



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: December 2, 1999

TO: INTERESTED LEGISLATORS

FROM: John Stolzenberg, Staff Scientist

SUBJECT: Text of New Law on Electric Utility Regulation--The "Reliability 2000" Legislation (Part of 1999 Wisconsin Act 9)

The attachment to this memorandum contains the text of the provisions in 1999 Wisconsin Act 9 (the 1999-2001 Biennial Budget Act), relating to public utility holding companies, electric power transmission, public benefits and other aspects of electric utility regulation. These provisions are commonly referred to as the "Reliability 2000" legislation. The new law took effect on October 29, 1999.

Legislative Council Staff Information Memorandum 99-6, *New Law on Electric Utility Regulation--The "Reliability 2000" Legislation (Part of 1999 Wisconsin Act 9)* (December 2, 1999) contains a description of all of the provisions in the new law. Information Memorandum 99-6, this memorandum and a memorandum to Interested Legislators that provides an overview of the new law are available in electronic format at www.legis.state.wi.us/lc via links through "Selected Publications" to "Legislative Enactments."

Mark Kunkel, Attorney, and Caroline Haugen, Word Processing Supervisor, Legislative Reference Bureau, assisted in the preparation of the attachment.

JES:ksm;jal

Attachment

“Reliability 2000” Legislation--Excerpt From 1999 Wisconsin Act 9

SECTION 28at. 15.107 (17) of the statutes is created to read:

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

- (a) Two members appointed by the governor.
- (b) Two members appointed by the senate majority leader.
- (c) One member appointed by the senate minority leader.
- (d) Two members appointed by the speaker of the assembly.
- (e) One member appointed by the assembly minority leader.
- (f) One member appointed by the secretary of natural resources.
- (g) One member appointed by the secretary of administration.
- (h) One member appointed by the chairperson of the public service commission.

SECTION 109m. 16.957 of the statutes is created to read:

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

- (bm) “Commission” means the public service commission.
- (c) “Commitment to community program” means a program by a municipal utility or retail electric cooperative for low-income assistance or an energy conservation program by a municipal utility or retail electric cooperative.
- (cm) “Council” means the council on utility public benefits created under s. 15.107 (17).
- (d) “Customer application of renewable resources” means the generation of electricity from renewable resources that takes place on the premises of a customer or member of an electric provider.
- (e) “Division of housing” means ~~the division of housing in~~ the department.
- (f) “Electric provider” means an electric utility or retail electric cooperative.
- (g) “Electric utility” means a public utility that owns or operates a retail electric distribution system.
- (h) “Energy conservation program” means a program for reducing the demand for natural gas or electricity or improving the efficiency of its use during any period.
- (i) “Fiscal year” has the meaning given in s. 655.001 (6).
- (k) “Local unit of government” means the governing body of any county, city, town, village or county utility district or the elected tribal governing body of a federally recognized American Indian tribe or band.

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

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

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

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

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

1m. The amount of the portion of the public benefits fee for fiscal year 1999-2000 that is specified in sub. (4) (c) 1. The amount specified in this subdivision shall not be subject to the reduction under 1999 Wisconsin Act ... (this act), section 9101 (1zv) (a).

2. The total amount expended by utilities under s. 196.374 related to low-income assistance.

3. Fifty percent of the amount of public benefits fees that municipal utilities and retail electric cooperatives are required to charge under sub. (5) (a) in fiscal year 1999-2000. The amount specified in this subdivision shall not be subject to the reduction under 1999 Wisconsin Act ... (this act), section 9101 (1zv) (c).

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

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

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

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

(s) “Retail capacity” means the total amount of electricity that an electric provider is capable of delivering to its retail customers or members and that is supplied by electric generating facilities owned or operated by the electric provider or any other person. “Retail capac-

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

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

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

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

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

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

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

(a) *Low-income programs.* After holding a hearing, establish programs to be administered by the department ~~through the division of housing~~ for awarding grants from the appropriation under s. 20.505 (10) (r) to provide low-income assistance. In each fiscal year, the amount awarded under this paragraph shall be sufficient to ensure that an amount equal to 47% of the sum of the following is spent for weatherization and other energy conservation services:

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

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

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

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

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

a. Proposals for providing energy conservation or efficiency services. In awarding grants under this subd. 1. a., the department shall give priority to proposals directed at the sectors of energy conservation or efficiency markets that are least competitive and at promoting environmental protection, electric system reliability or rural economic development. In each fiscal year,

1.75% of the appropriation under s. 20.505 (10) (s) shall be awarded in grants for research and development proposals regarding the environmental impacts of the electric industry.

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

2. For each fiscal year after fiscal year 2003–04, determine whether to continue, discontinue or reduce any of the programs established under subd. 1. and determine the total amount necessary to fund the programs that the department determines to continue or reduce under this subdivision. The department shall notify the commission if the department determines under this subdivision to reduce funding by an amount that is greater than the portion of the public benefits fee specified in sub. (4) (c) 2. The notice shall specify the portion of the reduction that exceeds the amount of public benefits fees specified in sub. (4) (c) 2.

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

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

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

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

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

4. Requirements for electric utilities to allow customers to include voluntary contributions to assist in funding a program established under par. (a) or (b) 1. with bill payments for electric service. The rules may require an electric utility to provide a space on an electric bill in which a customer may indicate the amount of a voluntary contribution and the customer’s preference regarding whether a contribution should be used for a program established under par. (a) or (b) 1. a. or b. The rules shall establish requirements and procedures for electric utilities to pay to the department any voluntary

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contributions included with bill payments and to report to the department customer preferences regarding use of the contributions. The department shall deposit all contributions received under this paragraph in the utility public benefits fund.

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

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

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

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

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

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

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

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

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

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

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

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

an electric provider, wholesale electric supplier or affiliate.

(4) **ELECTRIC UTILITIES.** (a) *Requirement to charge public benefits fees.* Each electric utility, except for a municipal utility, shall charge each customer a public benefits fee in an amount established in rules promulgated by the department under par. (b). An electric utility, except for a municipal utility, shall collect and pay the fees to the department in accordance with the rules promulgated under par. (b). The public benefits fees collected by an electric utility shall be considered trust funds of the department and not income of the electric utility.

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

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

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

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

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

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

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

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

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

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

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

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

(5) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. (a) *Requirement to charge public benefits fees.* Each retail electric cooperative and municipal utility shall charge a monthly public benefits fee to each customer or member in an amount that is sufficient for the retail electric cooperative or municipal utility to collect an annual average of \$16 per meter. A retail electric cooperative or municipal utility may determine the amount that a particular class of customers or members is required to pay under this paragraph and may charge different fees to different classes of customers or members.

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

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

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

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

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

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

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

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

b. Spend 50% of the public benefits fees that it charges under par. (a) on energy conservation programs.

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

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

b. Spend 50% of the public benefits fees that it charges under par. (a) on programs for low-income assistance.

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

a. Pay 50% of the public benefits fees that it charges under par. (a) on programs for low-income assistance.

b. Spend 50% of the public benefits fees that it charges under par. (a) on energy conservation programs.

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

1. Include an amount equal to the product of the municipal utility’s or retail electric cooperative’s

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wholesale supply percentage and the amount that the wholesale supplier has spent on low-income assistance in a fiscal year in calculating the amount that the municipal utility or retail electric cooperative has spent on low-income assistance in that fiscal year under par. (d) 2. b. or 3. a.

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

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

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

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

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

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

SECTION 109no. 16.958 of the statutes is created to read:

16.958 Air quality improvement program. (1) In this section:

(a) “Eligible electric provider” means a generator public utility or a generator electric cooperative that provides electric service to customers or members in the midcontinent area of this state.

(b) “Generator electric cooperative” means an electric cooperative, as defined in s. 76.48 (1g) (c), that generates electricity.

(c) “Generator public utility” means a public utility, as defined in s. 196.01 (5), that generates electricity.

(d) “Initial compliance date” means the date specified in a notice by the department of natural resources under s. 285.48 (2) by which electric generating facilities in the midcontinent area of this state are required to

comply with initial nitrogen oxide emission reduction requirements.

(e) “Midcontinent area” means the geographic area served by the Mid-Continent Area Power Pool reliability council of the North American Electric Reliability Council.

