

SECOND REGULAR SESSION

SENATE BILL NO. 728

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KINDER.

Read 1st time January 14, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

L2363.02I

AN ACT

To repeal sections 91.025, 393.106 and 394.312, RSMo 1994, relating to electric utility industry competition and consumer choice, and to enact in lieu thereof nineteen new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 91.025, 393.106 and 394.312, RSMo 1994, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 91.025, 394.312, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, to read as follows:

91.025. 1. As used in this section, the following terms mean:

(1) "Municipally owned or operated electric power system", a system for the distribution of electrical power and energy to the inhabitants of a municipality which is owned and operated by the municipality itself, whether operated under authority pursuant to this chapter or under a charter form of government;

(2) "Permanent service", electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;

(3) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

connected to the lines of an electrical corporation, rural electric cooperative, municipally owned or operated electric power system, or joint municipal utility commission. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once a municipally owned or operated electrical system, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo, or pursuant to a territorial agreement approved under section 394.312, RSMo. The public service commission, upon application made by a customer, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over municipally owned or operated electric systems to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such municipally owned or operated electrical system, and nothing in this section[, section 393.106, RSMo,] and section 394.315, RSMo, shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred.

[393.106. 1. As used in this section, the following terms mean:

(1) "Permanent service", electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;

(2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall

include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo, and section 394.080, RSMo, or pursuant to a territorial agreement approved under section 394.312, RSMo. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had canceled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.]

394.312. 1. Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.

2. Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality. Where the parties cannot agree, they may, by mutual consent of all parties involved, petition the public service commission to designate the boundaries of the electric service areas to be served by each party and such designations by the commission shall be binding on all such

parties. Petitions shall be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity and the commission shall be required to hold evidentiary hearings on all petitions so received. The commission shall base its final determination upon a finding that the commission's designation of electric service areas is in the public interest.

3. The provisions of sections 386.310, RSMo, [and 393.106, RSMo,] and sections 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order. Applications for commission approval shall be made and notice of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.

4. The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved. The commission may approve the application if it shall after hearing determine that approval of the territorial agreement in total is not detrimental to the public interest. Review of commission decisions under this section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

5. Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement. In the event any electrical corporation which is not a party to the territorial agreement and which is subject to the jurisdiction, control and regulation of the commission under chapters 386, RSMo, and 393, RSMo, has heretofore sought or hereafter seeks authorization from the commission to render electric service or construct, operate and maintain electric facilities within the boundaries designated in any such territorial agreement, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of any such territorial agreement and any actual rendition of retail electric service by any of the parties to such territorial agreement will not preclude the commission from granting the requested authority.

6. The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the same manner as other complaints before the commission. After hearing, if the commission determines that the territorial agreement is not in the public interest, it shall have the authority

to suspend or revoke the territorial agreement. If the commission determines that the territorial agreement is still in the public interest, such territorial agreement shall remain in full force and effect. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned utility, or to amend, modify, or otherwise limit the rights of electrical suppliers to provide service as otherwise provided by law.

7. Notwithstanding the provisions of section 386.410, RSMo, the commission shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements for approval or disapproval. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case. The fees shall be paid to the director of revenue who shall remit such payments to the state treasurer. The state treasurer shall credit such payments to the public service commission fund, or its successor fund, as established in section 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any rural electric cooperative or municipally owned utility and except as provided in this section nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical corporations or municipally owned utilities.

Section 1. As used in sections 1 to 17 of this act, unless the context clearly requires otherwise, the following terms mean:

(1) "Ancillary services", services needed to provide basic electrical services, both to support transactions between buyers and sellers of electricity and to maintain reliability of the interconnected electrical grid as defined by the Federal Energy Regulatory Commission;

(2) "Commission", the Missouri public service commission;

(3) "Electric utility or utilities", any investor-owned entity owning or operating facilities for the provision of electric service to retail consumers in Missouri, and any municipally owned utility and rural electric cooperative that elects to participate in retail competition pursuant to subsection 2 of section 8 of this act;

(4) "FERC", Federal Energy Regulatory Commission;

