of March 1, 1999, without regard to subsequent annexation. Provided, however,
5 that such geographic area may be modified by judicial decree as a result of
6 litigation which is pending as of March 1, 1999. After the Open Retail Access
7 Date, 'Service Area' shall mean, as appropriate, (i) the geographic area in
8 which a Participating Municipal Utility provides Electric Distribution
9 Services, or (ii) the geographic area in which a Municipal Utility which has
10 chosen not to participate in a competitive market for electric generation
11 services provided Electric Distribution Services as of March 1, 1999, without
12 regard to subsequent annexation.

13 (aa) "Stranded Costs" means the total sum of all legitimate, verifiable
14 and unmitigable costs of an Electric Utility, Electric Cooperative Corporation
15 or Participating Municipal Utility, calculated on a system-wide basis, for
16 Generation Assets, power purchase contracts and generation fuel contracts made
17 unrecoverable as a result of the restructuring of the electric industry
18 required by this Act. Stranded Costs may not include costs or charges that
19 would not have been eligible for recovery in rates under continued rate
20 regulation.

21 (bb) "Stranded Cost Surcharge" means a charge calculated to recover the
22 Stranded Costs of an Electric Utility or Electric Cooperative Corporation.

23 (cc) "Transition Costs" means (1) those unfunded mandates by the
24 Commission for the establishment and implementation of electric consumer
25 choice educational requirements for public benefit and (2) any other prudent
26 and verifiable cost as determined or approved by the Commission or governing
27 body of a Participating Municipal Utility which is the direct result of the
28 restructuring of the electric industry required by this Act, incurred by an
29 Electric Utility, Electric Cooperative Corporation or Participating Municipal
30 Utility; provided, however, that under no circumstance shall an electric
31 utility recover as Transition Costs the costs associated with competing in the
32 generation and sale of retail electricity. Transition costs may not include
33 costs that are includable in the calculation of Stranded Costs or costs
34 incurred prior to the effective date of this Act.

35
36 SECTION 4. CONSUMER CHOICE.

1 (a) Open Retail Access Date. On and after January 1, 2002, or such
2 later date established by the Commission pursuant to Subsection 4(c) hereof,
3 any Consumer may purchase or otherwise receive electricity from any
4 Participating Municipal Utility or any Electricity Provider which has been
5 issued a certificate of authority by the Commission and which chooses to offer
6 such service to such Consumer.

7 (b) Option Period. For a period of twenty-four (24) months after the
8 Open Retail Access Date, a Consumer shall continue receiving electricity at
9 the Regulated Rate from its existing Electricity Provider unless the Consumer
10 elects at any time during the Option Period to purchase electricity from any
11 other Electricity Provider or from its existing Electricity Provider at a rate
12 other than the Regulated Rate. However, in the event a Consumer's Electricity
13 Provider has elected to recover Stranded Costs pursuant to Section 12 of this
14 Act, the Consumer shall continue receiving electricity at the Regulated Rate
15 from its existing Electricity Provider for a period of thirty-six (36) months
16 after the Open Retail Access Date unless the Consumer elects at any time
17 during the Option Period to purchase electricity from any other Electricity
18 Provider or from its existing Electricity Provider at a rate other than the
19 Regulated Rate. In no event shall Consumers receiving electricity at the
20 Regulated Rate during the Option Period be required to pay any Stranded Cost
21 Surcharge or Transition Cost rider or surcharge. Once a Consumer elects to
22 purchase electricity at a rate other than the Regulated Rate during the Option
23 Period, the Consumer may not thereafter elect to purchase electricity at the
24 Regulated Rate.

25 (c) Postponement. Notwithstanding the provisions of Subsection 4(a)
26 hereof, the Commission may delay the Open Retail Access Date for 90 days, and
27 for successive 90 day periods thereafter, but not beyond March 31, 2003, upon
28 finding that:

29 (1) Implementation of this Act would materially adversely affect
30 the reliability of the electric system in Arkansas;

31 (2) The rates to which Arkansas Consumers would be subject would
32 be materially adversely affected by implementation of this Act;

33 (3) All communications and information systems necessary for
34 implementation of this Act have not been installed;

35 (4) There is lack of reliable, open and equitable access to the
36 electric transmission system, in that all Electricity Providers have not

1 subjected their transmission facilities to control by an Independent
 2 Transmission Entity;

3 (5) Implementation of retail open access would have an immediate,
 4 irreparable, and adverse financial effect on county or municipal governments,
 5 or school districts; and

6 (6) The orderly implementation of the legislative purpose of this
 7 Act cannot be achieved.

8 (d) Assurance Against Undue Delay of Competition. To ensure
 9 competition by January 1, 2002, or as soon thereafter as practicable, the
 10 Commission is empowered, if it determines that an Electric Utility or Electric
 11 Cooperative Corporation is attempting to thwart the beginning of competition
 12 in Arkansas by the Open Retail Access Date, to take any action against such
 13 Electric Utility or Electric Cooperative Corporation as the Commission deems
 14 necessary, including but not limited to, delaying or denying approval of
 15 applications before the Commission by that Electric Utility or Electric
 16 Cooperative Corporation.

17 (e) Procedure for Commission Determination. The Commission findings
 18 under subsection (c) of this Section shall be made after a public hearing held
 19 pursuant to the Commission's rules. Notice of such hearing shall be given at
 20 least sixty (60) days but not more than ninety (90) days prior by publication
 21 in a newspaper(s) of general circulation in the State and by mail to each
 22 Electricity Provider and any other Person who, in writing to the Commission,
 23 requests such notice.

24
 25 SECTION 5. CONSUMER PROTECTION.

26 (a) Protections. To protect Consumers, the Commission shall, at a
 27 minimum, take appropriate actions to ensure that:

28 (1) A Consumer shall receive safe and reliable electricity;

29 (2) A Consumer shall receive an accurate and understandable bill;

30 (3) A Consumer shall receive uniform and nondiscriminatory
 31 treatment with regard to billing and collection practices;

32 (4) A Consumer shall not have its Electricity Provider changed
 33 without the Consumer's informed consent;

34 (5) A Consumer shall be entitled to receive electric service from
 35 a supplier as set forth in Section 10 of this Act;

36 (6) A Consumer shall receive sufficient education and information

1 to make an informed choice of Electricity Provider;

2 (7) A Consumer shall receive protection from unfair and
3 unreasonable marketing and sales practices, and from unfair and abusive
4 credit, collection and connection practices; and

5 (8) A Consumer shall have any disputes with Electricity Providers
6 arising under this Act resolved by the Commission as provided by Arkansas Code
7 § 23-3-119.