(2) If the department of natural resources makes a notification to the department of administration under s. 285.48 (2), the department of administration shall do each of the following:

(a) In each fiscal year of the 10-year period that commences on July 1 of the fiscal year ending before the initial compliance date, transfer \$2,500,000, or the lesser amount specified in a notice under s. 285.48 (3) (d) 4., from the utility public benefits fund to the air quality improvement fund.

(b) From the air quality improvement fund, award grants to eligible electric providers to be used for the purpose of complying with requirements under state or federal law to reduce nitrogen oxide emissions in the midcontinent area of this state pursuant to a state implementation plan. An eligible electric provider that is a public utility may receive no more than \$500,000 per year in grants under this paragraph.

(c) Promulgate rules for awarding grants under par. (b). The rules shall require an applicant for a grant to identify the reduction in nitrogen oxide emissions that the applicant is capable of achieving with the grant.

(3) An eligible electric provider that is awarded a grant under sub. (2) (b) may assign the grant to a 3rd party if the 3rd party uses the grant for the purpose of reducing nitrogen oxide emissions and the eligible electric provider demonstrates to the satisfaction of the department of administration that the 3rd party is capable of achieving the reduction in nitrogen oxide emissions identified in the eligible electric provider's application for the grant.

SECTION 114nm. 16.969 of the statutes is created to read:

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

(a) “Commission” means the public service commission.

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

(2) The department shall promulgate rules that require a person who is issued a certificate of public convenience and necessity by the commission under s. 196.491 (3) for a high-voltage transmission line to pay the department the following fees:

(a) An annual impact fee in an amount equal to 0.3% of the cost of the high-voltage transmission line, as

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determined by the commission under s. 196.491 (3) (gm).

(b) A one-time environmental impact fee in an amount equal to 5% of the cost of the high-voltage transmission line, as determined by the commission under s. 196.491 (3) (gm).

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

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

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

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

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

SECTION 1. 20.005 (3) of the statutes, as affected by 1999 Wisconsin Act 2, is repealed and recreated to read:

20.005 (3) APPROPRIATIONS. The following schedule sets forth all annual, biennial and sum certain continuing appropriations and anticipated expenditures from other appropriations for the programs and other purposes indicated. All appropriations are made from the general fund unless otherwise indicated. The letter abbreviations shown designating the type of appropriation apply to both fiscal years in the schedule unless otherwise indicated. [See Figure 20.005 (3) following]

Figure: 20.005 (3)

STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	1999-00	2000-01
20.155 Public service commission				
(1) REGULATION OF PUBLIC UTILITIES				
(j) Intervenor financing	PR	A	500,000	500,000
NOTE: 1999 Wisconsin Act 9 increased the dollar amount of the above appropriation by \$250,000 for each fiscal year.				
20.505 Administration, department of				
(1) SUPERVISION AND MANAGEMENT; LAND INFORMATION BOARD				
(ge) High-voltage transmission line annual impact fee distributions	PR	C	-0-	-0-
(gs) High-voltage transmission line environmental impact fee distributions	PR	C	-0-	-0-
(10) UTILITY PUBLIC BENEFITS				
(q) General program operations	SEG	A	-0-	-0-
(r) Low-income assistance grants	SEG	S	10,250,000	20,500,000
(s) Energy conservation and efficiency and renewable resource grants	SEG	S	8,250,000	16,500,000
(11) AIR QUALITY IMPROVEMENT PROGRAM				
(r) Air quality improvement grants	SEG	S	-0-	-0-

SECTION 511n. 20.505 (1) (ge) of the statutes is created to read:

20.505 (1) (ge) *High-voltage transmission line annual impact fee distributions.* All moneys received

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from the payment of fees under the rules promulgated under s. 16.969 (2) (a) for distributions to towns, villages and cities under s. 16.969 (3) (a).

SECTION 511r. 20.505 (1) (gs) of the statutes is created to read:

20.505 (1) (gs) *High-voltage transmission line environmental impact fee distributions.* All moneys received from the payment of fees under the rules promulgated under s. 16.969 (2) (b) for distributions to counties, towns, villages and cities under s. 16.969 (3) (b).

SECTION 587b. 20.505 (10) of the statutes is created to read:

20.505 (10) UTILITY PUBLIC BENEFITS. (q) *General program operations.* From the utility public benefits fund, the amounts in the schedule for general program operations.

(r) *Low-income assistance grants.* From the utility public benefits fund, a sum sufficient for low-income assistance grants under s. 16.957 (2) (a).

(s) *Energy conservation and efficiency and renewable resource grants.* From the utility public benefits fund, a sum sufficient for energy conservation and efficiency and renewable resource grants under s. 16.957 (2) (b) 1. and to make the transfer to the air quality improvement fund under s. 16.958 (2) (a).

SECTION 587d. 20.505 (11) of the statutes is created to read:

20.505 (11) AIR QUALITY IMPROVEMENT PROGRAM. (r) *Air quality improvement grants.* From the air quality improvement fund, a sum sufficient equal to all moneys transferred under s. 16.958 (2) (a) and all moneys received under s. 196.86 (2), for the purpose of making grants under s. 16.958 (2) (b).

SECTION 695g. 25.17 (1) (ai) of the statutes is created to read:

25.17 (1) (ai) Air quality improvement fund (s. 25.97);

SECTION 699m. 25.17 (1) (xm) of the statutes is created to read:

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

SECTION 718b. 25.96 of the statutes is created to read:

25.96 Utility public benefits fund. There is established a separate nonlapsible trust fund designated as the utility public benefits fund, consisting of deposits by the public service commission under s. 196.374 (3), public benefits fees received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions received under s. 16.957 (2) (c) 4. and (d) 2.

SECTION 718d. 25.97 of the statutes is created to read:

25.97 Air quality improvement fund. There is established a separate nonlapsible trust fund designated as the air quality improvement fund, consisting of all

moneys transferred under s. 16.958 (2) (a) and all moneys deposited under s. 196.86 (3).

SECTION 1809b. 76.28 (1) (d) of the statutes is amended to read:

76.28 (1) (d) “Gross revenues” for a light, heat and power company other than a qualified wholesale electric company or a transmission company means total operating revenues as reported to the public service commission except revenues for interdepartmental sales and for interdepartmental rents as reported to the public service commission and deductions from the sales and use tax under s. 77.61 (4), except that the company may subtract from revenues either the actual cost of power purchased for resale, as reported to the public service commission, by a light, heat and power company, except a municipal light, heat and power company, that purchases under federal or state approved wholesale rates more than 50% of its electric power from a person other than an affiliated interest, as defined in s. 196.52 (1), if the revenue from that purchased electric power is included in the seller’s gross revenues or the following percentages of the actual cost of power purchased for resale, as reported to the public service commission, by a light, heat and power company, except a municipal light, heat and power company that purchases more than 90% of its power and that has less than \$50,000,000 of gross revenues: 10% for the fee assessed on May 1, 1988, 30% for the fee assessed on May 1, 1989, and 50% for the fee assessed on May 1, 1990, and thereafter. For a qualified wholesale electric company, “gross revenues” means total business revenues from those businesses included under par. (e) 1. to 4. For a transmission company, “gross revenues” means total operating revenues as reported to the public service commission, except revenues for transmission service that is provided to a public utility that is subject to the license fee under sub. (2) (d), to a public utility, as defined in s. 196.01 (5), or to a cooperative association organized under ch. 185 for the purpose of providing electricity to its members only. For an electric utility, as defined in s. 16.957 (1) (g), “gross revenues” does not include public benefits fees collected by the electric utility under s. 16.957 (4) (a) or (5) (a). For a generator public utility, “gross revenues” does not include any grants awarded to the generator public utility under s. 16.958 (2) (b). For a wholesale supplier, as defined in s. 16.957 (1) (w), “gross revenues” does not include any public benefits fees that are received from a municipal utility or retail electric cooperative or under a joint program established under s. 16.957 (5) (f). For a municipal utility, “gross revenues” does not include public benefits fees received by the municipal utility from a municipal utility or retail electric cooperative under a joint program established under s. 16.957 (5) (f).