(5) "Functional disaggregation", the physical, operational and accounting record separation by an electric utility of its business functions into the functions of generation, transmission and distribution, and the further separation of the distribution function into the following activities: delivery of electricity from the transmission system to the consumer's meter; metering, meter reading, billing, collection of billed amounts; and sales of electricity;

(6) "Independent system operator" or "ISO", an organization regulated by the Federal Energy Regulatory Commission which plans and operates a transmission system over which it has jurisdiction and which has been approved by the FERC as an

ISO which complies with FERC criteria;

(7) "Local distribution utility" or "LDU", an entity engaging in the business of distributing electricity to retail consumers in Missouri;

(8) "Market aggregator", an entity that specializes in aggregating the loads of retail consumers. A market aggregator may enter into financial contracts for electric generation resources from retail electric providers on behalf of retail consumers. Market aggregators may be brokers, cooperatives, buying clubs, municipalities or other entities that buy or arrange for electric generation services;

(9) "Municipally owned utility", any municipally owned or operated electric power system for the distribution of electrical power and energy to the inhabitants of a municipality, whether operated under authority pursuant to chapter 91, RSMo, or under a charter form of government;

(10) "Net transition costs", the result obtained by subtracting transition benefits from transition costs;

(11) "Protected retail service territory", the physical area within which an electric utility is required to provide delivery service to retail consumers under the existing regulated monopoly structure;

(12) "Regional transmission group" or "RTG", a voluntary organization of transmission owners, transmission users and other entities approved by FERC to efficiently coordinate transmission planning, operation and use on a regional basis;

(13) "Retail consumer", the ultimate consumer of electric power, regardless of the quantity purchased;

(14) "Retail electric provider" or "REP", an entity which acquires supplies of electricity through some combination of outright ownership of generation and contracts for supplies of electricity for sale to retail consumers or aggregators;

(15) "Rural electric cooperative", any cooperative, nonprofit, membership corporation organized pursuant to chapter 394, RSMo, for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas of Missouri;

(16) "Standard offer", an open offer for service by an REP to all retail consumers who qualify for service under the terms and conditions of that offer;

(17) "Transition benefits", those costs, liabilities, regulatory assets and investments that electric utilities would not reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric service continued and that may be recovered as a result of implementation of sections 1 to 17 of this act;

(18) "Transition costs", those prudently incurred costs, liabilities, regulatory assets, and investments that electric utilities would reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric

service continued and that may not be recovered as a result of implementation of sections 1 to 17 of this act unless a specific recovery mechanism is provided. The value of transition costs shall be equal to the difference between the embedded costs of assets currently recovered through the electric utility's base rates and the asset value recoverable in a competitive market, after the electric utility has taken all reasonable measures to mitigate these costs. Transition costs shall not include the cost of investments made after August 28, 1998;

(19) "Transition period", for each utility, the period of time which begins August 28, 1998, and ends when the utility has finished collecting the portion of its net transition costs that has been approved for recovery by the commission, but in no event to end any later than August 28, 2003;

(20) "Unbundled service tariffs", separate regulated rates for transmission and local distribution delivery service derived using unbundled rates;

(21) "Unbundled services", the separate offering by the utility to its retail consumers of each service identified in the definition of functional disaggregation;

(22) "Unbungling of rates", the determination and reporting in the tariffs for each customer class of the cost of providing each service identified in the definition of functional disaggregation with all revenue-related and volume-related taxes separately identified.

Section 2. 1. No later than January 1, 2000, electric generation shall be deregulated and subject to the competitive market in accordance with the provisions of the industry restructuring plan developed by the commission.

2. The commission shall adopt and publish a plan for restructuring the Missouri electric industry, consistent with the policies and procedures established pursuant to sections 1 to 17 of this act, with the objective of having full consumer choice no later than January 1, 2000. The plan shall address appropriate steps to achieve an orderly transition to a competitive market.

3. The commission's plan shall incorporate the substance of sections 1 to 17 of this act and may include other provisions, as the commission shall deem appropriate and necessary to expedite the transition to full consumer choice, except that the plan shall implement only a market structure which will provide full direct access to the market for all consumers. The commission shall not create, encourage or condone any form of power exchange, power pool or poolco, whether voluntary or involuntary, or any other organization whose purpose is to determine, set or fix the wholesale or retail price of electricity.