8 (b) Rules Study. (1) Prior to the Open Retail Access Date, the
9 Commission shall adopt rules appropriate for the implementation of
10 competition. (2) The Commission will, within one year following the Open
11 Retail Access Date, conduct and complete a study of and make any necessary
12 change to its rules regarding Consumer protection to ensure that the same
13 quality of electric service and all necessary Consumer protections against
14 abuses have become available in a restructured electric industry.

15
16 SECTION 6. UNAUTHORIZED SWITCHING.

17 (a) Informed Consent. No Person shall make any change in the
18 Electricity Provider for a Consumer without first obtaining the Consumer's
19 informed consent.

20 (b) Commission Rules. The Commission shall promulgate rules
21 establishing procedures to prevent unauthorized switching and shall
22 investigate any allegations of unauthorized switching. The Commission may
23 adopt criteria for various levels of informed consent applicable to different
24 classes of Consumers.

25 (c) Civil Penalties. Upon finding a violation of this Section, the
26 Commission may impose a civil penalty as provided in Section 20 of this Act.

27
28 SECTION 7. IMPLEMENTATION OF CONSUMER CHOICE.

29 (a) Unbundling. On or before January 1, 2001, each Electric Utility
30 and Electric Cooperative Corporation shall functionally unbundle its business
31 activities and keep a separate accounting for (1) Generation Assets, services
32 and rates; (2) transmission facilities, services and rates; and (3)
33 distribution facilities, services and rates. Functional unbundling shall be
34 accomplished by creation of separate divisions or departments, nonaffiliated
35 companies, separate affiliate companies owned by a common holding company or
36 through divestiture unless the Commission shall, for good cause shown, allow

1 functional unbundling by other methods. After the Open Retail Access Date,
2 each Electric Utility and Electric Cooperative Corporation shall provide
3 unbundled billing, supported by a Current Cost of Service Study, for such
4 categories of services to its Customers. The Commission shall adopt
5 appropriate codes of conduct and penalties for violation of the codes of
6 conduct as are necessary to prevent abuses based on preferential access to
7 information and other discriminatory behavior between Affiliates or
8 functionally unbundled business activities.

9 (b) Terms and Conditions. No later than one hundred eighty (180) days
10 prior to the Open Retail Access Date, the Commission shall establish just,
11 reasonable and non-discriminatory terms and conditions for open access to
12 distribution facilities owned or operated by Electric Distribution Companies.

13 (c) Access to Electric Distribution. The Commission by rule shall
14 require each Electric Distribution Company and Participating Municipal Utility
15 to allow the transfer of electricity, on and after the Open Retail Access
16 Date, from the transmission system across its distribution facilities to
17 provide service to Customers by any Electricity Provider at terms of access
18 and conditions that are just, reasonable and non-discriminatory.

19 (d) Exemption from Regulation. On and after the Open Retail Access
20 Date, the Commission shall not have the authority to set rates or charges for
21 generation services, except as expressly provided in Sections 4 and 10(b) of
22 this Act. With respect to generation facilities, Electricity Providers shall
23 be exempt from Arkansas Code Title 23, Chapter 4. After the Open Retail
24 Access Date, Electricity Providers shall no longer be required to apply for a
25 certificate of convenience and necessity for generation facilities pursuant to
26 Arkansas Code Title 23, Chapter 3, Subchapter 2; however, Electricity
27 Providers shall comply with Arkansas Code Title 23, Chapter 18, Subchapter 5,
28 as amended by this Act, regarding certificates of environmental
29 compatibility.

30
31 SECTION 8. UNIVERSAL ACCESS.

32 (a) Obligation to Connect. After the Open Retail Access Date, each
33 Electric Distribution Company shall be obligated to connect all Customers
34 within its Certificated Area and provide Electric Distribution Services to
35 those Customers on nondiscriminatory terms and conditions.

36 (b) Compensation. The Commission shall regulate the rates, terms and

1 conditions of service of Electric Distribution Companies pursuant to the then
2 existing statutory and regulatory guidelines.

3
4 SECTION 9. EXCLUSIVE RIGHT TO PROVIDE ELECTRIC DISTRIBUTION SERVICE.

5 (a) Certificate of Convenience and Necessity. As of the Open Retail
6 Access Date, all certificates of convenience and necessity previously issued
7 by the Commission granting to Electric Utilities or Electric Cooperative
8 Corporations the exclusive right to provide electric service to certain areas
9 of this State shall automatically be converted to certificates of convenience
10 and necessity granting the exclusive right to provide Electric Distribution
11 Services in those same areas and to those same Electric Utilities and Electric
12 Cooperative Corporations as were previously subject to certificates of
13 convenience and necessity.

14 (b) Subsequent Changes. Nothing herein shall prevent the Commission
15 from later granting to Electric Utilities or Electric Cooperative Corporations
16 the exclusive right to provide Electric Distribution Services to additional or
17 different areas of this State upon mutual agreement of the affected parties,
18 or upon dissolution, bankruptcy, or some other event resulting in an Electric
19 Distribution Company being unable to provide Electric Distribution Services to
20 its Customers.

21 (c) Exclusive Area. Notwithstanding any provisions of law or the terms
22 of any certificate of convenience and necessity, franchise, permit, license,
23 or other authority granted to an Electric Utility, Electric Cooperative
24 Corporation or other Person by the state or a municipality, no Electric
25 Utility, Electric Cooperative Corporation, Municipal Utility or other Person
26 shall furnish, or offer to furnish, Electric Distribution Services in any area
27 allocated by the Commission to another Electric Utility, Electric Cooperative
28 Corporation. Nothing in this subsection shall be construed to prevent or
29 limit competition in the sale of electricity.

30
31 SECTION 10. SERVICE OBLIGATION.

32 (a) Obligation to Provide Electricity. Each Electric Distribution
33 Company shall be obligated to provide electricity, and shall be the exclusive
34 provider of electricity, to Customers within its Certificated Area who have
35 not chosen a supplier of electricity, who have no other supplier of
36 electricity or whose chosen supplier and any chosen alternate supplier fail to

1 provide electricity. An Electric Distribution Company shall be obligated to
2 provide electricity to Customers with loads in excess of one thousand (1,000)
3 kilowatts whose chosen supplier and any chosen alternate supplier fail to
4 provide electricity only to the extent such electricity is available.