SECTION 1809f. 76.28 (1) (e) (intro.) of the statutes is amended to read:

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

SECTION 1809g. 76.28 (1) (e) 5. of the statutes is created to read:

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

SECTION 1809h. 76.28 (1) (eg) of the statutes is created to read:

76.28 (1) (eg) “Municipal utility” has the meaning given in s. 16.957 (1) (q).

SECTION 1809j. 76.28 (1) (gr) of the statutes is created to read:

76.28 (1) (gr) “Retail electric cooperative” has the meaning given in s. 16.957 (1) (t).

SECTION 1809no. 76.28 (1) (j) of the statutes is created to read:

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

SECTION 1809s. 76.28 (2) (c) (intro.) of the statutes is amended to read:

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

SECTION 1809w. 76.28 (2) (d) of the statutes is amended to read:

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

SECTION 1809y. 76.28 (2) (e) of the statutes is created to read:

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

SECTION 1809zm. 76.48 (1g) (d) of the statutes is amended to read:

76.48 (1g) (d) “Gross revenues” means total operating revenues, except revenues for interdepartmental sales and for interdepartmental rents, less deductions from the sales and use tax under s. 77.61 (4) and, in respect to any electric cooperative that purchases more than 50% of the power it sells, less the actual cost of

power purchased for resale by an electric cooperative, if the revenue from that purchased electric power is included in the seller’s gross revenues or if the electric cooperative purchased more than 50% of the power it sold in the year prior to January 1, 1988, from a seller located outside this state. For an electric cooperative, “gross revenues” does not include grants awarded to the electric cooperative under s. 16.958 (2) (b). For a retail electric cooperative, “gross revenues” does not include public benefits fees collected by the retail electric cooperative under s. 16.957 (5) (a), public benefits fees received by the retail electric cooperative from a retail electric cooperative or municipal utility under a joint program established under s. 16.957 (5) (f). For a wholesale supplier, as defined in s. 16.957 (1) (w), “gross revenues” does not include any public benefits fees that are received from a municipal utility, as defined in s. 16.957 (1) (q), or retail electric cooperative or under a joint program established under s. 16.957 (5) (f).

SECTION 1809zo. 76.48 (1g) (dm) of the statutes is created to read:

76.48 (1g) (dm) “Municipal utility” has the meaning given in s. 16.957 (1) (q).

SECTION 1809zp. 76.48 (1g) (fm) of the statutes is created to read:

76.48 (1g) (fm) “Retail electric cooperative” has the meaning given in s. 16.957 (1) (t).

SECTION 1810gm. 77.25 (21) of the statutes is created to read:

77.25 (21) Of transmission facilities or land rights to the transmission company, as defined in s. 196.485 (1) (ge), under s. 196.485 (5) (b) or (c) or (6) (a) 1. in exchange for securities, as defined in s. 196.485 (1) (fe).

SECTION 1812Lmr. 77.51 (14g) (fm) of the statutes is created to read:

77.51 (14g) (fm) The transfer of transmission facilities, as defined in s. 196.485 (1) (h), to a transmission company, as defined in s. 196.485 (1) (ge), after the organizational start-up date, as defined in s. 196.485 (1) (dv), of such company in exchange for securities, as defined in s. 196.485 (1) (fe);

SECTION 1813v. 77.54 (44) of the statutes is created to read:

77.54 (44) The gross receipts from the collection of public benefits fees that are charged under s. 16.957 (4) (a) or (5) (a).

SECTION 2310c. 196.025 of the statutes is renumbered 196.025 (1).

SECTION 2310g. 196.025 (2) of the statutes is created to read:

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

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

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

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

SECTION 2310L. 196.025 (3) of the statutes is created to read:

196.025 (3) The commission shall promulgate rules establishing requirements and procedures for electric utilities, as defined under s. 196.491 (1) (d), to file reports with the commission, on a frequency that the commission determines is reasonably necessary, on their current reliability status, including the status of operating and planning reserves, available transmission capacity and outages of major operational units and transmission lines. A report filed under the rules promulgated under this subsection is subject to inspection and copying under s. 19.35 (1), except that the commission may withhold the report from inspection and copying for a period of time that the commission determines is reasonably necessary to prevent an adverse impact on the supply or price of energy in this state.

SECTION 2310p. 196.025 (4) of the statutes is created to read:

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

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

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

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

SECTION 2310t. 196.025 (5) of the statutes is created to read:

196.025 (5) (ag) In this subsection, “electric cooperative” means a cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing electric energy at retail or wholesale to its members only.

(ar) The commission shall contract with an expert consultant in economics to conduct a study on the poten-

tial for horizontal market power, including the horizontal market power of electric generators, to frustrate the creation of an effectively competitive retail electricity market in this state and to make recommendations on measures to eliminate such market power on a sustainable basis. The study shall include each of the following:

1. An assessment of the effect of each recommendation on public utility workers and shareholders and electric cooperative workers and members.

1m. An assessment of the effect of each recommendation on rates for each class of public utility customers and electric cooperative members.

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

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

SECTION 2312x. 196.192 of the statutes is created to read:

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

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

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

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

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

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

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

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SECTION 2334d. 196.31 (1) (intro.) of the statutes is amended to read:

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

SECTION 2334h. 196.31 (1) (a) of the statutes is amended to read:

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

SECTION 2334p. 196.374 of the statutes is repealed and recreated to read:

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

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

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

(c) “Utility” means a Class A gas or electric utility, as defined by the commission, but does not include a municipal utility, as defined in s. 16.957 (1) (q), a municipal electric company, as defined in s. 66.073 (3) (d), or a cooperative association organized under ch. 185.

(2) The commission shall determine the amount that each utility spent in 1998 on programs for each of the following:

(a) Low-income assistance, including low-income weatherization and writing off uncollectibles and arrearages.

(b) Energy conservation and efficiency.

(c) Environmental research and development.

(d) Renewable resources.

(3) In 2000, 2001 and 2002, the commission shall require each utility to spend a decreasing portion of the amount determined under sub. (2) on programs specified in sub. (2) and contribute the remaining portion of the amount to the commission for deposit in the fund. In each year after 2002, each utility shall contribute the entire amount determined under sub. (2) to the commission for deposit in the fund. The commission shall ensure in rate-making orders that a utility recovers from its ratepayers the amounts spent on programs or contributed to the fund under this subsection. The commission shall allow each utility the option of continuing to use, until January 1, 2002, the moneys that it has recovered under s. 196.374 (3), 1997 stats., to administer the programs that it has funded under s. 196.374 (1), 1997 stats. The commission may allow each utility to spend additional moneys on the programs specified in sub. (2) if the utility otherwise complies with the requirements of this section and s. 16.957 (4).

(4) If the department notifies the commission under s. 16.957 (2) (b) 2. that the department has reduced funding for energy conservation and efficiency and renewable resource programs by an amount that is greater than the portion of the public benefits fee specified in s. 16.957 (4) (c) 2., the commission shall reduce the amount that utilities are required to spend on programs or contribute to the fund under sub. (3) by the portion of the reduction that exceeds the amount of public benefits fees specified in s. 16.957 (4) (c) 2.

SECTION 2334t. 196.378 of the statutes is created to read:

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

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

(am) “Biomass cofired facility” means a renewable facility in which biomass and conventional resources are fired together.

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

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

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

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

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

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

(g) “Renewable facility” means an installed and operational electric generating facility in which elec-

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tricity is derived from a renewable resource. “Renewable facility” includes a facility the installation or operation of which is required under federal law, but does not include a facility the installation or operation of which is required under the laws of another state even if the installation or operation of the facility is also required under federal law.

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

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

- a. A fuel cell that uses, as determined by the commission, a renewable fuel.
- b. Tidal or wave action.
- c. Solar thermal electric or photovoltaic energy.
- d. Wind power.
- e. Geothermal technology.
- g. Biomass.

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

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

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

(j) “Resource” means a source of energy used to generate electric power.

(k) “Retail electric cooperative” means a cooperative association organized under ch. 185 that sells electricity at retail to its members only. For purposes of this paragraph, a cooperative association is not considered to sell electricity at retail solely on the basis of its ownership or operation of a retail electric distribution system.