4. The commission's plan shall, during the period of transition, address transition issues, including:

(1) Rate certainty;

- (2) Outstanding federal and state issues;**
- (3) Appropriate regulatory approvals; and**
- (4) Legislative intent and public comment.**

5. The commission's plan shall include a program for making retail consumers aware of their new rights and the benefits and risks of consumer choice.

Section 3. Each electric utility shall file a restructuring plan for review and comment before the commission providing for consumer choice as set forth in sections 1 to 17 of this act and establishing a protocol for functional disaggregation, unbundling of services and unbundling of rates as required by this section. The plan approved by the commission for each utility shall include:

(1) A schedule for the introduction of consumer choice for all of the consumers currently served by the electric utility;

(2) The manner in which the plan will otherwise comply with each provision of sections 1 to 17 of this act; and

(3) That during the transition period set forth by the commission for each electric utility, each electric utility shall not increase the total rate for all components of electric service or any unbundled portion of the rate, as determined by the commission for each customer class, above the rates charged to each customer class on August 28, 1998.

Section 4. All retail consumers shall be permitted to choose their supplier or suppliers of electric generation services no later than January 1, 2000, through the following means, though this list is not intended to be exhaustive:

(1) Retail consumers may elect to take service from an REP under a standard offer;

(2) Retail consumers may individually negotiate a bilateral contract with an REP;

(3) Retail consumers may choose to delegate their right to contract to a market aggregator who will negotiate directly with a REP on behalf of the consumer; and

(4) The commission shall establish procedures for the selection of REPs to serve any retail consumer who has not chosen an alternative REP on or before July 1, 2000. The procedure shall use competitive bidding processes to ensure that retail consumers receive the best prices and services. The bidding process shall be repeated at eighteen-month intervals and shall apply only to those retail consumers who, at the time of the competitive bid, have not affirmatively selected an REP. Retail consumers who begin service between bid dates, and who do not affirmatively select an REP will be assigned to the REP that won the most recent bid.

Section 5. 1. All REPs, and all suppliers of ancillary services not regulated by FERC, shall register with the commission before doing business in the

state. Registration shall involve the following:

- (1) The demonstration of applicant's technical ability to obtain and deliver electricity and provide any other proposed services;
- (2) Documentation of the financial capability of the applicant to provide the proposed services;
- (3) A description of the form of ownership; and
- (4) Other information as deemed necessary by the commission.

2. The commission shall not limit market entry for economic reasons or regulate generation prices.

Section 6. 1. The commission's plan for restructuring the electric utility industry in Missouri shall require all existing electric utilities to functionally disaggregate on or before January 1, 2000.

2. Both LDUs and other companies that are not LDUs may own transmission facilities.

3. Affiliates of electric utilities may own electric generation assets. Such affiliates may sell generation directly to a retail consumer, provided that the generation assets and services are operationally and financially separate from the electric utility.

4. Prices for unbundled generation services shall not be established by the commission, but shall be determined by competitive market forces.

5. The commission shall adopt a plan designed to permit all providers of generation services to compete equally to supply power to Missouri retail consumers and to mitigate concentrations of undue market power. If the commission determines that any electric utility possesses market power sufficient to impede competition, the commission may order appropriate mitigation measures including, but not limited to, divestiture of generation assets.

Section 7. 1. All Missouri electric utilities shall provide access to those utilities transmission and distribution facilities, ancillary services and other available services to any buyer or seller on a nondiscriminatory and comparable basis. The commission shall promote nondiscriminatory open access to the electric system for wholesale and retail transactions.

2. Electric utilities providing transmission and ancillary services shall provide unbundled retail transmission and ancillary services under their open access transmission tariffs on file at FERC, and under the open access transmission tariffs of any ISO or RTG to which they belong. The commission shall monitor jurisdictional companies providing transmission or distribution services, and shall take necessary measures to ensure that no REP has an unfair advantage in offering access to and pricing such services.

3. The commission shall adopt rules and regulations that establish standards of

conduct to govern the relationships among the various business functions conducted by electric utilities.