5 (b) Tariff Approval. Each Electric Distribution Company shall file
6 with the Commission a tariff, based on its actual cost of electricity plus
7 such other charges which are just, reasonable, nonpreferential and
8 nondiscriminatory, to be applied when the Electric Distribution Company is
9 providing electricity to those Customers who have no other supplier of
10 electricity or whose chosen supplier and any chosen alternate supplier have
11 failed to provide electricity. Such tariff shall be subject to approval by
12 the Commission.

13 (c) Rates Not Subject to Regulation. On and after the Open Retail
14 Access Date, the Commission shall not have the authority to set rates and
15 charges for electric generation service provided by Electric Distribution
16 Companies to Customers who have not chosen a supplier of electricity, except
17 as expressly provided in this Act.

18
19 SECTION 11. REMEDIES. No Electric Distribution Company shall be liable
20 for damages to a current or future Customer if the Customer's chosen
21 Electricity Provider fails to deliver electricity in accordance with the terms
22 of its contract with the Customer. This provision shall not relieve an
23 Electric Distribution Company of liability arising from its own actions or
24 failure to act.

25
26 SECTION 12. STRANDED COSTS.

27 (a) General Provisions.

28 (1) Recovery. Electric Utilities or Electric Cooperative
29 Corporations may recover their Stranded Costs by means of a Stranded Cost
30 Surcharge. However, any money collected by an Electric Utility pursuant to
31 the transition cost account established by the Commission Docket No. 96-360-U
32 shall be applied against and reduce the amount of Stranded Costs before that
33 Electric Utility is entitled to recover under this Section. Any Electric
34 Utility or Electric Cooperative Corporation electing not to recover Stranded
35 Costs pursuant to this Section shall be prohibited from recovering any
36 Stranded Costs, and the Commission shall take no action to determine the

1 Stranded Costs, Stranded Cost Surcharge or Recovery Period for such Electric
2 Utility or Electric Cooperative Corporation.

3 (2) Prohibition of Unlawful Charges. No charge purporting to
4 recover Stranded Costs shall be imposed by any Electric Utility or Electric
5 Cooperative Corporation unless determined pursuant to this Section. No
6 Electric Utility or Electric Cooperative Corporation shall impose a Stranded
7 Cost Surcharge which is unjust or unreasonable or unduly preferential or
8 discriminatory.

9 (3) Mitigation. An Electric Utility or Electric Cooperative
10 Corporation seeking to recover Stranded Costs shall pursue all reasonable
11 means to reduce its potential Stranded Costs and to obtain the benefits of the
12 highest reasonably attainable value for Generation Assets and contracts,
13 including the exploration of all reasonable and lawful opportunities to reduce
14 the cost to ratepayers of contracts with Qualifying Facilities. Provided,
15 however, that nothing herein shall allow the Commission to require the
16 divestiture of any assets or contracts in order to mitigate Stranded Costs.
17 In considering an application to impose a Stranded Cost Surcharge, the
18 Commission shall determine all feasible measures by which Stranded Costs could
19 be reduced and ensure that the surcharge is reduced by the value of all such
20 measures, whether or not the Electric Utility or Electric Cooperative
21 Corporation elects to effectuate such measures.

22 (4) Collection of Stranded Costs. A Person who is a Consumer of
23 an Electricity Provider after the Open Retail Access Date and (A) whose
24 current Premises, prior to the Open Retail Access Date, were serviced by and
25 located within the Allocated Territory of an Electric Utility, Electric
26 Cooperative Corporation or (B) whose current Premises are being serviced by
27 and are located within the Allocated Territory of such an Electric Utility or
28 electric Cooperative Corporation, shall be subject to the Stranded Cost
29 Surcharge of that Electric Utility or Electric Cooperative Corporation. In
30 addition, a Consumer of an Electricity Provider after the Open Retail Access
31 Date and (C) whose current Premises, prior to the Open Retail Access Date,
32 were serviced by and located within the Allocated Territory of an Electric
33 Cooperative Corporation which purchased power from a Generation and
34 Transmission Electric Cooperative Corporation or (D) whose current Premises
35 are being serviced by and are located within the Allocated Territory of such
36 an Electric Cooperative Corporation, shall be subject to the Stranded Cost

1 Surcharge of the Generation and Transmission Electric Cooperative Corporation
2 which provided electricity to such Electric Cooperative Corporation. Any
3 Stranded Cost Surcharge shall be apportioned among Customer classes in
4 accordance with the methodologies used to allocate such costs in the
5 Commission's most recent general rate order fixing rates for such Electric
6 Utility or Electric Cooperative Corporation. Each Electric Distribution
7 Company shall collect and remit, as agent for an Electricity Provider, an
8 applicable Stranded Cost Surcharge from any Consumer which is subject to such
9 a surcharge and to which it provides Electric Distribution Services. All sums
10 collected by an Electric Distribution Company as agent for an Electricity
11 Provider shall be paid over to the Electricity Provider entitled thereto
12 within the calendar month following the month in which they were collected.

13 (5) Use. Stranded Costs recovered by an Electric Utility or
14 Electric Cooperative Corporation may only be applied to existing debt
15 obligations or internal costs. Recovered Stranded Costs may not be used to
16 acquire the assets of or to merge with another Electric Utility, Electric
17 Cooperative Corporation or Municipal Utility. An Electric Utility or Electric
18 Cooperative Corporation which receives Stranded Costs and acquires assets of
19 an Electric Distribution Company cannot receive a rate of return on those
20 distribution assets in an amount greater than the regulatory rate of return
21 based on the book value of those assets.

22 (b) Commission Regulation.

23 (1) Rules. The Commission shall promulgate such rules as may be
24 required to effectuate the recovery of Stranded Costs.

25 (2) Review. Any application for approval of Stranded Costs, a
26 Stranded Cost Surcharge or, a Recovery Period must be filed with the
27 Commission on or before such date as the Commission determines. The
28 Commission shall, after notice and hearing, enter an order on such application
29 not later than ten (10) months following the date the application is filed
30 with the Commission.

31 (3) Date Obligation Incurred. Notwithstanding any other
32 provision of this Act, the Commission may not include any costs for
33 obligations incurred on or after December 12, 1997, in the Stranded Costs of
34 an Electric Utility or Electric Cooperative Corporation.