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

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

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

1. By December 31, 2001, 0.5%.
2. By December 31, 2003, 0.85%.
3. By December 31, 2005, 1.2%.
4. By December 31, 2007, 1.55%.
5. By December 31, 2009, 1.9%.
6. By December 31, 2011, 2.2%.

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

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

2. The amount of electricity supplied by a biomass cofired facility that may be counted toward satisfying the requirements of par. (a) shall be an amount equal to the product of the maximum amount of electricity that the facility is capable of generating and the ratio of the energy content of the biomass fuels to the energy content of both the biomass and conventional resources.

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

4. The members of a municipal electric company, as defined in s. 66.073 (3) (d), may aggregate and allocate renewable energy among themselves.

(c) No later than April 15 annually, an electric provider shall submit a report to the department that describes the electric provider’s compliance with par.

(a). Reports under this paragraph may include certifications from wholesale suppliers regarding the sources and amounts of energy supplied to an electric provider. The department may specify the documentation that is required to be included with reports submitted under this paragraph.

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

1. Allocating the costs equally to all customers on a kilowatt-hour basis.

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

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

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

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

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

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

3. Notwithstanding subd. 1., this subsection applies to an electric provider unless the electric provider provides documentation to the commission that establishes,

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to the satisfaction of the commission, that the electric provider satisfies the requirements under subd. 1. a. or b.

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

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

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

(5) PENALTY. Any person who violates sub. (2) or any wholesale supplier who provides an electric provider with a false or misleading certification regarding the sources or amounts of energy supplied to the electric provider shall forfeit not less than \$5,000 nor more than \$500,000. Forfeitures under this subsection shall be enforced by action on behalf of the state by the attorney general. A court imposing a forfeiture under this subsection shall consider all of the following in determining the amount of the forfeiture:

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

(b) The gravity of the violation.

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

SECTION 2335ta. 196.485 (title) of the statutes is repealed and recreated to read:

196.485 (title) Transmission system requirements.

SECTION 2335tb. 196.485 (1) (am) of the statutes is created to read:

196.485 (1) (am) “Contribute a transmission facility” means to divest a person's interest in the transmission facility and to transfer ownership of the transmission facility, and associated deferred tax reserves and deferred investment tax credits to the extent permitted by law, to another person.

SECTION 2335tc. 196.485 (1) (be) of the statutes is created to read:

196.485 (1) (be) “Director” means, with respect to a transmission company organized as a corporation

under ch. 180, a member of the board of directors of the transmission company.

SECTION 2335td. 196.485 (1) (bs) of the statutes is created to read:

196.485 (1) (bs) “Electric utility” means any of the following:

1. A public utility that is involved in the generation, transmission, distribution or sale of electric energy.

2. A retail or wholesale electric cooperative.

SECTION 2335te. 196.485 (1) (dm) (intro.) of the statutes is amended to read:

196.485 (1) (dm) (intro.) “Independent transmission owner” means:

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

SECTION 2335tf. 196.485 (1) (dm) 1. of the statutes is renumbered 196.485 (1) (dm) 1m. a.

SECTION 2335tg. 196.485 (1) (dm) 2. of the statutes is created to read:

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

SECTION 2335th. 196.485 (1) (dm) 3. of the statutes is renumbered 196.485 (1) (dm) 1m. b. and amended to read:

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

SECTION 2335ti. 196.485 (1) (do) of the statutes is created to read:

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

SECTION 2335tk. 196.485 (1) (dq) of the statutes is created to read:

196.485 (1) (dq) “Manager” means, with respect to a transmission company organized as a limited liability company under ch. 183, the representatives of the security holders that are elected or appointed under sub. (3m) (c).

SECTION 2335tl. 196.485 (1) (dr) of the statutes is created to read:

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

SECTION 2335tm. 196.485 (1) (ds) of the statutes is created to read:

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

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SECTION 2335tn. 196.485 (1) (dt) of the statutes is created to read:

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

SECTION 2335to. 196.485 (1) (dv) of the statutes is created to read:

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

SECTION 2335tp. 196.485 (1) (em) of the statutes is created to read:

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

SECTION 2335tq. 196.485 (1) (fe) of the statutes is created to read:

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

SECTION 2335tr. 196.485 (1) (ge) of the statutes is created to read:

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

SECTION 2335ts. 196.485 (1) (gm) of the statutes is created to read:

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

SECTION 2335tt. 196.485 (1) (j) of the statutes is created to read:

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

SECTION 2335ttm. 196.485 (1) (k) of the statutes is created to read:

196.485 (1) (k) “Wholesale electric cooperative” means a cooperative that provides wholesale electric service to its members.

SECTION 2335tu. 196.485 (1m) of the statutes is created to read:

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

(b) After beginning operations, the transmission company shall, except for transmission service provided by an electric utility that has not transferred its transmission facilities to the transmission company, have the exclusive duty to provide transmission service in those areas in which transmission facilities have been contributed. The duty under this paragraph shall terminate on the date, as determined by the commission under sub. (2) (d), that the Midwest independent system operator begins operations.

(c) After beginning operations, the Midwest independent system operator shall, except for transmission service provided by an electric utility that has not transferred control over its transmission facilities to the Midwest independent system operator, have the exclusive duty to provide transmission service in the transmission area and shall ensure that each transmission facility in the transmission area that is under its operational control is planned, constructed, operated, maintained and controlled as part of a single transmission system.

SECTION 2335tv. 196.485 (2) (a) (intro.) of the statutes is amended to read:

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

SECTION 2335tw. 196.485 (2) (ar) of the statutes is created to read:

196.485 (2) (ar) The commission shall waive the requirement to issue an order against a transmission utility under par. (a) if the transmission utility shows, to the satisfaction of the commission, that a transfer of its transmission facilities to the Midwest independent system operator may have the effect of jeopardizing the tax-exempt status of the transmission utility or its secu-

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rities under the Internal Revenue Code. A waiver under this paragraph shall be in effect until the commission determines that the proposed transfer does not have the effect described in this paragraph.

SECTION 2335tx. 196.485 (2) (bx) of the statutes is created to read:

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

SECTION 2335tz. 196.485 (2) (d) of the statutes is created to read:

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

1. The date on which the transmission company begins operations.
2. Whether the Midwest independent system operator has begun operations and the date on which such operations have begun.

SECTION 2335tz. 196.485 (3) (bm) of the statutes is repealed.

SECTION 2335ub. 196.485 (3m) of the statutes is created to read:

196.485 (3m) TRANSMISSION COMPANY. (a) *Duties.*

1. The transmission company shall do each of the following:

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

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

c. Assume the obligations of a transmission utility that has transferred ownership of its transmission facilities to the transmission company under any agreement by the transmission utility to provide transmission service over its transmission facilities or credits for the use of transmission facilities, except that the transmission company may modify such an agreement to the extent allowed under the agreement and to the extent allowed under state or federal law.

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

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

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

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

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

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

c. Own electric generation facilities or sell, market or broker electric capacity or energy in a relevant wholesale or retail market as determined by the commission, except that, if authorized or required by the federal energy regulatory commission, the transmission company may procure or resell ancillary services obtained from 3rd parties, engage in redispatch activities that are necessary to relieve transmission constraints or operate a control area.

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

4. If the transmission charges or rates of any transmission utility in the transmission area are 10% or more below the average transmission charges or rates of the transmission utilities in the transmission area on the date, as determined by the commission, that the last public utility affiliate files a commitment with the commission under sub. (5) (a) 2., the transmission company shall, after consulting with each public utility affiliate

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that has filed a commitment under sub. (5) (a) 2., prepare a plan for phasing in a combined single zone rate for the purpose of pricing network use by users of the transmission system operated by the Midwest independent system operator and shall seek plan approval by the federal energy regulatory commission and the Midwest independent system operator. A plan under this subdivision shall phase in an average-cost price for the combined single zone in equal increments over a 5-year period, except that, under the plan, transmission service shall be provided to all users of the transmission system on a single-zone basis during the phase-in period.