Section 8. 1. On January 1, 2000, all electric utilities who own or operate transmission or distribution facilities in Missouri shall have comparable and reciprocal access to the Missouri customers of other electric utilities within the state, for the purpose of providing generation services to such customers, except as stated in subsection 2 of this section.

2. Municipally owned utilities and rural electric cooperatives may elect to participate in retail competition at any time by submitting their intent in writing to the commission, or by engaging in at least one retail sale to a retail consumer located outside their protected retail service territory. Municipally owned utilities and rural electric cooperatives that elect to participate in retail competition shall be treated as electric utilities for purposes of sections 1 to 17 of this act, and section 91.025, RSMo, and section 394.315, RSMo, shall no longer apply to those municipally owned utilities and rural electric cooperatives, respectively.

3. The commission's plan shall address impacts related to the participation or lack of participation by municipally owned utilities and rural electric cooperatives on territorial agreements negotiated pursuant to section 394.312, RSMo.

4. Sections 1 to 17 of this act shall not affect the application of existing laws to municipally owned utilities and rural electric cooperatives that elect not to participate in retail competition.

Section 9. 1. The LDU shall have an obligation to connect and provide delivery service to all retail consumers within its protected retail service territory on nondiscriminatory terms and conditions.

2. Each consumer shall have the right to select their REP, and shall have nondiscriminatory access to interconnection with their LDU, which utility shall be required to deliver the electricity from the point of receipt of power to the retail consumer over the LDU's transmission and distribution facilities.

3. In the case of a residential consumer, or a consumer in any other class or subclass of consumers designated by the commission, failure by such consumer to make their own alternative arrangements for power supply and delivery shall be deemed to constitute a request for the commission to assign an REP as set forth in section 4 of this act.

Section 10. The power of eminent domain shall not be used:

(1) To deny physical access or interconnection to transmission or distribution facilities;

(2) To restrict the construction of new transmission or distribution facilities by any qualified party; or

(3) To otherwise limit competition.

Section 11. 1. To the extent that states have jurisdiction over transmission and distribution pricing, the commission shall encourage pricing mechanisms to enhance reliability, compensate transmission owners fairly, allow for the widest possible markets and relieve transmission congestion.

2. The commission shall establish just and reasonable rates for unbundled local distribution services. Such rates shall provide for costs of providing distribution services. Rates shall be based on cost of service combined with other considerations to promote efficient, safe and reliable services at the lowest possible cost.

3. Each electric utility shall file unbundled service tariffs to provide services to all eligible purchasers on a nondiscriminatory basis.

4. The commission shall have jurisdiction over all aspects of transmission rates and services not subject to the exclusive jurisdiction of the FERC.

Section 12. The amounts included in current rates for environmental, social and other mandated programs shall be unbundled from electric rates and clearly identified on all electric bills. The commission's plan shall address the need for continued collection of these amounts and, if necessary, how the amounts will be recovered in the LDU's rates.

Section 13. All electric utilities shall be subject to the jurisdiction of the commission and be regulated on the same basis including, but not limited to, regulation of rates, terms and conditions.

Section 14. 1. Following the process established by sections 1 to 17 of this act, electric utilities shall be given a reasonable opportunity to recover from retail consumers the portion of verifiable net transition costs that the commission determines is eligible for recovery. In making its determination of the portion eligible for recovery the commission shall balance the interests of retail consumers and electric utility investors. The portion eligible for recovery from retail consumers shall not exceed fifty percent of the net transition costs, except upon a showing by the electric utility that a larger portion must be recovered in order for the electric utility to maintain an investment grade bond rating. The recovery plan adopted by the commission shall yield transition charges which shall not cause the total price for electric power, including transmission and distribution services, paid by any consumer to exceed, during the recovery period, the rate per kilowatt-hour paid on August 28, 1998. Recovery mechanisms that impede competition, such as entry and exit fees, shall not be used. Nothing in this section is intended to provide any greater opportunity for electric utilities to recover their costs than is available pursuant to applicable regulation or statute on August 28, 1998.

2. (1) Net transition costs shall not include transmission and distribution assets,

and shall be reconciled to actual electricity market conditions from time to time. Transition costs shall include an offset for the excess of market value over acquisition cost of any assets, domestic or foreign, obtained or controlled by an electric utility by purchase acquisition, merger or other means within three years prior to August 28, 1998.