35 (4) Approval. In the event that the Commission determines that
36 the Stranded Costs, Stranded Cost Surcharge or Recovery Period proposed by an

1 Electric Utility or Electric Cooperative Corporation is unjust, unreasonable
2 or unduly preferential or discriminatory, the Commission shall determine
3 whether Stranded Costs are recoverable and if so, fix just and reasonable
4 Stranded Costs, a Stranded Cost Surcharge and Recovery Period.

5 (c) Reevaluation. Upon finding that an event has occurred which was
6 not previously considered by the Commission in its determination of Stranded
7 Costs under this Subsection 12 and which could result in the recovery of
8 substantially insufficient or substantially excessive Stranded Costs, the
9 Commission may require the Electric Utility or Electric Cooperative
10 Corporation to reapply for approval of its Stranded Costs, Stranded Cost
11 Surcharge or Recovery Period. Any such reevaluation proceeding must be
12 initiated no later than January 1, 2005. The Commission shall enter a final
13 appealable order resolving any such reevaluation proceeding within 10 months
14 of the date of the order initiating such proceeding. No Electric Utility or
15 Electric Cooperative Corporation shall have its Stranded costs reevaluated
16 more than one time.

17 (d) Reconciliation. The Commission shall annually adjust the rate of
18 any Stranded Cost Surcharge to ensure the exact recovery of the Stranded Costs
19 determined pursuant to Subsection 12(b) or 12(c).

20
21 SECTION 13. TRANSITION COSTS.

22 (a) General Provisions. An Electric Utility or Electric Cooperative
23 Corporation shall be allowed to recover, during a period of time ending
24 thirty-six (36) months after the Open Retail Access Date, Transition Costs as
25 may be determined by the Commission through a rider or non-bypassable
26 surcharge. Transition Costs riders or surcharges will be subject to annual
27 review by the Commission and costs included therein shall be prudent,
28 reasonably known and measurable.

29 (b) Annual Adjustment. The Commission may annually adjust the level of
30 the rider or non-bypassable surcharge to ensure the recovery of
31 undercollections from the previous year and the refund of overcollections from
32 the previous year.

33
34 SECTION 14. MUNICIPAL UTILITIES.

35 (a) Option to Participate. The governing body of a Municipal Utility
36 shall have the discretion to decide when, or if, such Municipal Utility

1 becomes a Participating Municipal Utility and participates in a competitive
2 market for electric generation services. After the Open Retail Access Date,
3 Municipal Utilities may compete as they, in their sole discretion, deem
4 appropriate, by adoption of an appropriate ordinance or other local enabling
5 legislation by its governing body. A Participating Municipal Utility may not
6 thereafter rescind its determination to participate. A Participating
7 Municipal Utility shall have the exclusive right to provide Electric
8 Distribution Services in its Service Area.

9 (b) Service Area. A Municipal Utility, whether or not it participates
10 in a competitive market for electric generations services, is prohibited from
11 providing Electric Distribution Services to Customers outside its Service
12 Area. Notwithstanding the foregoing, Municipal Utilities may contract with an
13 Electric Distribution Company for the Municipal Utility to provide Electric
14 Distribution Services within that company's Certificated Area.

15 (c) Exclusive Provider. A Municipal Utility that has not elected to
16 participate in a competitive market may prohibit Electricity Providers from
17 serving Customers within its Service Area and shall not broker, market,
18 aggregate or sell electricity to Customers outside its Service Area.

19 (d) Exclusive Jurisdiction. In addition to rights within its authority
20 it may reserve in the local enabling legislation, the governing body of a
21 Participating Municipal Utility shall have exclusive jurisdiction:

22 (1) To set terms of access, conditions, and rates applicable to
23 services provided by the Participating Municipal Utility, including Electric
24 Distribution Services and transmission service, which must be reasonable and
25 non-discriminatory;

26 (2) To determine whether to unbundle any energy-related
27 activities, and if so, how;

28 (3) To determine the amount of its Stranded Costs and Transition
29 Costs;

30 (4) To recover its Stranded Costs and Transition Costs over an
31 appropriate period of time through a surcharge applicable to all existing or
32 future Customers within its Service Area;

33 (5) To determine the extent to which it will continue to provide
34 various Customer services at the distribution level or accept such services
35 from other providers;

36 (6) To plan, manage, and engineer its electric systems in

1 accordance with good utility practice;

2 (7) To establish and enforce service quality standards and
3 safeguards designed to protect Customers not inconsistent with other
4 provisions in this Act;

5 (8) To determine any other utility matters that it believes should
6 be included;

7 (9) To make any other decisions affecting the Municipal Utility's
8 participation in competition; and

9 (10) To implement appropriate advertising and promotional
10 practices not inconsistent with other provisions of this Act.

11 (e) Accounting Method. The local enabling legislation must require that
12 a Participating Municipal Utility adopt an accounting method which allows
13 costs associated with generation, transmission, and Electric Distribution
14 Services to be functionally separated on a non-discriminatory basis so that
15 transmission and distribution rates after the Open Retail Access Date,
16 including appropriate margin levels, may be calculated.

17 (f) Rates for Electric Distribution Service. The local enabling
18 legislation must require that rates for Electric Distribution Services of any
19 Participating Municipal Utility shall be filed for informational purposes with
20 the appropriate city clerk and the Commission.

21 (g) Jurisdiction of the Commission. A Participating Municipal Utility
22 shall only be required to file, for information purposes, its unbundled rates
23 for Electric Distribution Services with the Commission. Thereafter, the
24 Commission shall have limited jurisdiction to hear complaints against such
25 Participating Municipal Utility for non-compliance with such filed rates for
26 Electric Distribution Services. This limited jurisdiction shall not include
27 authority to review the propriety or lawfulness of such filed rates for
28 Electric Distribution Services or other municipal operations, except to the
29 extent necessary to determine whether the Participating Municipal Utility is
30 offering non-discriminatory access to its distribution facilities. The
31 Commission shall not, except as authorized by this Section, make any effort to
32 regulate a Participating Municipal Utility's operations, limit its right to
33 service or impose any penalty on a Participating Municipal Utility.

34 (h) Applicability of this Act. Notwithstanding any other provision of
35 this Act, a Participating Municipal Utility shall not be subject to the
36 provisions of this Act, except for Section 3, Section 4(a), Section 4(c),

1 Section 4(e), Section 6(a), Section 7(c), Section 9(c), Section 14, and
2 Section 16.

3
4 SECTION 15. ELECTRICITY PROVIDERS.