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

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

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

(c) *Organization.* The operating agreement, as defined in s. 183.0102 (16), of a transmission company that is organized as a limited liability company under ch. 183 or the bylaws of a transmission company that is organized as a corporation under ch. 180 shall provide for each of the following:

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

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

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

a. Each nontransmission utility security holder that owns 10% or more of the outstanding voting securities

of the transmission company may appoint one manager or director of the transmission company for a one-year term, except that the requirements of this subd. 3. a. may be modified upon a unanimous vote of the managers or directors.

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

bg. Each nontransmission utility security holder that makes an appointment under subd. 3. a. is not allowed to make an appointment under subd. 3. b. as a member of a group of nontransmission utility security holders.

br. Each nontransmission utility security holder that makes an appointment as a member of a group under subd. 3. b. is not allowed to make an appointment under subd. 3. a.

c. Each person that receives at least 5% of the voting securities of the transmission company under sub. (6) (a) 1. or 3. may appoint one manager or director of the transmission company for a one-year term if the person continues to hold at least a 5% equity interest in the transmission company during the one-year term and if the person does not make an appointment under subd. 3. a., b. or d.

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

4. That, during the 5-year period after the organizational start-up date, no public utility affiliate that contributes transmission facility assets to the transmission company under sub. (5) (b) and no affiliate of such a public utility affiliate may increase its percentage share of the outstanding securities of the transmission company prior to any initial issuance of securities by the transmission company to any 3rd party other than a 3rd party exercising its right to purchase securities under sub. (6) (a) 3., except that this subdivision does not apply to securities that are issued by the transmission company in exchange for transmission facilities that are contributed in addition to the transmission facilities that are contributed under sub. (5) (b) and except that the requirements of this subdivision may be modified upon a unanimous vote of the managers or directors.

5. That, beginning 3 years after the organizational start-up date, any holder of 10% or more of the securities of the transmission company may require the transmission company to comply with any state or federal

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law that is necessary for the security holder to sell or transfer its shares.

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

SECTION 2335ud. 196.485 (4) (a) (intro.) of the statutes is amended to read:

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

SECTION 2335uf. 196.485 (4) (am) of the statutes is created to read:

196.485 (4) (am) Each transmission utility in the transmission area that is a public utility shall become a member of the Midwest independent system operator no later than June 30, 2000, and shall transfer operational control over its transmission facilities to the Midwest independent system operator. Each such transmission utility that has not contributed its transmission facilities to the transmission company shall elect to become part of the single zone for pricing purposes within the Midwest independent system operator and any phase-in plan prepared under sub. (3m) (a) 4.

SECTION 2335uh. 196.485 (5) of the statutes is created to read:

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

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

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

3. Files with the commission an unconditional, irrevocable and binding commitment to contribute, and to cause each entity into which it merges or consolidates or to which it transfers substantially all of its assets to contribute, any transmission facility in this state the

ownership or control of which it acquires after the effective date of this subdivision ... [revisor inserts date], and land rights, to the transmission company.

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

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

(b) *Contribution of transmission facilities.* 1. A public utility affiliate may not contribute a transmission facility to the transmission company until the commission has reviewed the terms and conditions of the transfer to determine whether the transfer satisfies the requirements of this subsection and has issued an order approving the terms and conditions of the transfer. The commission may modify the terms and conditions of the transfer and take any other action necessary to satisfy the requirements of this subsection. An order under this subdivision that approves or modifies the terms and conditions of a transfer may allow a public utility affiliate to recover in retail rates any adverse tax consequences of the transfer as a transition cost.

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

a. The structure of the transfer avoids or minimizes material adverse tax consequences to the public utility affiliate from the transfer and avoids or minimizes material adverse consequences on public utility rates that do not arise out of combining the transmission company's facilities into a single zone in the Midwest independent system operator.

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

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

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

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

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

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

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

7. Any transmission facilities that are contributed to the transmission company shall be valued at net book value determined on the basis of the regulated books of account at the time of the transfer.

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

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

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

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

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

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under this subdivision, a land right shall be valued at book value, not at market value.

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

(d) *Applicability.* Notwithstanding sub. (1) (h), and subject to any approval required under federal law, for purposes of this subsection, a facility of a public utility affiliate is a transmission facility if any of the following applies:

1. The facility is not a radial facility and the facility is designed for operation at a nominal voltage of more than 130 kilovolts.

2. The facility is not a radial facility and the facility is designed for operation at a nominal voltage of more than 50 kilovolts but not more than 130 kilovolts, unless a person has demonstrated to the commission that the facility is not a transmission facility on the basis of factors for identifying a transmission facility that are specified in the orders of the federal energy regulatory commission under 16 USC 824d and 824e.

3. The facility is a radial facility or is designed for operation at a nominal voltage of 50 kilovolts or less, and a person has demonstrated to the commission that the facility is a transmission facility on the basis of factors for identifying a transmission facility that are specified in the orders of the federal energy regulatory commission under 16 USC 824d and 824e.

SECTION 2335uj. 196.485 (6) of the statutes is created to read:

196.485 (6) ELECTRIC UTILITIES, TRANSMISSION DEPENDENT UTILITIES AND RETAIL ELECTRIC COOPERATIVES.

(a) No later than the first day of the 12th month beginning after the first public utility affiliate files a commitment under sub. (5) (a) 2.:

1. An electric utility, other than a public utility affiliate or an owner or operator of a wholesale merchant plant, as defined in s. 196.491 (1) (w), may transfer all of its transmission facilities that are specified in subd. 2. to the transmission company on the same terms and conditions as a contribution of transmission facilities and land rights by a public utility affiliate under sub. (5) (b) and (c).

2. An electric utility may transfer transmission facilities under subd. 1. if the transmission facilities are located in the geographic area that is served by the Mid-America Interconnected Network, Inc., or the Mid-Continent Area Power Pool reliability council of the North American Electric Reliability Council.

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

(b) Notwithstanding sub. (1) (h), and subject to any approval required under federal law, for purposes of this subsection, a facility of an electric utility is a transmission facility if the criteria specified in sub. (5) (d) 1., 2. or 3. are satisfied.

SECTION 2335uk. 196.485 (6m) of the statutes is created to read:

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

SECTION 2335um. 196.485 (7) of the statutes is created to read:

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

SECTION 2335uo. 196.485 (8) of the statutes is created to read:

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

SECTION 2335uq. 196.487 of the statutes is created to read:

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

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

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

(2) COMMISSION ORDER. If the commission determines that a public utility affiliate or the transmission company is not making investments in the facilities under its control that are sufficient to ensure reliable electric service, the commission shall order the public utility affiliate or transmission company to make adequate investments in its facilities that are sufficient to ensure reliable electric service. An order under this sub-

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section shall require the public utility affiliate or transmission company to provide security in an amount and form that, to the satisfaction of the commission, is sufficient to ensure that the public utility affiliate or transmission company expeditiously makes any investment that is ordered.

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

SECTION 2335wb. 196.491 (3) (d) 3r. of the statutes is created to read:

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

SECTION 2335wd. 196.491 (3) (d) 3t. of the statutes is created to read:

196.491 (3) (d) 3t. For a high-voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high-voltage transmission line provides usage, service or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high-voltage transmission line are reasonable in relation to the cost of the high-voltage transmission line.

SECTION 2335wf. 196.491 (3) (gm) of the statutes is created to read:

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

SECTION 2335wh. 196.491 (3g) of the statutes is created to read:

196.491 (3g) **FEES FOR CERTAIN HIGH-VOLTAGE TRANSMISSION LINES.** (a) A person who receives a certificate of public convenience and necessity for a high-voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more under sub. (3) shall pay the department of administration an annual impact fee as specified in the rules promulgated by the department of administration under s. 16.969 (2) (a) and shall pay the department of administration a one-time environmental impact fee as specified in the rules promulgated by the department of administration under s. 16.969 (2) (b).

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

SECTION 2335wj. 196.491 (3m) (b) 2. of the statutes is amended to read:

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

SECTION 2335wL. 196.494 (3) of the statutes is amended to read:

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

SECTION 2335wn. 196.494 (5) of the statutes is created to read:

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

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

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(b) A regional need determination for transmission facilities.