(2) Electric utilities shall be allowed to recover one hundred percent of the net unmitigated transition costs associated with required environmental mandates currently approved for cost recovery.

(3) Power purchase contract obligations mandated by federal statute shall continue for the duration of the contract. Costs arising pursuant to such contracts or associated with any buyout, buy-down or renegotiation of the contracts shall be eligible for recovery in transition cost recovery charges.

(4) Transition cost charges shall not be recoverable for changes in usage occurring in the normal course of business which include those resulting from changes in business cycles, termination of operations, weather, reduced production, changes in manufacturing processes, installation or expansion of new self-generation or cogeneration equipment, changes in performance of existing self-generation or cogeneration equipment, energy conservation efforts or other similar factors.

3. Electric utilities shall have the duty to take all reasonable measures to prudently, thoroughly and aggressively mitigate transition costs. Mitigation measures may include, but are not limited to:

- (1) Reduction of expenses;
- (2) Renegotiation of existing contracts;
- (3) Refinancing of existing debt;
- (4) Sale, write-off or write-down of uneconomic or surplus assets;
- (5) Buy-back of preferred and common stock;
- (6) Increases in sale volumes; and
- (7) Other measures determined by the commission.

4. (1) Each electric utility may file a recovery plan pursuant to the restructuring plan adopted by the commission. The recovery plan shall document anticipated transition costs, mitigation proposals and offsetting increases in the value of other assets. The recovery plan shall provide for recovery of allowable transition costs over a period of not more than five years.

(2) The commission shall approve and publish a recovery plan for each electric utility submitting a plan. The approved recovery plan shall establish the amount of transition costs eligible for recovery from retail consumers and the transition charges designed to equitably recover such costs from all customer classes. The commission shall be responsible for the final determination of permissible transition cost recovery

charges for each electric utility and for approval of the recovery plan subject to its determination in a rate case proceeding that such charge and such plan are equitable, appropriate, balanced between consumers and shareholders, in the public interest, consistent with the intent of sections 1 to 17 of this act, and promote consumer choice. All interested parties may participate in the transition cost proceeding in accordance with the rules and statutes applicable to rate cases. The burden of proof for any transition cost recovery claim shall be borne by the electric utility making such claim. During recovery, the commission may include a provision to adjust transition cost recovery based on actual retail power market prices.

(3) Any allowable transition costs not recovered pursuant to sections 1 to 17 of this act and the recovery plan, as modified and approved by the commission, within five years shall not be recoverable by the electric utility. Electric utilities shall have a duty to cooperate with the commission in the implementation of sections 1 to 17 of this act as a precondition for recovery of transition costs. Approval of a recovery plan and collection of any transition costs shall be deemed a settlement of all such claims by an electric utility. No electric utility seeking to establish claims for recovery of transition costs through any other means shall be eligible for recovery pursuant to a recovery plan or the collection of a transition charge.

5. The commission shall have the duty to determine that any recovery of transition costs shall be through a nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all retail consumers, limited in duration and consistent with the promotion of fully competitive markets. Charges to recover transition costs shall only apply to consumers within an electric utility's formerly protected retail service territory. The charges shall not apply to decreases in consumption that result from the exercise by a retail consumer of any competitive alternative that existed prior to August 28, 1998, including, but not limited to, self-generation.

Section 15. 1. The commission shall promulgate appropriate rules and regulations that ensure the continuance of reliable and safe electric service, in conjunction with the activities of the FERC.

2. All electric utilities and providers of electric power delivery and ancillary services shall have in place sufficient measures to preserve the integrity, safety, reliability and quality of electric service in the state. REPs shall have appropriate provisions for operating reserves and other ancillary services in order to maintain the integrity of the bulk transmission network.

Section 16. Nothing in sections 1 to 17 of this act shall interfere with the rights of parties under contract.

Section 17. If any provision of sections 1 to 17 of this act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other

provisions or applications of the act which can be given effect without the invalid provision or applications, and to this end the provisions of sections 1 to 17 of this act are severable.

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