5 (a) Registration. As a condition of the right to provide electricity
6 in the State on and after the Open Retail Access Date, each Electricity
7 Provider shall register with and obtain a certificate of authority from the
8 Commission, providing such information and such assurances of ability to
9 perform as the Commission shall require by rule. Upon proper registration and
10 compliance with the rules of the Commission, the Commission shall issue to the
11 Electricity Provider a certificate of authority to operate as an Electricity
12 Provider in this state. The Commission may require an Electricity Provider
13 which did not provide electricity in this State prior to the effective date of
14 this Act to post a performance bond. The Commission shall maintain a current
15 listing of Electricity Providers who have registered and been issued a
16 certificate of authority.

17 (b) Certification of Compliance. Each Electricity Provider shall
18 certify to the Commission that it or its Affiliate has subjected its
19 transmission facilities to control by an Independent Transmission Entity prior
20 to being issued a certificate of authority.

21 (c) Suspension or Revocation of Certificate of Authority. In addition
22 to other penalties under this Act or other law, the Commission may suspend or
23 revoke the certificate of authority of any Electricity Provider which is found
24 to have violated any provision of this Act, any other state law or any rule of
25 the Commission.

26 (d) Injunction. The Commission shall have the right, in the chancery
27 court of any jurisdiction in which an Electricity Provider operates, to seek
28 an injunction, upon affidavit and without bond, restraining and prohibiting
29 the Electricity Provider from continued violation of any provision of this
30 Act.

31 (e) Unauthorized Providers. Any Person which provides or offers to
32 provide electricity within this State in violation of this Act shall be
33 subject to a civil penalty as provided in Section 20 hereof.

34
35
36 SECTION 16. AGGREGATION.

1 (a) Aggregators. Any Person may act as an aggregator of electricity. A
2 Customer may, but is not required to, aggregate the Customer's usage of
3 electricity with other Customers to purchase electricity.

4 (b) Public Entities. Notwithstanding any other law, a municipality,
5 political subdivision, or membership association may serve as a voluntary
6 aggregator for the Customers within its boundaries or membership. A
7 municipality or political subdivision shall provide a Customer within the
8 municipality or political subdivision the opportunity to participate in the
9 aggregation, but may not require the Customer to participate.

10
11 SECTION 17. RELIABILITY.

12 (a) Reliability Organizations. In order to assure reliability of the
13 supply of electricity in this State, all Electricity Providers shall be
14 required to comply with applicable requirements of such national and regional
15 organizations responsible for development and implementation of electric
16 reliability standards as the Commission shall designate. Each Electricity
17 Provider shall file with the Commission evidence of membership in such
18 organizations and a certificate of compliance with applicable reliability
19 requirements at such time and in such form as the Commission shall prescribe.

20 (b) Commission Regulation of Reliability. The Commission shall
21 promulgate such rules regarding Electricity Providers in this state as it
22 finds may be required to assure reliability of service to Consumers.

23
24 SECTION 18. TRANSMISSION.

25 (a) Commission Authority. To the extent not preempted by federal law,
26 the Commission shall have the authority to establish the rates, terms,
27 conditions of transmission in the State. Such authority shall include,
28 without limitation, the authority to:

- 29 (1) Establish rates for unbundled transmission service;
30 (2) Direct any Electric Utility or Electric Cooperative
31 Corporation that owns transmission facilities to modify those facilities in
32 order to relieve transmission constraints that are shown to impede the
33 development of effective competition in the State and the region; and
34 (3) Promulgate rules for interconnection to distribution and
35 transmission facilities.

36 (b) Commission Approval. No Electric Utility or Electric Cooperative

1 Corporation shall sell, lease, rent or otherwise transfer, in any manner,
2 control of transmission facilities in the State without the approval of the
3 Commission; provided, that such approval shall be required only to the extent
4 not preempted by federal law.

5 (c) Coordination and Cooperation. The Commission is hereby authorized
6 to coordinate, consult, and cooperate as it deems necessary and appropriate
7 with the regulatory commissions of other States and the United States, and
8 with any Independent Transmission Entity providing services in Arkansas, in
9 its restructuring of the electric utility industry, in the determination of
10 appropriate methods of unbundling costs, in planning to ensure adequate
11 transmission capacity for regional markets, and in the determination of the
12 appropriate method of owning and operating regional, multi-state transmission
13 grids.

14 (d) Nothing in this Section shall limit the authority of the Commission
15 to delay the Open Retail Access Date pursuant to Section 4(c)(4) of this Act.

16
17 SECTION 19. EFFECTIVE COMPETITION.

18 (a) Commission Monitoring. The Commission shall monitor the Retail
19 market to ensure effective competition in the supply of electricity to
20 Customers and shall take steps as set forth in this Section to prevent anti-
21 competitive or discriminatory conduct or the exercise of market power.

22 (b) Determination of Effective Competition. Effective competition with
23 respect to the sale of electricity shall mean, at a minimum, that an
24 individual Electricity Provider is not able to influence significantly the
25 Retail price of electricity as a result of:

26 (1) Dealing with Affiliates;

27 (2) The number of Electricity Providers;

28 (3) The size of each Electricity Provider's market share;

29 (4) The ability of other Electricity Providers to enter or exit
30 the market; and

31 (5) The Retail price and availability of comparable substitutes
32 for electricity.

33 (c) Rules. The Commission shall establish rules which define anti-
34 competitive or discriminatory conduct and the exercise of market power.

35 (d) Market Power Analysis. No later than July 1, 2001, and at such
36 later times as the Commission may direct, Electric Utilities and Generation

1 and Transmission Electric Cooperative Corporations must file with the
2 Commission market power analyses consistent with Department of Justice and
3 Federal Trade Commission standards for evaluating generation market power,
4 including but not limited to methods for defining the relevant market,
5 measuring market concentration, and assessing the existence of market power.
6 Consistent with those standards, the market power analysis shall address the
7 availability of import capability from transmission interconnections in the
8 relevant power market, and any proposed or existing contractual or other
9 mechanisms that would affect market concentration. The Electric Utility or
10 Generation and Transmission Electric Cooperative Corporation shall file such
11 other studies of market power that the Commission finds are appropriate.