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

SECTION 2335wp. 196.52 (3) (a) of the statutes is amended to read:

196.52 (3) (a) In this subsection, “contract or arrangement” means a contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services and any contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than management, supervisory, construction, engineering, accounting, legal, financial or similar services, but “contract or arrangement” does not include a contract or arrangement under which a transmission utility, as defined in s. 196.485 (1) (i), sells or transfers securities, as defined in s. 196.485 (1) (fe), that have been issued by a transmission company, as defined in s. 196.485 (1) (ge). Except as provided under par. (b), unless and until the commission gives its written approval, any contract or arrangement is not valid or effective if the contract or arrangement is made between a public utility and an affiliated interest after June 7, 1931. Every public utility shall file with the commission a verified copy of any contract or arrangement, a verified summary of any unwritten contract or arrangement, and any contract or arrangement, written or unwritten, which was in effect on June 7, 1931. The commission shall approve a contract or arrangement made or entered into after June 7, 1931, only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. The commission may not approve any contract or arrangement unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility or of the cost to the public utility of rendering the services or of furnishing the property or service to each affiliated interest. No proof is satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

SECTION 2335ya. 196.795 (1) (g) 1. of the statutes is amended to read:

196.795 (1) (g) 1. As a beneficial owner, to take, hold or acquire 5% or more of the outstanding voting securities of a public utility, other than a transmission

company, with the unconditional power to vote those securities.

SECTION 2335yb. 196.795 (1) (g) 2. of the statutes is amended to read:

196.795 (1) (g) 2. To exchange or convert 50% or more of the outstanding voting securities of a public utility, other than a municipality or other political subdivision or a transmission company, for or into the voting securities of a company organized, created, appointed or formed by or at the direction of the public utility or of a subsidiary of such company.

SECTION 2335yc. 196.795 (1) (h) 3. of the statutes is created to read:

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

SECTION 2335yd. 196.795 (1) (p) of the statutes is created to read:

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

SECTION 2335ye. 196.795 (5) (i) 1. of the statutes is amended to read:

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

SECTION 2335yf. 196.795 (5) (p) 1., 2., 3. and 4. of the statutes are renumbered 196.795 (6m) (b) 1., 2., 3. and 4.

SECTION 2335yg. 196.795 (5) (pm) 1. (intro.) of the statutes is repealed.

SECTION 2335yh. 196.795 (5) (pm) 1. a. of the statutes is renumbered 196.795 (6m) (a) 3.

SECTION 2335yi. 196.795 (5) (pm) 1. b. of the statutes is renumbered 196.795 (6m) (a) 5.

SECTION 2335yj. 196.795 (5) (pm) 1. c. of the statutes is renumbered 196.795 (6m) (a) 6.

SECTION 2335yk. 196.795 (5) (pm) 2. of the statutes is renumbered 196.795 (6m) (c) and amended to read:

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

SECTION 2335yL. 196.795 (5) (pm) 3. of the statutes is renumbered 196.795 (6m) (d) and amended to read:

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

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SECTION 2335ym. 196.795 (6m) (title) of the statutes is created to read:

196.795 (6m) (title) ASSET CAP.

SECTION 2335yn. 196.795 (6m) (a) (intro.) of the statutes is created to read:

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

SECTION 2335yo. 196.795 (6m) (a) 1. of the statutes is created to read:

196.795 (6m) (a) 1. “Contributor public utility affiliate” means a public utility affiliate that has contributed its transmission facilities to the transmission company under s. 196.485 (5) (b).

SECTION 2335yp. 196.795 (6m) (a) 2. of the statutes is created to read:

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

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

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

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

d. Recovering or producing energy from waste materials.

e. Processing waste materials.

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

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

h. Providing an environmental engineering service.

SECTION 2335yq. 196.795 (6m) (a) 4. of the statutes is created to read:

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

SECTION 2335yr. 196.795 (6m) (b) (title) of the statutes is created to read:

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

SECTION 2335ys. 196.795 (6m) (e) of the statutes is created to read:

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

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

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

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

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

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

SECTION 2335ysm. 196.795 (7) (a) (intro.) of the statutes is amended to read:

196.795 (7) (a) (intro.) No sooner than the first day of the 36th month after the formation of a holding company and at least once every 3 years thereafter, the commission shall investigate the impact of the operation of every holding company system formed on or after November 28, 1985, on every public utility affiliate in the holding company system and shall determine whether each nonutility affiliate, except for the nonutility affiliates of a holding company that were affiliates of a holding company that was formed before November 28, 1985, does, or can reasonably be expected to do, at least one of the following:

SECTION 2335yt. 196.795 (11) (b) of the statutes is amended to read:

196.795 (11) (b) This section shall be deemed to legalize and confirm the formation, prior to November 28, 1985, of any holding company, which is not itself a public utility, and shall be deemed to legalize and confirm the operations and issuances of securities of the holding company, except that nothing in this section shall be deemed to prevent the commission from imposing reasonable terms, limitations or conditions on any holding company which are consistent with the requirements of sub. (5) ~~(pm)~~ (6m) (c) or (d) or which are consistent with and necessary to satisfy the requirements of

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sub. (5) (b) to (o) and (q) to (s) or which relate to future investments by the holding company unless the holding company owns, operates, manages or controls a telecommunications utility and does not also own, operate, manage or control a public utility which is not a telecommunications utility.

SECTION 2335yu. 196.795 (11) (c) of the statutes is created to read:

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

SECTION 2335yum. 196.796 of the statutes is created to read:

196.796 Real estate activities. (1) In this section:

(a) “Brownfields facility or site” means any abandoned, idle or underused industrial or commercial facility or site, the use, expansion or redevelopment of which is adversely affected by actual environmental contamination.

(b) 1. “Commercial construction” means the act of building any structure, or that part of any structure, that is not used as a home, residence or sleeping place by one or more persons maintaining a common household to the exclusion of all others.

2. “Commercial construction” does not include any of the following:

a. Any repair, maintenance, installation or construction of a structure owned or used by or for a public utility, or for a customer of a public utility, if the repair, maintenance, installation or construction is related to furnishing heat, light, water or power to the customer.

b. Any construction related to the evaluation, control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

c. Any construction performed in order to comply with federal, state or local environmental laws, regulations, orders or rules.

(c) “Economic development” means development that is designed to promote job growth or retention, expand the property tax base or improve the overall economic vitality of a municipality, as defined in s. 30.01 (4), or region.

(d) “Engage” means to actively participate in the daily operations or daily business decisions of an entity. “Engage” does not include taking an action necessary to protect an ownership interest in an entity.

(dg) “Entity” has the meaning given in s. 180.0103 (8).

(dr) “Financial support” includes investments, loans and grants.

(e) “Holding company system” has the meaning given in s. 196.795 (1) (i).

(f) “Improvements” means any valuable addition made to land, including excavations, gradings, foundations, structures, buildings, streets, parking lots, sidewalks, sewers, septic systems and drainage facilities. “Improvements” does not include any repair, maintenance, installation or construction of structures or facilities owned or used by or for a public utility, or by or for a customer of a public utility, if the repair, maintenance, installation or construction is related to furnishing heat, light, water or power to the customer.

(g) “Nonutility affiliate” means a subsidiary of a public utility or a company in a holding company system that is not a public utility. “Nonutility affiliate” does not include a passively held company.

(gm) “Passively held company” means an entity that satisfies each of the following:

1. Less than 50% of the ownership interest of the entity is directly or indirectly owned in any chain of successive ownership by a public utility or nonutility affiliate.

2. The entity engages in property management for a 3rd party, real estate practice, residential real estate development or residential or commercial construction.

(h) “Property management” means any activity associated with the care or maintenance of land or improvements, including business planning and budgeting, accounting, lease administration, tenant relations and retention, security, maintenance of common areas, rent collections, financial reporting, service contract administration and inspections.

(hm) “Public utility” means every corporation, company, individual or association and their lessees, trustees or receivers appointed by any court or state or federal agency, that may own, operate, manage or control all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of electricity directly to or for the public, except that “public utility” does not include any municipal utility or municipal electric company, as defined in s. 66.073 (3) (d), or any cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only.

(i) “Real estate practice” has the meaning given in s. 452.01 (6).

(j) “Residential construction” means the act of building any structure, or that part of any structure that is used as a home, residence or sleeping place by one or more persons maintaining a common household to the exclusion of all others.