12 (e) Market Power Mitigation Plan. If, at any time after the Electric
13 Utility or Generation and Transmission Electric Cooperative Corporation has
14 filed its market power analysis, and upon application, complaint or its own
15 motion, after notice and hearing, the Commission determines that the Electric
16 Utility or Generation and Transmission Electric Cooperative Corporation has
17 market power, the Electric Utility or Generation and Transmission Electric
18 Cooperative Corporation shall file a market power mitigation plan that would
19 fully remedy the Commission's finding of undue market power. The Electric
20 Utility or Generation and Transmission Electric Cooperative Corporation's
21 market power mitigation plan must be filed within sixty (60) days of the
22 Commission's order finding the existence of market power. The mitigation plan
23 proposed by the Electric Utility or Generation and Transmission Electric
24 Cooperative Corporation may include, but is not limited to, price caps,
25 transitional standard offers, the auction of generation to be sold under long-
26 term power contracts, and divestiture. The mitigation plan ordered by the
27 Commission may include, but is not limited to, price caps, transitional
28 standard offers, the auction of generation to be sold under long-term power
29 contracts, divestiture of Generation Assets and the auction of the right to
30 serve Customers who have not made an affirmative selection of an Electricity
31 Provider as provided in Section 4(b) of this Act; provided that the Commission
32 shall not order divestiture unless and until it determines that other
33 available remedies will not adequately mitigate the Electric Utility or
34 Generation and Transmission Electric Cooperative Corporation's market power.
35 If the Commission determines that neither the Electric Utility or Generation
36 and Transmission Electric Cooperative Corporation's mitigation plan nor the

1 Commission's order pursuant to this Subsection adequately mitigates the
2 Electric Utility or Generation and Transmission Electric Cooperative
3 Corporation's market power, then the Commission shall refer its findings and
4 recommendations to appropriate state or federal authorities as provided in
5 this Section. A proceeding pursuant to this Subsection shall not be a
6 condition precedent to an action pursuant to state or federal antitrust or
7 consumer protection laws or regulations.

8 (f) Investigations and Remedies.

9 (1) Upon a complaint or upon its own motion, after notice and
10 hearing, the Commission may conduct an investigation of the impact on
11 effective competition in the market of actions such as, but not limited to,
12 mergers, consolidations, acquisition or disposition of assets, transmission
13 congestion or anti-competitive or discriminatory conduct.

14 (2) The Commission may require any Person to provide information,
15 including documents and testimony, in accordance with the Commission's rules.

16 (g) Referral. If the Commission has reason to believe that anti-
17 competitive or discriminatory conduct is preventing Customers in this state
18 from receiving the benefits of effective competition or determines that any
19 order pursuant to this Section is inadequate to ensure that Customers in this
20 state receive the benefits of effective competition, the Commission shall:

21 (1) Refer its findings to the Arkansas Attorney General, the
22 United States Department of Justice, the Securities and Exchange Commission,
23 the Federal Trade Commission, or the Federal Energy Regulatory Commission, as
24 appropriate; and

25 (2) Disclose any information it has obtained in the course of its
26 investigation to the agency or agencies to which it has made a referral.

27 (h) Antitrust Laws. It is intended that all state and federal
28 antitrust and consumer protection laws shall apply to Electricity Providers
29 and nothing herein shall affect the applicability of any such state or federal
30 antitrust law. A Commission investigation or proceeding pursuant to this
31 Section shall not be required prior to any Person initiating an action or
32 proceeding under state or federal anti-trust or consumer protection laws.

33
34 SECTION 20. COMMISSION RESPONSIBILITIES AND RULEMAKING.

35 (a) Rules. The Commission shall adopt rules to implement and enforce
36 the provisions of this Act.

1 (b) Jurisdiction. The Commission shall have jurisdiction over all
2 Electricity Providers in enforcing this Act.

3 (c) Discontinued Service. The Commission shall promulgate rules
4 establishing procedures as to how and when an Electricity Provider may
5 discontinue service to a Person due to the Person's nonpayment and procedures
6 relating to the reconnection.

7 (d) No Other Competitive Services. Nothing in this Act shall
8 authorize the Commission to make competitive any services other than the
9 purchase of electricity as provided in Section 4 herein.

10
11 SECTION 21. PENALTIES.

12 (a) Civil Penalties. In addition to any other action provided for
13 herein, the Commission, upon finding a violation of this Act by any Person,
14 shall have the authority to impose a civil penalty not to exceed one thousand
15 dollars (\$1,000) per violation. For purposes of this Section, each day of a
16 violation with respect to each Consumer shall constitute a separate violation.

17 (b) Judgment. Unless the penalty amount is paid within sixty (60) days
18 after the order of the Commission becomes final, the order shall constitute a
19 judgment and shall be filed and execution issued thereon in the same manner as
20 any other judgment of a court of record.

21 (c) Suspension or Revocation of Certificate of Convenience and
22 Necessity. The Commission may suspend or revoke the certificate of
23 convenience and necessity of any Electric Distribution Company which is found
24 to have violated any provision of this Act, any other state law or any rule of
25 the Commission.

26
27 SECTION 22. BI-ANNUAL REPORT TO GENERAL ASSEMBLY. Before January 1,
28 2003, and thereafter before January 1, 2005 and January 1, 2007, the
29 Commission shall report to the General Assembly on the progress of the
30 implementation of competition and restructuring in the electric industry and
31 its impact, if any, on Consumers. At a minimum, the report shall include:

32 (a) an assessment of the impact of competition on the rates and
33 availability of electric services to Customers;

34 (b) a summary of Commission action during the preceding two years with
35 respect to restructuring of the electric industry;

36 (c) a summary of complaints received from Customers relating to

1 restructuring during the preceding two years and actions taken to resolve such
2 complaints; and

3 (d) recommendations to the General Assembly for additional legislation
4 that the Commission finds appropriate to promote the public interest in a
5 competitive electric market.

6
7 SECTION 23. Title 23, Chapter 18, Subchapter 1 of the Arkansas Code of
8 1987 is in conflict with this Act and is repealed.