(k) “Residential real estate development” means the act of dividing or subdividing any parcel of land for resi-

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dential construction or making improvements to facilitate or allow residential construction.

(L) “Third party” means any person other than a public utility or nonutility affiliate.

(2) PROHIBITED ACTIVITIES. Except as provided in sub. (4), a public utility or nonutility affiliate may not do any of the following in this state:

- (a) Engage in real estate practice.
- (b) Engage in residential real estate development.
- (c) Engage in property management for a 3rd party.
- (d) Engage in residential or commercial construction.

(3) PERMITTED ACTIVITIES. (a) Subsection (2) does not prohibit a public utility or nonutility affiliate from doing any of the following:

1. Repairing, maintaining, installing or constructing a structure that is owned or used by or for a public utility or nonutility affiliate, or for a customer of a public utility if the repair, maintenance, installation or construction is related to furnishing heat, light, water or power to the customer.

2. Engaging in construction that is specifically related to the evaluation, control or remediation of hazardous substances; solid, liquid or gaseous wastes; soils; air; or water.

3. Engaging in construction that is performed in order to comply with federal, state or local environmental laws, regulations, orders or rules.

4. Consulting or making other financial or business arrangements with one or more 3rd parties who will engage in commercial construction.

5. Consulting or making other financial or business arrangements with one or more 3rd parties who will engage in residential construction or residential real estate development, except that if a public utility or nonutility affiliate contracts for the development of more than one residential construction project or residential real estate development, the public utility or nonutility affiliate may not enter into an exclusive arrangement with a 3rd party for all such residential construction or residential real estate development.

6. Acquiring or disposing of property or interests in property if the acquisition or disposition is related to the operation of a public utility and the acquisition or disposition satisfies one of the following:

a. The acquisition or disposition is conducted under a contract with a 3rd party that is engaged in real estate practice.

b. The acquisition or disposition is conducted by an individual engaged in real estate practice or employed by a public utility.

7. Owning a passively held company.

(b) Subsection (2) does not prohibit a public utility that is not subject to the requirements of s. 196.795, or the nonutility subsidiary of such a public utility, from doing any of the following:

1. Engaging in commercial or residential real estate development or construction on property owned or acquired by the public utility or nonutility subsidiary for a public utility purpose if the total annual revenues from the development or construction do not exceed 3% of the total operating revenues of the public utility in any year.

2. Providing financial support for the purpose of economic development to 3rd parties that are engaged in an activity specified in sub. (2) (a) to (d). The public utility or nonutility subsidiary may profit directly from that activity only through receipt of profits that are incidental to the economic development project or interest earned on a loan.

(4) EXCEPTIONS. (a) A nonutility affiliate that has engaged in residential construction prior to, or is engaged in residential construction on, the effective date of this paragraph ... [revisor inserts date], may directly or indirectly own in any chain of successive ownership 50% or more of the ownership interest of an entity that hires a 3rd party to engage in residential construction or commercial construction that is incidental to residential construction, except that the nonutility affiliate may not actively participate in the daily operations or daily business decisions of the entity.

(b) A public utility or nonutility affiliate may engage in residential real estate development at a brownfields facility or site.

(5) PRIVATE CAUSE OF ACTION. Any public utility or nonutility affiliate that does, causes or permits to be done any action prohibited under this section or fails to comply with any requirement specified in this section is liable to any person injured thereby in the amount of damages sustained in consequence of the prohibited action or failure to comply.

SECTION 2335z. 196.807 of the statutes is created to read:

196.807 Energy affiliate and utility employes. (1)

DEFINITIONS. In this section:

(a) “Affiliate or utility” means a nonutility affiliate, holding company system, public utility or cooperative association organized under ch. 185.

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

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

(d) “Nonutility affiliate” has the meaning given in s. 196.795 (1) (j).

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

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

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

(fr) “Transmission utility” has the meaning given in s. 196.485 (1) (i).

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

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

(b) 1. A public utility affiliate may not sell an energy unit to a nonutility affiliate in the same holding company system unless the terms of the transfer require the nonutility affiliate to offer employment to all of the nonsupervisory employes who are employed with the energy unit immediately prior to the transfer.

2. A transmission company to which an energy unit is sold by a transmission utility shall, beginning on the expiration of the 3-year period specified in s. 196.485 (3m) (a) 1. b. or, if applicable, the expiration of any extension of such 3-year period, offer employment to the nonsupervisory employes who are employed with the energy unit immediately prior to the transfer and who are necessary for the operation and maintenance of the energy unit.

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

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

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

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

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

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

SECTION 2336mt. 196.86 of the statutes is created to read:

196.86 Assessments for air quality improvement program. (1) In this section:

(a) “Department” means the department of natural resources.

(b) “Electric public utility affiliate” means a public utility affiliate, as defined in s. 196.795 (1) (L), that sells electricity in this state.

(c) “Heat throughput ratio” means the result obtained by dividing the total heat throughput of all electric generating facilities that use fossil fuel of an individual electric public utility affiliate by the total heat throughput of all electric generating facilities that use fossil fuel of all electric public utility affiliates.

(d) “Initial compliance date” means the date specified in a notice by the department of natural resources under s. 285.48 (2) by which electric generating facilities in the midcontinent area of this state are required to comply with initial nitrogen oxide emission reduction requirements.

(e) “Midcontinent area” has the meaning given in s. 16.958 (1) (e).

(2) If the department of natural resources makes a notification to the commission under s. 285.48 (2), the commission shall assess against electric public utility affiliates a total of \$2,400,000, or a decreased amount specified in a notice by the department of natural resources under s. 285.48 (3) (d) 3., in each fiscal year of the 10-year period that commences on July 1 of the fiscal year ending before the initial compliance date. An assessment in a fiscal year against an electric public utility affiliate under this subsection shall be in amount that is proportionate to the electric public utility affiliate’s heat throughput ratio for the prior fiscal year.

(3) An electric public utility affiliate shall pay an assessment required under sub. (2) within 30 days after the commission has mailed a bill for the assessment. The bill constitutes notice of the assessment and demand of payment. Payments shall be deposited in the air quality improvement fund.

(4) Section 196.85 (3) to (8), as it applies to assessments under s. 196.85 (1) or (2), applies to assessments under this section.

SECTION 2336u. 200.01 (2) of the statutes is amended to read:

200.01 (2) “Public service corporation” means and embraces every corporation, except municipalities and other political subdivisions, which is a public utility as defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02, but shall not include a public utility corporation receiving an annual gross revenue of less than \$1,000 for the calendar year next preceding the issuance of any securities by it. “Public service corporation” includes a holding company, as defined under s. 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). “Public service corporation” does not include a telecommunications utility, as defined in s. 196.01 (10). “Public service corporation”

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does not include any other holding company unless the holding company was formed after November 28, 1985, and unless the commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate, as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do at least one of the items specified in s. 196.795 (7) (a). “Public service corporation” does not include a company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless such company also owns, operates, manages or controls a public utility which is not a telecommunications utility. “Public service corporation” does not include a transmission company, as defined in s. 196.485 (1) (ge).

SECTION 2554j. 285.48 of the statutes is created to read:

285.48 Nitrogen oxide emissions reductions. (1) DEFINITIONS. In this section:

(a) “Call” means a call to implement a state implementation plan that is issued by the federal environmental protection agency before the effective date of this paragraph ... [revisor inserts date], or after that date arising out of a call issued before that date, including a call issued after that date pursuant to a federal court order or otherwise.

(b) “Electric cooperative” has the meaning given in s. 76.48 (1g) (c).

(c) “Midcontinent area” has the meaning given in s. 16.958 (1) (e).

(d) “Northwestern county” means Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, La Crosse, Monroe, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vernon or Washburn county.

(e) “Other county” means a county that is not a northwestern county.

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

(g) “State implementation plan” means a state implementation plan for control of atmospheric ozone in another state.

(h) “Summer” means the period beginning on May 1 and ending on September 30 of each year.