9 ~~23-18-101. Areas of service.~~

10 ~~Notwithstanding any provisions of law or the terms of any certificate of~~
11 ~~convenience and necessity, franchise, permit, license, or other authority~~
12 ~~granted to a public utility or electric cooperative corporation by the state~~
13 ~~or a municipality, no public utility or electric cooperative corporation shall~~
14 ~~furnish, or offer to furnish, electric service at retail and not for resale in~~
15 ~~any area allocated by the Arkansas Public Service Commission to another~~
16 ~~electric cooperative corporation or public utility.~~

17 ~~23-18-102. Agreements between rural cooperatives and other electric~~
18 ~~suppliers permitted. Nothing in this section or ___ 23-3-201, 23-18-101, 23-~~
19 ~~18-301, 23-18-308, or 23-18-331 shall be construed to prohibit or prevent a~~
20 ~~rural electric cooperative corporation and another supplier of electric~~
21 ~~service from entering into and carrying out a voluntary agreement for the~~
22 ~~exchange of facilities.~~

23 ~~23-18-103. Purchase of electricity from affiliated company.~~

24 ~~(a) As used in this section, unless the context otherwise requires:~~

25 ~~(1) "Affiliated company" means any business entity which is owned~~
26 ~~wholly or partly by an electric utility or which wholly or partly owns an~~
27 ~~electric utility, or any business entity which is owned by another business~~
28 ~~entity which wholly or partly owns an electric utility;~~

29 ~~(2) "Electric utility" means an electric utility subject to the~~
30 ~~jurisdiction of the Arkansas Public Service Commission.~~

31 ~~(b) Without the prior approval of the Arkansas Public Service~~
32 ~~Commission, no electric utility shall enter into any agreement for the~~
33 ~~purchase of electricity from an affiliated company.~~

34 ~~(c) Any agreement entered into in violation of this section shall be~~
35 ~~void.~~

36 ~~(d) The Arkansas Public Service Commission shall promulgate such~~

1 ~~regulations as are necessary to implement this section.~~

2 ~~(e) This section shall apply to agreements entered into on or after~~
3 ~~June 28, 1985.~~

4 ~~23-18-104. Construction of power-generating facilities outside the~~
5 ~~state.~~

6 ~~(a) No public utility subject to the jurisdiction of the Arkansas~~
7 ~~Public Service Commission shall commence construction of any power-generating~~
8 ~~facility to be located outside the boundaries of this state without the~~
9 ~~express written approval of the Arkansas Public Service Commission.~~

10 ~~(b) Any public utility proposing such construction shall render~~
11 ~~adequate written notice to the commission of its intent in order that the~~
12 ~~commission may conduct any germane inspection, investigation, public hearing,~~
13 ~~or take any other action deemed appropriate by the commission.~~

14 ~~(c) Failure on the part of any public utility to obtain prior approval~~
15 ~~of the commission, as established in this section, shall constitute grounds~~
16 ~~for disallowance, by the commission, of all costs and expenses associated with~~
17 ~~the construction and subsequent operation of the facility when computing the~~
18 ~~utility's cost of service for purposes of any rate-making proceedings.~~

19 ~~(d) Any electric utility which does not own in whole or part another~~
20 ~~electric utility and which is not owned in whole or part by a holding company~~
21 ~~and which derives less than twenty-five percent (25%) of its total revenues~~
22 ~~from Arkansas customers is exempt from the provisions of this section.~~

23 ~~23-18-105. Use of Arkansas-mined coal.~~

24 ~~(a) To the extent that it is technically, economically, and~~
25 ~~environmentally feasible, all electric utilities in Arkansas providing~~
26 ~~electric power for sale to consumers in Arkansas and generating electric power~~
27 ~~from coal-fired plants located in Arkansas shall burn a mixture of coal that~~
28 ~~contains a minimum of:~~

29 ~~(1) Three percent (3%) Arkansas-mined coal as calculated on a~~
30 ~~British Thermal Unit (BTU) basis from January 1, 1988, until December 31,~~
31 ~~1988;~~

32 ~~(2) Six percent (6%) Arkansas-mined coal as calculated on a~~
33 ~~British Thermal Unit (BTU) basis from January 1, 1989, until December 31,~~
34 ~~1989; and~~

35 ~~(3) Ten percent (10%) Arkansas-mined coal as calculated on a~~
36 ~~British Thermal Unit (BTU) basis each calendar year after January 1, 1990.~~

1 ~~(b)(1)(A) No electric utility shall be required to comply with this~~
2 ~~section if to do so would result in increasing the cost of electricity to its~~
3 ~~consumers over the cost incurred to serve them under existing or alternative~~
4 ~~coal purchase arrangements.~~

5 ~~(B) Types of increased costs to be considered in addition~~
6 ~~to the cost of the coal include, but are not limited to:~~

7 ~~(i) Plant modifications;~~

8 ~~(ii) Additional coal handling facilities;~~

9 ~~(iii) Additional environmental cost necessary to burn~~
10 ~~Arkansas coal; or~~

11 ~~(iv) Any other costs or penalties which may be~~
12 ~~incurred as a result of burning Arkansas coal.~~

13 ~~(2) No public utility shall be required to comply with this~~
14 ~~section if to do so would result in the utility exceeding any of its state or~~
15 ~~federal air quality emission standards or any other conditions of its~~
16 ~~environmental permits.~~

17 ~~(3) No public utility shall be required to comply with the~~
18 ~~provisions of this section if to do so would result in the utility being~~
19 ~~unable to fulfill any existing contractual commitments for the purchase of~~
20 ~~coal or result in the purchase of a quantity of Arkansas coal above the amount~~
21 ~~the utility can utilize.~~

22 ~~(c) It shall be the responsibility of the Arkansas Public Service~~
23 ~~Commission to enforce compliance with the requirements of this section.~~

24
25 SECTION 24. Arkansas Code 23-18-302(8) is repealed.

26 ~~(8) "Rural area" means any area not included within the boundaries of~~
27 ~~any incorporated or unincorporated city, town, or village having a population~~
28 ~~in excess of two thousand five hundred (2,500) inhabitants and includes both~~
29 ~~the farm and nonfarm population thereof. The determination of a rural area~~
30 ~~shall be made as of the time the Arkansas Public Service Commission or~~
31 ~~predecessor commission or Department of Public Utilities grants a certificate~~
32 ~~of convenience and necessity to a rural electric cooperative corporation~~
33 ~~organized under this subchapter. The corporation shall not be ousted from~~
34 ~~service in the rural area or deprived of the right to continue to provide~~
35 ~~electric service in the rural area subsequent to the granting of a certificate~~
36 ~~of convenience and necessity by the Arkansas Public Service Commission.~~

1
2 SECTION 25. Arkansas Code 23-18-306 is amended to read as follows:

3 "23-18-306. Purposes of cooperatives.

4 (a) Organization. Cooperative, nonprofit, membership corporations may
5 be organized under this subchapter for the purpose of ~~engaging in rural~~
6 ~~electrification by~~ any one (1) or more of the following ~~methods~~:

7 (1) The furnishing of ~~electric energy~~ electricity to persons ~~in~~
8 ~~rural areas who are not receiving central station service;~~

9 (2) Assisting in the wiring of the premises of persons in rural
10 areas or the acquisition, supply, or installation of electrical or plumbing
11 equipment therein;

12 (3) The furnishing of ~~electric energy~~ electricity, wiring
13 facilities, or electrical or plumbing equipment or services to any other
14 corporation organized under this subchapter or to the members thereof.