(2) APPLICABILITY. This section applies if the department of natural resources, pursuant to a call, issues a state implementation plan that requires electric generating facilities in the midcontinent area of this state to comply with nitrogen oxide emission reduction requirements. If the department of natural resources issues such a plan, the department of natural resources shall notify the department of administration and the public service commission. The notice shall specify the date on which electric generating facilities in the midcontinent area of this state are required to comply with the initial nitrogen oxide emission reduction requirements.

(3) NITROGEN OXIDE EMISSIONS STANDARDS AND LIMITATIONS. (a) In establishing nitrogen oxide emission reduction requirements for the control of atmospheric ozone in another state pursuant to a call, the department may not, in a state implementation plan, by rule or through the adoption of control strategies, establish nitrogen oxide emissions standards or limitations that do any of the following:

1. Require less than 2,234 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in northwestern counties that are owned by electric cooperatives.

2. Require less than 315 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in northwestern counties that are owned by public utilities.

3. Require less than 15,157 tons, or the greater number of tons determined under par. (d) 1., in total nitrogen oxide emissions each summer from all electric generating facilities located in other counties owned by public utilities or electric cooperatives.

(b) The department shall issue emissions allowances in a number that is sufficient to allow the emissions specified in par. (a).

(c) The department may not, based on this section, require reductions of nitrogen oxide emissions that are in addition to any reductions required in a state implementation plan from any of the following:

1. Any stationary source located in this state that is not an electric generating facility owned by a public utility or electric cooperative.

2. Any mobile source.

(d) If the department of natural resources implements a state implementation plan specified in sub. (2) in a manner that requires reductions in nitrogen oxide emissions that are lower than the reductions set forth in the call published on October 27, 1998, the department of natural resources shall do each of the following:

1. Determine the amounts by which the number of tons specified in par. (a) 1., 2. and 3. shall be increased to reflect the lower reductions.

2. Take action that is necessary to relax any related emissions control requirements in a manner that reflects the lower reductions.

3. Determine the amount by which the \$2,400,000 in assessments under s. 196.86 (2) shall be decreased to reflect the lower reductions and provide notice of the decreased amount to the public service commission.

4. Determine the amount by which the \$2,500,000 that is transferred to the air quality improvement fund under s. 16.958 (2) (a) shall be decreased to reflect the lower reductions and provide notice of the decreased amount to the department of administration.

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(4) **LOW-INCOME WEATHERIZATION AND ENERGY CONSERVATION MEASURES; RENEWABLE ENERGY USES.** The department shall ensure that at least 866 tons of total annual reductions in nitrogen oxide emissions required under the state implementation plan are achieved through any of the following:

(a) The use of renewable energy, including renewable energy that is provided by electric providers for the purpose of complying with the requirements of s. 196.378 (2) (a), or renewable energy that is used under programs specified in s. 196.374 (2) (d) that are funded by expenditures under s. 196.374 (3).

(b) The implementation of low-income weatherization and energy conservation measures, including programs established under s. 16.957 (2) (a) or (b) or programs specified in s. 196.374 (2) (a) or (b) that are funded by expenditures under s. 196.374 (3).

285.49 Trading program for nitrogen oxide emissions credits. The department shall establish or authorize air contaminant sources to participate in a market-based trading program for the purchase, sale and transfer of nitrogen oxide emissions credits for use in any state implementation plan under s. 285.11 (6) that requires reductions in nitrogen oxide emissions. To the extent allowed under federal law, the department shall allow nitrogen oxide emissions reductions by any source in this state, regardless of whether the source is subject to nitrogen oxide controls under a state implementation plan, to be purchased, sold or transferred under the trading program.

SECTION 9101. Nonstatutory provisions; administration.

(1zt) **INITIAL APPOINTMENTS TO COUNCIL ON UTILITY PUBLIC BENEFITS.** Notwithstanding section 15.107 (17) (intro.) of the statutes, as created by this act, the initial members of the council on utility public benefits shall be appointed for the following terms:

(a) One of the members under section 15.107 (17) (a), (b) and (d) of the statutes, as created by this act, for terms expiring on July 1, 2001.

(b) One of the members under section 15.107 (17) (a) of the statutes, as created by this act, and the members under section 15.107 (17) (c), (e) and (f) of the statutes, as created by this act, for terms expiring on July 1, 2002.

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

(1zu) **UTILITY PUBLIC BENEFITS AND TRANSMISSION LINE RULES.**

(a) Using the procedure under section 227.24 of the statutes, the department of administration shall, ~~no later than 60 days after the effective date of this subsection,~~ promulgate the rules required under section 16.957 (4)

(b) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under that section, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not required to make a finding of emergency. Notwithstanding section 16.957 (4) (b) (intro.) of the statutes, as created by this act, the department of administration is not required to consult with the council on utility public benefits in promulgating rules under this paragraph.

(am) Using the procedure under section 227.24 of the statutes, the department of administration shall promulgate the rules required under sections 16.957 (2) (c) and 16.969 (2) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under those sections, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not required to make a finding of emergency.

(b) The department of administration shall submit in proposed form the rules required under sections 16.957 (2) (c) and (4) (b) and 16.969 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this paragraph.

(1zv) **PUBLIC BENEFITS FEES.**

(a) Notwithstanding section 16.957 (4) (c) 1. (intro.) of the statutes, as created by this act, the department of administration shall ensure that, for fiscal year 1999–2000, the portion of the public benefits fee that is specified in section 16.957 (4) (c) 1. (intro.) of the statutes, as created by this act, is reduced in proportion to the length of time that has elapsed in that fiscal year at the time that the rules specified in subsection (1zu) (a) become effective.

(b) Notwithstanding section 16.957 (4) (c) 2. of the statutes, as created by this act, the department of administration shall ensure that, for fiscal year 1999–2000, the portion of the public benefits fee that is specified in section 16.957 (4) (c) 2. of the statutes, as created by this act, is reduced in proportion to the length of time that has elapsed in that fiscal year at the time that the rules specified in subsection (1zu) (a) become effective.

(c) Notwithstanding section 16.957 (5) (a) of the statutes, as created by this act, for fiscal year 1999–2000, the annual average amount of the monthly public benefits fee that retail electric cooperatives and municipalities are required to charge to each customer or member shall be reduced in proportion to the length of time that has elapsed in that fiscal year as of the effective date of the rules promulgated under subsection (1zu) (a). Upon the request of a retail electric cooperative or municipality, the department of administration

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shall provide advice as to the amount of a reduction that is required under this paragraph.

(1zw) PHASE-IN OF WEATHERIZATION AND ENERGY CONSERVATION AWARDS. Notwithstanding section 16.957 (2) (a) (intro.) of the statutes, as created by this act, the department of administration shall do each of the following:

(a) Specify a schedule for fiscal years 1999–2000 and 2000–01 for phasing in the requirement to spend the amount specified in section 16.957 (2) (a) of the statutes, as created by this act, on weatherization and other energy conservation services.

(b) Ensure that grants under section 16.957 (2) (a) of the statutes, as created by this act, are made in accordance with the schedule specified in paragraph (a).

SECTION 9141. Nonstatutory provisions; public service commission.

(2zt) RENEWABLE RESOURCES, ENVIRONMENTAL IMPACT AND RELIABILITY STATUS RULES.

(a) Using the procedure under section 227.24 of the statutes, the public service commission shall promulgate the rules required under sections 196.025 (2) and (3) and 196.378 (3) (a) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under that section, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) and (3) of the statutes, the commission is not

required to make a finding of emergency.

(b) The public service commission shall submit in proposed form the rules required under sections 196.025 (2) and (3) and 196.378 (3) (a) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this paragraph.

SECTION 9341. Initial applicability; public service commission.

(1zt) HIGH-VOLTAGE TRANSMISSION LINES. The treatment of section 196.491 (3) (d) 3r. and 3t. of the statutes first applies to applications for certificates of public convenience and necessity that are filed with the public service commission on the effective date of this subsection.

SECTION 9343. Initial applicability; revenue.

(1zt) TRANSMISSION COMPANY LICENSE FEE. The treatment of sections 76.28 (1) (d), (e) (intro.) and 5. and (j) and (2) (c) (intro.), (d) and (e) and 196.485 (1) (ge) of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31 the treatment of sections 76.28 (1) (d), (e) (intro.) and 5. and (j) and (2) (c) (intro.), (d) and (e) of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.