15 (b) Powers. Once properly organized pursuant to Subsection (a)
16 hereof, a corporation may engage in any other lawful business activity,
17 directly or through one or more affiliates, which its Board of Directors
18 determines to be beneficial to its members or non-members."

19
20 SECTION 26. Arkansas Code 23-18-307(4) is amended to read as follows:

21 "(4) To generate, manufacture, purchase, acquire, ~~and accumulate,~~
22 ~~electric power and energy and to transmit, distribute, sell, furnish, and~~
23 ~~dispose of electric power and energy in areas allocated to rural electric~~
24 ~~cooperative corporations but not to customers of regulated utilities in~~
25 ~~territories allocated to or served by regulated utilities;"~~

26
27 SECTION 27. Arkansas Code 23-18-307(6) is amended to read as follows:

28 "(6) To enter into sale or interchange agreements for surplus power and
29 energy ~~only~~ with any and all other persons, ~~individual corporations~~ business
30 entities, or public bodies or agencies, ~~including any federal agency or any~~
31 ~~agency of the state or city governments or any subdivision of state, county,~~
32 ~~or city government.~~ The electric power and energy may be resold at wholesale
33 or retail and may be sold or disposed of by the other party to the agreement
34 as provided in the contract or agreement, ~~provided that the other party to any~~
35 ~~sale or interchange agreement shall covenant and agree that the surplus power~~
36 ~~and energy shall not be interchanged, consumed, or resold in territories or to~~

1 ~~customers served by regulated utilities, except that this restriction shall~~
2 ~~not apply to the United States Department of the Interior or any successor~~
3 ~~marketing agency for electric power and energy thereof subject to the~~
4 ~~provisions covered by _ 5 of the Flood Control Act of 1944; "~~

5
6 SECTION 28. Arkansas Code 23-18-307 is amended by adding the following:
7 "(23) To engage in any lawful business activity."

8
9 SECTION 29. Arkansas Code 23-18-318(a)(1) is amended to read as follows:
10 "(a)(1) All persons ~~in rural areas~~ proposed to be served by a
11 corporation, ~~who are not receiving central station service,~~ shall be eligible
12 to membership in a corporation."

13
14 SECTION 30. Arkansas Code 23-18-330 is amended to read as follows:

15 "23-18-330. Exemptions from Securities Act.

16 Whenever any corporation organized under this subchapter shall have
17 borrowed money from any federal agency, the obligations issued to secure the
18 payment of such money shall be exempt from the provisions of the ~~Securities~~
19 ~~Act, Acts 1947, No. 397, as amended [repealed], neither shall the Arkansas~~
20 Securities Act, as amended. The provisions of that act the Arkansas
21 Securities Act shall not apply to the issuance of membership certificates by
22 any corporation organized under this subchapter."

23
24 SECTION 31. Arkansas Code 23-18-331 is amended to read as follows:

25 "23-18-331. Service in incorporated areas.

26 (a)(1) The inclusion by incorporation, annexation, or otherwise of any
27 portion of a rural area, ~~as defined in this subchapter,~~ assigned to
28 corporations, within the limits of an incorporated or unincorporated city,
29 town, or village, regardless of its population, shall not in any respect
30 impair or affect the rights of the corporations under their certificates of
31 convenience and necessity to continue and extend electric service in the
32 included areas.

33 (2) Notwithstanding any other provisions of law, the corporations shall
34 be entitled to continue and extend service therein under the same terms and
35 conditions as those contained in the franchise or indeterminate permit of any
36 other supplier of electric service in the city, town, or village the same as

1 though it were a party to the franchise or indeterminate permit.

2 (b)(1) A ~~rural electric cooperative~~ corporation which serves an area
3 within the limits of any municipality under the terms of this subchapter shall
4 as to that area be subject in all respects to the jurisdiction of the Arkansas
5 Public Service Commission to the same extent and in the same manner as a
6 ~~commercial electric utility serving within the municipality it is subject to~~
7 such jurisdiction in areas outside the limits of municipalities.

8 (2) Any such city, town, or village shall have the same authority to
9 impose taxes, charges, or fees in respect to the business of a corporation
10 conducted within the corporate limits of such city, town, or village as it has
11 in respect to business conducted by other suppliers of electric service.

12 ~~(c) Where a corporation continues and extends its electric service in~~
13 ~~areas which are so included within the limits of a city, town, or village~~
14 ~~which is also receiving electric service at retail from another supplier of~~
15 ~~the service, the retail rates charged by a corporation to its various classes~~
16 ~~of consumers shall be comparable to those charges by such other supplier for~~
17 ~~comparable retail service to comparable classes of consumers.~~

18 ~~(d) Nothing in this section shall in any manner restrict or impair the~~
19 ~~right of any municipality to acquire, construct, expand, maintain, or operate~~
20 ~~any electric generation, transmission, or distribution facilities within the~~
21 ~~corporate limits of the city, town, or village in Arkansas as such limits may~~
22 ~~now exist or as such limits may exist upon the extension or expansion of the~~
23 ~~city limits of the city, town, or village."~~

24
25 SECTION 32. Certain portions of the following laws, to the extent they
26 apply to the sale of electricity or the regulation of Electricity Providers,
27 are in conflict with this Act and such portions are hereby repealed: Arkansas
28 Code 23-2-304; Arkansas Code 23-2-306; Arkansas Code 23-2-307; Arkansas Code
29 23-2-314; Arkansas Code 23-3-101; Arkansas Code 23-3-102; Arkansas Code 23-3-
30 103; Arkansas Code 23-3-104; Arkansas Code 23-3-105; Arkansas Code 23-3-106;
31 Arkansas Code 23-3-114; Arkansas Code 23-3-117; Arkansas Code 23-3-118;
32 Arkansas Code Title 23, Chapter 3, Subchapter 4; Arkansas Code Title 23,
33 Chapter 4, Subchapters 1, 2, 4, and 5; and Arkansas Code 23-18-308.

34
35 SECTION 33. All provisions of this act of a general and permanent
36 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

2

3 SECTION 34. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

8

9 SECTION 35. All laws and parts of laws in conflict with this act are
10 hereby repealed.

11

/s/ Ross